

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: August 30, 2022
PUBLIC HEARING DATE: NA

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Robert Cortinas, Chief Financial Officer/Deputy City Manager, (915) 212-1062
Claudia A. Garcia, Interim Director of Purchasing & Strategic Sourcing, (915) 212-1218

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: 6: Set the Standard for Sound Governance and Fiscal Management.

SUBGOAL: 6.6 - Ensure continued financial stability and accountability through sound financial management, budgeting and reporting.

SUBJECT:

Discussion and action that the City Manager be authorized to sign an agreement for Contract No. 2022-0411R Professional Municipal Advisory Services between the City and Hilltop Securities, Inc., for a contract term of three (3) years beginning on September 1, 2022 and ending on, August 31, 2025, with an option to extend the term for an additional two, one-year options to extend to be exercised by the City Manager or designee; and whereas, the fees due to Hilltop Securities, Inc., for municipal advisory services will not exceed the fee schedule of a base fee of \$25,000.00 plus \$1.30 per \$1,000.00 for the first \$75,000,000.00 of bonds issued, plus \$1.15 per \$1,000.00 thereafter. The City will also pay for reimbursable expenses and for additional services for the completion of debt issuance.

BACKGROUND / DISCUSSION:

The Deputy City Manager with the assistance of the Comptroller and Director of the Office of Management and Budget, manages the analysis, accounting and projection of debt issuances and related issues. The Municipal Advisor will coordinate with the Deputy City Manager to ensure that relevant issues are discussed and analysis prepared is reflective of City needs. Due to inherent conflicts of interest, the firm selected as Municipal Advisor will not be allowed to resign in order to serve as underwriter for a proposed transaction.

SELECTION SUMMARY:

Solicitation was advertised on February 8, 2022 and February 15, 2022. The solicitation was posted on City website on February 8, 2022. The email (Purmail) notification was sent out on February 10, 2022. There was a total of thirty-five (35) viewers online; two (2) proposals were received; none being local suppliers. An inadequate competition survey was conducted.

CONTRACT VARIANCE:

NA.

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

NA

AMOUNT AND SOURCE OF FUNDING:

Costs are paid for out of bond proceeds.

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

PRIMARY DEPARTMENT: City Manager's Office
SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

*******REQUIRED AUTHORIZATION*******

DEPARTMENT HEAD:

Robert Cortinas

Robert Cortinas, Chief Financial Officer/Deputy City Manager

**COUNCIL PROJECT FORM
(RFQ)**

*******POSTING LANGUAGE BELOW*******

Please place the following item on the **REGULAR** agenda for the Council Meeting of **August 30, 2022**.

STRATEGIC GOAL NO. 6: Set the Standard for Sound Governance and Fiscal Management.

The linkage to Strategic Plan is subsection 6.6 - Ensure continued financial stability and accountability through sound financial management, budgeting and reporting.

Award Summary:

Discussion and action that the City Manager be authorized to sign an agreement for Contract No. 2022-0411R Professional Municipal Advisory Services between the City and Hilltop Securities, Inc., for a contract term of three (3) years beginning on September 1, 2022 and ending on, August 31, 2025, with an option to extend the term for an additional two, one-year options to extend to be exercised by the City Manager or designee; and whereas, the fees due to Hilltop Securities, Inc., for municipal advisory services will not exceed the fee schedule of a base fee of \$25,000.00 plus \$1.30 per \$1,000.00 for the first \$75,000,000.00 of bonds issued, plus \$1.15 per \$1,000.00 thereafter. The City will also pay for reimbursable expenses and for additional services for the completion of debt issuance.

This is a Request for Qualifications, service contract.

The Purchasing & Strategic Sourcing Department and City Manager's Office recommend award as indicated to Hilltop Securities, Inc., the highest ranked proposer based on evaluation factors established for this procurement.

Additionally, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute any related contract documents and agreements necessary to effectuate this award.

*******ADDITIONAL INFO BELOW*******

CITY OF EL PASO RFQ SCORESHEET

PROJECT: 2022-0411R Professional Municipal Advisory Services

Evaluation of Submittal

MAX POINTS

Hilltop Securities, Inc.

Estrada Hijonosa &
Company, Inc.**Factor A - Firm's Experience in Municipal Advisory Services****35**

32.67

30.33

Factor B - Financing Techniques**20**

19.00

18.00

Factor C - Experience – Comparable Contracts**15**

14.67

12.00

Factor D - References**10**

6.67

9.33

Factor E - Local Knowledge and Support**15**

15.00

10.00

Factor F - Trading Desk or Other Source of Market Information**5**

5.00

5.00

TOTAL SCORE**100****86.33****75.33**

Rank

1

2



**CITY OF EL PASO
REQUEST FOR QUALIFICATIONS TABULATION FORM**



Bid Opening Date: March 9, 2021

Solicitation #: 2022-0411R

Project Name: Professional Municipal Advisory Services

Department: City Manager's Office

BIDDER'S NAME:	LOCATION:	AMENDMENT(S) ACKNOWLEDGED:
Estrada Hinojosa & Company, Inc.	Dallas, TX	NA
Hilltop Securities, Inc.	Dallas, TX	NA
RFQs SOLICITED: 20 LOCAL RFQs SOLICITED: 2 RFQs RECEIVED: 2 LOCAL RFQs RECEIVED: 0 NO RFQs: 0		

NOTE: The information contained in this RFQ tabulation is for information only and does not constitute actual award/execution of contract.

Approved: /s/

Date: 3/16/2022

2022-0411R Professional Municipal Advisory Services
Bidders List

ESTRADA HINOJOSA & COMPANY, INC.
ATTN: NOE HINOJOSA, JR.
1717 MAIN ST. , STE 4700
LOCKBOX 47
DALLAS, TX 75201

GEORGE K. BAUM & COMPANY
ATTN: GARY P. MACHAK,
8115 PRESTON RD. STE. 650
DALLAS, TX 75225

RBC CAPITAL MARKETS
ATTN: MATTHEW BOLES, RON MORRISON
200 CRESCENT CT. STE. 1575
DALLAS, TX 75201

FIRST SOUTHWEST COMPANY
ATTN: MARIA F. URBINA
221 N. KANSAS STE. 600
EL PASO, TX 79901

BOSC, INC.
5 HOUSTON CENTER
1401 MCKINNEY ST. STE. 1000
HOUSTON, TX 77010

HUTCHINSON SHOCKEY ERLEY & CO
ATTN: MARK C. NITCHOLAS, TODD H.
HOLDER
4545 POST OAK PLATE, SUITE 215
HOUSTON, TX 77027

PUBLIC FINANCIAL MANAGEMENT, INC.
ATTN: JULIE GARCIA SEEBACH
221 WEST 6TH STREET SUITE 1900
AUSTIN, TX 78701

SAMUEL A. RAMIREZ & CO., INC.
ATTN: LORRAINE (LORRY) PALACIOS
100 CONGRESS AVENUE, STITE 2000
AUSTIN, TX 78701

DELOITTE FINANCIAL
ADVISORY SERVICES LLP
400 W 15TH ST. SUITE 1700
AUSTIN, TX 78701

ESTRADA HINOJOSA CO.
1717 MAIN STREET LB 47
SUITE 4760
DALLAS, TX 75201

FIRST SOUTHWEST COMPANY
325 NORTH ST. PAUL STREET
SUITE 800
DALLAS, TX 75201

WELLS FARGO
INVESTMENTS
1340 GEORGE DIETER DRIVE
EL PASO, TX 79936

RAYMOND JAMES & ASSOCIATES, INC.
ATTN: RAYMOND JAMES
745 EAST MULBERRY AVENUE
TRINITY PLAZA
SAN ANTONIO, TX 78212

GEORGE K. BAUM & COMPANY
6501 AMERICAS PARKWAY NE,
SUITE 360
ALBUQUERQUE, NM 87110

BKD, LLP
14241 DALLAS PARKWAY STE 1100
DALLAS, TX 75254

DELOITTE & TOUCHE
400 WEST 15TH STREET
SUITE 1700
AUSTIN, TX 78701

JPMORGAN CHASE BANK NA
221 WEST SIXTH STREET, 2ND FLOOR
TX3-8211
AUSTIN, TX 78701

BLEY INVESTMENT GROUP, INC.
4200 S. HULEN ST. #519
FORT WORTH, TX 76109

GARZA/GONZALEZ & ASSOCIATES
207 ARDEN GROVE
SAN ANTONIO, TX 78215

ERNEST R. GARZA AND COMPANY, P.C.
10201 LEOPARD ST.
CORPUS CHRISTI, TX 78410

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT, the City Manager be authorized to sign an agreement for Contract No. 2022-0411R Professional Municipal Advisory Services between the City and Hilltop Securities, Inc., for a contract term of three (3) years beginning on September 1, 2022 and ending on, August 31, 2025, with an option to extend the term for an additional two, one-year options to extend to be exercised by the City Manager or designee; and

WHEREAS, the fees due to Hilltop Securities, Inc., for municipal advisory services will not exceed the fee schedule of a base fee of \$25,000.00 plus \$1.30 per \$1,000.00 for the first \$75,000,000.00 of bonds issued, plus \$1.15 per \$1,000.00 thereafter. The City will also pay for reimbursable expenses and for additional services for the completion of debt issuance

APPROVED this _____ day of _____, 2022.

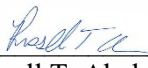
THE CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:



Claudia Garcia, Interim Director
Purchasing and Strategic Sourcing

STATE OF TEXAS)
)
)
)
)
COUNTY OF EL PASO)

**FINANCIAL ADVISORY SERVICES AGREEMENT
FOR HILLTOP SECURITIES, INC.**

This financial advisory services agreement (this "*Agreement*") is entered into this __ day of _____, 2022 (the "*Effective Date*") by and between the City of El Paso, a home rule municipal corporation (the "*City*"), and Hilltop Securities, Inc., a Texas Corporation (the "*Company*").

RECITALS

WHEREAS, the City desires to engage the Company to perform financial advisory services related to the authorization and issuance of debt instruments or other securities and debt management planning services; and

WHEREAS, the Company possesses the credentials, experience, and expertise to perform said financial advisor services for the City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION I. TERM. This Agreement commences as of September 1, 2022 and remains in effect thereafter through August 31, 2023.

SECTION 11. SCOPE OF SERVICES. The Company hereby agrees to perform the professional financial advisory services in accordance with the City's Request for Qualifications Solicitation No. 2022-0411R (the "*Solicitation*") attached hereto as *Exhibit A* and incorporated herein by reference and that certain Proposal to provide Financial Advisory Services RFQ 2022-0411R submitted to the City by the Company in response to the Solicitation, attached hereto as *Exhibit B* and incorporated herein by reference. The scope of services included is the Solicitation and Proposal shall be referred to collectively as "*Advisory Services*,"

SECTION III. COMPENSATION AND METHOD OF PAYMENT. The Company shall be paid in accordance with the modified proposal terms set forth in *Exhibit C* which is attached hereto and incorporated herein by reference. The Company hereby agrees that at no time will the Company make a claim against the City for more than the rates provided under the terms of this Agreement.

SECTION IV. ALTERNATE/ADDITIONAL SERVICES. Should alternate or additional services outside the scope set for in Section II be requested of the Company by the City, said alternate or additional services shall automatically become a part of this Agreement upon acceptance and funding by the City and acceptance by the Company. It is understood and agreed that the City will not be liable for any cost overrun on this Agreement without its prior written approval. Said approval must be obtained prior to the Company commencing alternate or additional services that will result in the cost overrun.

SECTION V. LOCATION OF PERFORMANCE. The Company shall perform the Advisory Services in the city and county of El Paso, Texas or 'such other place(s) as may be necessary to fulfill the terms of this Agreement.

SECTION VI. REPRESENTATIONS OF THE COMPANY. The Company represents, warrants, and agrees as follows:

- A. It will comply with all applicable federal, state and local governmental laws, rules, regulations and all provisions of the City of El Paso Charter and the El Paso City Code, now existing or as may be amended, in the performance of its duties under this Agreement
- B. It shall obtain and pay for all licenses, permits and certificates required by any applicable statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. The Company warrants that it is duly authorized and licensed to perform its duties hereunder in each jurisdiction in which it will act. It further warrants that its employees, agents and subcontractors shall maintain all required profession licenses during the term of this Agreement. If the Company receives notice from a licensing authority of a suspension or revocation of a license of the Company's employee(s), agent(s) or subcontractor(s), the Company shall immediately remove such employee, agent or subcontractor from performing any further services under this Agreement until such license is reinstated and in good standing. If the Company fails to maintain such licenses or fails to remove any employee, agent or subcontractor who performs services under this Agreement whose license has expired or been revoked or suspended, the City shall be entitled, in its sole discretion, to immediately terminate this Agreement upon written notice to the Company.
- C. It warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Company for the purpose of securing business. For breach or violation of this warranty, the City shall have the right in addition to any other right or rights to cancel this Agreement without liability and to deduct from the Agreement price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

SECTION VII. INDEPENDENT CONTRACTOR RELATIONSHIP. Nothing herein shall be construed as creating a relationship of employer and employee between the parties hereto. The City shall not be subject to any obligations or liabilities of the Company incurred in the performance of this

Agreement unless otherwise herein authorized. The City will provide no fringe benefits to the Company or its employees.

SECTION VIII. CONFIDENTIAL WORK. The Company recognizes that all materials to be prepared hereunder and all data received by the Company shall be kept in strictest confidence. The Company shall not divulge such confidential information except as approved in writing by the City or as otherwise required by law.

The Company has or shall establish a method to secure the confidentiality of records or information that the Company may have access to in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the City's or its authorized representatives, right of access to records or other information under this Agreement.

If the Company receives inquiries regarding documents within its possession pursuant to this Agreement, the Company shall immediately forward such request to the City Attorney's office for disposition.

SECTION IX. INSPECTIONS & AUDITS. The City shall have the right to perform, or cause to be performed: (1) audits of the books and records of the Company; and (2) inspections of all places where work is undertaken in connection with this Agreement. The Company shall be required to keep such books and records available for such purpose for at least five (5) years after its performance under this Agreement ceases. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

SECTION X. OWNERSHIP. All files generated by Company as a result of its activity under this Agreement shall remain at all times the property of the City. The data stored in the computer database shall also remain the property of the City.

SECTION XI. INSURANCE REQUIREMENTS. With no intent to limit Company's liability or the indemnification provisions set forth hereinafter, the Company shall provide and maintain the following insurance in full force and effect at all times during the term of this Agreement and any extensions thereto. Such insurance is described as follows:

- A. Risks and Limits of Liability. The insurance, at a minimum, must include the following coverage and limits of liability:

COVERAGE

Worker's Compensation and Employer's Liability

LIMIT OF LIABILITY

Statutory for Workers' Compensation
Bodily Injury by Accident
\$500,000 (each accident)
Bodily Injury by Disease
\$250,000 (policy limit)
Bodily Injury by Disease
\$250,000 (each employee)

Comprehensive General: Including Broad Form Coverage, Contractual Liability Bodily and Personal Injury	Bodily Injury and Property Damage, combined limits of \$1,000,000 each occurrence and \$2,000,000 aggregate
Excess Liability	Bodily Injury and Property Damage, combined limits of \$1,000,000 each occurrence and \$2,000,000 aggregate
Automobile Liability Insurance (for automobiles used by the Company in the course of its performance under this Agreement including Employer's Non-ownership and Hired Auto Coverage)	\$1,000,000 combined single limit per occurrence
Professional Liability Coverage	\$1,000,000 per occurrence \$2,000,000 aggregate

- B. Form of Policies. The insurance may be in one or more policies of insurance, the form of which must be approved by the City's Risk Manager.
- C. Issuers of Policies. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. Each issuer shall be subject to approval by the City's Risk Manager in his sole discretion as to conformance with these requirements.
- D. Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability and Professional Liability, must name the City (and its elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.
- E. Deductibles. A policy may contain deductible amounts only if the City's Risk Manager approves the amount and scope of the deductible. The Company shall assume and bear any claims or losses to the extent of such deductible amount and waives any claim it may ever have for the same against the City, its officers, agents or employees.

Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Director by the insurance company. The Company shall give written notice to the City's Purchasing Director within five (5) days of the date upon which total claims by any party against the Company reduce the aggregate amount of coverage below the amounts required by this Agreement.

- F. Material Change in Policy(ies). Prior to any material change in any policy required herein, the City will be given sixty (60) days advance written notice by registered mail. Further, the City will be immediately notified of any reduction or possible reduction in aggregate limits of any such policy where such reduction, when added to any previous reductions, would exceed twenty-five percent (25%) of the aggregate limits.
- G. Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its elected and appointed officials, officers, agents or employees.
- H. Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.
- I. Liability for Premium. If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate of waiver sufficient to establish that the issuer is entitled to look only to the Company for any further premium payment and has no right to recover any premiums from the City.
- J. Subcontractors. The Company shall require any and all subcontractors performing work under this Agreement to carry insurance naming the City as an Additional Insured and meeting all of the above requirements.
- K. Delivery of Policies. The originals of all policies referred to above, or copies thereof certified by the agent or attorney-in-fact issuing them together with written proof that the premiums have been paid, shall be deposited by the Company with the City's Purchasing Director prior to beginning work under this Agreement, and thereafter before the beginning of each year of the term of this Agreement. Notices and Certificates required by this clause shall be provided to:

City of El Paso
Purchasing & Strategic Sourcing Department
Attn: Purchasing Director
300 N. Campbell
El Paso, TX 79901

Notwithstanding the termination notice provisions in this Agreement, the failure of the Company to provide the City's Purchasing Director with the above proof of insurance prior to beginning work and thereafter prior to the beginning of each year of the term of this Agreement, shall constitute a default on the part of the Company entitling the City, upon three (3) days written notice to the Company to terminate this Agreement. This default provision shall also apply to the proof of insurance requirements under circumstances where a policy is canceled or expires during a given year of the Agreement. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that the Company, throughout the term of this Agreement, continuously and without interruption, maintain in force the required insurance coverage set forth above.

Failure of the Company to comply with this requirement shall constitute a default of the Company allowing the City, at its option, to terminate this Agreement.

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

SECTION XIII. INDEMNIFICATION. The Company or its insurer shall indemnify, hold harmless, and defend the City, its elected officials, agents, employees, officers, directors and representatives of the City, individually or collective, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death of property damage, made upon the City directly arising out of, resulting from or related to the Company's activities under this Agreement for Third Party Claims Administration and Medical Cost Containment, including any act or omission by the Company, its agents, employees or subcontractors while in the exercise of performance of the rights or duties under this Agreement, all, without however, waiving and governmental immunity available to the City. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity. Without modifying the conditions of preserving, asserting, or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to the Company every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. In addition, the Company shall promptly advise the City in writing of any claim or demand against the City or the Company known to the Company related to or arising out of the Company's activities under this Agreement. the Company will: 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages;

2) negotiate or cause to be negotiated the claim as the Company may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. The Company will pay all judgments finally establishing liability of the City in actions defended by the Company pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by the Company, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest without relieving Company of any of its obligations under this paragraph. The City will not be responsible for any loss of or damage to the Company's property from any cause.

SECTION XIV. SUBCONTRACTOR'S INDEMNITY. The Company shall require all of its subcontractors to include in their subcontracts indemnity in favor of the City in substantially the same form as *Section XIII*.

SECTION XV. DISPUTE RESOLUTION. The parties hereto agree that reasonable efforts will be made to aid and assist the other in accomplishing the objectives of this Agreement. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or any breach thereof, the parties shall use their best efforts to meet regularly and resolve the dispute, claim, question, or disagreement. To this effect, the parties hereby agree to consult and negotiate with each other in good faith. The parties further agree that should their efforts to resolve a dispute, claim, questions, or disagreement arising from this Agreement fail, that before either party files suit against the other to enforce, or otherwise relating to, the terms of this Agreement, it shall notify the other party of its intent to sue. Upon delivery and receipt of such notice, the parties agree to submit the matter to be litigated to mediation before a mutually-agreed upon mediator and to diligently pursue a mediated settlement until such time as the parties mutually agree to terminate such mediation or the mediator declares an impasse. No lawsuit under this Agreement by one party against the other may be filed until mediation of the issue has ended in accordance with the terms hereof.

SECTION XVI. TERMINATION OF AGREEMENT. This Agreement may be terminated under any one of the following circumstances:

- A. **TERMINATION FOR CONVENIENCE:** This Agreement may be terminated by the City upon written notice, provided such notice specifies an effective date for cancellation of not less than thirty (30) calendar days from the date such notice is received. The Company will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Company will promptly submit its termination claim to the City to be paid the Company.

- B. **TERMINATION FOR CAUSE:** Either party may terminate its performance under this Agreement in the event of default by the other party and a failure by that party to cure such default after receiving notice thereof, all as provided in this Section. Default shall occur if a party fails to observe or perform any of its duties under this Agreement. Should such a default occur, the injured party may deliver a written notice to the defaulting party describing such default and the proposed date of termination. Such proposed date of termination may not be sooner than the 30th day following receipt of the notice. The injured party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the defaulting party cures such default, then the proposed termination shall be ineffective. If the defaulting party fails to cure such default prior to the proposed date of termination, then the injured party may terminate its performance under this Agreement as of such date.

- C. **EFFECTS OF TERMINATION:** All duties and obligations of the City and the COMPANY shall cease upon termination or expiration of this Agreement, except that:
 - 1. All files are property of the City and at the City's request will be delivered at no cost to the City or its designated recipient at the effective date of cancellation. Any City funds held in any escrow account(s) shall be returned to the City within thirty (30) calendar days after the effective date of termination or expiration.

2. The Company shall release and make available to the City all records owned by the City, including all supporting documentation for the claims data contained in the computer database, and the database itself, which the Company shall download to one or more ASCII formatted tape(s), to be supplied to the City and shall cooperate fully to effect an orderly transfer of services and claim files.
3. All provisions of this Agreement that expressly or impliedly contemplate or require payment or performance after the expiration or termination of this Agreement shall survive such expiration or termination. Any unpaid obligation due and owing, by either party, as of the date of termination, shall continue to be due and payable.
4. Upon termination or expiration of this Agreement, the City shall have option to:
 - a) Assume responsibility of all claims pending as of the effective date of the termination; or
 - b) Require the Company to continue administering all pending claims as provided herein at the compensation provided in this Agreement. If the City assumes responsibility for all claims, the Company agrees to do all things necessary to transfer administration of all claims to the City.

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

SECTION XVIII. ASSIGNMENT. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto. Any attempted assignment or delegation by either party shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

SECTION XIX. SUBCONTRACTORS. The Company may subcontract with other competent entities to provide services required to be performed under this Agreement. Any work or services approved for subcontracting hereunder, however, shall be contracted only by written Agreement and, specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontracts with this Agreement shall be the Company's responsibility. The Company shall submit a list, identifying the subcontractors who will perform services under this Agreement, within ten (10) days of the Effective Date of this Agreement. All subcontractors, however, must be accepted and approved by the City in writing, and such consent shall not be unreasonably withheld.

Despite the City's approval of a subcontract or subcontractor, the City shall in no event be obligated to any third party, including any subcontract of the Company, for performance of work or services.

SECTION XX. SURVIVAL. The Company shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the Indemnification provisions hereof.

SECTION XXI. AMENDMENT & WAIVER. This Agreement may be amended by the parties at any time, by mutual consent of the parties. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the City and the Company. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

SECTION XXII. APPLICABLE LAW & VENUE. This Agreement shall be governed by the laws of the State of Texas along with any applicable provisions of Federal law, the City Charter, or any ordinance or resolution of the City. Both parties agree that venue for any litigation arising from this Agreement shall lie in El Paso, El Paso County, Texas.

SECTION XXIII. LEGAL CONSTRUCTION. Every provision of this Agreement is severable, and if any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement. Where the context of the Agreement require, the singular shall include the plural and the masculine gender shall include feminine. Any reference to the City Manager in this Agreement shall mean the City of El Paso or her designee.

SECTION XXIV. NOTICES. Any notices required under this Agreement shall be sufficient if sent by Certified Mail, Return Receipt Requested, postage prepaid, to the City and the Company at the following addresses:

THE CITY:
City of El Paso
Attn: City Manager
300 N. Campbell
El Paso, TX 79901

With copy to:
City of El Paso
Purchasing & Strategic Sourcing Department
Attn: Purchasing Director
300 N. Campbell
El Paso, TX 79901

THE COMPANY:
Hilltop Securities, Inc.
Attn: Vickie Hall
717 N. Harwood Street, Suite 3400
Dallas, TX 75201

Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other in the manner set forth in this paragraph.

SECTION XXV. ENTIRE AGREEMENT. This Agreement and attached Exhibits constitute the entire Agreement between the parties hereto. There exists no other written or oral understanding, Agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

[Signature page to follow]

STATE OF TEXAS)
)
)
COUNTY OF EL PASO)

FINANCIAL ADVISORY SERVICES
AGREEMENT FOR HILLTOP SECURITIES, INC

(Signature page)

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of _____, 2022.

THE CITY OF EL PASO:

Oscar Leaser
Mayor

Hilltop Securities, Inc.


Signature:

Title:

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:



Claudia Garcia, Interim Director
Purchasing and Strategic Sourcing

EXHIBIT "A"

REQUEST FOR QUALIFICATIONS

ISSUED BY

THE CITY OF EL PASO

PURCHASING & STRATEGIC SOURCING DEPARTMENT

SOLICITATION NO: 2022-0411R

DATE ISSUED: February 8, 2022

**TITLE: Professional Municipal Advisory Services
Deputy City Manager - Finance & Health Services**

An original, signed, sealed, OFFER to furnish the goods and/or services set forth below will be received at the place indicated below, until:
2:00 PM, local time, WEDNESDAY, MARCH 9, 2022

NOTICE When used in Request for Proposals, the terms 'Offer' and 'Proposal' and 'Offeror' and 'Vendor' are interchangeable.

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

MAIL TO:

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

OR

HAND DELIVER TO:

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

FOR ADDITIONAL INFORMATION CONCERNING THIS SOLICITATION, CONTACT:
Paula Salas, Purchasing Agent
Telephone: [915] 212-1192 Email: salaspx@elpasotexas.gov

EXPIRATION OF OFFERS

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

AMENDMENTS TO SOLICITATION

Receipt of all numbered amendments to Solicitations must be acknowledged:

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

OFFER SUBMITTED BY

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

STREET ADDRESS

P.O. BOX NUMBER

CITY, STATE AND ZIP CODE

&

TELEPHONE NUMBER

FAX NUMBER

E-Mail address

PLEASE CHECK PREFERRED ADDRESS FOR RECEIVING SOLICITATION DOCUMENTS.

OFFER EXECUTED BY [PLEASE PRINT]

NAME AND TITLE OF PERSON AUTHORIZED TO OBLIGATE COMPANY

SIGNATURE AND DATE OF OFFER

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

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

MISSION

Deliver exceptional services to support a high quality of life and place for our community.

VISION

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government.

VALUES

Integrity

Respect

Excellence

Accountability

People



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PART 1 – GENERAL INFORMATION

1.1 Background Information

The intent of this document is to provide interested firms with sufficient information to enable them to prepare and submit innovative submittals for consideration to the City of El Paso Finance and Management Support team, headed by the Deputy City Manager – Support and Financial Services, hereafter referred to as “**Deputy City Manager**,” to satisfy the need for professional Municipal Advisory Services. The term of the engagement based on the awarded Request for Qualifications (RFQ) is thirty-six (36) with two (2) one (1) year options to extend. Joint proposals with other firms will not be considered for this RFQ. The City will be selecting one municipal advisor as a result of this solicitation.

The Deputy City Manager seeks the services of a nationally recognized and experienced consulting firm. This firm, hereafter referred synonymously as the “**Municipal Advisor**,” should provide Municipal Advisory Services related to the authorization and issuance of debt instruments or other securities as well as debt management planning services as requested by the Deputy City Manager. It is understood that the authorization and issuance of indebtedness in amounts and forms cannot be predetermined and that in connection with the authorization, sale, issuance and delivery of such indebtedness, this Request for Qualifications is being sought.

1.2 Solicitation Purpose

The Deputy City Manager with the assistance of the Comptroller and Director of the Office of Management and Budget, manages the analysis, accounting and projection of debt issuances and related issues. The Municipal Advisor will coordinate with the Deputy City Manager to ensure that relevant issues are discussed and analysis prepared is reflective of City needs. Due to inherent conflicts of interest, the firm selected as Municipal Advisor will not be allowed to resign in order to serve as underwriter for a proposed transaction.

It is the policy of the City of El Paso to develop and maintain a sound debt management program. In November 2005, the City adopted a Debt Management Policy (“Policy”) that set forth the parameters for issuing new debt as well as managing the outstanding debt portfolio, identifying the types and amounts of permissible debt, and maintaining the current bond rating in order to minimize borrowing costs and preserving access to credit. It is the intent of the City to establish the Debt Management Policy to provide guidance to staff to:

- Ensure high quality debt management decisions;
- Ensure that debt management decisions are viewed positively by rating agencies, investment community and citizenry-at-large;
- Ensure support for debt issuances both internally and externally;
- Demonstrate a commitment to long-term financial planning.

This policy has been amended since November 2005 and updated annually in accordance with the provisions of the Policy. The most up-to-date policy can be located on the City’s website at <https://www.elpasotexas.gov/assets/Documents/CoEP/Office-of-the-Comptroller/Fiscal-Policies/Debt-Policy.pdf>

PART 2 - NOTICES TO PROPOSERS

2.1 Public Disclosure Proposal Information

Offerors are cautioned that once a bid is opened, all information contained therein will be available to the PUBLIC unless the information is excepted from the requirements of Government Code Section 552.021 pertaining to Open Records.

The exception that allows the City to protect information that, if released, would give advantage to a competitor or bidder does not apply after the bidding is complete and the contract has been awarded. Trade secrets, commercial or financial

background data and privileged or confidential information may be excepted from public inspection. If any information contained in your offer qualifies for an exception because it falls into one of the categories above it should be clearly marked "CONFIDENTIAL" and the basis of your claim of confidentiality should be stated. Data so identified will be maintained as a protected record. Offerors who claim that information contained in a bid should be protected from public disclosure after the award of the contract may be asked to support such claim if the City receives an Open Records request for the information and requests a determination by the Attorney General. [Rev. 04-03-98.]

2.2 Proposal Net Notification

NOTE: ANY CHANGES IN DUE DATE OR MATERIAL CHANGES FOR ANY RFQ'S/SOLICITATIONS WILL BE POSTED ON THE SOLICITATIONS PAGE OF THE CITY OF EL PASO PURCHASING DEPARTMENT'S WEBSITE: <http://legacy.elpasotexas.gov/purchasing/ep-invitations.asp>

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

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

2.3 Strategic Goal

Strategic Goal: No. 6: Set the Standard for Sound Governance and Fiscal Management

2.3.1 Linkage to the Strategic Plan

The linkage to the Strategic Plan is subsection 6.6 - Ensure continued financial stability and accountability through sound financial management, budgeting and reporting.

2.4 Communications

2.4.1 Cone of Silence/Anti Lobbying Policy

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

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

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

If contact is required with City employees, such contact will be done in accordance with procedures incorporated into the solicitation document and the City's contracting policies. Any person or entity that violates this provision

may be disqualified in accordance with Section 2.94.130 of this chapter. Furthermore, any person who knowingly or intentionally violates the provisions of this policy, with respect to the solicitation or award of a discretionary contract may be prohibited by the City council from entering into any contract with the City for a period not to exceed three years.

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

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

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

1. Questions of Process and Procedure, including oral communications with the Purchasing Director or Proposal Administrator, provided the communications are strictly limited to matters of process or procedure already contained in the solicitation document. A minimum of ten days will be provided for questions during solicitation unless otherwise stated in the Solicitation Schedule of Events in the documents.
2. Pre-Proposal/Pre-Proposal Conferences, including oral communications at pre-proposal or pre-proposal conferences, oral presentations before selection committees, contract negotiations, and public presentations made to the Mayor and Council Representatives during a duly noticed public meeting.
3. Written Communications, to the Purchasing Analyst/Agent identified in the solicitation.

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

3.46.10 Definition

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

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

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

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

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

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

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

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

Section 3.46.020 WAGE THEFT COORDINATOR

- A. **Appointment.** The City Manager shall designate a Wage Theft Coordinator to perform the duties identified in this Section.
- B. **Duties.** The Wage Theft Coordinator shall:
 1. Wage Theft Adjudication Database- the Wage Theft Coordinator shall create and maintain a database of employers located or operating within the City of El Paso who have a Wage Theft Adjudication record. The Wage Theft Database will be created on a “complaint basis” and populated with information provided by third parties. The Wage Theft Coordinator shall be under no obligation to investigate wage theft or to prosecute complaints.
 2. Substantiate whether a proposed party to a City Contract has a Wage Theft Adjudication record or part of the Wage Theft Adjudication Database.
 3. Receive, review, and process wage theft complaint according to the process established in Section 3.46.040.
 4. Coordinate with the Purchasing Director to ensure that the notice of the City’s Wage Theft ordinance is included in all the City’s proposal documents.
 5. Provide and present an annual report to City Council regarding the number of employers in the Wage Theft Adjudication Database and an update on the status of the enforcement of the City’s Wage Theft ordinance.

Section 3.46.030 WAGE THEFT ADJUDICATION DATABASE

- A. **Inclusion in Database.** No employer shall be included in the database until the Wage Theft Coordinator has:
 1. Confirmed that an employer has a Wage Theft Adjudication record;
 2. Provided written notice at the address provided by the complainant, or on the documents evidencing the wage theft adjudication of the inclusion of the employer in the Wage Theft Adjudication Database.
 3. Allowed the employer thirty (30) days from the date of the notice to protest the employer’s inclusion in such database and provide the Wage Theft Coordinator evidence that the employer should not be included in the Wage Theft Adjudication Database. In the case of

a wage theft judgment, the Wage Theft Coordinator shall not include the employer in the Database upon proof of full payment of outstanding wage theft adjudication judgment.

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

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

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

Section 3.46.040 Wage Theft Complaints Procedure

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

B. City Contracts.

1. **Filing a Complaint.** A person employed in connection with a city contract who has a good faith belief that he is the victim of wage theft may file a wage theft complaint with the Wage Theft Coordinator in writing. The complaint shall contain fact including but not limited to: identity of the employer, date(s) on or during which the wages were earned and were due to be paid, the amount of the wages alleged to have been withheld or unpaid.
2. **Notification and Resolution of the Complaint.** The Wage Theft Coordinator shall notify the employer of the receipt of the wage theft complaint. Employer shall attempt to resolve the alleged issue with the affected employee by written agreement within thirty (30) days from the receipt of the City notification. Employer shall notify the Wage Theft Coordinator if the issue was resolved between the Employer and the affected employee.
3. **Texas Workforce Commission.**
 - (a) If no resolution is achieved, the complainant shall be referred to the Texas Workforce Commission ("Commission").
 - (b) The Wage Theft Coordinator shall seek to determine status of the complaint at the commission. The Wage Theft Coordinator shall place Employer in the Wage Theft Adjudication Database if it appears that the Commission has made a finding that wage theft occurred.

Section 3.46.050 Retaliation Prohibited

- A. No City Contractor shall retaliate against any person who has filed a wage theft complaint pursuant to this Chapter. Retaliation means action to discharge from employment, discipline, or otherwise

punish an employee for filing a wage theft complaint in good faith.

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

Section 3.46.060. Sanctions and Penalties- City Contracts

A. Existing City Agreement.

1. In the event the City becomes aware of the fact an Employer acting under a contract which was awarded prior to the effective date of this Ordinance has been adjudicated for wage theft, the City may terminate the contract.
2. Prior to terminating the contract the City will provide Employer with thirty (30) days' notice and opportunity to provide full proof of payment of outstanding wage theft adjudication judgment.
3. The award of future City contracts after termination of an existing contract due to an Employer's wage theft adjudication shall be managed as a New City Agreement in this section.

B. New City Agreement.

1. In the event the City becomes aware an Employer with a wage theft adjudication record has submitted a proposal or proposal for City work prior to the award of a contract, the City shall deem the Employer non-responsible and refuse to enter into a City Agreement with such Employer for a period of five (5) years after the date of final adjudication.
2. Prior to deeming the Employer as non-responsible, the City will provide the Employer with thirty (30) days' notice and opportunity to provide full proof of payment of outstanding wage theft adjudication judgment.

2.4.3 Request for Clarification

In order to meet the City's schedule, it is extremely important that requests for clarification or additional information be submitted in writing no later than February 23, 2022. Questions submitted after this date may not elicit a response. All proposals or requests for clarification should be sent to the following:

BY E-MAIL

Paula Salas

FAX: (915) 212-0044

Email: salasp@elpasotexas.gov

City of El Paso

Purchasing & Strategic Sourcing

Department 300 N. Campbell, 1ST Floor

El Paso, TX 79901-1153

Attn: Paula Salas

2

IN WRITING (MAIL OR HAND DELIVERY)

2.4 Schedule of Events

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

EVENTS	DATE AND/OR TIME
Release Proposal	February 9, 2022
Non-Mandatory Pre-Proposal Meeting (Recommended to attend)	February 16, 2022 at 11:00 a.m. MST Due to COVID-19 restrictions, pre-bid meetings will be conducted via conference call. (915) 213-4096 - El Paso (833) 664-9267 - Toll-free Conference ID: 767 909 056#
Last Day for Offerors to Submit Written Questions	February 23, 2022
Answers provided	March 2, 2022
Due Date	March 9, 2022 at 2:00 P.M. (MST)
Bid Opening Notice	Bids will be publicly opened and read at 2:30 P.M. MST on Wednesday, March 9, 2022. Due to COVID-19 restrictions , the City of El Paso, Texas will be broadcasting Bid Openings Live at https://www.elpasotexas.gov/purchasing
Evaluations	March, 2022
Contract Award Date	April, 2022

The City reserves the right, at its sole discretion, to adjust this Schedule of Events as it deems necessary. If necessary, the City will communicate adjustments to any event in the Schedule of Events in the form of an amendment. Amendment to this RFQ will only be issued and posted on the City’s website at: <http://legacy.elpasotexas.gov/purchasing/ep-invitations.asp>

2.5 Contract Term (Initial and Option Terms)

The successful Respondent(s) shall complete all work hereunder within the terms of the contract. The initial contract period shall be for three (3) years from the Effective Date of the Contract, e.g., the date on which the original Contract is executed by the City of El Paso (the “Initial Term”).

Option Terms

The City of El Paso shall have the option to extend the term of the Contract for up to two (2) one (1) year term. The City Manager or designee may extend the option to extend.

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

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

2.6 Notices of Instruction to Offerors

1. Signature of Offer to person Authorized to Sign

All offers shall bear an original signature, in ink, of a responsible officer or agent of the company. Failure to sign the offer portion of the solicitation, offer and award form, or to include a substitute signed document binding the offeror, will be the basis for declaring a proposal non-responsive.

2. Effective Period of Proposals

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

3. Required Number of Copies

Offer (proposal) must be submitted in original form with three (3) additional copies, unless otherwise stated herein.

4. Offer Submission Instructions

Offer must be sealed when presented to the Purchasing Department. Offers will be received by the City of El Paso until **2:00 P.M., local time, on Wednesday, March 9, 2022. Proposals will be publicly opened and the Name of the Offer and the City and State will be read aloud.**

5. Addressing Instructions

The envelope containing the offer must be addressed as follows:

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

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

6. Labeling of Proposals [Rev 6/15/05]

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

7. Offeror Delivery Responsibility

Proposals received at the Purchasing & Strategic Sourcing Department after the specified date and time will not be accepted. Package delivery services such as FedEx, UPS, etc. deliver packages addressed to the Director of Purchasing directly to the Purchasing & Strategic Sourcing Department. U.S. Postal Service deliveries, including Express Mail, are only delivered to the Mail Room at City Hall and may or may not be delivered by the Mail Room to the Purchasing & Strategic Sourcing Department by the time and place proposals are recorded. The offeror accepts all responsibility for delivering its offer to address stated above

within the specified time or the offer will be considered non-responsive and will be mailed back unopened. If the envelope does not reflect a return address, it will be opened for the sole purpose of obtaining the return address.

8. Descriptive Literature

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

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

9. Offer Documents, Supporting Literature and Related Data

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

10. Alternate Offers

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

11. Solicitation Changes or Clarifications

Requests for changes or clarifications to this solicitation are welcomed by the Purchasing Department for its consideration, provided the requests are in writing and received by February 23, 2022. Requests received after that time may not elicit a response. Refer to requests for clarification in Communication Section for more details.

12. Acknowledgement of Solicitation Amendments

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

13. Proposal Preparation Cost

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

14. Additional Information

For further procedural information concerning this Request for Qualifications contact the point of contact for contract administration (refer to in the Communication Section for contact details).

15. Contract Performance

The Respondent shall be responsible for the completion of all work set out in the Contract and task orders.

All work is subject to inspection, evaluation, and acceptance by City of El Paso. City of El Paso may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the Contract

16. Notification to Unsuccessful Offerors

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

17. Acceptance or Rejection of Proposals

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

18. Failure to Respond to Solicitations

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

19. Time

[RESERVED]

20. Debriefing Requests

A written request for a debriefing should be directed to the Analyst identified in **Request for Clarification in Part 2, Item 2.4** within five (5) days after the date of award. Debriefing requests will be scheduled with the appropriate evaluation committee and Purchasing representative.

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

21. Protest

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

The written protest should include 1) the Request for Proposal number and should clearly state, with particularity, the relevant facts believed to constitute an error in the award recommendation, or desired remedy; 2) a specific identification of the statutory or regulatory provision that the Protesting Offeror alleges has been violated and the provisions entitling the Protesting Offeror to relief; 3) a specific factual description, with particularity, of each action by the City that the Protesting Offeror alleges to be a violation of the statutory or regulatory provision that the Protesting Offeror has identified pursuant to item (2) of this paragraph (mere disagreement with the decisions of City employees does not constitute grounds for protest). If there is no disputed issue of the material fact, the Protest must indicate this as well.

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

PART 3 - SCOPE OF WORK

3.1 Scope of Work and Minimum Requirements

In general, the Municipal Advisor shall submit to the City recommendations on debt instruments under consideration including such elements as the date of issue, interest payment dates, schedule of principal maturities, options of prior payments, security provisions and any other additional provisions designed to make the issue attractive to investors. Information to make these recommendations will be provided by City staff. Submitted recommendations should be based on the professional judgment of the Municipal Advisor with the goal of designing debt instruments, which can be sold under terms most advantageous to the City and at the lowest interest cost consistent with other considerations.

The City also strives to maintain good working relationships with bond rating agencies as well as disclose financial reports and information to these agencies and to the public. The Municipal Advisor will assist the City by preparing professional ratings presentations as well as advising the City on a semi-annual basis on strategies about how to maintain and/or upgrade the City's ratings from these agencies.

The City requests that the Municipal Advisor provide a brief description of the firm, how it is organized, and how its resources will be utilized on behalf of the City. Additionally, the overview should include how the Municipal Advisors will approach the aforementioned recommendations and other services that the firm may provide as the Municipal Advisor of the City. The Municipal Advisor shall take into account the Debt Management Policy adopted by the City of El Paso. (See Attachment A)

The overview should also include but not be limited to:

- Relevant experience of the firm and the individuals assigned to the issuer;
- Identification of the individual in charge of day-to-day management and the percentage of time committed for each individual on the account;
- The respondent's ideas on how the issuer should approach the financing, including the structure of the offering, credit-rating strategy, and investor marketing strategy;
- The analytic capability of the firm and assigned individuals and ongoing training and educational services that could be provided to the City of El Paso.
- Description of the firm's access to sources of current market information to assist in the pricing of negotiated sales and information to assist the City in planning and executing competitive sales;
- The level and types of insurance carried, including the deductible amount, to cover errors and omissions, improper judgments, or negligence; and
- Any finder's fees, fee splitting, or other contractual arrangements of the Municipal Advisor that could present a real or perceived conflict of interest, as well as any pending investigation of the Municipal Advisor or enforcement or disciplinary actions taken within the past three years by the SEC or other regulatory bodies.
- Disclosure of the firm's affiliation or relationship with any broker-dealer.

ADDITIONAL REQUIREMENTS

In addition to the previous information described, the selected Municipal Advisor shall consider the following, based on their assessment, to further satisfy the requirements of the Services Overview and needs of the Deputy City Manager.

Component I – Experience in Municipal Advisory Services

The firm should have relevant experience with financings of the City of El Paso or comparable issuers and financings of similar size, types and structures, including financing in the State of Texas. The firm should provide a description,

including resumes, of the professional(s) that will provide direct municipal advisory services to the City, including the name of the lead consultant for this account and his/her primary office location. The primary individual assigned to the City should be a licensed public finance professional. The firm must be licensed in the State of Texas and should be registered with the U.S. Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB).

The firm should discuss the firm's municipal advisory experience necessary to assist the City of El Paso with either competitive or negotiated sales. The firm should indicate any specific firm resources available to the proposed team that differentiates the firm from any competing firms.

For the past five years, indicate the firm's ranking as a Municipal Advisor for the following categories (indicate both total dollar volume and number of issues):

- General National Municipal Advisor
- Municipal Advisor in the State of Texas
- Municipal Advisor for Texas Cities

References from at least three other municipal clients, preferably Texas municipalities for whom similar services have been provided, are requested.

Component II – Local Support and Knowledge

A critical aspect of providing quality service is access to the Municipal Advisor. The firm should provide a brief description of the firm's presence and knowledge of the El Paso area tax-exempt bond market and resources dedicated to the El Paso area. The selected firm will provide the location of the office responsible for the day-to-day contact, hours of operation, secondary offices and other contact support to be provided.

Describe the firm's experience and/or knowledge of the City's political, economic, financial, legal or other issues and environment that may affect a proposed financing. Describe the firm's familiarity with GFOA's Recommended Practices relating to the selling of bonds and the selection of finance professionals. Please provide any other information that the City should consider in selecting its Municipal Advisor.

Component III – Financing Techniques

The Municipal Advisor will outline the overall approach to assessing the needs of the City. An example of a quantitative analysis must be included in the proposal. Describe the firm's depth of knowledge of Texas Cities financing techniques and provide a list of the municipal tax-exempt and taxable financings that have been completed for the last 5 years for which the firm served as municipal advisor for cities in the State of Texas. Please include issuer, issue description, and par amount.

Component IV – Trading Desk Information

If applicable, a complete description of the firm's short and long-term municipal underwriting and trading desk activities should be included in the proposal. If the firm does not have its own underwriting desk, then describe other resources the firm will use to provide pertinent pricing and market information.

Work Plan

Include a brief narrative description of the firm's organization and how the organization anticipates best being able to meet the specifications outlined herein in terms of methodology and solutions in performing the services described. The work plan should address the Additional Requirements.

SCHEDULE FOR WORK

A. Quantitative Analysis

As requested by the Deputy City Manager, the Municipal Advisor shall provide any quantitative analysis as needed within 10 days of the request. If the Municipal Advisor is unable to fulfill such request, a proposed time schedule and a list of all information to be provided to the firm and dates that the data will be required.

B. Draft Reports

As requested by the Deputy City Manager, the Municipal Advisor will prepare and submit drafts of the reports and recommendations to management available for review as is mutually agreeable to the Deputy City Manager and the Municipal Advisor.

C. Work Schedule

The Deputy City Manager, or designee, shall determine the work schedule for a particular debt issuance or related project.

D. Ratings Presentations

For every rating presentation before the City's rating agencies, the Municipal Advisor will take the lead in preparing a thorough and complete analysis to present to the City's rating agencies. Additionally, the City requests a semi-annual review of its credit rating position and requests the Municipal Advisor to identify potential strategies to maintain and/or upgrade the City's current bond ratings.

E. Continuing Disclosure Requirements

Timely disclosure of annual financial information is critical to ensuring that the City maintains good relationships with its bond rating agencies. The Municipal Advisor is responsible for coordinating and obtaining necessary information to comply with all continuing disclosure requirements on behalf of the City. Any MSRB fees imposed upon municipal advisors should not be passed through to the City.

F. Presentations to Council

As requested by the Deputy City Manager, the Municipal Advisor will make presentations to City Council and others as necessary. This will generally require extensive preparation as well as submittal of professionally prepared reports no later than seven days prior to the actual Council presentation date.

TEAM'S EXPERIENCE, PAST PERFORMANCE, FINANCIAL CAPABILITY AND LITIGATIONS

Describe any other experiences related to the work described in this RFQ; in particular, experiences related to the work described. Describe any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the service to be rendered in which the consultant, any of its employees or subcontractors or sub consultants is or has been involved within the last three years.

OTHER DELIVERABLES

Provide a high quality, written document to illustrate a presentation to City Council or other governing body that the consulting firm has prepared and presented.

Part 4 – FORMAT

4.1 Proposal Format and Structure

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

1. Use fonts no smaller than Times New Roman, 10 point. Maximum length including title page, the entire proposal, and appendices should not exceed 100 pages but may be required in some instances.
2. All pages must be numbered.
3. Address qualifications criteria in the order presented in PART 5 – PROPOSAL EVALUATION.
4. Major sections must have page breaks between them and the following sections.
5. The proposal must be signed and titled by a duly authorized representative of the Offeror.

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

6. Title Page – Clearly label with the RFQ number, RFQ title, Offeror's name, mailing address, and fax number, and the name, telephone number, and email address of a contact person.
7. Table of Contents – Identify the page location of each major section.
8. Introduction – Provide brief narrative of background and general qualifications of the Offeror, including any experience with services/products similar in scope and/or size to those requested in this RFQ.
9. Offeror's Proposal – Include all pages from this Request for Qualifications in addition to any other materials submitted by the Offeror. State in succinct terms the Offeror's understanding of the services to be provided and how the Offeror anticipates being able to meet the scope of work as delineated within Part 3 Scope of Work.
10. Contract Clauses and Forms – Include all pages and completed forms. In addition to the above information, describe any prior or pending litigation, civil or criminal, involving a governmental agency or which may affect the performances of the services to be rendered. This includes any instances in which the Offeror or any of its employees, subcontractors, or sub-consultants is or has been involved within the last three years.
11. Client list – for historical purposes, please provide the name and addresses of organizations that have used your company for similar products/services within the last five years.
12. Response must demonstrate your comprehension of the objectives and services from the RFQ. Do not merely duplicate the Scope of Work as presented within this RFQ.
13. Appendices – include any additional information that the Offeror deems important to the decision process but that is not specified elsewhere in the RFQ.
14. Identify by name and title the individual responsible for the administration of the project. (That is, the individual who has the responsibility to oversee the contract, not a firm's contract negotiator, etc.)
15. Identify the project organization and staffing. A project organizational chart is to be provided, along with resumes of the personnel assigned to the project. Level of staff for work to be performed under this Contract. Proposals must describe the work to be performed by the individuals you name to perform essential functions and detail their specific qualifications and substantive experience directly related to this RFQ. A response prepared specifically for this RFQ is required. Marketing resumes often include non-relevant

information that may detract from the evaluation of a proposal. Lists of projects are not useful. Focus on individual's specific duties and responsibilities and how project experience is relevant to the requirements of this RFQ.

16. A list of references that can be contacted to discuss the performance on similar work. If available, provide a sample of comparable data your firm has generated for a similar project.

References that are not relevant to RFQ should not be included. Therefore, the References provided should be directly related to the requirements in the SOW. The City is particularly interested in government references. The City may obtain other information by sending out questionnaires and/or through other sources. References other than those identified by the Offeror may be contacted by the City with the information received used in the evaluation.

17. Additional Information. Offerors are asked not to include loose brochures (e.g. general marketing material). **BROCHURE MATERIAL WILL NOT BE CONSIDERED FOR REVIEW**. Only pertinent information should be submitted.

4.2 Copies Required

Paper – One (1) complete, original copy (signed in blue ink where required) and **three (3) copies**, both contained in a single sealed submission. All responses shall contain those pages on which prices, other information, or signatures are required.

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

4.3 Proposal Term

The initial term of this contract shall be for **three (3) years** with the option to extend the term of the contract for up to two (2) additional term of one (1) year each. The City Manager or designee may extend the option to extend.

4.4 Proposal Cost

A Fee Proposal will be requested from the highest ranked proposer.

PAYMENT TERMS & CONDITIONS

NOTE: All vendors must accept an ACH payment effective immediately. Vendors must fill-out the attached Accounts Payable Direct Deposit Sign-Up Form located in Part 6 of this document to facilitate the Automated Clearing House (ACH) payment process.

Prompt Payment:

Payments will be made to the Contractor within thirty (30) days following acceptance of goods or services, or receipt of a properly prepared invoice by the City Department identified in the Invoice Instructions set forth on the Purchase Order, whichever is later. Payments will be considered to have been made on the date of mailing (postmark) of the payment check or, for an electronic funds transfer, the specified payment date. Invoices are to be submitted in single copy to the appropriate Department. Invoices are to be submitted in single copy to the appropriate Department.

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

FEDERAL MINIMUM WAGE

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

If the federally mandated minimum wage is increased during the term of this contract, Contractor may submit a written request for a price adjustment. The City will consider an adjustment only to the extent shown by the Contractor to be necessary to meet increased federal requirements for minimum wage employees included in the proposal.

PART 5 - PROPOSAL EVALUATION

5.1 Evaluation Factors

The proposal evaluation process is designed to award the contract, not necessarily to the Respondent of least cost, but rather to the Respondent with the best combination of attributes (i.e., qualifications and experience, cost) based upon the evaluation factors specifically established for this RFQ.

Respondents must provide all information outlined in the Evaluation Factors to be considered responsive. Proposals will be evaluated based on the responsiveness of the Respondent’s information to the Evaluation Factors, which will demonstrate the Respondent understands of the Evaluation Factors and capacity to perform the required services of this Request for Qualifications.

Proposals will be evaluated based on the following Evaluation Factors:

EVALUATION FACTORS	MAXIMUM POINTS
A. Firm’s Experience in Municipal Advisory Services	35 Points
B. Financing Techniques	20 Points
C. Experience – Comparable Contracts	15 Points
D. References	10 Points
E. Local Knowledge and Support	15 Points
F. Trading Desk or Other Source of Market Information	5 Points
Total	100 Points

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

5.2 Evaluation Factor Description

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

Factor A – Firm’s Experience in Municipal Advisory Services.....35 Points

The firm should provide a description, including resumes, of the professional(s) that will provide direct municipal advisory services to the City, including the name of the lead consultant for this account and his/her primary office location. The primary individual assigned to the City should be a licensed public finance professional. The firm must be licensed in the State of Texas.

Indicate the individual’s relevant experience, relevant licenses they hold and how their particular area of expertise

would benefit the City. Specifically include experience with long-term strategic financial planning, Texas public finance laws, tax-exempt new money, advance and current refunding's, taxable financings, marketing and pricing of issues, technical analysis, arbitrage strategies and rating agencies.

Describe in detail the experience your firm has in working with an issuer similar in size and complexity to the City. Include details regarding the type of expertise your firm offers in similar transactions. Describe the firm's experience in presentations to governing boards. Describe the firm's experience in assisting Cities with rating agency presentations. Experience in managing federal/state-funded programs.

Factor B – Financing Techniques.....20 Points

Describe the firm's depth of knowledge of Texas Cities financing techniques and provide a list of the municipal tax-exempt and taxable financings that have been completed for the last 5 years for which the firm served as municipal advisor for cities in the State of Texas. Please include issuer, issue description, and par amount.

Factor C – Experience – Comparable Contracts.....15 Points

Offeror to provide three (3) contracts comparable in scope within the past five (5) years and have performed for at least five (5) years prior to bid opening. Contract will be considered comparable in scope if they include the following elements: provide Municipal Advisory Services related to the authorization and issuance of debt instruments or other securities as well as debt management planning services as requested by the Deputy City Manager. Offeror is required to use the Experience – Comparable Contract Form for this factor. Contracts not comparable in scope will not be evaluated.

Note: The maximum points for each contract will be determined by dividing the points allocated to this factor by 3 (i.e. 15 total points ÷ 3 = 10 points per contract).

Factor D – References10 Points

Offeror shall provide references for three (3) contracts listed for Factor C.

A contract deemed non-comparable under Factor B shall not be considered as a viable reference under Factor C and shall not be scored.

Note: The maximum points for each reference will be determined by dividing the points allocated to this factor by 3 (i.e. 30 total points ÷ 3 =10 points per reference).

Comparable Contracts and Reference Check Notice

The Offeror is responsible for ensuring the accuracy of the comparable contracts and the contact information for the references provided. The City shall not contact the Offeror for replacement contracts, references and/or contact information if said e-mail addresses or telephones numbers are not valid or connected.

In addition to the above, the Offeror is encouraged to inform said references that they shall initially be contacted via e-mail at the e-mail address provided herein. If a response to the e-mail is not provided within the designated time frame, the City will attempt to contact the reference by telephone at the number provided. If the reference does not respond after two attempts via telephone the Offeror shall receive zero points for said reference.

Factor E – Local Knowledge and Support15 Points

A critical aspect of providing quality service is access to the Municipal Advisor. The firm should provide a brief description of the firm's presence and knowledge of the El Paso area tax-exempt bond market and resources dedicated to the El Paso area. The selected firm will provide the location of the office responsible for the day-to-day contact, hours of operation, secondary offices and other contact support to be provided.

Describe the firm's experience and/or knowledge of the City's political, economic, financial, legal or other issues and environment that may affect a proposed financing. Describe the firm's familiarity with GFOA's Recommended Practices relating to the selling of bonds and the selection of finance professionals. Please provide any other

information that the City should consider in selecting its Municipal Advisor.

Factor F – Trading Desk or Other Source of Market Information.....5 Points

If applicable, a complete description of the firm’s short and long-term municipal underwriting and trading desk activities should be included in the proposal for evaluation by the Evaluation Committee. If the firm does not have its own underwriting desk, then describe other resources the firm will use to provide pertinent pricing and market information

MAXIMUM TOTAL POSSIBLE POINTS.....100 Points

(Space left blank intentionally)

Factor D
Experience – Comparable Contract Form - #1
2022-0411R Professional Municipal Advisory Services

Contract ID and Name: _____

Client Name: _____

Contract Administrator: _____

Address: _____

Phone Number: _____

Email Address: _____

Performance Period: From: _____ to _____ (within the past 5 years)

Contract Details: Refer to Factor C for elements comparable in scope. Enter all the details in the space provided below that makes this contract similar in scope for this solicitation.

Factor D
Experience – Comparable Contract Form - #2
2022-0411R Professional Municipal Advisory Services

Contract ID and Name: _____

Client Name: _____

Contract Administrator: _____

Address: _____

Phone Number: _____

Email Address: _____

Performance Period: From: _____ to _____ (within the past 5 years)

Contract Details: Refer to Factor C for elements comparable in scope. Enter all the details in the space provided below that makes this contract similar in scope for this solicitation.

Factor D
Experience – Comparable Contract Form - #3
2022-0411R Professional Municipal Advisory Services

Contract ID and Name: _____

Client Name: _____

Contract Administrator: _____

Address: _____

Phone Number: _____

Email Address: _____

Performance Period: From: _____ to _____ (within the past 5 years)

Contract Details: Refer to Factor C for elements comparable in scope. Enter all the details in the space provided below that makes this contract similar in scope for this solicitation.

5.3 Evaluation and Award Process-General Information

- A. All offers are subject to the terms and conditions of this solicitation. Material exceptions to the terms and conditions, or failure to meet the City's minimum specifications, shall render the offer non-responsive to the solicitation.
- B. Any award made under this solicitation shall be made to the Offeror who provides goods or services, other than professional services as defined by Section 2254.002 of the Government Code, that are determined to be the most advantageous to the City. Factors to be considered in determining the proposal most advantageous to the City are included below.
- C. As part of the requirement to establish the responsibility of the Offeror, the City of El Paso may perform a price analysis to determine the reasonableness of the price(s) of the highest ranked Offeror's professional services. Prices that appear to be unreasonably low may be determined to be evidence that pricing is not fair and reasonable and cause the Offer to be rejected.

5.3.1 Evaluation and Award Process

- A. An Evaluation Committee shall be established to evaluate responses based solely on the Evaluation Factors set forth below. Factors not specified in the RFQ will not be considered. The City reserves the right to waive any minor irregularities or technicalities in the offers received. Responses will be evaluated on an individual basis against the requirements stated in the RFQ.
- B. Minor problems of completeness or compliance may be called to the attention of Offerors for clarification. Substantial deviations from specifications or other requirements of this RFQ will result in disqualification of an offeror's response.
- C. Award of a contract for professional services will be made on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. Detailed evaluation of the responses to this RFQ will involve a determination of the most favorable combination of various elements contained in this RFQ.
- D. During the evaluation process, the City reserves the right, where it may serve in the City's best interest, to request additional information or clarifications from Offerors, or to allow corrections of errors or omissions.
- E. All responses meeting the minimum specifications of the scope of work will be ranked based on the evaluation criteria listed. After initial evaluations, the Evaluation Committee will determine a ranking..
- F. At the completion of the evaluation period, the City will enter into negotiations with the highest ranked offeror. If the City cannot come to an agreement with that offeror it will formally end negotiations with that respondent and begin negotiations with the next highest ranked respondent.
- G. The City reserves the right to negotiate the final scope of services, price, schedule, and any and all aspects of this solicitation with the highest ranked respondent.
- H. Responses to this RFQ that are considered non-responsive will not receive consideration. The City reserves the right at any time during the evaluation process to reconsider any proposal submitted. It also reserves the right to meet with any Respondent at any time to gather additional information. Furthermore, the City reserves the right to delete, add or modify any aspect of this procurement through competitive negotiations up until the final contract signing.
- I. The successful Offeror's response to this RFQ will be incorporated into the final contract. Any false or misleading statements found in the proposal will be grounds for disqualification or contract termination. Submission of a proposal indicates acceptance by the Offeror of the conditions contained in this RFQ, unless

clearly and specifically noted in the proposal and confirmed in the contract between the City and the Offeror selected.

- J. The City reserves the right to award this contract to one Respondent or to make multiple awards. The city may reject any or all offers if such action is in the City's interest, award, waive informalities and minor irregularities in offers received, and award all or part of the requirements stated.

Responsibility Determination

The responsibility determination includes consideration of a Respondent's integrity, compliance with public policy, past performance with the City (if any), financial capacity and eligibility to perform government work (e.g., debarments/suspension from any Federal, State, or local government). The City reserves the right to perform whatever research it deems appropriate in order to access the merits of any Respondent's proposal.

A. Financial Capacity Determination

FINANCIAL INFORMATION

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

If a **publicly** held organization:

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

If a **privately** held organization:

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

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

If not considered proprietary, any recent Management Letters.

Evidence of Financial Responsibility.

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

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

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

Note: Dun & Bradstreet has the capability to obtain information on past performance on specific contractors. Accordingly, the City may require Offerors to provide a copy of a recent past performance report prepared by Dun & Bradstreet. The Past Performance Evaluation Report

provided to the Offeror by Dun & Bradstreet shall be submitted, not later than 14 calendar days after request by the City. The Offeror shall be responsible for the cost of Dun & Bradstreet's preparation of the report.

B. Technical Capacity Determination

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

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

PART 6 - MANDATORY SUBMITTALS

- 6.1 Business Information Certification
- 6.2 Non-Collusion and Business Disclosure Affidavit
- 6.3 Indebtedness Affidavit
- 6.4 Certification Regarding Terrorist Organizations & Boycotting of Israel
- 6.5 Certification Regarding Discrimination Against Firearm & Ammunition Industries
- 6.6 Certification Regarding Boycotting of Energy Company
- 6.7 Vendor Information Form
- 6.8 W-9 Request for Taxpayer Identification Number and Certification
- 6.9 Direct Deposit Form
- 6.10 Conflict of Interest Questionnaire
- 6.11 1295 Form



SECTION D FORMS

6.1 Business Information Certification

Mark all that apply.

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

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

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

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

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

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

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

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

Signature of Person Authorized to Sign Application

Title

Date



**City of El Paso
Purchasing & Strategic Sourcing Department**

6.2 Non-Collusion and Business Disclosure Affidavit

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

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

1. I am over the age of 18, have never been convicted of a crime and am competent to make this affidavit.
2. I am a duly authorized representative of the following company or firm (the "Offeror") which is submitting a response to 2022-0411R *Professional Municipal Advisory Services*
_____(Name of Offeror).
3. **BY SUBMITTING THIS BID, I CERTIFY THAT OFFEROR AND ITS AGENTS, OFFICERS OR EMPLOYERS HAVE NOT DIRECTLY OR INDIRECTLY ENTERED INTO ANY AGREEMENTS, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THIS BID OR WITH ANY CITY OFFICIAL.**
4. I have listed in Paragraph 10 below all the names the Offeror uses and has used in the past and certify that I have disclosed all such names, including any assumed (DBA) names.
5. **Certificate of Organization.** In completing this Affidavit, I have attached a copy of the organization certificate issued by the Secretary of State of the state in which the company was organized (i.e. Certificate of Formation, Certificate of Good Standing, Statement of Operation or Registration and/or a copy of Assumed Name Certificate if the Offeror/Offeror used a trade name in the Solicitation documents is other than the name under which company was organized).
6. **Material Change in Organization or Operation.** *Except as described in Paragraph 10 below*, I certify that Offeror is not currently engaged nor does it anticipate that it will engage in any negotiation or activity that will result in the merger, transfer of organization, management reorganization or departure of key personnel within the next twelve (12) months that may affect the Offeror's ability to carry out the contract with the City of El Paso.
7. **Debarment/Suspension.** *Except as described in Paragraph 10 below*, I certify that Offeror and its subcontractors, officers or agents are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any covered transactions by any federal, state or local department or agency. If such an event has occurred, state in Paragraph 10 below, the reason for or the circumstances surrounding the debarment or suspension, including but, not limited to, the name of the governmental entity, the period of time for such debarment or suspension and provide the name and current phone number of a governmental contact person familiar with the debarment or suspension.

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

8. **Default/Termination of Contracts.** *Except as described in Paragraph 10 below*, I certify that, within the last 24 months, there are no Contract(s) between the Offeror and a governmental entity that have been terminated, with or without the Offeror's default. If such a contract has been terminated within the last 24 months, state in Paragraph 10 below the reason for or circumstances surrounding the termination.
9. **Taxpayer Identification.** In completing this Affidavit, I have also attached a copy of a completed Form W-9 that shows the Offeror's taxpayer identification number (Employer Identification Number or Social Security Number). I understand that failure to provide this information may require the City to withhold 20% of payments due under the contract and pay that amount directly to the IRS.

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

(Attach additional pages if needed)

Attached are the following:

Certificate of Organization (required by ***Paragraph 5***)

Taxpayer Identification (required by ***Paragraph 9***)

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

Signature

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

Notary Public

Printed Name

Commission Expires



**City of El Paso
Purchasing & Strategic Sourcing Department**

6.3 Indebtedness Affidavit

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

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

1. Affiant is authorized and competent to give this affidavit and has personal knowledge of the facts and matters herein stated.
2. Affiant is an authorized representative of the following company or firm: _____
[Contracting Entity’s Corporate or Legal Name] (hereafter, “*Contracting Entity*”).
3. Affiant is submitting this affidavit in response to the following bid: *Solicitation No. 2022-0411R Professional Municipal Advisory Services*
4. Contracting Entity is organized as a business entity as noted below (check box as applicable):

For Profit Entity (select below):

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

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

- Non-Profit Corporation
- Unincorporated Association

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

Contracting Entity:

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

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

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

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

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

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

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

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

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

Signature _____

Notary Public _____

Printed Name _____

Commission Expires _____



**City Of El Paso
Purchasing & Strategic Sourcing Department**

6.4 Certification Regarding Terrorist Organizations & Boycotting of Israel

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

I, _____ (Full Name) the undersign representative of
_____ (Company Name) (herein after referred as Vendor) hereby Certifies that:

1. It is not a company identified on the Texas Comptroller’s list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.
2. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary or parent company of Vendor, if any (the “Vendor Companies”), boycotts Israel and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this agreement. For purposes of this Agreement, the term “boycott” shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory. (See Texas Government Code Chapter 2270.002 and 2252.151-154.)

Signature

Date



**City of El Paso
Purchasing & Strategic Sourcing Department**

6.5 Certification Regarding Discrimination Against Firearm & Ammunition Industries

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

I, _____ (Full Name) the undersign representative of
_____ (Company Name) (herein after referred as Vendor) hereby

Certifies that:

(1) neither Vendor, nor any affiliate, subsidiary or parent company of Vendor, if any (the "Vendor Companies"), does not have a written or unwritten internal practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association; and

(2) Vendor agrees that Vendor and VendorCompanies will not discriminate during the term of the contract against a firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association during the term of this agreement pursuant to the provisions of Texas Government Code Chapter 2274.

For purposes of this Agreement, the term "Discriminate against a firearm entity or firearm trade association" shall have the meaning defined in Texas Government Code Chapter 2274.

Signature

Date



**City of El Paso
Purchasing & Strategic Sourcing Department**

6.6 Certification Regarding Boycotting of Energy Company

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

I, _____ (Full Name) the undersign representative of _____

_____ (Company Name) (herein after referred as Vendor) hereby

Certifies that:

1. It is not a company identified on the Texas Comptroller’s list of companies known to boycott energy companies, as defined in Texas Government Code Chapter 809.
2. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary or parent company of Vendor, if any (the “Vendor Companies”), boycotts energy companies and Vendor agrees that Vendor and VendorCompanies will not boycott energy companies during the term of this agreement pursuant to the provisions of Texas Government Code Chapter 809. For purposes of this Agreement, the term “boycott energy company” shall have the meaning defined in Texas Government Code Chapter 809.

Signature

Date

6.7 Vendor Information Form

**CITY OF EL PASO PURCHASING & STRATEGIC SOURCING DEPARTMENT
VENDOR INFORMATION FORM**

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

City Department: _____ Telephone # _____ Name: _____

Request:

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

Vendor Sales Address: If same as W-9 check box

Company Name: _____

Street: _____

City: _____ State _____ Zip Code _____

Contact Name & Title: _____

(Authorized Company Contact)

Telephone # (required) (____) _____ Fax # (____) _____

E-Mail Address: _____

Contact Name & Title: _____

(Alternate Authorized Company Contact)

Telephone # (required) (____) _____ E-mail _____

Web Page: _____

VENDOR STATUS:

(Yes) (No) Small business concern (Less than 100 employees or less than \$1,000,000.00 Annual Receipts) (Yes) (No) Disadvantage business concern (At least 51% owned by one or more socially disadvantaged individuals; or, a publicly-owned business at least 51% of the stock owned by one or more of such individuals.) If your company is certified please send us a photo copy. We must have an updated copy of the certificate on file. DBES include (Please mark one):

- Black Americans Hispanic Americans
 Native Americans Asian-Pacific Americans

(Yes) (No) Woman-owned business (At least 51% owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.)

(Yes) No) Handicapped (At least 51% owned by a person or persons with an orthopedic, hearing, mental or visual impairment which substantially limits one of more of his/hers/their major life activities.)

(Yes) No) Local business enterprise (At least 51% of which is owned by a resident or residents of El Paso County and the principal place of business is in El Paso County.)

(Yes) No) Hub (Historically underutilized business) If your company is certified please send us a photo copy. We need to have an updated copy of the certificate on file.

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

- | | |
|--|--|
| <input type="checkbox"/> Goods (No Withholding / No Default Class) | <input type="checkbox"/> Rental Property (Withholding / Default Class 1) |
| <input type="checkbox"/> Settlement / Attorney Proceeds (Withholding / Default Class 14) | <input type="checkbox"/> Stipend (No Withholding / Default Class 7) |
| <input type="checkbox"/> Medical & Healthcare (Withholding / Default Class 6) | <input type="checkbox"/> Corporation (No Withholding/ No Default Class) |
| <input type="checkbox"/> Services (Withholding / Default Class 7) | |

Contractual Employees or Vendors

- Based on W-9, Individual/Sole Proprietor, Partnership, Limited Liability Company (all LLCs C=Corporation, D=Disregarded Entity, S=Corporation, P=Partnership) are marked as withholding. Corporation is not marked as withholding.
- Vendors for Rent, Medical Services, Attorney Fees are **always** marked as withholding, even if they are a Corporation

City of El Paso Employees (IRS-Withholding not required for the following items)

- Pension Refund Mileage Reimbursement Settlement Travel Request Tuition Reimbursement

Send Form To: vendormanagement@elpasotexas.gov P - 915-212-0043 F - 915-212-0044

6.8 W-9 Request for Taxpayer Identification Number and Certification

Form W-9 (Rev. October 2018) Department of the Treasury Internal Revenue Service	<h3 style="margin: 0;">Request for Taxpayer Identification Number and Certification</h3> <p style="margin: 0;">▶ Go to www.irs.gov/FormW9 for instructions and the latest information.</p>	Give Form to the requester. Do not send to the IRS.
Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.	
	<input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate	
	<input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____	
	Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.	
	<input type="checkbox"/> Other (see instructions) ▶ _____	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>	
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)																									
Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> , later.																									
Note: If the account is in more than one name, see the instructions for line 1. Also see <i>What Name and Number To Give the Requester</i> for guidelines on whose number to enter.	<table style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center; font-size: x-small;">Social security number</td> </tr> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td style="text-align: center; font-size: x-small;">-</td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td style="text-align: center; font-size: x-small;">-</td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td colspan="2" style="text-align: center; font-size: x-small;">or</td> </tr> <tr> <td colspan="2" style="text-align: center; font-size: x-small;">Employer identification number</td> </tr> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td style="text-align: center; font-size: x-small;">-</td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> </table>	Social security number				-		-						or		Employer identification number				-					
Social security number																									
-																									
-																									
or																									
Employer identification number																									
-																									

Part II Certification	
Under penalties of perjury, I certify that:	
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and	
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and	
3. I am a U.S. citizen or other U.S. person (defined below); and	
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.	
Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.	

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

General Instructions

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

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

6.9 Direct Deposit



City of El Paso
PURCHASING & STRATEGIC SOURCING

DIRECT DEPOSIT SIGN-UP FORM

This form is used to collect important information to enroll, update or change your Direct Deposit request. Please complete and return to the Purchasing & Strategic Sourcing Department; see contact information provided below. For assistance, please call 915-212-0043.

Part I – Vendor / Employee Information

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

E-mail to Receive ACH Remittance Notifications

Part II – Direct Deposit Information

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

For security purposes, you **must attach a voided check or bank letter** in order to process direct deposit request. Do not use a deposit slip as some banking institutions do not display the correct routing number on deposit slips.

Voided Check or Bank Letter Required



Part III – Terms and Conditions

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

Print Name and Title: _____ Signature:  _____ Date: _____
(Authorized Company Contact)

Purchasing & Strategic Sourcing Department
300 N. Campbell, 1st floor – EL PASO TX 79901

PPS FORM 038, V2 OS, March 7, 2017 All previous versions are obsolete

6.10 Conflict of Interest Questionnaire

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY Date Received	
<p>1 Name of vendor who has a business relationship with local governmental entity.</p>		
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p>3 Name of local government officer about whom the information is being disclosed.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>		
<p>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p style="margin-left: 40px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="margin-left: 80px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p> <p style="margin-left: 40px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="margin-left: 80px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p>		
<p>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p>		
<p>6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p>7</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature of vendor doing business with the governmental entity Date</p>		

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

6.11 Form 1295

Business Entity: Disclosure of Interested Parties Texas

Government Code § 2252.908

Form 1295

This Form is required in the submission of your bid or proposal:

The Texas Legislature adopted House Bill 1295 in 2015. HB 1295 added Section 2252.908 to the Government Code. Under this new law, any business entity that enters into a contract with the City of El Paso that requires the approval of the City Council must submit a “Disclosure of Interested Parties” to the City prior to the execution of the contract. This form, the “Disclosure of Interested Parties” form was promulgated by the Texas Ethics Commission, and is the “Form 1295”.

The Texas Ethics Commission was also charged with promulgating rules to implement Section 2252.908 of the Government Code. The rules adopted by the Texas Ethics Commission are located at Sections 46.1, 46.3, and 46.5 of Title 1 of the Texas Administrative Code.

The Texas Ethics Commission’s website is: www.ethics.state.tx.us. The area of their website pertaining to Form 1295 is: www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

All business entities are encouraged to visit the Texas Ethics Commission website, which contains Frequently Asked Questions, instructional videos, and much more information on HB1295/Section 2252.908 requirements and/or to consult with their own counsel.

Once the business entity has completed their electronic filing of Form 1295, then the business entity must print out the form and sign and notarize the form. The form must be submitted with your bid or proposal.

If your firm is selected for award, the Purchasing & Strategic Sourcing Department will go to the Texas Ethics Commission website to submit electronic confirmation of the City’s receipt of the completed, signed, and notarized Form 1295.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

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

OFFICE USE ONLY

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

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

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

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____ (street) _____ (city) _____ (state) _____ (zip code) _____ (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
 (month) (year)

 Signature of authorized agent of contracting business entity
 (Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

Must file online at www.ethics.state.tx.us/File



PART 7 - CONTRACT CLAUSES

1. TYPE AND TERM OF CONTRACT

This is a Requirements Best Value Contract under which the City shall order all of its supplies and/or services described in Part 2 from the successful bidder, hereinafter referred to as the Contractor, for the duration of the contract.

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

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

2. INVOICES & PAYMENTS

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

3. CONTRACTUAL RELATIONSHIP

Nothing herein will be construed as creating the relationship of employer and employee between the City and the Contractor or between the City and the Contractor's employees. The City will not be subject to any obligations or liabilities of the Contractor or his employees incurred in the performance of the contract unless otherwise herein authorized. The Contractor is an independent Contractor and nothing contained herein will constitute or designate the

Contractor or any of his employees as employees of the City. Neither the Contractor nor his employees will be entitled to any of the benefits established for City employees, nor be covered by the City's Workers' Compensation Program.

4. INDEMNIFICATION [Rev. 04-15-99] [Rev. 01-04-04] [Rev. 10-19-18]

Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY,

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

5. GRATUITIES

The City may, by written notice to the Contractor, cancel this contract without liability to Contractor if it is determined by the City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations

with respect to the performing of such a contract. In the event this contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

6. WARRANTY-PRICE

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

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

7. RIGHT TO ASSURANCE

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

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

A. Termination for Convenience

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

B. Termination for Default

If the Contractor fails to comply with any provision of the contract the City of El Paso may terminate this contract for default. Termination shall be effected by serving a notice of

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

C. Termination for Failure to Comply with Subchapter J, Chapter 552, Government Code. [1/10/2020]

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor or vendor agrees that the Contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

9. ADDITIONAL REMEDIES [New 12/96]

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

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

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

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

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

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

12. ASSIGNMENT-DELEGATION

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

13. WAIVER

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

14. INTERPRETATION-PAROL EVIDENCE

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

15. APPLICABLE LAW

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

16. ADVERTISING

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

17. AVAILABILITY OF FUNDS

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

18. VENUE

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

19. ADDITIONAL REMEDY FOR HEALTH OR SAFETY VIOLATION

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

20. INSURANCE REQUIREMENTS [6/29/2019]

Commercial General Liability:
Written on an occurrence form. (There may be situations where a "claims-made" form may be our only option but it is best we require an occurrence form including all the usual coverage known as:

- Premises/operations liability
- Products/completed operations
- Personal/advertising injury
- Contractual liability
- Broad-form property damage
- Independent contractor liability
- Explosion, Collapse and Underground (XCU)
- Cyber Liability/Data/Breach/Ransom

Minimum Limits of Liability

\$1,000,000 Bodily Injury/\$1,000,000 Property Damage per occurrence

Commercial General Liability Exclusion Removed/Railroad Protective Liability/Contractual Liability-Railroads

\$1,000,000 Bodily Injury/\$1,000,000 Property Damage Liability per occurrence

Required when a contractor is going to work on or within 50 feet of any "railroad property"

Commercial Automobile Liability;

\$1,000,000 Bodily Injury/\$500,000 Property Damage Liability per occurrence

Workers' Compensation

Statutory Coverage

\$500,000 Employers Liability

Professional (Errors & Omissions) Liability (if required)

\$1,000,000 per occurrence

Umbrella or Excess Liability Insurance (if required)

\$5,000,000 per occurrence

The City, its officials, employees, agents and contractors shall be named as additional insureds and contain a "blanket waiver of subrogation" clause in favor of the City.

The contractor/vendor and their subcontractors' insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents and contractors shall be in excess of the contractor/vendor's or contractor/vendor's subcontractor's insurance and shall not contribute to the contractor/vendor's or contractor/vendor's subcontractor's insurance.

Prior to undertaking any work under this Agreement, the contractor/vendor, at no expense to the City, shall furnish to the City copy of a certificate of insurance with an actual copy of policy and original endorsements affecting coverage for each of the insurance policies provided in this exhibit. Any deductibles or self-insured retentions must be declared to, and approved by the City.

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

City of El Paso
Purchasing & Strategic Sourcing Department
300 N. Campbell, 1th Floor
El Paso, Texas 79901-1153
Attn: Paula Salas, Purchasing Agent

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

Failure to submit insurance certification may result in contract cancellation.

21. CONTRACT ADMINISTRATION

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

Margarita Muñoz

Comptroller

Telephone: (915) 212-1174

Email: MunozMM@elpasotexas.gov

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

Mail correspondence should be addressed to:

City of El Paso

Purchasing & Strategic Sourcing Department

300 N. Campbell, 1th Floor

El Paso, TX 79901-1153

Attn: Paula Salas, Purchasing Agent

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

22. COMPLIANCE WITH NON-DISCRIMINATION LAWS

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

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

23. CONTRACTING INFORMATION [1/10/2020]

The Contractor must preserve all contracting information related to this Contract as provided by the records retention schedule requirements applicable to the City for the duration of this Contract.

Contractor will promptly provide the City any contracting information related to this Contract that is in the custody or possession of the Contractor on request of the City. On completion of this Contract, Contractor will either provide at no cost to the City all contracting information related to this Contract that is in the custody or possession of the Contractor or preserve the contracting information related to this Contract as provided by the records retention requirements applicable to the City.

24. RIGHT TO AUDIT

The Contractor agrees that the City shall, until the expiration

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

25. CONTRACTOR TO PACKAGE GOODS

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

26. SHIPMENT UNDER RESERVATION PROHIBITED

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

27. DELIVERY TERMS AND TRANSPORTATION CHARGES

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

28. TITLE & RISK OF LOSS

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

RIGHT OF INSPECTION

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

29. NO REPLACEMENT OF DEFECTIVE TENDER

Every tender or delivery of goods must fully comply with all

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

30. PLACE OF DELIVERY

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

31. WARRANTY-PRODUCT

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

32. SAFETY WARRANTY

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

33. NO WARRANTY BY THE CITY AGAINST INFRINGEMENTS

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

34. TERRORIST ORGANIZATIONS & BOYCOTTING OF ISRAEL

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary or parent company of Vendor, if any (the "Vendor Companies"), boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this

Purchase Order. For purposes of this Purchase Order, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

35. DISCRIMINATION AGAINST FIREARM & AMMUNITION INDUSTRIES [Rev 2021-09-23]

Vendor certifies and verifies that (1) neither Vendor, nor any affiliate, subsidiary or parent company of Vendor, if any (the "Vendor Companies"), does not have a written or unwritten internal practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association based solely on its status as a firearm entity or

firearm trade association and (2) Vendor agrees that Vendor and Vendor Companies will not discriminate during the term of the contract against a firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association during the term of this agreement pursuant to the provisions of Texas Government Code Chapter 2274. For purposes of this Agreement, the term "Discriminate against a firearm entity or firearm trade association" shall have the meaning defined in Texas Government Code Chapter 2274.

36. BOYCOTTING OF ENERGY COMPANIES [Rev 2021-09-23]

Vendor certifies and verifies that it is not a company identified on the Texas Comptroller's list of companies known to boycott energy companies, as defined in Texas Government Code Chapter 809. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary or parent company of Vendor, if any (the "Vendor Companies"), boycotts energy companies and Vendor agrees that Vendor and Vendor Companies will not boycott energy companies during the term of this agreement pursuant to the provisions of Texas Government Code Chapter 809. For purposes of this Agreement, the term "boycott energy company" shall have the meaning defined in Texas Government Code Chapter 809.

8.1 Title VI Contract Provisions

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

NOTE TO CONTRACTORS:

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

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

8.2 APPENDIX A

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

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

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

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

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

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

- a. Withholding of payments to the contractor under the contract until the contractor complies, and / or
- b. Cancellation, termination or suspension of the contract in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the City of El Paso may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the contractor may request the City of El Paso to enter into such litigation to protect the interests of the City of El Paso, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States

8.3 Required Contract Provisions

FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term

Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NON DISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified

and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

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

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

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

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

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

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

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

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

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the

contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a

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

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

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

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

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

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

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

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

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not

expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

2. Withhold ing

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

3. Payrolls and basic records

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

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee

program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

d.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

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

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

subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

5. The 30% self-performance requirement of paragraph (1) is not

applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

Whoever knowingly makes any false statement, false

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it

shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

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

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

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

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

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

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

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

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

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

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

Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

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

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

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

EXHIBIT "B"

SCOPE OF WORK

Scope of Work and Minimum Requirements

In general, the Municipal Advisor shall submit to the City recommendations on debt instruments under consideration including such elements as the date of issue, interest payment dates, schedule of principal maturities, options of prior payments, security provisions and any other additional provisions designed to make the issue attractive to investors. Information to make these recommendations will be provided by City staff. Submitted recommendations should be based on the professional judgment of the Municipal Advisor with the goal of designing debt instruments, which can be sold under terms most advantageous to the City and at the lowest interest cost consistent with other considerations.

The City also strives to maintain good working relationships with bond rating agencies as well as disclose financial reports and information to these agencies and to the public. The Municipal Advisor will assist the City by preparing professional ratings presentations as well as advising the City on a semi-annual basis on strategies about how to maintain and/or upgrade the City's ratings from these agencies.

The City requests that the Municipal Advisor provide a brief description of the firm, how it is organized, and how its resources will be utilized on behalf of the City. Additionally, the overview should include how the Municipal Advisors will approach the aforementioned recommendations and other services that the firm may provide as the Municipal Advisor of the City. The Municipal Advisor shall take into account the Debt Management Policy adopted by the City of El Paso. (See Attachment A)

The overview should also include but not be limited to:

- Relevant experience of the firm and the individuals assigned to the issuer;
- Identification of the individual in charge of day-to-day management and the percentage of time committed for each individual on the account;
- The respondent's ideas on how the issuer should approach the financing, including the structure of the offering, credit-rating strategy, and investor marketing strategy;

- The analytic capability of the firm and assigned individuals and ongoing training and educational services that could be provided to the City of El Paso.
- Description of the firm's access to sources of current market information to assist in the pricing of negotiated sales and information to assist the City in planning and executing competitive sales;
- The level and types of insurance carried, including the deductible amount, to cover errors and omissions, improper judgments, or negligence; and
- Any finder's fees, fee splitting, or other contractual arrangements of the Municipal Advisor that could present a real or perceived conflict of interest, as well as any pending investigation of the Municipal Advisor or enforcement or disciplinary actions taken within the past three years by the SEC or other regulatory bodies.
- Disclosure of the firm's affiliation or relationship with any broker-dealer.

ADDITIONAL REQUIREMENTS

In addition to the previous information described, the selected Municipal Advisor shall consider the following, based on their assessment, to further satisfy the requirements of the Services Overview and needs of the Deputy City Manager.

Component I – Experience in Municipal Advisory Services

The firm should have relevant experience with financings of the City of El Paso or comparable issuers and financings of similar size, types and structures, including financing in the State of Texas. The firm should provide a description, including resumes, of the professional(s) that will provide direct municipal advisory services to the City, including the name of the lead consultant for this account and his/her primary office location. The primary individual assigned to the City should be a licensed public finance professional. The firm must be licensed in the State of Texas and should be registered with the U.S. Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB).

The firm should discuss the firm's municipal advisory experience necessary to assist the City of El Paso with either competitive or negotiated sales. The firm should indicate any specific firm resources available to the proposed team that differentiates the firm from any competing firms.

For the past five years, indicate the firm's ranking as a Municipal Advisor for the following categories (indicate both total dollar volume and number of issues):

- General National Municipal Advisor
- Municipal Advisor in the State of Texas
- Municipal Advisor for Texas Cities

References from at least three other municipal clients, preferably Texas municipalities for whom similar services have been provided, are requested.

Component II – Local Support and Knowledge

A critical aspect of providing quality service is access to the Municipal Advisor. The firm should provide a brief description of the firm's presence and knowledge of the El Paso area tax-exempt bond market and resources dedicated to the El Paso area. The selected firm will provide the location of the office responsible for the day-to-day contact, hours of operation, secondary offices and other contact support to be provided.

Describe the firm's experience and/or knowledge of the City's political, economic, financial, legal or other issues and environment that may affect a proposed financing. Describe the firm's familiarity with GFOA's Recommended Practices relating to the selling of bonds and the selection of finance professionals. Please provide any other information that the City should consider in selecting its Municipal Advisor.

Component III – Financing Techniques

The Municipal Advisor will outline the overall approach to assessing the needs of the City. An example of a quantitative analysis must be included in the proposal. Describe the firm's depth of knowledge of Texas Cities financing techniques and provide a list of the municipal tax-exempt and taxable financings that have been completed for the last 5 years for which the firm served as municipal advisor for cities in the State of Texas. Please include issuer, issue description, and par amount.

Component IV – Trading Desk Information

If applicable, a complete description of the firm's short and long-term municipal underwriting and trading desk activities should be included in the proposal. If the firm does not have its own underwriting desk, then describe other resources the firm will use to provide pertinent pricing and market information.

Work Plan

Include a brief narrative description of the firm's organization and how the organization anticipates best being able to meet the specifications outlined herein in terms of methodology and solutions in performing the services described. The work plan should address the Additional Requirements.

SCHEDULE FOR WORK

A. Quantitative Analysis

As requested by the Deputy City Manager, the Municipal Advisor shall provide any quantitative analysis as needed within 10 days of the request. If the Municipal Advisor is unable to fulfill such request, a proposed time schedule and a list of all information to be provided to the firm and dates that the data will be required.

B. Draft Reports

As requested by the Deputy City Manager, the Municipal Advisor will prepare and submit drafts of the reports and recommendations to management available for review as is mutually agreeable to the Deputy City Manager and the Municipal Advisor.

C. Work Schedule

The Deputy City Manager, or designee, shall determine the work schedule for a particular debt issuance or related project.

D. Ratings Presentations

For every rating presentation before the City's rating agencies, the Municipal Advisor will take the lead in preparing a thorough and complete analysis to present to the City's rating agencies. Additionally, the City requests a semi-annual review of its credit rating position

and requests the Municipal Advisor to identify potential strategies to maintain and/or upgrade the City's current bond ratings.

E. Continuing Disclosure Requirements

Timely disclosure of annual financial information is critical to ensuring that the City maintains good relationships with its bond rating agencies. The Municipal Advisor is responsible for coordinating and obtaining necessary information to comply with all continuing disclosure requirements on behalf of the City. Any MSRB fees imposed upon municipal advisors should not be passed through to the City.

F. Presentations to Council

As requested by the Deputy City Manager, the Municipal Advisor will make presentations to City Council and others as necessary. This will generally require extensive preparation as well as submittal of professionally prepared reports no later than seven days prior to the actual Council presentation date.

TEAM'S EXPERIENCE, PAST PERFORMANCE, FINANCIAL CAPABILITY AND LITIGATIONS

Describe any other experiences related to the work described in this RFQ; in particular, experiences related to the work described. Describe any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the service to be rendered in which the consultant, any of its employees or subcontractors or sub consultants is or has been involved within the last three years.

OTHER DELIVERABLES

Provide a high quality, written document to illustrate a presentation to City Council or other governing body that the consulting firm has prepared and presented.

EXHIBIT "C"

Fee Proposal

Base	\$ <u>25,000.00</u>
For the first \$ _____ of bonds issued	Plus \$1.30 per \$1,000 for the next \$75,000,000
Thereafter	Plus \$1.15 per \$1,000 thereafter