

TUCSON TRANSIT MANAGEMENT LLC
dba
SUN TRAN
INVITATION FOR BID

INVITATION FOR BID NUMBER: 24-25-03
BID DUE DATE: Dec 6, 2024 @ 2 P.M. Local AZ Time
BID SUBMITTAL LOCATION: Sun Tran Main Lobby
3920 N. Sun Tran Blvd., Tucson, AZ 85705

MATERIAL OR SERVICE: Bus Driver Barriers

PRE-BID CONFERENCE DATE: No Pre-bid Conference

SENIOR BUYER: Gina Fields
TELEPHONE NUMBER: (520) 206-8813
EMAIL: Gina.fields@tucsonaz.gov

A copy of this solicitation and possible future amendments may be obtained from our internet site at: <http://www.suntran.com> by selecting the Opportunities link, click on Procurement, then click on Current Solicitations and finally the associated solicitation number. Sun Tran does not mail out Notices of available solicitations via the U.S. Postal Service. Email notifications are sent to those interested offerors who are registered with us and who have selected email as their preferred delivery method. To register, please visit www.suntran.com, click on the Opportunities link, then click on Procurement and finally Vendor Registration. To update an existing record, use the same process as if registering. You may also call (520) 206-8813 or email Gina.fields@tucsonaz.gov if you have questions.

Competitive sealed bids for the specified material or service shall be received by Sun Tran, 3920 N. Sun Tran Blvd., Tucson, Arizona 85705, until the date and time cited.

Bids must be in the actual possession of the Department of Procurement at the location indicated, on or prior to the exact date and time indicated above. Late bids shall not be considered. The prevailing clock shall be Sun Tran's Department of Procurement clock.

Bids must be submitted in a sealed envelope. The Invitation for Bid number and the Bidder's name and address should be clearly indicated **on the outside** of the envelope. All bids must be completed in ink or typewritten. Questions must be addressed to the Senior Buyer listed above.

PUBLISH DATE: November 8, 2024

THIS BID IS OFFERED BY: _____

INTRODUCTION

Tucson Transit Management (dba) Sun Tran maintains and operates the mass transit system for the City of Tucson. We currently work out of two bus maintenance facilities within the city limits. Our business is public transportation and we strive to offer the safest environments for our employees and riders.

Sun Tran is seeking bids from qualified firms to provide thirty (30) after-market
Bus Driver Barriers

for our transit buses. The contractor shall be responsible for the design, manufacturing, hardware and installation of the safety barriers and the barriers must meet Federal Vehicle Motor Safety Standards (FVMSS). The thirty (30) designated transit buses are housed at the locations listed below.

-NW-BMF 3920 N Sun Tran Blvd Tucson, AZ 85705
-SY-BMF 4220 S. Park Ave. Tucson, AZ 85714

This contract will be partially funded by the Federal Transit Administration (FTA) and is subject to federal terms and conditions (Attachment B). These terms are non-negotiable. By submitting a bid the Contractor agrees to abide by all of the federal terms and conditions herein.

SCOPE OF WORK

1. GENERAL REQUIREMENTS

1.1 All materials used in the manufacturer of the Driver Protection System (DPS) or barrier furnished under this bid shall conform to all U.S. Government and State of Arizona laws and regulations, and likewise, the manufacturing of the DPS furnished shall conform to all Federal, State and Local laws and regulations.

1.2 The vendor shall assume responsibility for all materials, accessories, and warranties used in furnishing the Driver Protection Systems, whether manufactured by the vendor or purchased ready-made from a source outside the vendor's company.

1.3 The vendor or his sub-vendor in the omission of any part or detail, which goes to make the DPS complete and ready for service, shall take no advantage.

1.4 The Driver Protection System's are to provide a defensive barrier and safety glass with an unobstructed view for the driver. The barrier must provide mechanisms to protect the driver from potential physical or chemical assaults.

1.5 This solicitation is for the initial purchase and installation of thirty (30) driver barriers with the possibility of additional future installs. In addition to include, but not limited to, parts and repair/maintenance upon request as needed.

2. SPECIFICATIONS

2.1 Driver Protection System (DPS)

- DPS shall prevent sudden intrusion into the bus operator's area.

- DPS assembly shall not cause objectionable noise or vibration during normal road operation.
- DPS components shall not prevent access to fare box payment interface or vault door.
- DPS shall allow for a reasonable amount of verbal communication between the bus operator and passengers.
- DPS shall not obstruct the rearward view of operator to the standee line.
- All DPS parts shall be powder coated or anodized to complement the interior color of the bus.
- The DPS shall be designed with an upper glazing section and a non-transparent lower section.
- For maintenance purposes, the DPS shall take less than 30 minutes to remove and replace.
- All DPS parts shall be new and unused.

2.2 Operation

- Forward most DPS glass shall slide using a low friction track into multiple, operator selectable positions.
- Forward most DPS glass shall include a rocker latch mechanism to prevent the glass from moving during bus acceleration or braking.
- Forward most DPS glass shall operate with a force of less than 26lbf to initiate motion and a force of less than 13lbf to maintain motion.
- The DPS shall not affect vehicle adherence to ADA or other international accessibility standards as pertaining to aisle clearance and conformance to the standardized "Box Test."
- The DPS shall include a stop mechanism to prevent the door from opening more than ninety-five (95) degrees or past the passenger standee line.
- The primary DPS latch mechanism release shall be inconspicuous to untrained personnel and be operated by means of a push out knob that actuates with a force of less than 5lbf.
- The DPS shall be designed to minimize glare and reflection from outside light sources during hours of darkness.
- No portion of the DPS latching mechanism or strike plate shall present a hazard during ingress or egress from the bus operator's area.
- The DPS door swing shall be accommodated by a rotary post hinge mechanism, free of pinch points.
- The DPS shall close by use of an ergonomically positioned pull handle, and latch with a force of less than 20lbs.

3. MATERIALS

3.1 Glazing

- Glazing shall permit unobstructed view of the curb-side mirrors and to the bottom of the entrance door for operators included in the 95th percentile of the operator population in accordance with SAE J941.

- Glazing material shall be a minimum of 5/16" AS2 (8mm) thickness and be of a tempered / laminated construction with pyrolytic application of anti-glare coating on surfaces #1 and #4.
- Glazing material shall comply with American National Institute, Standard ANSI/SAE Z26.1-1996 S5.2, FMVSS 571.205 49CFR, and SAE J673 #1 edge standards for automotive glazing.
- Glazing material shall be properly marked indicating approved for automotive use in accordance with ANSI/SAE Z26.1-1996 S7 and FMVSS 205 S6.2 standards.
- All DPS glazing shall be easily serviceable and allow replacement in less than 5 minutes by a qualified technician.

3.2 Support Infrastructure and Overall Construction

- DPS stanchion framing shall be constructed of a minimum 11 gauge (0.120" wall) 304 stainless steel material.
- DPS stanchion mounts shall be structurally affixed to the vehicle undercarriage, chassis, or body framing.
- DPS shall be constructed with a sturdy metal frame supporting both upper and lower sections. No portion of the framing shall extend around the front edge of the glazing material.
- All DPS glazing shall be retained by 6063-T6 extruded aluminum framing and include mechanisms to provide vibration-dampening properties.
- All DPS glazing shall be retained without the use of holes, notches, or slots within 5" of the edge of the material.
- Non-transparent lower sections shall be constructed of a minimum 5/32" thickness aluminum sheet and include reinforcement members with welded construction.
- The primary DPS latching mechanism shall include a two-stage rotary slam close type latch and utilize a 9/16" diameter striker bar with fully captured engagement. The latch must be able to withstand a load of no less than 350lbf applied at the locking point, both inward (towards the driver seat) or outward (away from the driver seat).

3.3 Hardware

- DPS latch shall be serviceable and fully replaceable in less than 10 minutes by a qualified technician.
- All fasteners used on the DPS shall be of a safe design to prevent injury to the bus operator or passengers.

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- DPS hinge shall be of a maintenance free rotary post design and incorporate UHMW bushings and bronze thrust washers.

INSTRUCTIONS TO BIDDERS

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

For purposes of this solicitation and subsequent Contract, the following definitions shall apply:

Bidder: The individual, partnership, or corporation who submits a bid in response to a solicitation.

Sun Tran: Sun Tran Tucson, Arizona

Contract: The legal agreement executed between Sun Tran and the Contractor/Consultant. The Contract shall include this IFB document incorporated herein by reference, all terms, conditions, specifications, scope of work, Amendments and the Contractor's bid as accepted by Sun Tran.

Contractor/Consultant: The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by Sun Tran.

Contract Representative: Sun Tran employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and is responsible for monitoring and overseeing the Contractor's performance under this Contract.

Director of Procurement: The contracting authority for Sun Tran authorized to sign contracts and amendments thereto on behalf of Sun Tran.

May: Indicates something that is not mandatory but permissible.

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements, if they constitute a substantive requirement, may, at Sun Tran's sole discretion, result in the rejection of the bid as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the Bidder fails to provide recommended information, Sun Tran may, at its sole option, ask the Bidder to provide the information or evaluate the bid without the information.

2. PRE-BID CONFERENCE: This solicitation will have no pre-bid conference. Bidders are to submit written questions, via electronic mail, at least five days prior to the Invitation for Bid due date, to the Senior Buyer listed above. Upon receipt of any questions, Sun Tran will then determine if a written amendment to the Invitation for Bid is necessary. Oral statements or instructions will not constitute an Amendment to this Invitation for Bid.

3. INQUIRIES: Any question related to an Invitation for Bid shall be directed to the Senior Buyer whose name appears above. A Bidder shall not contact or ask questions of the department for whom the requirement is being procured. The Senior Buyer requires all questions to be submitted via electronic mail, at least five days prior to the bid due date. Any correspondence related to a solicitation should refer to the appropriate Invitation for Bid number, page, and paragraph number. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written Amendment to the Invitation for Bid will be binding.

4. AMENDMENT OF INVITATION FOR BID: The Bidder shall acknowledge receipt of an Invitation for Bid Amendment by signing and returning the document by the specified due date and time.

5. FAMILIARIZATION OF SCOPE OF WORK: Before submitting a bid, each Bidder shall familiarize themselves with the requirements, laws, regulations, and other factors affecting Contract performance. The Bidder shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of Contract requirements. The submission of a bid will constitute a representation of compliance by the Bidder. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.

6. PREPARATION OF BID:

A. All bids shall be on the forms provided in this Invitation for Bid package. It is permissible to copy these forms as required.

B. The Offer and Acceptance page and any solicitation amendments must be signed and returned with the bid.

C. The Offer and Acceptance page shall be signed by the person authorized to submit a bid. An authorized signature on the Notice Page (first page), Offer and Acceptance page, Bid Amendment(s), or cover letter accompanying the

bid documents shall constitute an irrevocable offer to sell the good and/or service specified herein. Bidder shall submit any additional requested documentation, signifying intent to be bound by the terms of the agreement.

- D. The authorized person signing the bid shall initial erasures, interlineations, or other modifications in the bid.
- E. In case of error in the extension of prices in the bid, unit price shall govern. No bid shall be altered, amended or withdrawn after the specified bid due time and date, unless in accordance with the Tucson Procurement Code (§28-17(6)).
- F. Periods of time, stated as a number of days, shall be in calendar days.
- G. It is the responsibility of all bidders to examine the entire Invitation for Bid package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after due date and time.
- H. Sun Tran shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation.
- I. Submission of additional terms, conditions, or agreements with the bid document may result in bid rejection.
- J. Bidder must list any subcontractors to be utilized in the performance of the Contract specified herein.

7. PAYMENTS: Payment terms are Net 45 Days after receipt of invoice.

8. TAXES: Sun Tran is tax exempt for this Contract.

9. BID FORMAT: An original of each bid 1 original copy of the solicitation should be submitted on the forms and in the format specified in the IFB. Bidders shall also submit one electronic copy of the bid on a USB Flash Drive in MS Office or .pdf format. Any confidential information shall be submitted on a separate USB flash drive.

10. PUBLIC RECORD: All bids submitted in response to this invitation shall become the property of Sun Tran available for review subsequent to the Contract award.

11. CONFIDENTIAL INFORMATION: If a Bidder believes that any portion of a bid, specification, protest or correspondence contains information that should be withheld, a statement advising the Senior Buyer of this fact should accompany the submission and the information shall be so identified wherever it appears. Sun Tran shall review all requests for confidentiality and may provide a written determination to designate specified documents confidential or the request may be denied. Price is not confidential and will not be withheld. If the confidential request is denied, such information shall be disclosed as public information, unless the Bidder submits a formal written objection.

12. CERTIFICATION: By signature on the Notice Page, Offer and Acceptance page, solicitation Amendment(s) or cover letter accompanying the bid documents, Bidder certifies:

- A. The submission of the offer did not involve collusion or other anti-competitive practices.
- B. The Bidder shall not discriminate against any employee, or applicant for employment in violation of Federal or State law.
- C. The Bidder has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer.
- D. The Bidder hereby certifies that the individual signing the bid is an authorized agent for the bidder and has the authority to bind the Bidder to the Contract.

14. WHERE TO SUBMIT BIDS: In order to be considered, the Bidder must complete and submit their bid to Sun Tran's Administration Building at the location indicated, prior to or at the exact date and time indicated on the Notice of Invitation for Bid page. The bid shall be submitted in a sealed envelope. The words "SEALED BID" with the INVITATION FOR BID TITLE, BID NUMBER, BID DUE DATE AND TIME, and BIDDER'S NAME AND ADDRESS shall be written on the envelope/package.

15. LATE BIDS: Late bids shall not be considered and will be rejected.

- 16. OFFER AND ACCEPTANCE PERIOD:** In order to allow for an adequate evaluation, Sun Tran requires a bid in response to this solicitation to be valid and irrevocable for thirty (30) days after the bid due date and time.
- 17. WITHDRAWAL OF BID:** At any time prior to a specified solicitation due date and time, a Bidder may formally withdraw the bid by written letter or electronic mail from the Bidder or designated representative. Telephonic or oral withdrawals shall not be considered.
- 18. REQUEST FOR ADDITIONAL INFORMATION:** Sun Tran reserves the right to contact Bidders for the purpose of obtaining additional information and/or clarification that will assure full understanding of, and responsiveness to, solicitation requirements.
- 19. VENDOR APPLICATION:** Prior to the award of a Contract, the successful bidder shall register with Sun Tran's Department of Procurement. Registration can be completed at <http://www.suntran.com/> by clicking on Opportunities the Procurement tab and finally, Vendor Registration. Please note that email notifications of newly published solicitations and Amendments will be provided to those vendors that select email as their preferred delivery method in their vendor record.
- 20. CITY OF TUCSON BUSINESS LICENSE:** It is the responsibility of the Contractor to have a City of Tucson Business License throughout the life of this Contract or a written determination from the City's Business License Section that a license is not required. At any time during the contract, Sun Tran may request the Contractor to provide a valid copy of the business license or a written determination that a business license is not required. Application for a City Business License and any questions should be directed to the City's Business License Section at (520) 791-4566 or email at tax-license@tucsonaz.gov.
- 21. UPON NOTICE OF INTENT TO AWARD:** The apparent successful Bidder shall sign and file with Sun Tran, within fifteen calendar days (15) after Notice of Intent to Award, all mutually agreed documents necessary to the successful execution of the Contract.
- 22. AWARD OF CONTRACT:**
- A. Unless otherwise provided within the IFB, Sun Tran reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to Sun Tran.
 - B. Notwithstanding any other provision of the Invitation for Bid, Sun Tran reserves the right to:
 - (1) waive any immaterial defect or informality; or
 - (2) reject any or all bids, or portions thereof; or
 - (3) reissue an Invitation for Bid.
 - C. A response to the Invitation for Bid is an offer to Contract with Sun Tran based upon the terms, conditions, and specifications contained in Sun Tran's Invitation for Bid, any Amendments or addenda thereto and Contractor's bid, as applicable. Bids do not become Contracts unless and until they are executed by Sun Tran's Director of Procurement and Assistant General Manager. A Contract has its inception in the award, eliminating a formal signing of a separate Contract. All of the terms and conditions of the Contract are contained in the Invitation for Bid, unless any of the terms and conditions are modified by an IFB Amendment, a Contract Amendment, or by mutually agreed terms and conditions in the Contract documents.
- 23. BID RESULTS:** Bid results are not given in response to telephone or electronic mail inquiries. Bids are opened publicly in Sun Tran's Main Conference Room, 3920 N. Sun Tran Blvd. and interested parties are invited to attend. A tabulation of bids received will be available to all bidders after evaluation and award. This tabulation is also on file in the Sun Tran Procurement Department.
- 24. PROTESTS:** A protest shall be in writing and shall be filed with the Director of Procurement. A protest of an Invitation for Bid shall be received at the Department of Procurement not less than five (5) working days before the Invitation for Bid due date. A protest of a proposed award or of an award shall be filed within ten (10) days after issuance of notification of award or issuance of a notice of intent to award, as applicable. A protest shall include:

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- A. The name, address, and telephone number of the protestant;
- B. The signature of the protestant or its representative;
- C. Identification of the Invitation for Bid or Contract number;
- D. A detailed statement of the legal and factual grounds of protest including copies of relevant documents; and
- E. The form of relief requested.

SPECIAL TERMS AND CONDITIONS

1. INSURANCE:

The Contractor agrees to:

- A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this Contract. All policies will contain an endorsement providing that written notice be given to Sun Tran at least thirty (30) calendar days prior to termination, cancellation, or reduction in coverage in any policy.
- B. The Commercial General Liability Insurance policy will include Sun Tran as an additional insured with respect to liability arising out of the performance of this Contract. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. The Contractor agrees that the insurance hereunder will be primary, and that any insurance carried by Sun Tran will be excess and not contributing.
- C. Provide and maintain minimum insurance limits as applicable.

COVERAGE	LIMITS OF LIABILITY
I. Commercial General Liability:	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Project	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.	
Combined Single Limit	\$1,000,000
III. Workers' Compensation (applicable to the State of Arizona)*1	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000

*1 Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Senior Buyer listed in the solicitation.

- D. **ADDITIONAL INSURANCE REQUIREMENTS:** All policies shall include, or be endorsed to include, the following provisions:
 1. A waiver of subrogation endorsement in favor of Sun Tran, for losses arising from work performed by or on behalf of the Contractor.
 2. The insurance afforded the Contractor shall be primary insurance and that any insurance carried by Sun Tran and its agents, officials or employees shall be excess and not contributory.
 3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

- E. NOTICE OF COVERAGE MODIFICATIONS:** Any changes material to compliance with this Contract in the insurance policies above shall require (30) days written notice to Sun Tran. Such notice shall be sent directly to the Department of Procurement.
- F. ACCEPTABILITY OF INSURERS:** Contractors insurance shall have an "A.M. Best" rating of not less than A-VII. Sun Tran in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- G. VERIFICATION OF COVERAGE:** Contractor shall furnish Sun Tran with certificates of insurance (ACORD form or equivalent approved by Sun Tran) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by Sun Tran before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon Sun Tran's request, is a material breach of Contract.

All certificates required by this Contract shall be sent directly to the Department of Procurement.

Sun Tran Contract number and Contract description shall be noted on the certificate of insurance. Sun Tran reserves the right to require complete copies of all insurance policies required by this Contract at any time.

- H. SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to Sun Tran separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- I. EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self- Insurance.
- J. CONFIDENTIAL MATERIAL:** The Contractor will make all claim reports and files available to legal counsel selected by Sun Tran for the defense of lawsuits. All claim reports and files relating to Sun Tran will be kept strictly confidential and will not be released except at the direction of a court or Sun Tran's Risk Manager.

2. TERM AND RENEWAL: The term of the Contract shall commence upon award and shall remain in effect for one year, unless terminated, canceled or extended as otherwise provided herein. The Contractor agrees that Sun Tran shall have the right, at its sole option, to renew the contract for four (4) additional one-year periods or portions thereof. In the event that Sun Tran exercises such right, all terms, conditions and provisions of the original contract shall remain the same and apply during the renewal period, with possible exception of price.

3. PRICE ADJUSTMENT: The Department of Procurement may review fully documented requests for a price adjustment only after the Contract has been in effect for one (1) year. A price adjustment shall only be considered at the time of a Contract extension and shall be a factor in the extension review process. The Department of Procurement shall determine whether the requested price adjustment or an alternate option is in the best interest of Sun Tran/Sun Link. Any price adjustment will be effective upon the effective date of the Contract extension.

Revised price(s) will not become effective until revised list(s) are submitted to Sun Tran under vendor cover letter identifying the applicable Contract and purchase order number. Contractor cover letter and pricing list(s) must be dated, signed and submitted to Sun Tran's Procurement Department, 3920 N. Sun Tran Blvd., Tucson, Arizona 85705.

4. ALTERNATE PRODUCT LITERATURE: Bidders submitting a bid for products other than those specified shall submit a brochure or descriptive catalog giving detailed specifications of the proposed equipment being bided. Bids received

without such materials may be deemed non-responsive.

5. **AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR:** Sun Tran's obligation for performance of this Contract is contingent upon the availability of funds from which payment for Contract purposes can be made. No legal liability on the part of Sun Tran for any payment may arise for performance under this Contract until funds are made available for performance of this Contract
6. **BRAND OR TRADE NAMES:** Any manufacturer's names, trade names, brand names or catalog numbers used in the solicitation are for the purpose of describing and/or establishing the quality, design and performance required. Any such reference is not intended to limit or restrict any bid by any vendor, but is only listed in order to advise potential Bidders of the requirements of Sun Tran. Any bid which proposes like quality, design or performance will be considered.
7. **CONFLICTS OF INTEREST:** An Bidder responding to this IFB acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure a Contract that may be awarded pursuant to this IFB upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the City of Tucson Mayor and Council, any employee of the City or Sun Tran has any financial interest in Bidder's firm. In addition, all communications regarding this solicitation shall be directed to the Department of Procurement. Interested Bidders shall refrain from engaging in any communication (written or verbal) regarding this solicitation or the matters involving this solicitation with any other City or Sun Tran staff. Sun Tran reserves the right to disqualify an Bidder from further participation in the IFB process in the event Sun Tran determines that Bidder has an actual or apparent conflict of interest with the purposes of this IFB, or has violated this Conflict of Interest.
8. **CURRENT PRODUCTS:** All products being bid in response to this solicitation shall be in current and ongoing production; shall be formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
9. **DEFECTIVE PRODUCT:** All defective products shall be replaced and exchanged by the Contractor. The cost of transportation, unpacking, inspection, re-packing, re-shipping or other like expenses shall be paid by the Contractor. All replacement products must be received by Sun Tran within seven (7) days of initial notification, unless otherwise acknowledged.
10. **DELIVERY CONSIDERATION:** Delivery is an important consideration and will be a factor in the determination of an award. Therefore, delivery time after receipt of an order must be stated in definite terms. Should there be variations in delivery time by item, bids must be clear in regard to those variations.
11. **DESCRIPTIVE LITERATURE:** All bids must include complete manufacturers' descriptive literature regarding the product they propose to furnish. Literature shall have sufficient detail in order to allow a complete evaluation of the bid submitted. Failure to include this information may result in the bid being rejected.
1. **DEVIATIONS:** Any deviations from minimum requirements must be stated in an attached letter. If no deviations are taken, Sun Tran will expect and require complete compliance with the specifications and all conditions of purchase. Approved alternate products are not considering deviations.
12. **DISCOUNT:** The Bidder shall provide prices based on the percent of discount off of a referenced manufacturer's price list. A copy of the referenced price list and the applicable catalog(s) shall be enclosed with the bid. Failure to include either the manufacturer's price list or the applicable catalog(s) may result in the bid being rejected.
13. **DISCOUNTED PRICE:** Prices calculated by the Bidder shall be entered on the price sheet(s) provided. Prices entered shall be computed using the same discount referenced by the Bidder. In the event of Contract award, the Contractor shall furnish all items in the manufacturer's catalog, at the discount bided, using the referenced price list. Additionally, the Contractor must provide, at no cost to Sun Tran, copies of the referenced catalog(s) and price list to all eligible

agencies.

- 14. EQUALS:** Bids submitted as alternates, "equals" or on the basis of exceptions to specific conditions of purchases and/or required specifications, must be submitted with an attachment referencing the specific paragraph numbers and adequately defining the exception submitted. Detailed product or service literature, suitable for evaluation, must be submitted with the bid. If no exceptions are taken, Sun Tran will expect and require complete compliance with the specifications and conditions of purchase.
- 15. EQUIPMENT/RECALL NOTICES:** In the event of any recall notice, technical service bulletin, or other important notification affecting equipment purchased from this contract, a notice shall be sent to the Contract Representative. It shall be the responsibility of the contractors to assure that all recall notices are sent directly to the agency's Contract Representative.
- 16. ESTIMATED QUANTITIES:** The quantities shown are estimates only and Sun Tran reserves the right to increase or decrease amounts as circumstances may require.
- 17. FOB DESTINATION FREIGHT PREPAID:** Prices shall be FOB Destination Freight Prepaid to the delivery location designated. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. Sun Tran will assist the Contractor in arranging for inspection.
- 18. FOB SHIPPING POINT:** The Contractor agrees that in those cases where shipping term is Origin, Freight Prepaid and Invoiced, goods shall be shipped PRE-PAID only. The Contractor will pay freight charges directly to the freight company and include documented freight charges on the invoice to Sun Tran. Bids submitted with FOB Shipping Point terms must include freight charges in addition to and separate from the price of items.
- 19. HAZARDOUS MATERIAL ALTERNATIVES:** Sun Tran will consider alternatives for products containing hazardous materials as defined in OSHA Hazard Communications Regulations 29 CFR Part 29-1910.1200. Bidders are encouraged to submit alternate products that meet the intent of the specifications and do not contain hazardous ingredients.
- 20. INSPECTION:** Sun Tran reserves the right to inspect the Contractor's facility at any time during working hours.
- 21. INSPECTION OF PREMISES:** Bidders are encouraged to inspect the premises prior to submitting a bid in order to be fully aware of the scope of services required. Failure to do so will in no way relieve the successful Bidder from performing in accordance with the conditions of this solicitation. Arrangements for on-site inspection of premises can be made with the Senior Buyer noted above.
- 22. KEY PERSONNEL:** It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions. The Contractor shall appoint an individual acceptable to Sun Tran to serve as the full time Contractor Representative (point of contact) through the term of the Contract. This individual shall be the primary contact to Sun Tran.
The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to Sun Tran.
Qualified Contractor employees must be available to perform all services in a timely manner. Sun Tran Contract Representative must be notified in advance if this requirement cannot be met.
- 2. MAINTENANCE & CONTROL OF EQUIPMENT:** Contractor shall be responsible for security, oversight and control of equipment provided by Sun Tran for Contractor's use. Contractor shall be responsible for the maintenance, repair and/or replacement of any equipment that is damaged (with the exception of normal wear and tear), destroyed or missing.

3. **MAINTENANCE FACILITIES:** The equipment specified in this solicitation is dependent upon the availability of prompt professional service. In order to be considered for award, each potential Contractor is required to have existing maintenance facilities with sufficient parts inventory and trained technicians experienced in providing quality service on the equipment specified. Maintenance facilities are subject to inspection by Sun Tran to determine adequacy.
4. **MULTIPLE AWARDS:** Award shall be made to the lowest, responsive, and responsible bidder meeting specifications by grand total. To provide adequate contract coverage, at Sun Tran's sole discretion, multiple awards may be made. If multiple awards are made, the lowest responsive, responsible bidder shall be awarded first position. Sun Tran will contact the first position Contractor for all orders. If the first position Contractor is unable to meet the Sun Tran's immediate requirements, then Sun Tran will contact the second position Contractor.

Contract positions may be reviewed at time of contract renewal and/or extension. If contract pricing is adjusted, per the Price Adjustment clause in this contract, then Sun Tran may reevaluate the contract positions and award first position to the current lowest, responsive, and responsible bidder.

5. **PERFORMANCE:** Contractor agrees that, from and after the date that the applicable services commence, their performance of the Scope of Work will meet or exceed industry best practices subject to the limitations and in accordance with the provisions set forth in this Contract. If the Scope provided pursuant to this Contract are changed, modified or enhanced (whether by Change Order or through the provision of new Scope), Sun Tran and the Contractor will review the current performance experience and will in good faith determine whether such experience should be adjusted and whether additional services should be implemented or whether services be removed.
6. **RECORDS:** Pursuant to provisions of Title 35, Chapter 1, Article 6, Arizona Revised Statutes, Sect. 35-214 and 35-215, each Contractor shall retain, and shall contractually require each subcontractor to retain all books, accounts, reports, files and other records relating to the acquisitions and performance of the Contract for a period of two years after the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced at the offices of Sun Tran's Procurement Department.
7. **REMOVAL OF CONTRACTOR'S PERSONNEL:** The selected Contractor acknowledges that any person assigned to work under this Contract must perform their duties to not unduly impair contract performance. By assigning a person to work under this Contract, the Contractor agrees to be responsible for the work and behavior of that person during contract performance.

The Contractor acknowledges that Sun Tran has the right to require the removal of any Contractor's employee that Sun Tran determines at its sole discretion to be negatively effecting performance of work under the Contract. Examples of such behavior include: (1) conduct which poses a threat to the safety of anyone working under the Contract; (2) conduct which is disruptive to Contract performance; (3) careless work.

8. **REPAIRS:** The Contractor will be responsible for the transportation of equipment to and from their place of business for repairs until such time as Sun Tran places the equipment in service. Transporting the equipment will not be delayed more than one (1) working day from date of notification.
9. **SAFETY STANDARDS:** The Bidder shall certify that the equipment being bided is designed and includes operating features that comply with the safety standard promulgated under the Federal Occupational Safety and Health Act (OSHA). If the equipment being bided is governed by OSHA regulations the successful Bidder is required to submit a certificate stating that such equipment complies with applicable OSHA standards.

During the term of this Contract, should there be modifications in federal and/or state laws and regulations regarding safety standards or other specifications and marketing procedures for the contracted item(s), Sun Tran reserves the right to amend the Contract to provide for the delivery of items which conform to such changes. As a result, Sun Tran will negotiate any

necessary price changes with the Contractor. Should negotiations fail Sun Tran may cancel the Contract for the affected items.

10. SAMPLES AND DEMONSTRATIONS: Samples or demonstrations may be requested if an item bided is other than specified. If samples should be requested, unless otherwise authorized, such samples must be received by Sun Tran no later than five (5) days after a formal request is made. When required, Sun Tran may request full demonstration of any item(s) bided prior to the award of any Contract.

Samples shall be an exact and true representative sample of the actual material bided. Each sample shall be properly tagged or labeled with the name of the Bidder and manufacturer, the due date, and the solicitation number. Samples shall be provided at no additional costs to Sun Tran. Samples not used for tests will be returned to the Bidder.

Furthermore, after award, Sun Tran reserves the right to secure additional samples from the actual material supplied. In the event the samples fail to conform with the Contract requirements, the Contractor shall immediately replace the portion of the delivered commodity with acceptable material conforming to the Contract requirements at no cost to Sun Tran.

11. SUBSTITUTE ITEMS: Sun Tran intends to award Contract(s) for particular products and/or models of equipment as result of this solicitation. In the event that a product or model is discontinued by the manufacturer, Sun Tran, at its sole discretion, may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request permission to substitute a new product or model and provide the following:

- A. A formal announcement from the manufacturer that the product or model has been discontinued.
- B. Documentation from the manufacturer that names the replacement product or model.
- C. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation.
- D. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
- E. Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

12. TRAINING: The Contractor shall provide Sun Tran with primary training for each basic unit of equipment purchased. This training shall be adequate to the needs of the typical equipment operator in order to assure proper operation and utilization of the equipment supplied. Any manuals necessary to perform the required training shall be furnished by the Contractor.

13. USAGE REPORT: The Contractor shall provide an electronic copy of a usage report, upon request, to the Department of Procurement. The report shall provide complete information on the quantity and description of items purchased under this Contract.

14. WARRANTY: Bidder shall warrant that all equipment and parts furnished in their bid are newly manufactured and free from defects in material and workmanship for no less than one (1) year from the date the equipment is delivered or installed. Warranty shall also guarantee accepted trade standards of quality, fitness for the intended uses, and conformance to promises or specified specifications. No other express or implied warranty shall eliminate the Bidder's liability as stated herein.

15. WORKMANSHIP: The Contractor agrees that all work shall be done by skilled and experienced mechanics/technicians and shall be done in a first-class and workmanlike manner.

STANDARD TERMS AND CONDITIONS

1. **ACCEPTANCE:** Mere physical receipt and inspection of goods or services by Sun Tran does not alter or affect the obligations of Contractor to provide goods and services that conform to all specifications of this Contract and Sun Tran may reject goods or services that are later found to be nonconforming.
2. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract without prior written consent of Sun Tran's Director of Procurement.
3. **ARBITRATION:** Notwithstanding any other provision in this Contract, no agreement by Sun Tran to arbitrate a dispute is binding unless given expressly and in writing after execution of this Contract. However, if both parties agree, disputes may be resolved through arbitration following the process in A.R.S. § 12-1501, et seq. Contractor must continue to perform under this Contract without interruption, notwithstanding the provisions of this section.
4. **ASSIGNMENT-DELEGATION:** Contractor may not assign its rights or obligations under this Contract without the prior written permission of the Sun Tran's Director of Procurement. Sun Tran will not unreasonably withhold approval for a requested assignment.
5. **COMPLIANCE WITH LAWS:** The parties will comply with all federal, state and local laws, rules, regulations, standards and Executive Orders including, without limitation, the following:
 - A. Americans with Disabilities Act. Contractor will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101 -- 12213) and applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36.
 - B. Workers' Rights Laws. Contractor will comply with all applicable provisions of Federal and State Child Labor and Workers' Rights laws and agrees if called upon to affirm in writing that they and any subcontractors working under this Contract are in compliance.
 - C. Affirmative Action. Contractor will comply with Chapter 28, Article XII of the Tucson City Code Chapter 28.
6. **GOVERNING LAW AND VENUE:** This Contract is governed by the laws of the State of Arizona and the City and Contractor will have all remedies afforded to each by the Tucson Procurement Code and the laws of the State of Arizona. Any lawsuits regarding this Contract must be brought in a court of competent jurisdiction in Pima County, Arizona.
7. **COMMENCEMENT OF WORK:** Contractor will not commence any billable work or provide any material or service under this Contract until Contractor receives a purchase order or is otherwise directed to do so, in writing, by Sun Tran.
8. **CONFIDENTIALITY OF RECORDS:** Contractor will establish and maintain procedures to ensure that no information contained in its records or obtained from Sun Tran or from others in carrying out its functions under this Contract is used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform its duties under the Contract, and will take appropriate measures to protect any personal identifying information of any individuals.
9. **CONFLICT OF INTEREST:** Sun Tran may terminate this Contract without penalty or further obligation pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of Sun Tran is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a contractor to, Contractor with respect to the subject matter of this Contract. Termination will be effective when written notice from Sun Tran's Director of Procurement, or designee, is received by Contractor, unless the notice specifies a later time.
10. **CONTRACT AMENDMENTS; ADDITIONAL WORK:** This Contract may only be amended by a written agreement signed by the parties Sun Tran Procurement Department has the sole authority to initiate the following:
 - A. Amend the Contract or enter into supplemental verbal or written agreements;
 - B. Grant time extensions or Contract renewals;

C. Otherwise modify the scope or terms and provisions of the Contract.

Except in the case of a documented emergency, Contractor will not perform any work under this Contract that exceeds the scope of work or contract amount unless a formal amendment or change order has first been approved and executed by Sun Tran Procurement Department.

11. ENTIRE CONTRACT; INTERPRETATION: This Contract, which includes all the conditions and requirements set forth in the Solicitation and all Amendments to the Solicitation, all the Special Terms and Conditions and Standard Terms and Conditions, and all the terms of the Offer submitted by Contractor as finally negotiated and accepted by Sun Tran, constitutes the entire agreement of the parties regarding the services described in the Scope of Work and will prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.

No course of prior dealings between the parties and no usage of the trade will be deemed to supplement or explain any term used in the Contract.

12. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH: Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.

13. DELIVERABLES PROPERTY OF CITY; NO LIENS: All services, information, computer program elements, reports and other deliverables created under this Contract are the sole property of Sun Tran and may not be used or released by Contractor except with Sun Tran's prior written permission.

All deliverables supplied to Sun Tran under this Contract will be free of all liens and encumbrances.

14. DUPLEXED/RECYCLED PAPER: Whenever practicable, all printed materials produced by Contractor in the performance of this Contract will be duplexed (two-sided copies), printed on recycled paper, and labeled as such.

15. FEDERAL IMMIGRATION LAWS AND REGULATIONS: Contractor warrants and will require each subcontractor performing work on this Contract to warrant that it will comply with all federal immigration laws and regulations that relate to its employees and with the requirements of A.R.S. § 23-214(A). A breach of this warranty will be deemed a material breach of this Contract that is subject to penalties up to and including termination of this Contract. City may inspect the records of any employee of Contractor or any subcontractor performing work on this Contract to monitor Contractor's and its subcontractors' compliance with this warranty.

16. FINANCIAL RECORDS AND AUDITS:

- A. Financial Controls and Accounting Records. Contractor will exercise internal controls over all financial transactions related to this Contract in accordance with sound fiscal policies. Contractor will maintain books, records, documents, and other evidence directly pertinent to the performance this Contract in accordance with generally accepted accounting principles and practices consistently applied, and other local, state or federal regulations.
- B. Retention Period. Contractor will maintain those records, together with related or supporting documents and information, at all times during the term of this Contract and for a period of 3 years after its expiration or termination.
- C. Audits. Upon written notice from Sun Tran, Contractor will obtain and provide to Sun Tran a contract-specific or general financial audit. The notice from Sun Tran will specify the period to be covered by the audit, the type of audit and the deadline for completion and submission of the audit results to Sun Tran. The audit must be performed by a qualified, independent accounting firm and include Contractor's responses, if any, to any audit findings.
- D. Access to Books and Records. Sun Tran and its authorized representatives may, with advance written notice to Contractor, during the term of this Contract or thereafter during the above retention period, inspect and audit Contractor's books and records that relate to its operations under this Contract as well as those kept by or under the control of its agents, assigns, successors and subcontractors. The Contractor will, at its expense, make such

books and records available for such inspection and audit during normal business hours at Contractor's office, place of business, or other agreed-upon location, or will provide copies by mail or electronically. Sun Tran may, as part of its examination, make copies of, or extracts from, all such books and records (in whatever form they may be kept, whether written, electronic, or other).

- E. Result of Audit. If, as a result of such audit, Contractor is liable to Sun Tran for the payment of any sum, Contractor will pay such sum to Sun Tran together with interest thereon at the rate of one percent (1%) per month from the date such sums should have been paid, or the date of any overpayment by Sun Tran or the City of Tucson, within 90 days after presentation of Sun Tran's findings to Contractor. If the audit results in findings of fraud, misrepresentation, or non-performance, Contractor will pay Sun Tran's costs of conducting the audit. Sun Tran's audit rights will survive the expiration or termination of this Contract.
- F. Subcontractors and Assigns. Contractor will include these Section H.31 requirements in every agreement with any agent, assign, successor, and subcontractor who provides construction, professional design services, or other goods or services under this Contract.

17. FORCE MAJEURE: Except for payment of sums due, neither party will be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure does not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party must notify the other party in writing of the delay as soon as practical, including when the delay commenced and its cause. The notice must make a specific reference to this article to fall within its protection. The delayed party must resume performance as soon as practicable and must notify the other party in writing when it has done so. The parties will modify the Contract to agree upon the period of time by which the excused delay extends any completion dates.

18. GRATUITIES: Sun Tran may, by written notice to the Contractor, terminate this Contract if it finds that gratuities, in the form of entertainment, gifts, meals or otherwise, were offered or given by Contractor or any agent or representative of Contractor, to any officer or employee of Sun Tran or the City of Tucson to influence the award of this Contract or any determinations with respect to the performance of this Contract. In the event this Contract is terminated by Sun Tran pursuant to this provision, Sun Tran will be entitled, in addition to any other rights and remedies, to recover or withhold from Contractor the amount of the gratuity.

19. INDEMNIFICATION: To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, will indemnify, defend, and hold harmless Sun Tran and its officials, employees, volunteers, and agents, from and against all allegations, demands, proceedings, suits, actions, claims (including but not limited to claims of patent, trademark, or copyright infringement), liability, damages, losses, expenses (including but not limited to attorney fees and court costs, including the cost of appellate proceedings, and all claim-adjusting-and-handling expenses) or disbursements of any kind or nature, that may be asserted against, imposed on, or incurred by any of them, in any way relating to or arising from any actions, errors, mistakes or omissions of Contractor or any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable relating to work, services and/or products provided under this Contract.

Contractor is responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Contractor agrees to waive all rights of subrogation against Sun Tran, its agents, officials, employees, and volunteers for losses arising from the work performed by Contractor under this Contract.

20. INDEPENDENT CONTRACTOR: Neither party is the agent, employee, partner, joint venturer, or associate of the other. No employee or agent of one party will be deemed or construed to be the employee or agent of the other party for any purpose. Neither party will be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

21. INSPECTION AND ACCEPTANCE: All materials and services provided to Sun Tran under this Contract are subject to final inspection and acceptance by Sun Tran. Any materials or services failing to conform to the specifications of this Contract must be promptly replaced or redone at Contractor's cost. Nonconforming goods or services may be deemed a default and result in Contract termination.

22. INTELLECTUAL PROPERTY: If manufacture, sale, or use of any method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof ("Product") by Contractor in performing its duties under this Contract is determined to constitute infringement and if further manufacture, sale, or use of said Product is enjoined, Contractor will, at its own expense, either procure for Sun Tran the right to continue manufacture, sale, or use of that Product, replace it with an alternative non-infringing Product, or modify it so it becomes non-infringing.

If requested by Sun Tran, Contractor will provide Sun Tran with satisfactory evidence of patent licenses or patent releases covering Sun Tran-specified proprietary materials, equipment, devices or processes.

23. ISRAEL BOYCOTT DIVESTMENTS: If this Contract has a value of \$100,000 or more, Contractor certifies that it is not currently engaged in, and will not during the term of this Contract engage in, a boycott of goods or services from Israel as defined in A.R.S. § 35-393.

24. LICENSES: Contractor will maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract. Contractor will, at the request of Sun Tran at any time during the term of this Contract, give Sun Tran a valid copy of its business license or, if it is exempt, a written determination from the City Business License Section that a business license is not required.

25. NO WAIVER: No provision in this Contract acts expressly or by implication as a waiver by either party of any existing or future right and/or remedy available at law in the event of any default or breach of contract. If either party fails to insist upon the other's strict performance of any duty or condition under this Contract or fails to exercise or delays in exercising any right or remedy provided in this Contract or by law, or accepts nonconforming materials or services, that party will not be deemed to have waived its right to insist thereafter upon the strict performance of the Contract.

26. NON-EXCLUSIVE CONTRACT: This Contract is for the sole convenience of Sun Tran, which may obtain like goods or services from other sources.

27. NON-DISCRIMINATION: Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Contract, including flow-down of all provisions and requirements to any subcontractors. During the term of this Contract, Contractor will not discriminate against any employee, client, or any other individual in any way because of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status, and/or marital status.

28. OVERCHARGES BY ANTITRUST VIOLATIONS: To the extent permitted by law, Contractor hereby assigns to Sun Tran any and all claims that Contractor has for overcharges by any subcontractor or supplier of goods or services used by Contractor to fulfill this Contract that relate to antitrust violations.

29. PAYMENT: Sun Tran will issue a Purchase Order and pay subsequent invoices by one of the following payment methods upon receipt of goods or services in good order:

- A. Credit Card: No convenience fees will be reimbursed and all credit card fees will be incurred by Contractor.
- B. Check
- C. Electronic Funds Transfer: Contractor may sign up for EFT, no charge to Contractor, by submitting an EFT application to the City of Tucson. An application can be provided by Sun Tran upon request.

The payment terms shall apply to all purchases and to all payment methods. The Contractor shall notify Sun Tran of their preferred payment method at least 2 weeks prior to the issuance of an invoice.

Contractor will issue to Sun Tran a separate invoice for each shipment of materials or provision of services under this Contract, and Sun Tran will issue no payment prior to receipt of the goods or services and the related invoice. The invoice may not be dated prior to the receipt of goods or completion of services.

Sun Tran and the City of Tucson will make commercially reasonable efforts to process payments due under this Contract within 45 calendar days after receipt of materials or services and a correct invoice.

30. PROTECTION OF CITY PROPERTY: If this Contract requires Contractor to perform any work on City-owned property, Contractor will use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on the property. Contractor will replace or repair any damage caused by Contractor or any employee, agent, or subcontractor of Contractor, at no expense to Sun Tran. If Contractor fails or refuses to make such repair or replacement, Sun Tran will estimate the cost of repair and, upon receiving an invoice from Sun Tran for that estimated cost, Contractor will pay Sun Tran/City of Tucson the invoiced amount. Sun Tran may, at its discretion, instead deduct the amount from any payments due Contractor under this or any other Sun Tran or City of Tucson contract.

Contractor will, during the course of its work on City property, keep the work area, including any storage areas used by the Contractor, free from accumulation of waste material or rubbish. Upon completion of the work, Contractor will leave the work area in a clean and neat condition, free of any debris, and will remove any non-City-owned materials or equipment or other personal property that it has caused to be located on the City property.

31. PROVISIONS REQUIRED BY LAW: This Contract will be deemed to include every provision required by law to be included. If through mistake or otherwise any such provision is not included, or is included incorrectly, then upon request by either party the parties will amend the Contract to insert or correct the required provision..

32. RIGHT TO ASSURANCE: If a party to this Contract has reason to question, in good faith, the other party's intent to perform, the former party may demand that the other party give a written assurance of their intent to perform. In the event that a demand is made and no written assurance is given within 5 business days, the demanding party may treat this failure as a default.

33. RIGHT TO INSPECT: Sun Tran may from time to time during normal business hours, at Sun Tran's expense, inspect the Contractor's or any subcontractor's place of business at which work under this Contract is being performed.

34. SEVERABILITY: The provisions of this Contract are severable. If any provision or application of a provision of this Contract is held to be invalid, that will not affect the validity of any other provision or application of a provision that can remain meaningfully effective without the invalidated provision or application.

35. SUBCONTRACTS: Contractor may not enter into any subcontracts for work under this Contract without the advance written approval of the Sun Tran's Director of Procurement. All subcontracts will incorporate all the terms and conditions of this Contract. Contractor is responsible for contract compliance and quality of work of any subcontractors used.

36. SUSPENSION OF WORK: Sun Tran may order Contractor to suspend, delay, or interrupt all or any part of the work under this Contract for the period of time that Sun Tran determines appropriate for the convenience of Sun Tran. The order must be in writing and signed by the Sun Tran's Director of Procurement or designee.

37. TERMINATION OF CONTRACT:

- A. For Convenience. Sun Tran may terminate this Contract at any time, with or without cause, with 30 days' advance written notice to Contractor. If Sun Tran terminates the Contract, it will be liable only for payment for services rendered and accepted before the effective date of the termination.
- B. For Cause. Sun Tran may terminate this Contract if any Contractor representation or warranty is found to have been inaccurate when made or is no longer accurate, or if Contractor fails to carry out or abide by any term or condition of the Contract and fails to remedy the problem within 10 days after receipt of notice of default from Sun Tran for monetary defaults, or within 30 days after notice if the default is non-monetary.

C. Non-Appropriation. Each payment obligation of Sun Tran created by this Contract is conditioned upon the availability of funds that are appropriated or allocated for the payment of such obligation. If funds are not appropriated by Sun Tran and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by Sun Tran at the end of the period for which funds are available. Sun Tran will endeavor to notify Contractor if continued service will or may be affected by non-appropriation. No penalty will accrue to Sun Tran in the event this provision is exercised, and Sun Tran will not be liable for any future payments due or for any damages resulting from termination under this paragraph.

38. TITLE AND RISK OF LOSS: The title and risk of loss of any goods provided under this Contract will not pass to Sun Tran until Sun Tran actually receives the goods at the point of delivery and thereafter accepts them. No tender of a bill of lading will operate as a delivery of the materials.

PRICE PAGE

Thirty (30) approved Driver Protective Barriers.

Cost each: \$ _____

Installation of each barrier \$ _____

Extended Cost with installation for 30 barriers \$ _____

Replacement Parts discount percentage _____ or

Contractor mark-up percentage for replacement parts _____

Hourly rate for service and/or repair (outside of scope)\$ _____ hr.

OFFER AND ACCEPTANCE

OFFER

TO SUN TRAN:

The Undersigned hereby offers and shall furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Invitation for Bid which is incorporated by reference as if fully set forth herein.

For clarification of this offer, contact:

Company Name

Name: _____

Address

Title: _____

City State Zip

Phone: _____

Signature of Person Authorized to Sign

Fax: _____

Printed Name

E-mail: _____

Title

ACCEPTANCE OF OFFER

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as Contract No. _____.

TUCSON TRANSIT MANAGEMENT, LLC.
dba SUN TRAN

Approved as to form this _____ day of _____, 2024.

Awarded this _____ day of _____, 2024.

Jeff Rock as Assistant General Manager and not personally

Michele Taylor as Director of Procurement and not personally

**ATTACHMENT A
SUBMITTAL REQUIREMENTS**

1. Price Page(s)
2. Insurance documents
3. Signed Offer and Acceptance Page
4. Signed Amendment(s) (If applicable)
5. Submittal Format:
 - A. An original of each completed bid
 - B. One electronic copy of the bid on cd disc or USB Flash Drive in MS Office or .pdf format.
 - C. Any confidential information shall be submitted on a separate cd disc or USB flash drive
 - D. Bids must be submitted in a sealed envelope or package. The words "SEALED BID" with the Invitation for Bid Title, Invitation for Bid Number, Bid Due Date and Time, and Bidder's Name & Address shall be written on the envelope or package.
 - E. Bids must be delivered to Sun Tran's Administrative Building 3920 N Sun Tran Blvd Tucson, AZ 85705
6. FTA Terms and Conditions certifications filled out and signed (Attachment B)

REMINDER:

Please send any questions or concerns you may have to Gina.fields@tucsonaz.gov at least five (5) days prior to the bid due date.

Bids must be received by 2 pm on December 6, 2024.

Attachment B

**FEDERAL TRANSIT ADMINISTRATION
TERMS, CONDITIONS, AND CERTIFICATIONS**

FEDERAL TRANSIT ADMINISTRATION TERMS, CONDITIONS AND CERTIFICATIONS

Requirements/Conditions For All FTA Assisted Contracts:

- Federal Disclaimer to Third Parties
- Program Fraud and False or Fraudulent Statements and Related Acts
- Access to Third Party Contract Records
- Prohibitions Against Exclusionary or Discriminatory Specifications
- Changes to Federal Requirements
- Termination Provisions (Contracts exceeding \$10,000)
- Civil Rights Requirements
- Requirements for Disadvantaged Business Enterprises (DBEs)
- Incorporation of FTA Terms
- Prohibition on Certain Telecommunications and Surveillance Equipment
- Procurement of Recovered Materials
- Americans with Disabilities Act (ADA)
- Contract Work Hours and Safety Standards Act
- Notification to FTA
- Solid Wastes
- Prompt Payment
- Simplified Acquisition Threshold
- Veterans Hiring Preference
- Trafficking in Persons
- Federal Tax Liability and Recent Felony Convictions
- Severability

Requirements for Contracts Exceeding \$25,000 Threshold:

- Debarment and Suspension Requirements

Requirements for Contracts Exceeding Small Purchase Threshold (\$250,000):

- Report, record retention, and access provisions
- Buy America requirements
- Provisions For Resolution Of Disputes, Breaches, Defaults Or Other Litigation
- Lobbying Requirements
- Bonding Requirements for Construction Activities; (may be imposed for nonconstruction activities)
- Clean Water Requirements
- Clean Air Requirements

Cargo Preference

- Acquisition of Property Shipped by Ocean Vessel
- Acquisition of Property Shipped by Air (Fly America)

Construction Activities:

- Equal Employment Opportunity (Except for supplies/raw materials)
- Construction Employee Protection Requirements: (except for contracts < \$2,000, or for supplies/raw materials)
- Davis Bacon Act (for contracts exceeding \$2,000)
- Contract Work Hours & Safety Standards Act (contracts exceeding \$100,000)
- Copeland Anti-Kickback Act (for all construction contracts)
- Seismic Safety (for new buildings/additions only)
- Special DOL EEO Clause

Non Construction Activities

Non Construction Employee Protection Requirements (Except for supplies/raw materials) (for all turnkey, rolling stock and operational contracts (excluding transportation services) in excess of \$100,000

Transit Operations

**Transit Employee Protective Arrangements
Charter Service Operation
School Bus Operations
Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations**

Planning, Research, Development and Demonstration Projects

**Patent Rights Requirements
Rights in data and copyrights requirements**

Turnkey and Other Acquisitions Made by a Third Party Contractor Assuming the Role of the City of Tucson

**Bus Testing
Pre-Award and Post-Delivery Audit Requirements**

Miscellaneous Special Requirements

**Environmental Protection
Energy Conservation Requirements
Metric System Requirements
National ITS Architecture
Requirements for Recycled Products (for items designated by EPA)
Seat Belt Use
Distracted Driving
Civil Rights and Equal Opportunity
No Federal Government Obligation to Third Parties
Program Fraud and False or Fraudulent Statements or Related Acts
Termination**

Certifications

**Buy America
Lobbying**

Protest Procedures For Federal Transit Administration Funded Projects

City Of Tucson Protest Procedures For Federal Transit Administration (FTA) Funded Projects-

Requirements/Conditions For All FTA Assisted Contracts

This Contract is Subject to Federal Financial Assistance/Application of Provisions and Clauses

This contract is funded in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of any contract is subject to the requirements of financial assistance contracts between the City of Tucson and the U.S. Department of Transportation.

The Contractor is required to comply with all terms and conditions prescribed for third-party contracts by the U.S. Department of Transportation, Federal Transit Administration (FTA). If FTA requires any change to this Contract to comply with its requirements, both parties agree to amend the Contract as required by FTA. If such changes cause an increase or decrease in the work to be performed by the Contractor or the time for such performance, then the compensation to be paid the Contractor and time of performance shall be equitably adjusted.

The required contract clauses, which are identified below as applicable to this solicitation, will be incorporated by reference in any contract resulting from this solicitation issued by the City Of Tucson. These solicitation provisions and required contract clauses are in addition to other General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures, and Bid or Proposal Forms set forth in other sections of this solicitation which may also be incorporated by reference in any resulting contract. If there is any discrepancy in the language between this document and the General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures and Bid or Proposal Forms set forth in other sections of this solicitation, the stricter of two shall govern.

Some provisions and clauses require the bidder/proposer to execute and submit certain required certifications with the bid or proposal, which are included herein. Failure to execute and submit required certifications with the bid or proposal documents may render a bid or proposal non-responsive.

Federal Disclaimer to Third Parties

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

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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) 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 Third Party Contract Records

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

Flow Down

The record keeping and access requirements extend to all third party contractors and their contracts at every tier and sub-recipients and their subcontracts at every tier.

Prohibitions Against Exclusionary or Discriminatory Specifications – 49 U.S.C. § 5323(h)(2)

1. Apart from inconsistent requirements imposed by Federal laws or regulations, the City of Tucson agrees that it will comply with 49 U.S.C. § 5325 (h) by not expending or otherwise using any Federal assistance FTA has made available for the Project to support a procurement using exclusionary or discriminatory specifications.

Changes to Federal Requirements - 49 CFR Part 18

1. 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 Agreement (*Form FTA MA (18) dated October, 2011 between the City of Tucson 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. All standards or limits set forth in this Contract to be observed in the performance of the work are minimum requirements, unless modified by the FTA.

Termination Provisions - 49 U.S.C. Part 18, FTA Circular 4220.1F

1. **Termination for Convenience (General Provision):** The City Of Tucson 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 the City Of Tucson to be paid the Contractor. If the Contractor has any property in its possession belonging to the City Of Tucson, the Contractor will account for the same, and dispose of it in the manner the City Of Tucson directs.
2. **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 City Of Tucson 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 City Of Tucson 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 City Of Tucson, 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.

3. **Opportunity to Cure (General Provision):** The City Of Tucson in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 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 the City Of Tucson's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract after receipt of written notice from the City of Tucson setting forth the nature of said breach or default, the City of Tucson 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 the City of Tucson from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

5. **Termination for Convenience (Professional or Transit Service Contracts):** The City of Tucson, 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 City of Tucson shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

6. **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 City of Tucson may terminate this contract for default. The City of Tucson 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 City of Tucson.

7. **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 City of Tucson may terminate this contract for default. The City of Tucson 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 City of Tucson, protect and preserve the goods until surrendered to the City of Tucson or its agent. The Contractor and the City of Tucson 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 City of Tucson.

8. **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 City of Tucson may terminate this contract for default. The City of Tucson shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the City of Tucson may take over the work and complete 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 City of Tucson 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 City of Tucson in completing the work.

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

- a. 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 City of Tucson, acts of another Contractor in the performance of a contract with the City of Tucson, epidemics, quarantine restrictions, strikes, freight embargoes; and
- b. the contractor, within ten [10] days from the beginning of any delay, notifies the City of Tucson in writing of the causes of delay. If in the judgment of the City of Tucson, the delay is excusable, the time for completing the work shall be extended. The judgment of the City of Tucson 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 City of Tucson.

9. **Termination for Convenience or Default (Architect and Engineering):** The City of Tucson may terminate this contract in whole or in part, for the City of Tucson's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City of Tucson 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 City of Tucson, 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 City of Tucson may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the City of Tucson.

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 City of Tucson.

10. **Termination for Convenience or Default (Cost-Type Contracts):** The City of Tucson may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the City of Tucson 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 City of Tucson, or property supplied to the Contractor by the City of Tucson. If the termination is for default, the City of Tucson 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 City of Tucson and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the City of Tucson, 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 City of Tucson 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 City of Tucson, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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.

The following Federal Civil Rights laws and regulations apply to all contracts.

1. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to: a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.* and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 *et seq.*, and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.*, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Civil Rights and Equal Opportunity

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Requirements for Disadvantaged Business Enterprises (DBE's) - 49 CFR Part 26

1. The Federal Fiscal Year goal has been set by the City Of Tucson in an attempt to match projected procurements with available qualified disadvantaged businesses. The City Of Tucson goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the City Of Tucson as set forth by the Department of Transportation Regulations 49 C.F.R. Part 26, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Legal Documents and Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, the City Of Tucson may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

- a. Policy - It is the policy of the Department of Transportation and the City Of Tucson that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 and Section 106(c) of the STURAA of 1987 have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts. 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 any such other remedy as the recipient deems appropriate.

It is further the policy of the City Of Tucson to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the City Of Tucson procurement activities are encouraged.

- b. DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.
- c. Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the City Of Tucson may declare the contractor noncompliant and in breach of contract.
- d. The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the City Of Tucson DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the City Of Tucson and will be submitted to the City Of Tucson upon request.
- e. The City Of Tucson will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:
 - * Identification of qualified DBE
 - * Available listing of Minority Assistance Agencies
 - * Holding bid conferences to emphasize requirements

2. DBE Program Definitions, as used in the contract:

- a. Disadvantaged business "means a small business concern":
 - i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
 - ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.or
 - iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and
 - iv. Whose management and daily business operations are controlled by one or more women individuals who own it.
- b. "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.
- c. "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents and who are black Americans, Hispanic

Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

- i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
 - ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;
 - v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.
3. Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment made by the City of Tucson to the prime contractor. If applicable, the Prime contractor is to pay all retainage owed to the DBE subcontractor within 30 days of satisfactory completion of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented by the prime contractor as required by the City of Tucson. The City of Tucson will continue to hold full retainage as provided for under the Arizona Revised Statutes. Prime contractors must provide notice to DBE firms that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson Arizona 85701. The complaint shall set forth the facts and identify the prime contractor and the project.

Incorporation Of Federal Transit Administration (FTA) Terms - FTA Circular 4220.1F

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 4220.1F, 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 of the City Of Tucson's requests which would cause the City Of Tucson to be in violation of the FTA terms and conditions.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The contractor is prohibited from obligating or expending federal funds to: a. Procure or obtain b. Extend or renew a contract to procure or obtain; or c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. d. As described in Public Law 115-232, section 889, "covered telecommunications equipment or services" is: Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) e. For public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). f. Telecommunications or video surveillance services provided by such entities or

using such equipment. g. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. h. The Contractor shall not provide covered telecommunications equipment or services in the performance of this contract.

See Public Law 115-232, section 889 for additional information. See also § 200.471

PROCUREMENT OF RECOVERED MATERIALS

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or at a reasonable price. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

AMERICANS WITH DISABILITIES ACT (ADA)

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

.Applicability: This requirement applies to all FTA grant and cooperative agreement programs. b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II. c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

Compliance with the Contract Work Hours and Safety Standards Act. (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and onehalf times the basic rate of pay for all hours worked in excess of forty hours in such workweek. (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section. (3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section. (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

NOTIFICATION TO FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements. (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

SOLID WASTES

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery

Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item Updated November 2022 exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

PROMPT PAYMENT

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. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The contractor must promptly notify the Agency, 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 Updated November 2022 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 Agency.

SIMPLIFIED ACQUISITION THRESHOLD

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or Updated November 2022 breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

VETERANS HIRING PREFERENCE

Veterans Employment - Recipients and subrecipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

TRAFFICKING IN PERSONS

The contractor agrees that it and its employees that participate in the Recipient's Award, may not: (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect; (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or (c) Use forced labor in the performance of the Recipient's Award or sub-agreements thereunder.

FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

(1) The contractor certifies that it: Updated November 2022 (a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for

collecting the tax liability; and (b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months. If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval. (2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any sub-agreement.

SEVERABILITY

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

Requirements for Contracts Exceeding \$25,000

Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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 AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, 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 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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.

Requirements for Contracts Exceeding \$100,000

Access To Records And Reports - 49 U.S.C. 5325, 18 CFR 18.36 (i), 49 CFR 633.17

Access to Records and Reports

a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all 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. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

Required Use of American Iron, Steel, Manufactured Products, and Construction Materials Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: 1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; 2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and 3) all construction materials⁴⁴ are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project. Waivers:

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements. a) When the Federal agency has made a determination that one of the following exceptions

applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that: 1) applying the domestic content procurement preference would be inconsistent with the public interest; 2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or 3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [link to awarding agency web site with information on currently applicable general applicability waivers]. Definitions: "Construction materials" includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives⁴⁶—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

"Domestic content procurement preference" means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States. "Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy. "Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States

Provisions For Resolution Of Disputes, Breaches, Defaults Or Other Litigation - 49 CFR Part 18, FTA Circular 4220.1F

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 the City Of Tucson. 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 authorized representative of the City Of Tucson. 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 authorized representative of the City Of Tucson shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute

Unless otherwise directed by the City Of Tucson, 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 or damage.

Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City Of Tucson 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 City Of Tucson 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 City Of Tucson, 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.

Lobbying Requirements - 31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20

Lobbying Restrictions

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Bonding Requirements for Construction Activities; may be imposed for non-construction activities

Refer to the Special Terms & Conditions of this Solicitation for

- Bid Bond Requirements (Construction)
- Performance and Payment Bonding Requirements (Construction)
- Performance and Payment Bonding Requirements (Non-Construction)
- Advance Payment Bonding Requirements
- Patent Infringement Bonding Requirements (Patent Indemnity)
- Warranty of the Work and Maintenance Bonds

Clean Water Requirements - 33 U.S.C. 1251

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

Clean Air Requirements - 42 U.S.C. 7401 et seq., 40 CFR 15.61, 49 CFR Part 18

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

Requirements for Recycled Products - 42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873

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.

Cargo Preference

Cargo Preference - 46 U.S.C. 1241, 46 CFR Part 381

Acquisition of Property Shipped by Ocean Vessel:

Pursuant to 46 C.F.R. Part 381, the following clauses must be inserted in all contracts under which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project.

The contractor agrees to:

- a. 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. 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. 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.

Acquisition of Property Shipped by Air (Fly America):

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.

Construction Activities

Equal Employment Opportunity (Does not apply for supplies/raw materials procurements)

Equal Employment Opportunity

All construction contracts in excess of \$10,000 by grantees and their contractors or sub-grantees shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 C.F.R. Part 60). The following clauses shall be included:

Nondiscrimination

During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, disability, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.
- c. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Secretary of Labor and the FTA for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of such rules, regulations or orders, this agreement may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Federal or Federally assisted contracts in accordance with procedures authorized in Executive No. Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The contractor will include the provisions of paragraphs (a) through (g) of this subsection in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Secretary of Labor or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that if a contractor becomes involved in, or is

threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Specifications

The following clauses must also be included in all construction contracts and subcontracts over \$10,000, in geographical areas designated pursuant to 41 C.F.R. 60-4.3:

"Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order No. 11246):

1. As used in these specifications:
 - a. "Covered Area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer Identification Number" means the federal social security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - i. Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
 - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and
 - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 C.F.R. 60-4.5) in a hometown plan approved by the U.S. Department of Labor in the covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such hometown plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the plan goals and timetables.
4. The contractor shall implement the specific affirmative action standards provided in paragraphs (7)(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted

are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Federal Contract Compliance Program Office or from Federal Procurement Contracting Officers. The contractor is expected to make substantially uniform progress toward its goal in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order No. 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notice to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs

funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under (7)(b) above.

- f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- i. Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notice to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth, both on the site and in other areas of the contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 C.F.R. Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations that assist in fulfilling one or more of their affirmative action obligations set forth in paragraphs (7)(a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under paragraphs (7)(a) through (p) of these specifications, provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (even though the contractor has achieved its goal for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order No. 11246.
12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the equal opportunity clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order No. 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order No. 11246, as amended.
13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 C.F.R. 60-4.8.
14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the extent that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program)."

Notice

Contractor agrees to include the following notice in all construction subcontracts over \$10,000, in geographical areas designated pursuant to 41 C.F.R. 60-4.2:

"Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246):

- 1. The offeror's or bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

- 2. a. The goals and the timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for Minority Participation for Each Trade	Goals for Female Participation in Each Trade
	24%	7%

- b. These goals are applicable to all the contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its Federally involved and non-federally involved construction.

- c. The contractor's compliance with the Executive Order and the regulations at 41 C.F.R. Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth at 41 C.F.R. Part 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in C.F.R. Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- 3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

- 4. As used in this notice, and in the contract resulting from this solicitation, the "covered area" is miscellaneous sites within the city limits of Tucson, Pima County, State of Arizona."

Construction Employee Protection Requirements: (except for contracts < \$2,000, or for supplies/raw materials)

Davis Bacon Act - 40 USC §§ 3142(a), 29 CFR § 5.5(a)

Copeland Anti-Kickback Act - 18 U.S.C. § 874, 29 C.F.R. § 3, 29 C.F.R. § 5.5(a)(1) through (10)

DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing 12 Jun-24 wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Contract Work Hours & Safety Standards Act - 40 U.S.C. §3701, 29 C.F.R. § 5.5(b)

Federal Labor Standards Provision

[Code of Federal Regulations]
[Title 29, Volume 1, Parts 0 to 99]
[Revised as of July 1, 1998]
From the U.S. Government Printing Office
via GPO Access
(<http://www.access.gpo.gov/nara/cfr/index.html>)
[CITE: 29CFR5.5]

[Page 110-116]

TITLE 29--LABOR

PART 5--LABOR STANDARDS
PROVISIONS APPLICABLE TO
CONTRACTS COVERING FEDERALLY
FINANCED AND ASSISTED
CONSTRUCTION (ALSO LABOR
STANDARDS PROVISIONS APPLICABLE
TO NONCONSTRUCTION CONTRACTS
SUBJECT TO THE CONTRACT WORK
HOURS AND SAFETY STANDARDS ACT)

Subpart A--Davis-Bacon and Related
Acts Provisions and Procedures

Sec. 5.5 Contract provisions and related
matters.

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without

subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked

therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

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

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

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract

shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

(2) **Withholding** - The City of Tucson shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or

any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City of Tucson may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City of Tucson for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of

Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that

there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

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

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

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

(2) of this section.

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

Contract Work Hours and Safety Standards

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

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

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

ATTACHMENT TO FEDERAL LABOR STANDARDS PROVISIONS
SO CALLED "ANTI-KICKBACK ACT" AND REGULATIONS PROMULGATED
PURSUANT THERETO BY THE SECRETARY OF LABOR.
UNITD STATES DEPARTMENT OF LABOR

TITLE 18, U.S.C., section 874

(June 25, 1948, ch. 645, 62 Stat. 740; Pub. L. 103-322, title XXXIII,
Sec. 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

KICKBACKS FROM PUBLIC WORKS EMPLOYEES

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both.

TITLE 29 – LABOR

Subtitle A - Office of Secretary of Labor

PART 3 – CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR
PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM
THE UNITED STATES

Sec. 3.1 Purpose and scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Sec. 3.2 Definitions.

As used in the regulations in this part:

(a) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways,

parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping.

Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part.

(b) The terms construction, prosecution, completion, or repair mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms public building or public work include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term building or work financed in whole or in part by loans or grants from the United States includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is employed and receiving wages, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term any affiliated person includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term Federal agency means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

Sec. 3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term employee shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this title during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on the back of Form WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Copies of Form WH 347 may be obtained from the Government contracting or sponsoring agency or from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982; 73 FR 77511, Dec. 19, 2008]

Sec. 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under Sec. 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 1215-0017)

[29 FR 97, Jan. 4, 1964, as amended at 47 FR 145, Jan. 5, 1982]

Sec. 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A bona fide prepayment of wages is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents:

Provided, however, That the following standards are met:

(1) The deduction is not otherwise prohibited by law;

(2) It is either:

(i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

(ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under Sec. 516.25(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either

(1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

(2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9770, May 28, 1971]

Sec. 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under Sec. 3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is

To be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

Sec. 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under Sec. 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of Sec. 3.6, and specifies any conditions which have changed in regard to the payroll deductions.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of Sec. 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9771, May 28, 1971]

Sec. 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of Sec. 3.6; and shall notify the applicant in writing of his decision.

Sec. 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under Sec. 3.6 are prohibited.

Sec. 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

Sec. 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see Sec. 5.5(a) of this subtitle.

Seismic Safety - 42 U.S.C. 7701 et seq. 49, CFR Part 41

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The

contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project

Non Construction Activities

Non Construction Employee Protection Requirements (Except for supplies/raw materials)

The Contractor agrees to comply with and assures compliance by other Project participants with any applicable employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

Special DOL EEO Clause

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause: During the performance of this contract, the contractor agrees as follows: (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's Updated November 2022 essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information. (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. (6) The contractor will furnish all information and reports

required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. Updated November 2022 The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

Transit Operations

Transit Employee Protective Arrangements - 49 U.S.C. § 5310, § 5311, and § 5333; 29 CFR Part 215

The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

- a. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- b. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- c. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

Charter Service Operation - 49 U.S.C. 5323(d), 49 CFR Part 604

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

School Bus Operation - 49 U.S.C. 5323(f) or (g), 49 CFR Part 605

Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations - 49 U.S.C. §5331, 49 CFR Part 655

The contractor agrees to establish an anti-drug use and alcohol misuse program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Arizona, or the City of Tucson, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the contractor's testing process. The contractor agrees further to certify annually its compliance with Part 655 thirty days before July 1st of each year and to submit the Management Information System (MIS) reports thirty days before March 15 each year to John Zukas, Transit Services Coordinator, P.O. Box 27210 Tucson, AZ 85726.

If the Contractor performs functions under the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), the contractor must comply with such applicable regulations. The Contractor's Drug Free Workplace Policy and the Contractor's Drug and Alcohol Policy/Program must clearly delineate the Contractor's responsibilities under their own Company policy, the FHWA's regulations, and the FTA's regulations respectively.

Privacy Act - 5 U.S.C. 552

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Planning, Research, Development and Demonstration Projects

Patent And Rights In Data - 37 CFR Part 401, 49 CFR Parts 18 and 19

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

- A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work:
1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
 2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - a. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has

not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- d. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - f. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
 - g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- B. Patent Rights - This following requirements apply to each contract involving experimental, developmental, or research work:

1. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,"
3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**Turnkey and Other Acquisitions Made by a Third Party Contractor
Assuming the Role of the City of Tucson**

Bus Testing - 49 U.S.C. 5318(e), 49 CFR Part 665

The Contractor or Manufacturer agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the City of Tucson at a point in the procurement process specified by the City of Tucson which will be prior to the City of Tucson's final acceptance of the first vehicle.
2. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
3. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the City of Tucson prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
4. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the City of Tucson of such a vehicle and the details of that vehicle's configuration and major components.

Pre-Award and Post-Delivery Audit Requirements - 49 U.S.C. 5323 (m), 49 CFR Part 663

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

1. Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists:
 - a. component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and;
 - b. the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
2. Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
3. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit:
 - a. manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or;
 - b. manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

Miscellaneous Special Requirements

Environmental Protection 42 U.S.C. 4321 et seq., 49 U.S.C. 5324(b) et seq., 40 CFR Part 1500 et seq., 23 CFR Part 771, 49 CFR Part 622

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622

Energy Conservation Requirements - 42 U.S.C. 6321 et seq., 49 CFR Part 622, subpart c

Contractor shall recognize 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.

Metric System Requirements – 15 U.S.C. 205a et seq.

As required by U.S. DOT or FTA, the City of Tucson agrees to use the metric system of measurement in its Project activities, as may be required by 15 U.S.C. §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the City of Tucson agrees to accept products and services with dimensions expressed in the metric system of measurement.

National ITS Architecture

The Contractor agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and to any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

Recycled Products (for items designated by the EPA)

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

Seat Belt Use

In accordance with the provisions of Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, the contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any subagreements, leases, third party contracts, or other similar document in connection with the Project.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Civil Rights and Equal Opportunity

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

No Federal Government Obligation to Third Parties.

The Recipient 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 Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the 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 or Related Acts

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.

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. chapter 53, 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.

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.

Termination

Termination for Convenience (General Provision)

The AGENCY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the AGENCY'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 AGENCY to be paid the Contractor. If the Contractor has any property in its possession belonging to AGENCY, the Contractor will account for the same, and dispose of it in the manner AGENCY directs.

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 AGENCY 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 be paid only 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 AGENCY 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 AGENCY, 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.

Opportunity to Cure (General Provision)

The AGENCY, 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 AGENCY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY 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 AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that AGENCY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by AGENCY shall not limit AGENCY's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The AGENCY, by written notice, may terminate this contract, in whole or in part, when it is in the AGENCY's interest. If this contract is terminated, the AGENCY shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

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 AGENCY may terminate this contract for default. The AGENCY 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 AGENCY.

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 AGENCY may terminate this contract for default. The AGENCY 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 AGENCY goods, the Contractor shall, upon direction of the AGENCY, protect and preserve the goods until surrendered to the AGENCY or its agent. The Contractor and AGENCY 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 AGENCY.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure 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 provision of this contract, AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the AGENCY may take over the work and complete 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 AGENCY 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 AGENCY in completing the work. The Contractor's right to proceed shall not be terminated nor shall the Contractor be 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 AGENCY, acts of another contractor in the performance of a contract with AGENCY, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies AGENCY in writing of the causes of delay. If, in the judgment of AGENCY, the delay is excusable, the time for completing the work shall be extended. The judgment of AGENCY shall be final and conclusive for the parties, but subject to

appeal under the Disputes clause(s) of this contract. 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 AGENCY.

Termination for Convenience or Default (Architect and Engineering)

The AGENCY may terminate this contract in whole or in part, for the AGENCY's convenience or because of the failure of the Contractor to fulfill the contract obligations. The AGENCY 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 AGENCY's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. AGENCY has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the AGENCY, the AGENCY's 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 AGENCY may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the AGENCY.

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 AGENCY.

Termination for Convenience or Default (Cost-Type Contracts)

The AGENCY may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of AGENCY 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 AGENCY, or property supplied to the Contractor by the AGENCY. If the termination is for default, the AGENCY 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 AGENCY and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of AGENCY, 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 AGENCY determines that the Contractor has an excusable reason for not performing, the AGENCY, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Certifications

BUY AMERICA CERTIFICATION CERTIFICATION FOR PROCUREMENT OF STEEL OR MANUFACTURED PRODUCTS

**(To be submitted with each bid or offer exceeding \$100,000)
(To be signed and submitted by the bidder/offeror)**

Certification requirement for all procurements except buses, other rolling stock and associated equipment.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids 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 non-responsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

**BUY AMERICA CERTIFICATION
CERTIFICATION FOR PROCUREMENT OF STEEL OR MANUFACTURED PRODUCTS**

**Certification requirement for procurement of buses, other rolling stock and associated equipment.
(To be submitted with each bid or offer exceeding \$100,000)
(To be signed and submitted by the bidder/offeror)**

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

**CERTIFICATION REGARDING LOBBYING
CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE
AGREEMENTS**

(To be submitted with each bid or offer exceeding \$100,000)

(To be submitted by the bidder/offeror)

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

**Protest Procedures For Federal Transit Administration Funded
Projects**

City Of Tucson Protest Procedures For Federal Transit Administration (FTA) Funded Projects:

Any protest shall be submitted pursuant to the Tucson Procurement Code Article IX: Legal and Contractual Remedies.

Sec. 28-78. Filing of a protest.

The protest shall be in writing and shall include the following information:

- (a) The name, address, telephone number and email address of the protestant;
 - (b) The signature of the protestant or its representative;
 - (c) Identification of the solicitation or contract number;
 - (d) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 - (e) The form of relief requested.
- (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-79. Time for filing protests.

Sec. 28-79(1). Protests concerning improprieties in a solicitation. Protests based upon alleged improprieties in a solicitation that are apparent before the solicitation due date shall be filed not less than five (5) working days before the solicitation due date.

Sec. 28-79(2). In cases other than those covered in subsection (1) of this section, protests shall be filed within ten (10) days after the aggrieved person knows or should have known of the facts giving rise thereto; however, in no event shall the protest be filed later than ten (10) days after issuance of notice of intent to award or in the absence of a notice of intent to award, after notification of award.

Sec. 28-79(3). The contract officer, without waiving the city's right to dismiss the protest for lack of timeliness, may consider any protest that is not filed timely.

Sec. 28-79(4). The contract officer shall give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. Interested parties have the right to intervene.