SOLICITATION OF OFFERS

ISSUED BY

THE CITY OF EL PASO

PURCHASING & STRATEGIC SOURCING DEPARTMENT

SOLICITATION NO: 2016-696 **DATE ISSUED: JUNE 14, 2016**

TITLE: DIESEL EXHAUST FLUID (DEF) AND DEF DISPENSING SYSTEMS (RE-BID)
STREETS & MAINTENANCE - FLEET DIVISION

An original, signed, sealed, OFFER to furnish the goods and/or services set forth in the SCHEDULE will be received at the place indicated below, until:
2:00 PM, local time, WEDNESDAY, JULY 13 , 2016

NOTICE **When used in formal bid solicitations, the terms 'offer' and 'bid', and 'offeror' and 'bidder' are interchangeable.**

ADDRESS OFFERS TO:
PURCHASING 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 & STRATEGIC SOURCING DEPARTMENT,
300 N. CAMPBELL, 1st Floor
EL PASO, TX 79901

FOR ADDITIONAL INFORMATION CONCERNING THIS SOLICITATION, CONTACT:
ART GAMBOA, PROCUREMENT ANALYST
Telephone: [915] 212-1199 FAX: [915] 212-0044 Email: GamboaA@elpasotexas.gov@elpasotexas.gov

EXPIRATION OF OFFERS

The offeror agrees, to furnish all items [supplies or services] at the prices offered, and delivered at the designated point or points, within the time set forth in the SCHEDULE, if this offer is accepted within NINETY [90] consecutive days from the date set for the receipt of offers. All offers shall expire on the 90th 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:

AMENDMENT	DATED	AMENDMENT	DATED	AMENDMENT	DATED	AMENDMENT	DATED
A001	_____	A002	_____	A003	_____	A004	_____
A005	_____	A006	_____	A007	_____	A008	_____

OFFER SUBMITTED BY

_____
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

_____&_____ **- HIRE EL PASO 1ST LOCAL VENDOR REGISTRATION ID#**_____
TELEPHONE NUMBER FAX NUMBER

_____ ☐ **PLEASE CHECK PREFERRED ADDRESS FOR RECEIVING SOLICITATION DOCUMENTS.**
E-Mail address

OFFER EXECUTED BY [PLEASE PRINT**]**

_____
NAME AND TITLE OF PERSON AUTHORIZED TO OBLIGATE 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 ☐

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PART 1 – GENERAL INFORMATION

1.1 Public Disclosure of Bid Information

Offerors are cautioned that once a bid is opened, all information contained therein will be available to the **PUBLIC** unless the information is excepted 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 excepted 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. Offerors who claim that information contained in a bid 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]

IMPORTANT NOTICE

Note: Any changes in due date or material changes for any RFPs/solicitations will be posted on the solicitations page of the City of El Paso Purchasing & Strategic Sourcing Department's website: http://legacy.elpasotexas.gov/purchasing/ep-invitations.asp

> **It is the bidder'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 bid, 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. Vendors are responsible for monitoring the City's website for said postings.

1.2 Hire El Paso First Local Bid Preference
City of El Paso Code - Chapter 3.45

3.45.010- Statement of Policy.

(A) It is the policy of the City of El Paso to use the City's spending powers in a manner that promotes fiscal responsibility; maximizes the effectiveness of local tax dollars; ensures that a portion of local tax dollars remain in the local economy for economic development opportunities; and, utilizes all legally-available opportunities to contract with local businesses.

(B) It is the policy of the City of El Paso to afford a bidding preference to local businesses, unless prohibited by granting agencies, exempted by Federal or State Laws/Codes, Local ordinances or City resolutions, or if doing so would be clearly be disadvantageous to the City.

(C) It is the policy of the City of El Paso to achieve the goals in subsection (A) above by utilizing a local business purchasing preference in the competitive processes of procuring goods and services.

(D) Nothing contained herein shall prohibit the City from rejecting all bids, as permitted by law.

(E) Except as provided by this Chapter 3.45 Hire El Paso First- Local Bid Preference, the City's policies and procedures governing City procurement shall otherwise remain unchanged.

3.45.020- Definitions.

The words and phrases defined in this section have the following meanings:

(A) **Economic development opportunities** means economic benefits to/for the City of El Paso and its citizens created by the award of a procurement contract including, but not limited to, the following:

1. employment of residents who reside within the incorporated city limits of El Paso, Texas in the delivery of the contracted service and/or product;

2. employment of residents who reside within the incorporated city limits of El Paso, Texas in the manufacturing/production processes of the products being procured or the delivery of services being rendered;

3. increase of tax revenues to the City of El Paso; or 25 percent of the total value of the contract is subcontracted to local businesses as defined in Section 3.45.020, if subcontractors are part of the contract.

(B) **Local business** means a business with a Tier 1 or Tier 2 principal place of business within the incorporated city limits of El Paso, Texas

(C) **Headquarter** means the executive office where the corporate officers are located and from which the operations of the business are directed and controlled by its officers or owners.

(D) **Principal place of business**

Tier 1 Principal place of business: means a business whose primary headquarter is located within the incorporated city limits of El Paso, Texas and at least 10 percent the total number of full time employees reside within the incorporated city limits of El Paso, Texas. A temporary construction trailer or temporary structure shall not be construed as the headquarter structure.

Tier 2 Principal place of business: means a business that:

(1) Has been physically present and operating for at least one (1) year in the incorporated limits of the City of El Paso; and

(2) A minimum of fifty (50) of its full time employees reside within the incorporated city limits of El Paso, Texas; and

(3)Owns or leases real property or owns or leases space in a structure in which primary business is conducted in the incorporated limits of the City of El Paso; and

(4) The Property or space owned or leased is used as an office, plant, store, warehouse, or other function that is fully operational and has sufficient equipment, supplies, and personnel to provide the product or service of the business without significant reliance on the resources of another entity, affiliate, or an auxiliary facility of the business which is located outside the incorporated limits of the City of El Paso; and

(5) A temporary construction trailer or temporary structure shall not be construed as a real property for purposes of meeting the ownership or lease requirement.

3.45.030- Procedures for Granting Local Preference in Purchasing and Contracting for Certain Construction Projects, Real and Personal Property, and Services.

(A) Construction contracts in an amount less than $100,000.

In purchasing *construction services*, if the City receives a bid from a bidder that is a Tier 1 local business and whose bid is within five percent (5%) of the lowest bid price received by the City from a bidder who is not a local business or a bid from a bidder that is a Tier 2 local business and whose bid is within two and a half percent (2.5%) of the lowest bid received by the City from a bidder who is not a local business the City may enter into a contract with a value of less than $100,000.00 with:

(1) the lowest bidder; or

(2) the bidder that is a Tier 1 or Tier 2 local business as defined herein, provided the governing body of the City determines, in writing, that awarding to the local bidder offers the City the best combination of contract price and economic development opportunities.

(B) Contracts for personal property or services in an amount of less than $500,000.

In purchasing any personal property that is not affixed to real property, or services, if the City receives a competitive bid from a bidder that is a Tier 1local business and whose bid is within five percent (5%) of the lowest bid price received by the City from a bidder that is not a local business or if the City receives a competitive bid from a bidder that is a Tier 2 local business and whose bid is within two and a half percent (2.5%) of the lowest bid price received by the City from a bidder that is not a local business , the City may enter into a contract for an amount of less than $500,000 with:

(1) the lowest bidder; or

(2) the bidder that is a Tier 1 or Tier 2 local business as defined herein, provided the governing body of the City determines, in writing, that awarding to the local bidder offers the City the best combination of contract price and economic development opportunities.

(C) Contracts for personal property or services in an amount equal to or greater than $500,000.

In purchasing any personal property that is not affixed to real property or services, if the City receives a competitive bid from a bidder that is a Tier 1 local business and whose bid is within three percent (3%) of the lowest bid price received by the City from a bidder that is not a local business or if the City receives a

competitive bid from a bidder that is a Tier 2 local business and whose bid is within one and a half percent (1.5%) of the lowest bid price received by the City from a bidder that is not a local business, the City may enter into a contract for an amount of $500,000 or more with:

(1) the lowest bidder; or

(2) the bidder that is a Tier 1 or Tier 2 local business as defined herein, provided the governing body of the City determines, in writing, that awarding to the local bidder offers the City the best combination of contract price and economic development opportunities.

3.45.040- Application Process.

(A) Application**-** All businesses seeking to be certified as a Local Business under Chapter 3.45 Hire El Paso First- Local Bid Preference must submit an application to the City as designated on the form provided by the City. The Application shall contain the following:

(1) The address of the primary headquarters of the applicant's business.

(2) The amount of time the applicant's business has been physically present and operating in the incorporated city limits of El Paso, Texas.

(3) The number of the applicant's full time employees who reside within the incorporated city limits of El Paso, Texas.

(4) Information identifying whether the business owns or leases real property or owns or leases space located in the incorporated city limits of El Paso, Texas and whether the structure is a temporary construction trailer or temporary structure.

(5) Information identifying the business activities conducted on the Property or space owned or leased located in the incorporated city limits of El Paso, Texas.

(6) Information identifying the economic development opportunities for the City of El Paso created by the business by the award of a City contract to the business.

(7) Information identifying subcontractors, if any, and the percent of the total value of the contract that is subcontracted to certified local businesses.

(8) A non-refundable application fee in the amount established by City Council.

3.45.050- Falsification of information.

(A) A City contract that is awarded to a business based on a local business certification that is approved by the City based upon false information may be terminated by the City.

(B) Information presented by an applicant of a local business certification or business considered local which is false shall be grounds for finding the business non-responsible and the City may discontinue all business with the City of El Paso for a period of three years.

3.45.060- Exceptions.

(A) This program does not apply to any contract in which the federal government participates in the form of a grant or loan, or where the City acts as a conduit for federal money.

(B) This program does not apply to purchases made through a purchasing cooperative program.

(C) In accordance with Local Government Code section 271.9051, this program does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

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

3.46.010 Definition

1. **Wage Theft Adjudication** occurs when:

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

2. 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

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

4. 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

5. 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.**

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

2. 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

1. 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.

2. 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

1. **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.

   3. 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.

2. **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.

1.4 Cooperative Purchasing

This contract may be utilized for purchases by other local government entities under an interlocal cooperation agreement, Texas Government Code Chapter 791. Any contract award by the City of El Paso on behalf of another local government entity shall be contingent upon the issuance of a purchase order or execution of a separate contract by the other local government entity. The Contractor must deal directly with the local government entity concerning the placement of orders, issuance of the purchase order, insurance certificates, contractual disputes, invoicing and payment or any other terms and conditions that the other local government entity may require. The actual utilization of this contract award by the other local government entity is at the sole discretion of that other local government entity.

The City of El Paso is acting on the behalf of other local government entities for the sole purpose of complying with Texas competitive bidding requirements and shall not be held liable for any costs, damages, etc. incurred by any bidder with regard to any purchase by another local government entity. The City of El Paso shall be legally responsible only for payment for goods and services in the quantities detailed in the City's own purchase order or contract.

1.5 Notes – Special Terms and Conditions

1. Bidders are required to submit offers on the prescribed form(s) (unaltered). Offers submitted on other than the prescribed form(s) may be considered incomplete or non-responsive. Failure to furnish required documentation with the bid may result in the bid being deemed incomplete and non-responsive, resulting in rejection.

2. 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 bidder 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 bidder.

3. The City may accept the lowest responsible and responsive bid based on the tabulation of any one, combination or all of the base bid(s), alternate bid(s), and/or optional bid(s) based on the most advantageous project bid that is desired by the City department involved and that the City Council in their sole judgment determines is in the City's best interest and benefit.

4. At any time during the term of the contract the Purchasing Director or designated personnel may increase or decrease the scope of supplies and or services as he may find necessary to accomplish the general purpose of the contract.

5. All goods and services delivered shall comply with the specifications set forth in Part 2. Descriptive literature containing sufficient information to determine product compliance with specifications must accompany bid. The City of El Paso reserves the right to request samples from bidder(s) prior to award of contract.

6. In addition to any other discount, the City is entitled to a deduction for federal excise tax if it is included on the manufacturer's published price list for applicable items, and contractor must invoice accordingly. A federal tax exemption certification will be provided by the City, upon request.

7. Bidder must submit with their offer a copy of the company's organization certificate issued by the Secretary of State of the State in which the bidder/proposer was organized. Also, a DBA certificate must be provided if the bidder/proposer used a trade name in the solicitation documents other than the name under which the company was organized. Further, the bidder/proposer must fill out the affidavit in Part 5 stating what names the company uses and has used in the past and attest that all such names describe the company currently submitting a bid.

8. Accuracy of estimated quantities – the City believes that the numbers used as item quantities to be a reasonably accurate estimate; however, the actual quantity may be more or less than the estimate, and shall not be the basis for any change in the contract per unit price. Additionally, estimates are minimums, but not guaranteed minimums, and the contract cost can increase so long as the unit costs remain the same and increased funds are appropriated in the budget.

9. Any manufacturer names, trade names, brand names, or catalog numbers used in these specifications are for the purpose of describing and establishing minimum requirements or level of quality and design required. They are in no way intended to prohibit the bidding of other manufacturers' items of equal material and quality or meant to exclude any other make and model from being considered. Vendors who wish to bid a functionally equivalent item(s) which meets or exceeds the specifications must furnish with the bid descriptive literature containing sufficient information to determine product compliance.

10. 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.

11. **One award will be made for all items.**

12. Prompt payment discounts will be considered when determining the apparent lowest bidder, providing the City is allowed at least ten (10) days in which to take advantage of the discount.

13. As part of the requirement to establish the responsibility of the offeror, the City of El Paso may perform a price analysis to determine the reasonableness of the price(s) at which the supplies and/or services are offered. prices that are significantly lower than the mean of all offers and that appear to be unreasonably low may be determined to be evidence of non-responsibility, and cause the offer to be rejected.

1.6 Cone of Silence

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:

1. 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.

2. 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.

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

1.7 Requests for Clarifications

In order to meet the City's schedule for awarding this requirement it is extremely important that requests for clarification or additional information, or requests for a change in the specifications, be submitted in writing no later than ten calendar days prior to bid opening date. Each vendor submitting questions shall clearly address each question by reference to a specific section, page and item of this solicitation. Questions submitted after this date may not elicit a response. Please refer to Bid/Contract Number and Title in all correspondence.

BID ADMINISTRATOR CONTACT INFORMATION

Art Gamboa
Procurement Analyst
Fax: (915) 212-0044
Email: GamboaA@elpasotexas.gov@elpasotexas.gov

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

Bidder's [Company] Name:_____

It is the vendor's responsibility to follow up and make certain that the Purchasing & Strategic Sourcing Department received the request. Vendors shall promptly notify the Purchasing & Strategic Sourcing Department of any ambiguity or inconsistency which they may discover upon examination of a solicitation document. During the bid process, vendors shall not contact any City staff except those designated in the text of this solicitation or in subsequent documentation. Non-compliance with this provision may result in rejection of the offer involved.

1.8 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 Bids	06/14/2016
Last Day for Offerors to Submit Written Questions	06/29/2016
Answers provided	07/06/2016
Bid Due Date	07/13/2016
Evaluations	TBD
Contract Award Date	TBD

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 BID will only be issued and posted on the City's website at: http://www.elpasotexas.gov/financial_services/invitations.asp

1.9 Copies Required

One complete original copy (signed in blue ink), and one copy of the bid package are required, unless otherwise stated in Part 3. Bidders must provide enough information with their bid to constitute a definite, firm, unqualified and unconditional offer. The bidder shall submit the bid on the forms (unaltered) as furnished by the City. All bids shall contain the following:

1. Those pages on which you are required to fill in prices, furnish other information, or which call for a signature and those pages which include the City of El Paso Standard Contract Clauses (Part 4), and

2. Any other information requested.

The submission or attachment of company "Quotation Forms" or any other documents containing alternative terms and / or conditions is not acceptable and may result in your bid being deemed non-responsive. Unauthorized additions, serious omissions, bids that do not contain a unit price where required or irregularities of any kind which make the bid incomplete, indefinite, or otherwise ambiguous are not acceptable and may result in your bid being deemed non-responsive.

PART 2 - SCHEDULE OF ITEMS

Diesel Exhaust Fluid (DEF) and DEF Dispensing Systems (Re-Bid)
Streets & Maintenance - Fleet Division

BID NUMBER: 2016-696
BID OPENING DATE: 07/13/2016

The City of El Paso is soliciting bids for Diesel Exhaust Fluid (DEF) and DEF Dispensing Systems (Re-Bid), primarily for the Streets & Maintenance - Fleet Division. The City shall order all of its supplies and/or services from one or more successful bidders (contractors) from time to time as needed. Only personnel from Streets & Maintenance - Fleet Division are authorized to directly place orders against this Contract. Personnel from other City departments may only utilize this contract with express written authorization from Streets & Maintenance - Fleet Division and only if the additional usage is within reasonableness given the total awarded amount of the Contract.

This is Low Bid procurement.

The term of this contract shall be for: **Thirty-six (36) months**.

2.1 Bid Form

Failure to bid on all items shall deem the bidder non-responsive.

Group I: DIESEL EXHAUST FLUID (DEF)

ESTIMATED ANNUAL QUANTITY 20,000 GALLONS.

ITEM #	DESCRIPTION	MANUFACTURER / BRAND PRODUCT NUMBER	ANNUAL ESTIMATED QUANTITY	COST PER ITEM	ESTIMATED ANNUAL AMOUNT	ESTIMATED 3 YEAR TOTAL (Annual Amount x 3 Years)
1.	DIESEL EXHAUST FLUID **330 GALLON TOTE** (Specifications SECTION A, Page 5)	_____	35	$_____/ each tote	$_____	$_____
2.	DIESEL EXHAUST FLUID **55 GALLON BARREL** (Specifications SECTION A, Page 5)	_____	140	$_____/ each barrel	$_____	$_____
Group I (Items 1 and 2)					_____ Annual total	_____ 3 year total

Bidder's [Company] Name:_____

Group II: BARREL/DRUM AND TOTE DEF DISPENSING SYSTEM(S) AND PUMP(S)

ITEM #	DESCRIPTION	MANUFACTURER / BRAND PRODUCT NUMBER	ANNUAL ESTIMATED QUANTITY	COST PER ITEM	ESTIMATED ANNUAL AMOUNT	ESTIMATED 3 YEAR TOTAL (Annual Amount x 3 Years)
1.	DEF DISPENSING SYSTEM **330 GALLON TOTE** (Specifications SECTION A, Page 5)	_____	1	$_____/ each system	$_____	$_____
2.	REPLACEMENT PUMP FOR DISPENSING SYSTEM **330 GALLON TOTE** (Specifications SECTION A, Page 5)	_____	1	$_____/ each pump	$_____	$_____
3.	DEF DISPENSING SYSTEM **55 GALLON BARREL** (Specifications SECTION A, Page 5)	_____	3	$_____/ each system	$_____	$_____
4.	REPLACEMENT PUMP FOR DISPENSING SYSTEM **55 GALLON BARREL** (Specifications SECTION A, Page 5)	_____	3	$_____/ each pump	$_____	$_____
Group II (Items 1 - 4)					_____ Annual total	_____ 3 year total

ANNUAL TOTAL (Group I and II)	**$**_____
3 YEAR TOTAL (Group I and II)	**$**_____

A copy of all receipts (to include proof of any and all materials purchased by Contractor from the merchant/supplier of the materials) will be submitted to the Facilities Maintenance Division personnel for departmental review and approval. Materials purchased that are not accompanied with proper documentation may result in non-compensation for the Contractor at the City's discretion.

Bidder's [Company] Name:_____

2.2 Option to Extend To Extend Term of Agreement

NOTE: NOT AN AWARD FACTOR – CHECK ALL APPROPRIATE BOXES

The City at its sole discretion, may exercise any option to extend the term of the agreement, by giving the Contractor written notice within the time period noted on the selected options. The term of this contract shall be based on one of the selections below and under the same terms and conditions. The City Manager or designee may extend the option to extend.

Bidder offers the City the option of extending the term of the contract for:

☐ **Two** [2] additional years at the same unit price(s), if the option is exercised prior to the expiration of the original term of the Contract:

☐ **NO OPTION OFFERED**

2.3 Payment Terms and Conditions

NOTE: All vendors must accept an ACH payment effective immediately. Vendors must fill-out the attached Accounts Payable Direct Deposit Sign-Up Form located in Part 5 of this document to facilitate the Automated Clearing House (ACH) payment process.

Contract Payments
All 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 goods and/or services that are subject of this bid unless otherwise noted in the Form of Contract. Invoices may be submitted on no more than a monthly basis. Invoices submitted for services rendered shall be forwarded to:

Accounts Payable
City of El Paso
Streets & Maintenance
1059 Lafayette Bldg. 3
El Paso, TX 79907

2.4 Prompt Payment and Payment Terms

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 acceptance of goods or services, or receipt of a properly prepared invoice by the City Department identified in the Invoice Instructions set forth on the Purchase Order, whichever is later. Any discount for prompt payment will be calculated from the day goods or services are accepted or 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 appropriate Department.

PAYMENT TERMS: Please mark appropriate block.

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

Bidder's [Company] Name:_____

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

2.5 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 vendor's employees shall be paid, at a minimum, the federally mandated minimum wage and the vendor 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 included in the bid.

2.6 Subcontractor and/or Supplier Identification

The Bidder shall indicate below the name of each subcontractor and/or supplier the bidder will use in the performance of the contract. The Bidder shall specify the work to be performed by the subcontractor or the materials to be provided by the supplier. Any changes in subcontractor and/or supplier listed below shall require prior approval by the Purchasing & Strategic Sourcing Department.

Name, Address & Phone Number	**Service / Supplies**

2.7 City's Required Delivery

Delivery shall be made within **seven (7)** consecutive calendar days subsequent to the receipt by the contractor of a written notice of award, or purchase order, as evidenced by the date of receipt shown on the US Postal Service domestic return receipt or facsimile.

In cases of emergency delivery must be made within **four (4)** hours or the next morning.

The City understands that all parts may not be available in this time frame, in which case delivery of eighty percent (80%) of the parts ordered in this time frame will be considered in compliance.

2.8 Bidder's Promised Delivery

Pursuant to the above requirements in the Required Delivery section, bidder's promised delivery is:

Within _____ consecutive calendar days

Within _____ hours or overnight after receipt of verbal order in cases of emergency

NOTE: If bidder does not specify an earlier delivery, the City's required delivery shall prevail. A delivery date later than the City's required delivery may be cause for rejection of the bid.

2.9 Delivery Receipt and Returns

Receipt and Documentation:

An official City Purchase Order or Procurement Card authorization is required prior to making any deliveries.

Contractors will make reference to City Purchase Order number if applicable on all invoices. This will serve as an accounting check for parts received.

Returned Items:

Defective item shall be returned as soon as possible and replaced, or returned for full credit, if correct item is not available.

Incorrect item shall be returned as soon as possible and replaced, or returned for full credit, if correct item is not available.

Contractor shall be responsible for freight to return defective or incorrect items.

The City will only accept responsibility for re-stocking fees that are the result of an ordering error made by the City.

2.10 Delivery Location (See also delivery details on page 21)

1059 Lafayette – Shop II – Attention: Joe Hernandez; El Paso, TX 79907

4096 Doniphan – Shop 50 – Attention: Russell Still; El Paso, TX 79922

910 N. Raynor – Shop 30 – Attention: Albino Gonzalez; El Paso, TX 79903

2300 Darrington Rd. – Landfill – Attention: David St. Leon; Clint, TX 79928

2.11 Emergency Delivery and Requirements

Emergency delivery (After-hours, Holidays, and Weekends) of parts may be required in some instances. The contractor must be able to respond and provide such parts. The contractor will be compensated the actual cost of premium time and transportation, to effect emergency delivery, when specifically authorized by the ordering department. The contractor is asked to provide after-hours/emergency contact(s).

CONTACT PERSON: _____ PHONE: _____

ALTERNATE: _____ PHONE: _____

PART 3 - SPECIFICATIONS

Diesel Exhaust Fluid (DEF) and DEF Dispensing Systems (Re-Bid)
Streets & Maintenance - Fleet Division

BID NUMBER: 2016-696
BID OPENING DATE: 07/13/2016

3.1 General Conditions

1. Minimum Specifications: The specifications listed are to be interpreted as meaning the minimum required by the City. Offeror commits to provide goods/services that are consistent with the City's specifications in every regard unless an exception is clearly noted. The City may accept a bid subject to an exception if, in the sole judgment of the City, the bid meets or exceeds the City's specifications. If the goods/services offered do not meet or exceed the City's specifications because of the exception, the City will consider the bid non-responsive.

2. Safety and Capacity Inspections: The City reserves the right to conduct safety and capacity inspections of facilities, equipment, and staff prior to the award and periodically during the contract term. If, in the sole discretion of the City, a vendor is deemed to have inadequate safety equipment and/or procedures, has a track record of safety violations, or has insufficient capacity to honor the contract requirements then the vendor may be declared non-responsible.

3. Equipment, Personnel and Responsibility Determination: At the time of submission, the vendor must provide and/or identify the following as appropriate, 1) their primary equipment it intends to use in the execution of this contract to include quantity, brand, type, and model year; 2) the number of personnel it employs that can fulfill the contract requirements and; 3) responsibility determination (financial and technical - see end of Section B for specific information). **Complete the responsibility check list at the end of this Part 3.**

4. 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 El 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) and Department Contracts Administrator(s) (DCAs) to assist with the administration of the resultant Contract.

5. Contract Performance
   The Respondent shall be responsible for the completion of all work set out in the Contract and task orders. All work 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 work is progressing and being performed in compliance with the Contract.

6. Materials and Fabrication: Details of construction and materials, where not otherwise specified, are left to the discretion of the manufacturer, provided that only materials and workmanship of the highest quality are to be used, and best commercial practice is adhered to in the fabrication of the unit(s). Except as otherwise specified herein, the manufacturer shall be solely responsible for design and construction of the product to meet the stated performance criteria.

7. Reference to Brand Names: Any manufacturer names, trade names, brand names, or catalog numbers used in these specifications are for the purpose of describing and establishing minimum requirements or level of quality and design required, and are in no way intended to prohibit the bidding of other manufacturers' item of equal material and quality.

Bidder's [Company] Name:_____

3.2 Materials

The items furnished shall be new, unused or the latest model in production as offered to commercial trade and shall be of the highest quality as to materials and workmanship. Manufacturer furnishing these items shall be experienced in the design and construction of such items and shall furnish evidence of having supplied similar items which have been in successful operation. The bidder shall be an established supplier of the items bid.

3.3 Specifications

Group I: DIESEL EXHAUST FLUID (DEF)

1. DEF for use on 2010 and newer engines with Selective Catalytic Reduction (SCR).
2. 32.5% Aqueous Urea Solution SCR grade.
3. Fluid must meet AUS 32, ISO 22241 and DIN 70070 specifications.

Group II: DRUM AND TOTE DEF DISPENSING SYSTEMS AND PUMP

1. "Closed" dispensing systems for DEF barrels or totes must be designed and manufactured specifically for this purpose and container attachment must provide a good seal to maintain DEF purity.
2. 1/3 HP, 110 volt electric centrifugal pumps with auto shut-off.
3. Automatic stainless steel nozzle with swivel.
4. Must have a flow meter to track usage in gallons.
5. ¾ inch delivery DEF hoses: Container to pump 8 feet. Pump to nozzle 20 feet.

Delivery Details:

- Locations:

1059 Lafayette, El Paso, Texas (MSC)	Shop 11	330 Gallon Totes
4096 Doniphan, El Paso, Texas	Shop 50	55 Gallon Barrels
910 N. Raynor, El Paso, Texas	Shop 30	55 Gallon Barrels
2300 Darrington Road, Clint, Texas	Landfill	55 Gallon Barrels

- Orders for specified quantities will be placed by the ordering entity "as required" between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday. Regular deliveries will be made during normal business hours Monday through Friday, 8 a.m. to 5 p.m.

3.4 Warranties

A. The Complete Unit, without limitation, will be guaranteed against defects in material and workmanship for a term not less than twelve (12) months, or the Manufacturer's standard warranty, whichever is longer. All Texas statutes and case law with regard to implied warranty shall apply.

B. The City's warranty is not an optional item, it is a mandatory item. In the event that a manufacturer of the unit or of component parts of the unit only provides an extended or optional warranty (which meets or exceeds the City's warranty) when the cost of this extended or optional warranty is in addition to their standard warranty, then the Contractor shall include the cost of this extended or optional warranty in the base price of the unit.

C. **Warranty details must be submitted with bid.**

D. All warranties shall run from the date of installation of the part in a unit.

E. All warranties to cover all field repairs, labor, parts and transportation for return of goods, or to a repair facility. Warranty re-work, shall be accomplished in the same time as the original required service time set forth in **PART 2** of the Contract.

1A. Parts: Manufacturer's standard warranty, copy to be submitted with offer.

_____
[time or other limits]

1B. Service Labor: Dealers standard service warranty as offered to commercial customers, and, or the component or sub-assembly, Manufacturer's Service Warranty. Copies of applicable warranties must accompany your offer.

_____
[time or other limits]

3.5 Exceptions to Specifications

Except as set forth below, the Offeror agrees it will perform the services under this Solicitation to the minimum standards set forth in Paragraph 1 of these Specifications (Part 3).

Offeror takes the following exceptions to the specifications set forth above:

_____

_____

_____
(Attach additional pages if needed)

_____
Signature of Company Representative (only needed if taking exception)

3.6 Responsibility Determination

The responsibility determination includes consideration of a Respondent's integrity, compliance with public policy, past performance with the City (if any), financial capacity and eligibility to perform government work (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 bid.

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) Any Form 8K's filed subsequent to last Form 10K.

If a **privately** held organization:

(1) Balance sheet for your last two fiscal years accompanied by audit reports by an independent Certified Public Accountant.
(2) Statement of income of your last two fiscal years accompanied by audit reports 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 Bid 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 projects that are similar to the scope of work identified in this bid, which may include services/projects 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 Respondent's existing clients and analysis of industry reports. The City will make a finding of the Respondent's Technical Resources/Ability to perform the bid scope of work based upon the results of the survey.

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

- RESPONSIBILITY CHECK LIST -

EQUIPMENT, PERSONNEL AND RESPONSIBILITY DETERMINATION
(Vendor must provide and/or identify the following as applicable)

1A. If a publicly held organization, submit financial statements for the last two (2) fiscal years as described above under Financial Capacity Determination

Submitted - YES ☐ - NO ☐

- OR -

1B. If a privately held organization, submit balance sheets and statement of income for the last two years accompanied by an independent Certified Public Accountant as described above under Financial Capacity Determination.

Submitted - YES ☐ - NO ☐

If no, the vendor cannot provide Certified documents listed in 3B above, then provide a letter requesting a waiver for this requirement and 1) provide the balance sheets and income statements for the last two years, 2) provide the name of the Bank(s) the vendor uses for its' business transactions, 3) provide the line of credit it has with the bank, if applicable, and 4) provide the Income Tax returns for the last two years.

PART 4 - CONTRACT CLAUSES

4.1 Contract Clauses (Terms & Conditions)

1. TYPE AND TERM OF CONTRACT

This is a Requirements Low Bid Contract under which the City shall order all of its supplies and/or services described in Section A from the successful bidder, hereinafter referred to as the Contractor, for the duration of the contract.

In the event the City has not obtained another service contractor by the expiration date of the term contract, the City, at its discretion, may extend the contract on a month-to-month basis not to exceed six (6) months until such time as a new contract is awarded.

The term of this agreement shall be for THIRTY SIX (36) MONTHS commencing on the date the Contractor receives a written NOTICE OF AWARD. Delivery of the NOTICE OF AWARD shall be by email or US Postal Service.

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2. INVOICES & PAYMENTS

1. The Contractor will submit invoices, in single copy, on each contract after each delivery. Invoices covering more than one purchase order will not be accepted.
2. Invoices will be itemized, including serial number of unit; transportation charges, if any, will be listed separately.
3. Invoices will reflect the Contract Number and the Purchase Order Number.
4. Do not include Federal Tax, State Tax, or City Tax. The City will furnish a tax exemption certificate upon request.
5. Discounts will be taken from the date of receipt of goods or date of invoice, whichever is later.
6. A copy of the bill of lading and the freight waybill when applicable will be attached to the invoice.
7. Payment will not be due until the above instruments are submitted after delivery and acceptance.
8. Mail invoices to the City Department indicated in the Invoice Instructions set forth on the Purchase Order.
9. Contractor shall advise the Comptroller of any changes in its remittance addresses.

3. CONTRACTUAL RELATIONSHIP

Nothing herein will be construed as creating the relationship of employer and employee between the City and the Contractor or between the City and the Contractor's employees. The City will not be subject to any obligations or liabilities of the Contractor or his employees incurred in the performance of the contract unless otherwise herein authorized. The Contractor is an independent Contractor and nothing contained herein will constitute or designate the Contractor or any of his employees as employees of the City. Neither the Contractor nor his employees will be entitled to any of the benefits established for City employees, nor be covered by the City's Workers' Compensation Program.

4. INDEMNIFICATION [Rev. 04-15-99] [Rev. 01-04-04]

Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Contractor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Contractor will pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause.

5. GRATUITIES

The City may, by written notice to the Contractor, cancel this contract without liability to Contractor if it is determined by the City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

6. WARRANTY-PRICE

A. The price to be paid by the City will be that contained in the

Contractor's bid which the Contractor warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty the prices of the items will be reduced to the Contractor's current prices on orders by others, or in the alternative, the City may cancel this contract without liability to Contractor for breach or Contractor's actual expense.

B. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the City will have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

7. RIGHT TO ASSURANCE

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

8. TERMINATION [Rev. 06/07/97]

A. Termination for Convenience

The City of El Paso may terminate this contract, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to the City of El Paso to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of El Paso, the Contractor will account for the same, and dispose of it in the manner the City of El Paso directs.

B. Termination for Default

If the Contractor fails to comply with any provision of the contract the City of El Paso may terminate this contract for default. Termination shall be effected by serving a notice of intent to terminate the contract setting forth the manner in which the Contractor is in default. The Contractor will be given an opportunity to correct the problem within a reasonable time before termination notice is rendered. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. The City shall have the right to immediately terminate the Contract for default if the Contractor violates any local, state, or federal laws, rule or regulations that relate to the performance of this Agreement.

9. ADDITIONAL REMEDIES [New 12/96]

If the City terminates the contract because the Contractor fails to deliver goods as required by the contract, the City shall have all of the remedies available to a buyer pursuant to the *UNIFORM COMMERCIAL CODE* including the right to purchase the goods from another vendor in substitution for those due from the Contractor. The cost to cover shall be the cost of substitute goods determined by informal or formal procurement procedures as required by the Local Government Code. The City may recover the difference between the cost of cover and the contract cost by deducting the same from amounts owed to Contractor for goods delivered prior to termination or any other lawful means.

10. TERMINATION FOR DEFAULT BY CITY [Rev. 06/09/97]

If the City fails to perform any of its duties under this contract, Contractor may deliver a written notice to the Purchasing Director describing the default, specifying the provisions of the contract under which the Contractor considers the City to be in default and setting forth a date of termination not sooner than 90 days following receipt of the Notice. The Contractor at its sole option may extend the proposed date of termination to a later date. If the City fails to cure such default prior to the proposed date of termination, Contractor may terminate its performance under this Contract as of such date.

11. FORCE MAJEURE [Rev. 06/07/97]

If, by reason of Force Majeure, either party hereto will be rendered unable wholly or in part to carry out its obligations under this Contract then such party will give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, will be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party will try to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, will mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty. If a party is unable to comply with the provisions of this contract by reason of Force Majeure for a period beyond thirty days after the event or cause relied upon, then upon written notice after the thirty (30) days, the affected party shall be excused from further performance under this contract.

12. ASSIGNMENT-DELEGATION

No right or interest in this contract will be assigned or delegation of any obligation made by the Contractor without the written permission of the City. Any attempted assignment or delegation by the Contractor will be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

13. WAIVER

No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

14. INTERPRETATION-PAROL EVIDENCE

This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their contract. No course of prior dealings between the parties and no usage of the trade will be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.

15. APPLICABLE LAW

The law of the State of Texas will control this contract along with any applicable provisions of Federal law or the City Charter or any ordinance of the City of El Paso.

16. ADVERTISING

Contractor will not advertise or publish, without the City's prior consent, the fact that the City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

17. AVAILABILITY OF FUNDS

The awarding of this contract is dependent upon the availability of funding. In the event that funds do not become available the contract may be terminated or the scope may be amended. A 30-day written notice will be given to the vendor and there will be no penalty nor removal charges incurred by the City.

18. VENUE

Both parties agree that venue for any litigation arising from this contract will lie in El Paso, El Paso County, Texas.

19. ADDITIONAL REMEDY FOR HEALTH OR SAFETY VIOLATION

If the Purchasing Director determines that Contractor's default constitutes an immediate threat to the health or safety of City employees or members of the public he may give written notice to Contractor of such determination giving Contractor a reasonable opportunity to cure the default which shall be a period of time not less than 24 hours. If the Contractor has not cured the violation within the time stated in the notice, the City shall have the right to terminate the contract immediately and obtain like services as necessary to preserve or protect the public health or safety from another vendor in substitution for those due from the Contractor at a cost determined by reasonable informal procurement procedures. The City may recover the difference between the cost of substitute services and the contract price from Contractor as damages. The City may deduct the damages from Contractor's account for services rendered prior to the Notice of Violation or for services rendered by Contractor pursuant to a different contract or pursue any other lawful means of recovery. The failure of the City to obtain substitute services and charge the Contractor under this clause is not a bar to any other remedy available for default.

20. COMPREHENSIVE GENERAL LIABILITY INSURANCE

For the duration of this contract and any extension hereof, Contractor shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

$1,000,000.00 – Per Occurrence
$1,000,000.00 – General Aggregate
$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

Notices and Certificates required by this clause shall be provided to:

City of El Paso
Purchasing & Strategic Sourcing Department
300 N. Campbell, 1th Floor
El Paso, Texas 79901-1153
Attn: Art Gamboa, Procurement Analyst

Please refer to Bid Number/Contract Number and Title in all correspondence.

Failure to submit insurance certification may result in contract cancellation.

21. WORKERS' COMPENSATION

For the duration of this contract and any extension hereof, Contractor shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law: $500,000.00. Out-of-state Contractors that provide goods through US mail, UPS, etc. are exempt from this requirement.

22. CONTRACT ADMINISTRATION

The point of contact for the administration of this Contract, on behalf of the City of El Paso, is:

Rene Barraza
Business & Finance Manager
Telephone: (915) 212-8006
Fax: (915) 212-6100
Email: BarrazaR1@elpasotexas.gov

Note any contact with the Contract Administrator prior to award of this contract is a violation of the Cone of Silence (2.3.1 Cone of Silence/Anti Lobbying Policy) and your submission may be subject to disqualification.

Mail correspondence should be addressed to:

City of El Paso
Purchasing & Strategic Sourcing Department
300 N. Campbell, 1th Floor
El Paso, TX 79901-1153
Attn: Art Gamboa, Procurement Analyst

Please refer to Bid Number/Contract Number and Title in all correspondence

23. COMPLIANCE WITH NON-DISCRIMINATION LAWS

The Contractor agrees that it, its employees, officers, agents, and

subcontractors, will comply with all applicable federal and state laws and regulations and local ordinances of the City of El Paso in the performance of this Contract, including, but not limited to, the American with Disabilities Act, the Occupational Safety and Health Act, or any environmental laws.

The Contractor further agrees that it, its employees, officers, agents, and subcontractors will not engage in any employment practices that have the effect of discriminating against employees or prospective employees because of sex, race, religion, age, disability, ethnic background or national origin, or political belief or affiliation of such person, or refuse, deny, or withhold from any person, for any reason directly or indirectly, relating to the race, gender, gender identity, sexual orientation, color, religion, ethnic background or national origin of such person, any of the accommodations, advantages, facilities, or services offered to the general public by place of public accommodation.

24. RIGHT TO AUDIT

The Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and copy any directly pertinent books, computer and digital files, documents, papers, and records of the Contractor involving transactions relating to this Contract. Contractor agrees that the City shall have access during normal working hours to all necessary Contractor facilities, and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The City shall give Contractor reasonable advance notice of intended audits. The City will pay Contractor for reasonable costs of any copying the City performs on the Contractor's equipment or requests the Contractor to provide. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

The Contractor agrees that it will include this requirement into any subcontract entered into in connection with this Contract.

25. CONTRACTOR TO PACKAGE GOODS

The Contractor will package goods according to good commercial practice. Each shipping container will be clearly and permanently marked as follows: (a) Contractor's name and address; (b) Consignee's name, address and purchase order; (c) Container number and total number of containers, e.g., "box 1 of 4 boxes"; and (d) the number of the container bearing the packing slip. The Contractor will bear cost of packaging unless otherwise provided. Goods will be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. The City's count or weight will be final and conclusive on shipments not accompanied by packing lists.

26. SHIPMENT UNDER RESERVATION PROHIBITED

The Contractor is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

27. DELIVERY TERMS AND TRANSPORTATION CHARGES

F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in bid; the City agrees to reimburse the Contractor for transportation costs in the amount specified in the Contractor's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided the City will have the right to designate what method of transportation will be used to ship the goods.

28. TITLE & RISK OF LOSS

The title and risk of loss of the goods will not pass to the City until the City actually receives and takes possession of the goods at the point or points of delivery.

29. RIGHT OF INSPECTION

The City will have the right to inspect the goods at delivery before accepting them.

30. NO REPLACEMENT OF DEFECTIVE TENDER

Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this will constitute a breach and the Contractor will not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Contractor may reasonably notify the City of his intention to cure and may then make a conforming tender within the contract time but not afterward.

31. PLACE OF DELIVERY

The place of delivery will be that set forth in the solicitation. The terms of this contract are "no arrival, no sale."

32. WARRANTY-PRODUCT

The Contractor will not limit or exclude any implied warranties and any attempt to do so will render this contract voidable at the option of the City. Contractor warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation, and to the sample(s) furnished by Contractor, if any. In case of a conflict between the specifications, drawings and descriptions, the drawings and descriptions will govern.

33. SAFETY WARRANTY

Contractor warrants that the product sold to the City will conform to the standards promulgated by the US Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, the City may return the product for correction or replacement at the Contractor's expense. In the event the Contractor fails to make the appropriate correction within reasonable time, correction made by the City will be at the Contractor's expense.

34. NO WARRANTY BY THE CITY AGAINST INFRINGEMENTS

As part of this contract for sale Contractor agrees to ascertain whether goods manufactured according to the specifications attached to this contract will cause the rightful claim of any third person by way of infringement or the like. The City makes no warranty that the production of goods according to the specification will not give rise to such a claim and in no event will the City be liable to the Contractor for indemnification if Contractor is sued on the grounds of infringement or the like. If Contractor is of the opinion that an infringement or the like will result, he will notify the City to this effect in writing within two weeks after the signing of this contract. If the City does not receive notice and is subsequently held liable for the infringement or the like, the Contractor will save the City harmless (if the Contractor in good faith ascertains that production of goods according to the specifications will result in infringement or the like, this contract will be null and void except that the City will pay the Contractor the reasonable cost of his search as to infringements).

PART 5 - FORMS

5.1 Business Information Certification

Mark all that apply.

- ☐ Manufacturer or Producer
- ☐ Wholesaler
- ☐ Retailer
- ☐ Franchised Distributor
- ☐ Factory Representative
- ☐ Other_____
- ☐ Large Business
- ☐ Small Business
- ☐ Disadvantaged Business Enterprise
- ☐ Asian - Pacific American
- ☐ Black American
- ☐ Hispanic American
- ☐ Native American
- ☐ Woman Owned Business
- ☐ Handicapped
- ☐ Local Business Enterprise
- ☐ 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 the incorporated city limits of El Paso, Texas.

Tier 1 Principal place of business: means a business whose primary headquarter is located within the incorporated city limits of El Paso, Texas and at least 10 percent the total number of full time employees reside within the incorporated city limits of El Paso, Texas. A temporary construction trailer or temporary structure shall not be construed as the headquarter structure.

Tier 2 Principal place of business: means a business that:

(1) Has been physically present and operating for at least one (1) year in the incorporated limits of the City of El Paso; and

(2) A minimum of fifty (50) of its full time employees reside within the incorporated city limits of El Paso, Texas; and

(3) Owns or leases real property or owns or leases space in a structure in which primary business is conducted in the incorporated limits of the City of El Paso; and

(4) The Property or space owned or leased is used as an office, plant, store, warehouse, or other function that is fully operational and has sufficient equipment, supplies, and personnel to provide the product or service of the business without significant reliance on the resources of another entity, affiliate, or an auxiliary facility of the business which is located outside the incorporated limits of the City of El Paso; and

A temporary construction trailer or temporary structure shall not be construed as a real property for purposes of meeting the ownership or lease requirement.

Bidder's [Company] Name:_____

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

5.2 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 "Bidder") which is submitting a response to *2016-696 Diesel Exhaust Fluid (DEF) and DEF Dispensing Systems (Re-Bid) - Streets & Maintenance - Fleet Division*:

   _____ (Name of Bidder).

3. **BY SUBMITTING THIS BID, I CERTIFY THAT BIDDER 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 Bidder 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 bidder/proposer 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 Bidder 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 Bidder'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 Bidder 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 Bidder is obligated to immediately inform the City in the event that the Bidder 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 Bidder and a governmental entity that have been terminated, with or without the Bidder'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 Bidder'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 37l10. In addition, by providing false information on this Affidavit, the Bidder 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 Bidder by the City of El Paso.

_____
Signature

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

_____
Notary Public

_____
Printed Name

_____
Commission Expires

(Rev. Sept. 2009)

City Of El Paso
Purchasing & Strategic Sourcing Department

5.3 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:

A. Affiant is authorized and competent to give this affidavit and has personal knowledge of the facts and matters herein stated.

B. Affiant is an authorized representative of the following company or firm: _____ [*Contracting Entity's Corporate or Legal Name*] (hereafter, "***Contracting Entity***").

C. Affiant is submitting this affidavit in response to the following bid: *Solicitation No. 2016-696 Diesel Exhaust Fluid (DEF) and DEF Dispensing Systems (Re-Bid) - Streets & Maintenance - Fleet Division* which is expected to be in an amount that exceeds $50,000.00. ,

D. 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

E. 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.

F. 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.

G. 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.

H. 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.

I. 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:

_____

_____

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

_____

_____

K. 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.

_____
Signature

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

_____
Notary Public

_____
Printed Name

_____
Commission Expires

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.) If your company is certified please send us a photo copy. We must have an updated copy of the certificate on file. DBES include (Please mark one:)
(___) 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. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.)
(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)
___ Goods (No Withholding / No Default Class)
___ Settlement / Attorney Proceeds (Withholding / Default Class 14)
___ Medical & Healthcare (Withholding / Default Class 6)
___ Garnishment Vendor (No Withholding / No Default Class)
___ Juror (No Withholding / No Default Class)
___ Services (Withholding / Default Class 7)
___ Rental Property (Withholding / Default Class 1)
___ Stipend (No Withholding / No Default Class)
___ Corporation (No Withholding/ No Default Class)

01/12/10

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.

Print or type
See Specific Instructions on page 2.

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) ▶

☐ Other (see instructions) ▶

☐ Exempt payee

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
☐☐☐ – ☐☐ – ☐☐☐☐

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
☐☐ – ☐☐☐☐☐☐☐

Part II Certification

Under penalties of perjury, I certify that:

1. 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
2. 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
3. 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:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. 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.

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

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 vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(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 on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information in this section is being disclosed.**

_____

Name of Officer

This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor 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.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor 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?

☐ Yes ☐ No

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 interest of one percent or more?

☐ Yes ☐ No

D. Describe each employment or business and family relationship with the local government officer named in this section.

4

_____ _____

Signature of vendor doing business with the governmental entity Date

Adopted 8/7/2015

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

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

Form provided by Texas Ethics Commission www.ethics.state.tx.us Adopted 10/5/2015

City of El Paso
ACCOUNTS PAYABLE
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

El Paso ★★★★★ All-America City 2010

Bidder's [Company] Name:_____

PPS FORM 014, Rev.1, 3/17/2016 (Discard previous versions)

PART 6 - NOTICES AND INSTRUCTIONS TO OFFERORS

1. SIGNATURE OF OFFER BY PERSON AUTHORIZED TO SIGN

All offers shall bear an original signature, in ink, of a responsible officer or agent of the company. 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 bid non-responsive.

2. REQUIRED NUMBER OF COPIES

Offer (bid or proposal) must be submitted in original form with one additional copy, unless otherwise stated in Part 2.

3. OFFER SUBMISSION INSTRUCTIONS

Offer Must Be Sealed When Presented To The Purchasing & Strategic Sourcing Department. Offers will be received by the City of El Paso until **2:00 P.M., local time, on Wednesday, July 13, 2016. Bids will be publicly opened and read; proposals will be announced.**

THE CITY DOES NOT PROVIDE ENVELOPES FOR THE PURPOSE OF SUBMITTING OFFERS.

4. 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: Purchasing Director

Also, write the **Bid Number**, **Bid Title**, and **Bid Opening Date** clearly on a visible section of the envelope.

5. LABELING OF 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 & Strategic Sourcing Department may open any unlabeled submittal to identify it properly. Offerors are required to identify their package to protect the integrity of their sealed bids and to fully avail themselves of the sealed bid process.

6. OFFERER DELIVERY RESPONSIBILITY

Bids received at the Purchasing & Strategic Sourcing Department after the specified date and time will not be accepted. Package delivery services such as FedEx, UPS, etc. deliver packages addressed to the Purchasing Director directly to the Purchasing & Strategic Sourcing Department. U.S. Postal Service deliveries, including Express Mail, are only delivered to the Mail Room at City Hall Bldg. #2 and may or may not be delivered by the Mail Room to the Purchasing & Strategic Sourcing Department by the time and place bids are opened. 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.

7. DESCRIPTIVE LITERATURE

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

8. OFFER DOCUMENTS, SUPPORTING LITERATURE AND RELATED DATA

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

9. ALTERNATE OFFERS

Alternate offers may be submitted if they meet the minimum requirements of the specifications. For full consideration all necessary technical data will be furnished with such alternate bids so proper evaluations can be made.

10. SOLICITATION CHANGES OR CLARIFICATIONS

Requests for changes or clarifications to this solicitation are welcomed by the Purchasing & Strategic Sourcing Department for its consideration, provided the requests are made in writing and received at least ten calendar days before the bid opening date. Requests received after that time may not elicit a response. Refer to REQUESTS FOR CLARIFICATION in Section B for more details.

11. ACKNOWLEDGMENT OF SOLICITATION AMENDMENTS

All Amendments will be acknowledged on the *Solicitation of Offers* form (first page of this bid). Failure to do so may cause the bid to be rejected.

12. BID PREPARATION COSTS

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 services specified.

13. DEFINITION OF COMPLETE

The word "complete" means that each proposed unit of equipment will include all appurtenances, fasteners, parts, accessories and services ordinarily catalogued.

14. ADDITIONAL INFORMATION

For further procedural information concerning this Invitation for Bids contact the point of contact for contract administration (refer to CONTRACT ADMINISTRATION in Part 4 for contact details).

15. ACCEPTANCE OR REJECTION OF BIDS

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

16. TIME AND PLACE OF OPENING

Offers will be opened and read in Council Chambers, Second Floor, City Hall, shortly after 2:00 p.m. on opening day. However, you are cautioned that offers must be received in the Purchasing & Strategic Sourcing Department, before the time stated in item #3 above.

17. NOTICE TO NONRESIDENTS

Offers received from nonresidents (bidders whose principal place of business is not in the State of Texas) must be lower than offers from Texas bidders by the same amount that a Texas bidder would be required to underbid a resident bidder, to obtain a comparable contract, in the state in which a nonresident bidder's business is located. This paragraph does not apply to contracts involving federal funds.

18. ROUNDING

Except those commodities normally priced to four decimal places, bids submitted beyond two decimals will be rounded off to the nearest cent.

19. UNIT PRICES

In the event of a discrepancy between the unit price offered, and the extension thereof, the unit price shall prevail.

20. TIE BIDS [REV. 06/14/12]

In case of a tie, the successful bid will be determined by lot unless the principal place of business of one, but not more than one, of the parties to the tie is located in the City of El Paso in which case the award will be made to the local vendor. The casting of lots is to be conducted in the presence of the governing body, Council. The qualified bidders or legal representatives can be present at the casting of lots.

21. BID RESULTS

Any questions concerning bid results should be directed to the point of contact for contract administration.

22. BID TABULATIONS

The point of contact for contract administration will accept requests for a copy of the completed tabulated report of bid results after 2:00 P.M., Tuesday of the week following bid opening (refer to CONTRACT ADMINISTRATION in Part 4 for contact details). The bid tab results will also be made available on the City web site at http://legacy.elpasotexas.gov/purchasing/ep-bid_tabs.asp
No results will be given over the phone.

23. 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.

24. TIME

Time of delivery is of the essence.

25. DEBRIEFING REQUESTS

A written request for a debriefing should be directed to the Analyst identified in CONTRACT ADMINISTRATION in Part 4 within five (5) days after the date of award. Debriefing requests will be scheduled with the appropriate evaluation committee and Purchasing representative.

26. PROTEST/DISPUTE PROCEDURE

Only a bidder who has actually submitted a bid response/proposal may appeal an award decision.

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 bidder must write a letter to the Purchasing Director using the phrase “Bid 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 bid 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 Bidder alleges has been violated and the provisions entitling the Protesting Bidder to relief; 3) a specific factual description, with particularity, of each action by the City that the Protesting Bidder alleges to be a violation of the statutory or regulatory provision that the Protesting Bidder 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 in making a recommendation to Council.

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

APPENDIX A

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

(1) **Compliance with Regulations**: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination**: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment**: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports**: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the City of El Paso to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the City of El Paso, as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance**: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the City of El Paso shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and / or

b. Cancellation, termination or suspension of the contract in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directive issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the City of El Paso may direct as a means of enforcing such provisions including sanctions for non- compliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the contractor may request the City of El Paso to enter into such litigation to protect the interests of the City of El Paso, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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 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).

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.

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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.