SOLICITATION NO: 2016-859 **DATE ISSUED: MAY 3, 2016**

TITLE: GM/CHEVY PROPRIETARY PARTS & SERVICE - Mass Transit (Sun Metro)

A signed OFFER to furnish the goods and/or services set forth below will be received at the place indicated below, until:
5:00 PM, local time, THURSDAY, MAY 12, 2016

NOTICE: When used in informal 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:		HAND DELIVER TO:		SUBMIT VIA:
CITY EL PASO 300 N. CAMPBELL PURCHASING DEPT. 1ST FLOOR EL PASO, TX 79901-1153	OR	CITY OF EL PASO 300 N. CAMPBELL PURCHASING DEPT. 1ST FLOOR EL PASO, TX 79901	OR	FAX: ATTENTION – RALPH TORRES EMAIL TO: RALPH TORRES

FOR ADDITIONAL INFORMATION CONCERNING THIS SOLICITATION, CONTACT:
RALPH TORRES, BUYER
Telephone: [915] 2121-1195 FAX: [915] 212-0044 Email: TORRESRA@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 below, if this offer is accepted within FORTY-FIVE [45] consecutive days from the date set for the receipt of offers.

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	_____

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

_____ ☐
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 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 NOTICE: 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 RFP'S/SOLICITATIONS WILL BE POSTED ON THE SOLICITATIONS PAGE OF THE CITY OF EL PASOPURCHASING & STRATEGIC SOURCING DEPARTMENT'S WEBSITE: http://www.elpasotexas.gov/financial_services/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.

1.2 Wage Theft
The City of El Paso Code – Chapter 346
346.010 Definition

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

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

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

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

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

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

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

2. ***Employee*** and ***employer*** have the meanings by Texas Labor Code, Section 61.001.

3. ***Wages*** means compensation owed by an employer for labor or services rendered by an employee, whether computed on a time, task piece, commission or other basis.

4. ***Wage Enforcement Coordinator*** shall mean the person designated by the City Manager to receive and investigate claims of wage theft and to create, maintain a Wage Theft database.

5. ***Wage Theft Complaint*** means a written complaint filed with the Wage Theft Coordinator alleging any instance of wage theft by an employer.

Section 3.46.020 WAGE THEFT COORDINATOR

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

B. Duties. The Wage Theft Coordinator shall:

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

2. Substantiate whether a proposed party to a City Contract has a Wage Theft Adjudication record or part of the Wage Theft Adjudication Database.

3. Receive, review, and process wage theft complaint according to the process established in Section 3.46.040.

4. Coordinate with the Purchasing Director to ensure that the notice of the City's Wage Theft ordinance is included in all the City's bid documents.

5. Provide and present an annual report to City Council regarding the number of employers in the Wage Theft Adjudication Database and an update on the status of the enforcement of the City's Wage Theft ordinance.

Section 3.46.030 WAGE THEFT ADJUDICATION DATABASE

A. Inclusion in Database. No employer shall be included in the database until the Wage Theft Coordinator has:

1. Confirmed that an employer has a Wage Theft Adjudication record;

2. Provided written notice at the address provided by the complainant, or on the documents evidencing the wage theft adjudication of the inclusion of the employer in the Wage Theft Adjudication Database.

3. Allowed the employer thirty (30) days from the date of the notice to protest the employer's inclusion in such database and provide the Wage Theft Coordinator evidence that the employer should not be included in the Wage Theft Adjudication Database. In the case of a wage theft judgment, the Wage Theft Coordinator shall not include the employer in the Database upon proof of full payment of outstanding wage theft adjudication judgment.

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

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

1. A Wage Theft Adjudication has been annulled, withdrawn, overturned, rescinded or abrogated, and such fact has been confirmed by the Wage Theft Coordinator; or

2. Employer provides proof of full payment of an outstanding wage theft adjudication judgment; or

3. Five (5) years or more has elapsed since the date of the employer's most recent Wage Theft Adjudication.

Section 3.46.040 WAGE THEFT COMPLAINTS PROCEDURE

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

B. City Contracts.

1. **Filing a Complaint.** A person employed in connection with a city contract who has a good faith belief that he is the victim of wage theft may file a wage theft complaint with the Wage Theft Coordinator in writing. The complaint shall contain fact including but not limited to: identity of the employer, date(s) on or during which the wages were earned and were due to be paid, the amount of the wages alleged to have been withheld or unpaid.

2. **Notification and Resolution of the Complaint.** The Wage Theft Coordinator shall notify the employer of the receipt of the wage theft complaint. Employer shall attempt to resolve the alleged issue with the affected employee by written agreement within thirty (30) days from the receipt of the City notification. Employer shall notify the Wage Theft Coordinator if the issue was resolved between the Employer and the affected employee.

3. **Texas Workforce Commission.**

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

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

Section 3.46.050 RETALIATION PROHIBITED

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

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

Section 3.46.060. SANCTIONS AND PENALTIES- CITY CONTRACTS

Existing City Agreement.

1. In the event the City becomes aware of the fact an Employer acting under a contract which was awarded prior to the effective date of this Ordinance has been adjudicated for wage theft, the City may terminate the contract.

2. Prior to terminating the contract the City will provide Employer with thirty (30) days' notice and opportunity to provide full proof of payment of outstanding wage theft adjudication judgment.

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.

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.

1.3 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.

1.4 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.

The Cone of Silence period begins on the day that the request for proposal (RFP), request for qualifications (RFQ), or highest qualified bid (including best value and competitive sealed proposals) is advertised, or the day a source selection or the giving of a notice of a proposed project is made, and ends on the day that a recommendation of a contract award is placed on the City Council agenda.

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 Contract Administrator, provided the communications are strictly limited to matters of process or procedure already contained in the solicitation document.

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.

A person who knowingly or intentionally lobbies in violation of the provisions of this policy, or who shall knowingly obstruct or prevent compliance with this policy shall be guilty of a misdemeanor.
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.

1.5 Requests for clarification

In order to meet the City's schedule it is extremely important that requests for clarification or additional information be submitted in writing no later than two calendar days prior to the bid due date. Questions submitted after this date may not elicit a response. All proposals or requests for clarification should be sent to the following:

Ralph Torres
Buyer
Fax: (915) 212-0044
Email: TorresRA@elpasotexas.gov

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

Please refer to Bid Number and Title in all correspondence.

1.6 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	5/03/2016
Last Day for Offerors to Submit Written Questions	5/05/2016
Answers provided	5/11/2016
Bid Due Date	05/12/2016
Evaluations	5/16/2016
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://legacy.elpasotexas.gov/purchasing/ep-invitations.asp

1.7 NOTES – SPECIAL TERMS AND CONDITIONS

Note 1: Expenditures under this contract may not exceed $50,000.00 per annum or an aggregate of $100,000 per the life of the contract.

Note 2: 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.

Note 3: All goods and services delivered shall comply with the specifications set forth below.

Note 4: At any time during the term of the contract the purchasing director or designated personnel may increase or decrease the scope of supplies or services as necessary to accomplish the general purpose of the contract.

Note 5: 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.

Note 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.

Note 7: Any award made under this solicitation shall be made to the lowest responsive, responsible bidder, price and other factors considered. One award will be made for all items.

Note 8: 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.

Note 9: 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.

Note 10: 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.

Note 11: 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.

Note 12: One award for all items.

Note 13: 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.

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.

(Section left intentionally blank)

PART 2 - SCHEDULE OF ITEMS`

GM/Chevy Light Duty Proprietary Parts & Service - Mass Transit (Sun Metro

BID NUMBER: 2016-859
BID DUE DATE: 05/12/2016

The City of El Paso is soliciting bids for GM / Chevrolet Light Duty Proprietary Parts and service, primarily for the Mass Transit Department (Sun Metro). The City shall order all of its supplies and/or services from one or more successful bidders (contractors) from time to time as required. Only personnel from Mass Transit Department (Sun Metro) are authorized to directly place orders against this Contract. Personnel from other City departments may only utilize this contract with express written authorization from Mass Transit Department (Sun Metro) and only if the additional usage is within reasonableness given the total awarded amount of the Contract.

This is **Low Bid Procurement**. The initial term of this contract shall be for: **Thirty Six (36) Months**

2.1 Bid Form

Failure to complete the Bid Form in its entirety shall result in the bid being deemed non-responsive.

PRICE LIST PRICING

The undersigned hereby offers to furnish and deliver, F.O.B. destination point(s), as listed on individual Purchase Orders, parts and components in accordance with the discounts [minus] or mark-ups [plus] or net from stated Manufacturer's List Price Schedules identified herein, or from that Price List's most current published revision, in accordance with the City's Specifications, and general terms and conditions of this Solicitation. “Most current published version” means latest price list in effect between the date the Solicitation was issued, as indicated on the Solicitation of Offers form, and the Bid Opening Date, shown on the same form, or as shown on any amendment to the Solicitation.

Price Adjustment Factor must be filled in; otherwise bid will be considered non-responsive. If selecting the **NET** Price Adjustment Factor, the submitted price list(s) **is** the City’s cost and will be the basis for all future cost of parts under this solicitation. Otherwise, the actual cost of all future pricing under this solicitation will be the result of any discount or mark-up applied to the manufacturer’s price list. If needed, vendor may attach additional pages for pricing based on additional alternate price lists. The submitted price list(s), whether bidding Net, Discount or Mark-up, will be the basis of the Sample Pricing evaluation on the following pages.

The City of El Paso will only accept a Manufacturer’s original price list (an abbreviated brand or category specific manufacturer price list is acceptable). If, in the opinion of the Purchasing Manager, it is impractical for the Bidder to include published Price Lists as a part of this bid and to furnish any Price Lists and/or written changes as required herein, Bidder shall permit the Purchasing Manager or authorized representative to inspect the pertinent published Price Lists and/or written changes in the office of the Bidder or at any other location approved by the Purchasing Manager prior to the award and periodically during the contract term.

In order to receive award consideration, bidders are required to submit, with their offer, two electronic copies (CD or flash drive) of the manufacturer’s price list(s) on which they base their bid. The electronic price lists must be in a format in which the contents are searchable via normal keyboard commands so as to facilitate future price list checks against invoices. Hardcopy price lists are not acceptable unless Bidder can demonstrate to the City’s satisfaction that such a price list is not available in electronic form. In the event Bidder fails to either provide an electronic or hardcopy

version of the Price List or allow the Purchasing Manager or authorized representative to inspect the pertinent Price Lists as noted in the third paragraph above, the bid will be considered non-responsive.

If a Bidder submits a bid on any price list that is available only through an internet link it is **mandatory** that the Bidder provide a secure link and/or access to the internet catalog to the City, or any other mutually acceptable method of verifying bid prices at any time during the term of the contract.

PART A: GMC/CHEVROLET PROPRIETARY PARTS

Bidder MUST select a type of price list for each Price Adjustment Factor for each item in order to have the bid be considered responsive.

ITEM NO.	DESCRIPTION	PRICE ADJUSTMENT FACTOR	PRICE LIST OR CATALOG	TYPE OF PRICE LIST
1.	GM/CHEVY PROPRIETARY PARTS & SERVICE	☐ Net **OR** ☐ ____% Discount **OR** ☐ _____% Mark-up	_____ [note Manufacturer or Brand Name, as applicable] List Number: _____ Dated: _____	☐ Wholesaler ☐ Distributor ☐ Jobber ☐ Dealer ☐ Retailer ☐ _____ Other

Bidders are required to submit, with their offer, two (2) electronic copies (or hardcopies in the event that an electronic version is not available) of each manufacturer's price list(s) on which they base their bid. If two (2) copies are not included with the bid package, the Bidder agrees to allow the Purchasing Manager or authorized representative to inspect the pertinent published Price Lists and/or written changes in the office of the Bidder or at any other location approved by the Purchasing Manager:

_____YES _____NO

PART B: SERVICE LABOR RATES

Service and repair of various GMC/CHEVROLET models performed by mechanics certified by GMC/ CHEVROLET.

Regular Hours: $_____/Per Hour

After Hours/Emergency: $_____/Per Hour

PART C: SAMPLE PRICING

For each sample item below list your price list cost before any applicable discount or mark-up AND the final price after any applicable discount or mark-up is applied. In the event of a discrepancy between your stated price list cost and the actual amount listed in the manufacturer's published price list, the latter shall govern. **The sample pricing is the basis for establishing the Cost for this Bid.**

Please Note: ***Labor cost for purposes of this sample pricing is based on one hour at the regular labor rate as indicated in Part B Pricing (it is understood that the actual total hours will vary for each specific repair).***

This is a fixed price Indefinite Delivery, Indefinite Quantity type contract, in which, Purchase Orders for parts will be issued throughout the term of this contract on an as needed basis based on the awarded prices as indicated. Individual Delivery Orders will be issued throughout the term of the contract.

ITEM NO.	DESCRIPTION / MANUFACTURER PART NUMBER	BIDDER'S PART NUMBER	PRICE LIST COST (before Discount or Mark-up)	CITY'S COST (after Discount or Mark-up or Net)	LABOR COST (assume one (1) hour labor from PART B)	TOTAL COST (City's Cost + Labor Cost)
1.	TIRE/WHEEL 225/75/R16 PN 19296018					
2.	BELT ALT & P/S CHEVY 4500 PN 12637204					
3.	IGNITION COIL CHEVY 4500 PN 12573190					
4.	SPARK PLUG WIRE SET CHEVY 4500 PN 19206447					
5.	SPARK PLUG CHEVY 4500 PN 12621258					
6.	BRAKE PADS REAR PN 20850250					
7.	BRAKE PADS FRONT PN 19210708					
8.	BRAKE SHOES PRKG BRK PN 20778485					
9.	SEAL REAR AXLE PN 15823962					
10.	GASKET REAR AXLE PN 12471641					
					TOTAL COST ITEMS 1-10	$_____

2.2 MSDS/SDS Requirement

When applicable, all bidders are required to provide the City with a Product Label and the appropriate Material Safety Data Sheet (MSDS) or Safety Data Sheet (SDS) with their bid.

Containers must be properly labeled in accordance with the OSHA Hazard Communication Standard. Improperly labeled containers may result in refusal of the shipment.

Note: The OSHA Hazard Communication Standard has been updated to align with the UN Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3, issued in the Federal Register, March 26, 2012. Where applicable, all bidders should be aware of and abide any required changes.

2.3 Option To Extend The 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**

2.4 Payment Terms & Conditions
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 solicitation, 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
Sun Metro Transit Operations Center
10151 Montana Avenue
El Paso, TX 79925-1515

2.5 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 ☐

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

2.6 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.

2.7 City's Required Delivery

Delivery shall be made within __**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 ___24_____ 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.

2.7.1 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.

2.8 General Conditions

MINIMUM SPECIFICATIONS: The specifications listed are to be interpreted as meaning the minimum required by the City. The 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.

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 and/or supply of the unit(s). The bidder shall be an established supplier of the items bid.

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.

2.9 Specifications

Items on this solicitation are partially or entirely funded by **Federal Transit Administration Funds.** As such **FTA** clauses and forms are included in this solicitation and must be fully executed prior to issuing out a Purchase Order.

In lieu of detailed technical specifications or general performance specifications for parts and materials used in the performance of this contract, parts and materials furnished will be considered as meeting the technical specifications if they are the current product, identified by item or part number, listed in the latest revision of the applicable Price/Parts List issued by one of the Manufacturers appearing in the QUALIFIED PRODUCTS LIST (QPL) below**.**

NOTE: The City reserves the right to remove a Manufacturer's line from the QPL at any time, should their quality drop below an acceptable level. The City also reserves the right to add a Manufacturer's line to the QPL at any time if it meets the specifications required by the City.

QUALIFIED PRODUCTS LIST (QPL)

GMC

CHEVROLET

IF OFFERING BRANDS ARE NOT ON THE ABOVE LIST PLEASE SUBMIT COMPLETE TECHNICAL SPECIFICATIONS.

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 **SECTION A** 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, GMC/Chevrolet Manufacturer's Service Warranty. Copies of applicable warranties must accompany your offer.

_____

2.10 Exception To Specifications

Except as set forth below, the Offeror agrees it will perform the services under this Solicitation in accordance with the minimum standards set forth in the Specifications.

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)

2.11 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.

Failure to submit insurance certification may result in contract cancellation.

2.12 Requests For Clarification

In order to meet the City's schedule it is extremely important that requests for clarification or additional information be submitted in writing no later than two calendar days prior to the bid due date. Questions submitted after this date may not elicit a response. All proposals or requests for clarification should be sent to the following:

RALPH TORRES
BUYER
Fax: (915) 212-0044
Email: TORRESRA@elpasotexas.gov

City of El Paso
PURCHASING & STRATEGIC SOURCING DEPARTMENT
300 N. Campbell, 1ST Floor
El Paso, TX 79901-1153
Attn: RALPH TORRES

Please refer to Bid Number and Title in all correspondence.

(Section left intentionally blank)

PART 3- FORMS
3.1 Vendor Information Form

CITY OF EL PASO PURCHASING DEPARTMENT
VENDOR INFORMATION FORM
This form must be accompanied by an IRS Form W-9 and Conflict of Interest Questionnaire.

___ Add ___ Update ___ Inactivate ___ Vendor ___ Contractual Employee ___ City of El Paso Employee

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

From: Name:_____ City Department _____ Tel. #_____

VENDOR SALES ADDRESS: If same as W-9 check box ☐
Company Name: _____

Street:_____

City:_____State_____Zip Code_____

Contact Name & Title:_____

Telephone # (_____) _____ Fax # (_____) _____

E-Mail Address:_____ Web Page:_____

VENDOR STATUS:
(Yes) (No) Small business concern (Less than $1,000,000.00 Annual Receipts or 100 employees.)
(Yes ___) (No ___) Disadvantage business concern (At least 51% owned by one or more socially disadvantaged individuals; or, a publicly-owned business at least 51% of the stock owned by one or more of such individuals.) 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

3.2 W-9

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

Request for Taxpayer Identification Number and Certification

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

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.

Cat. No. 10231X Form **W-9** (Rev. 12-2011)

3.3 Conflict of Interest

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

3.4 DIRECT DEPOSIT SIGN-UP FORM

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

Part I – Vendor / Employee Information

Name of Payee (Print) _____

Federal Taxpayer ID Number or Employee KRONOS ID# _____

Address: _____

City, State, and Zip Code _____

Telephone _____

E-mail (Print) _____

Part II – Direct Deposit Information

Action Requested: ☐ Start Direct Deposit ☐ Stop Direct Deposit ☐ Change Direct Deposit

Name of Financial Institution: _____

Routing Number (must be nine digits): _____

Bank Account Number: _____

Account Type: ☐ Checking ☐ Savings

For convenience, you may attach a voided check.

Do not use a deposit slip as some banking institutions do not display the correct routing number on deposit slips.

Part III – Terms and Conditions

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

_____ _____

Signature **Date**

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

Part 4 Contract Clauses

1. TYPE AND TERM OF CONTRACT

This is an Informal Requirements 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 and $50K per year and $100K for multiple years 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 Certified Mail, and the date of receipt shall be established as the date of Delivery shown on the US Postal Service Domestic Return Receipt form or facsimile confirmation.

2. INVOICES & PAYMENTS

A. 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.

B. Invoices will be itemized, including serial number of unit; transportation charges, if any, will be listed separately.

C. Invoices will reflect the Contract Number and the Purchase Order Number.

D. Do not include Federal Tax, State Tax, or City Tax. The City will furnish a tax exemption certificate upon request.

E. Discounts will be taken from the date of receipt of goods or date of invoice, whichever is later.

F. A copy of the bill of lading and the freight waybill when applicable will be attached to the invoice.

G. Payment will not be due until the above instruments are submitted after delivery and acceptance.

H. Mail invoices to the City Department indicated in the Invoice Instructions set forth on the Purchase Order.

I. 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 Manager of Purchasing 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, 1st Floor
El Paso, Texas 79901-1153
Attn: RALPH TORRES, BUYER

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:

Ralph Torres
Buyer
Telephone: (915) 2121-1195
Fax: (915)212-0044
Email: TORRESRA@elpasotexas.gov

Mail correspondence should be addressed to:

City of El Paso
Purchasing & Strategic Sourcing Department
300 N. Campbell, 1st Floor
El Paso, TX 79901-1153
Attn: Ralph Torres, Buyer

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 Federal Clauses – (Materials & Supplies)

Federal (Fta) Clauses

Federal Funding Requirements

The following provisions shall apply throughout the performance of this Agreement because federal funds are involved:

ALL PROCUREMENT TYPES OR AMOUNTS

NO OBLIGATIONS BY THE FEDERAL GOVERNMENT

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5323, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.42(i)(11).

FEDERAL CHANGES

49 CFR Part 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement MA18, dated October, 2011 between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

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

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

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

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Americans with Disabilities:

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

Page IV-14 FTA C 4220.1F (11/01/2008); Rev.1 – 04/14/2009; Rev.2 – 07/01/2010; Rev.3 – 02/15/2011 Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. Section 794, prohibits discrimination on the basis of disability by recipients of Federal financial assistance.

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

DOT Public Transportation Regulations implementing Section 504 and the ADA. These regulations include DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27, DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, and Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. In addition the solicitation should also comply with: “DOT’s ADA Standards for Transportation Facilities (2206)” and the DOT ADA Final Rule 10/19/2011.

Examples of requirements include, but are not limited to, the following:

- 1. Design and Construction. Accessibility requirements for the design and construction of new transportation facilities.
- 2. Accessibility and Usability. Requirements that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;
- 3. Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Disadvantaged Business Enterprises

1. **Policy:** It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 26, and as amended in Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this Agreement. Consequently, the DBE requirements of 49CFR Part 26 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 apply to this Agreement.

2. **DBE Obligation:** The Contractor or its representative agrees to ensure that disadvantaged business enterprises as

defined in 49 CFR Part 26 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, the Contractor or its representative shall take all the necessary and reasonable steps in accordance with 49 CFR Part 26 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. The Contractor shall not discriminate on the basis of race, religion, color, national origin, age, disability, or sex in the award and performance of DOT-assisted contracts. Part 26 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 apply to this Agreement.

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is _9.1_ **%.**

b. The contractor 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 this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as The City of El Paso deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)). The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from The City of El Paso. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by The City of El Paso and contractor's receipt of the partial retainage payment related to the subcontractor's work.

d. The contractor must promptly notify The City of El Paso, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of The City of El Paso.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1E

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.
49 CFR Part 18

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

PROCUREMENTS OF MATERIALS & SUPPLIES OF $10,000 OR MORE ANNUALLY

RECYCLED PRODUCTS
(EPA-selected items $10,000 or more annually.)
42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Special Notification Requirements for States.

To the extent required by Federal law, the State, as the Recipient, agrees to provide the following information about FTA funding for State Programs or Projects: a. Types of Information. It will provide information including: (1) Identification of FTA as the Federal agency providing the Federal funds for the Program or Project, (2) The Catalog of Federal Domestic Assistance Number of the Program from which the Federal funding for the Program or Project is authorized, and (3) The amount of Federal funds FTA has provided for the Program or Project, and b. Documents. It will provide the information required by this provision in the following documents: (1) Requests for proposals, (2) Solicitations, (3) Grant or cooperative agreement applications, (4) Forms, (5) Notifications, (6) Press releases, and (7) Other publications.

TERMINATION

49 U.S.C.Part 18
FTA Circular 4220.1E

a. **Termination for Convenience (General Provision)** the (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs,

and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. 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.

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

c. **Opportunity to Cure (General Provision)** the (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. **Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. **Termination for Convenience (Professional or Transit Service Contracts)** the (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. **Termination for Default (Transportation Services)** if the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

h. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is

excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. **Termination for Convenience or Default (Architect and Engineering)** The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. **Termination for Convenience of Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

PROCUREMENTS OF MATERIALS & SUPPLIES OF $25,000 OR MORE ANNUALLY

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION
(Nonprocurement)
49 CFR Part 29
Executive Order 12549

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the **City of El Paso**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the **City of El Paso**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

PROCUREMENTS OF MATERIALS & SUPPLIES OF $100,000 OR MORE ANNUALLY

BUY AMERICA REQUIREMENTS
49 U.S.C. 5323(j)
49 CFR Part 661

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal fund may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America

certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

CLEAN AIR
42 U.S.C. 7401 et seq
40 CFR 15.61
49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq*. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

Clean Water Requirements
33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

BREACHES AND DISPUTE RESOLUTION
49 CFR Part 18
FTA Circular 4220.1E

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

CLAUSES SPECIFIC TO PROCUREMENT CONDITIONS

CARGO PREFERENCE REQUIREMENTS
(Transport by ocean vessel)
46 U.S.C. 1241
46 CFR Part 381

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a*. to use* privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. *to furnish within* 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo *described in the preceding paragraph* to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (*through the contractor in the case of a subcontractor's bill-of-lading.)* c. *to include these* requirements in *all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.*

CONFORMANCE WITH NATIONAL ITS ARCHITECTURE

ITS projects shall conform to the National ITS Architecture and standards in accordance with the requirements contained in this part. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 614).

FLY AMERICA REQUIREMENTS
49 U.S.C. §40118
41 CFR Part 301-10

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

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES.

To the extent required by Federal law, the State, as the Recipient, agrees to provide the following information about FTA funding for State Programs or Projects: a. Types of Information. It will provide information including: (1) Identification of FTA as the Federal agency providing the Federal funds for the Program or Project, (2) The Catalog of Federal Domestic Assistance Number of the Program from which the Federal funding for the Program or Project is authorized, and (3) The amount of Federal funds FTA has provided for the Program or Project, and b. Documents. It will provide the information required by this provision in the following documents: (1) Requests for proposals, (2) Solicitations, (3) Grant or cooperative agreement applications, (4) Forms, (5) Notifications, (6) Press releases, and (7) Other publications.

Protest Procedures

In the event that a bidder or Proposer desires to protest the procurement (bid or proposal) or an award, the following procedures must be followed:

1. General

Any protest must be submitted in writing. A fax is allowable as long as a formal written document with original signatures is also submitted. The outside of the transmittal envelope must be clearly marked "PROTEST". All protests shall clearly state the name of the protester, the solicitation, bid or contract title and number. The protest must be fully supported by technical data or other pertinent information that will delineate why the protest is being lodged. Protests filed after the deadline shall be dismissed.

The City of El Paso's objective is to resolve all formal protests as soon as practical. Nothing in this procedure should be construed as requiring a formal protest if a vendor wishes to clarify or discuss standards or procedures relating to the procurement process.

1.1 Submission for Protest of Procurement

Any protest of the procurement must be submitted in writing to the City Procurement Representative and received no later than five (5) working days before the scheduled closing date for receipt of proposals or bids. This includes protests based upon:

- Restrictive or exclusionary specifications,
- Challenges to the bid or proposal specifications,
- Evaluation procedures,
- Terms and conditions of the solicitation package.

1.2 Submission for Protest of Award

Any protest of the award must be submitted in writing to the City Procurement Representative received by no later than five (5) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the City of El Paso) after receipt of notice of the award.

1.3 Response

The City Procurement Representative shall respond to the protest within five (5) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the City of El Paso) from the receipt date of the written protest.

1.4 FTA Notification – Upon receipt of a protest, the City Procurement Representative shall notify FTA of the protest. All protest activities will be logged in the Procurement Narrative.

Options – The City Procurement Representative has the option to:

- Extend the time provided for each step of the protest procedure,
- Postpone the bid or proposal opening,
- Extend the date of notice of award, or
- Postpone the award of contract if deemed appropriate for protest resolution.

All active parties will be notified in writing if an option is elected.

2. Appeal of Determination

If the City Procurement Representative's response is not satisfactory, the protester may appeal in writing to the City Manager of El Paso within five (5) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the City of El Paso) from the date of receipt of the Procurement Representative's response. The City Manager will respond in writing within ten (10) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the City of El Paso) from the date of receipt of appeal.

The decision rendered by the City Manager shall be the final decision of the City of El Paso.

3. FTA Review of Protest

Federal Transit Administration's (FTA) protest procedures are found in FTA Circular 4220.1E. If federal funding is involved, FTA will review protests from a third party only when:

- The City failed to have or follow its protest procedures, or
- The City failed to review a complaint or protest.
- Violations of federal law or regulations and the standards of 49 CFR Part 18.36(b)(12).

The FTA regional office must receive an appeal within five (5) working days of the receipt of the decision of the City by the protester.

A protester must exhaust all administrative remedies with the City before pursuing a protest with FTA.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.