

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



DEPARTMENT: Internal Audit
Purchasing & Strategic Sourcing
AGENDA DATE: February 4, 2025
PUBLIC HEARING DATE: NA
CONTACT PERSON NAME: Edmundo S. Calderon, Chief Internal Auditor
PHONE NUMBER: (915)212-1365
K. Nicole Cote, Managing Director
PHONE NUMBER: (915)212-1092
DISTRICT(S) AFFECTED: All
STRATEGIC GOAL: No. 6 – Set the Standard for Sound Governance and Fiscal Management
SUBGOAL: 6.8 – Support transparent and inclusive government

SUBJECT:

Request that the City Manager be authorized to sign a Service Agreement (Solicitation 2024-0654R) for the auditing of City sales tax collections by and between the City of El Paso ("City") and Avenu Insights & Analytics, LLC ("Service Provider") for a contract term of three years from the date this Service Agreement is approved by the City Council, with an option to extend for two additional years. This award is a contingency-based contract, which shall not exceed 25% of the additional revenue to the City based on the Agency's documented findings.

BACKGROUND / DISCUSSION:

This contract will consist of a firm to perform an audit of State and City records to determine if: (i) All businesses operating within the City of El Paso are subject to City sales and use tax are in fact remitting to the Texas Comptroller of Public Accounts, (ii) All internet sales that are subject to local City of El Paso sales and use tax are in fact remitting to the Texas Comptroller of Public Accounts, (iii) The City of El Paso is being correctly allocated all City sales and use tax due each month from the Texas State Comptroller of Public Accounts, and (iv) Coordinate with the Office of the Texas Comptroller of Public Accounts to correct appropriate records in order to ensure that collection of any unrealized sales tax revenue to the City.

COMMUNITY AND STAKEHOLDER OUTREACH:

A pre-proposal meeting was held on August 28, 2024. One (1) firm was in attendance.

SELECTION SUMMARY:

Solicitation was advertised on August 20, 2024 and August 27, 2024. The solicitation was posted on City website on August 20, 2024. There were a total number in seven (7) viewers online; two (2) proposals were received, none from local firms. An Inadequate Competition Survey was conducted.

CONTRACT VARIANCE:

The difference based in comparison to the previous contract for the initial terms is as follows: An increase of 12% due to the contingency fee rate increasing.

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

NA

AMOUNT AND SOURCE OF FUNDING:

Amount: Contingency-based not to exceed 25%
Funding Source: 210 – 1000 – 521000 – 13130
Account: General Fund

REPORTING OF CONTRIBUTION OR DONATION TO CITY COUNCIL:

Report any contributions or donations to City Council of an accumulated total of \$500 or more. Report the name of the elected official and the amount.

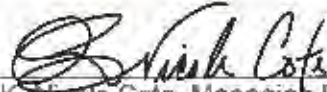
NAME	AMOUNT (\$)
NA	NA

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

DEPARTMENT HEAD:



Edmundo S. Calderon, Chief Internal Auditor



K. Nicole Cote, Managing Director

Project Form
Request for Qualifications

*****Posting Language Below*****

Please place the following item on the Consent Agenda for the City Council of February 4, 2025.

Strategic Goal 6 - Set the Standard for Sound Governance and Fiscal Management

The linkage to the Strategic Plan is subsection: 6.8 Support transparent and inclusive government

Award Summary:

Request that the City Manager be authorized to sign a Service Agreement (Solicitation 2024-0654R) for the auditing of City sales tax collections by and between the City of El Paso ("City") and Avenu Insights & Analytics, LLC ("Service Provider") for a contract term of three years from the date this Service Agreement is approved by the City Council, with an option to extend for two additional years. This award is a contingency-based contract, which shall not exceed 25% of the additional revenue to the City based on the Agency's documented findings.

Contract Variance:

The difference based in comparison to the previous contract for the initial terms is as follows: An increase of 12% due to the contingency fee rate increasing.

Department:	Internal Audit
Award to:	Avenu Insights & Analytics, LLC
City & State:	Centreville, VA
Item(s):	All
Initial Term:	3 Years
Option Term:	2 Years
Total Contract Time:	5 Years
Annual Estimated Award:	Contingency-based not to exceed 25%
Initial Term Estimated Award:	Contingency-based not to exceed 25%
Option Term Estimated Award:	Contingency-based not to exceed 25%
Total Estimated Award	Contingency-based not to exceed 25%
Account(s)	210 – 1000 – 521000 – 13130
Funding Source(s):	General Fund
District(s):	All

This was a Request for Qualifications Procurement, service contract.

The Purchasing & Strategic Sourcing Department and Internal Audit recommend award as indicated to Avenu Insights & Analytics, LLC, the highest ranked offeror based on the evaluation factors established in the evaluation criteria for this procurement.

In addition, the City Manager is authorized to execute any documents and agreements necessary to effectuate the intent of this award; including but not limited to documents related to the collection of amounts owed or owing to the City of El Paso; upon review and approval by the City Attorney's Office.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

In accordance with this award, the City Manager or designee is authorized to exercise future options if needed.

CITY OF EL PASO RFQ SCORESHEET

PROJECT: 2024-0654R Audit of Sales Tax Collections

Evaluation of Submittal

	<small>MAX POINTS</small>	Avenu Insights & Analytics, LLC Centreville, VA	Sales Tax Assurance LLC dba HdL Companies Houston, TX
Factor A - General Overview of Agency and Services	30	30.00	28.33
Factor B - Experience – Comparable Contracts	25	25.00	23.67
Factor C - References	10	10.00	6.00
Factor D - Capacity and Capability of Agency’s Resources	25	25.00	21.00
Factor E - Number of Hours Dedicated to Engagement	10	10.00	10.00
TOTAL SCORE	100	100.00	89.00
Rank		1	2



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



Bid Opening Date: September 18, 2024

Solicitation #: 2024-0654R

Project Name: Audit of Sales Tax Collections

Department: Internal Audit

OFFERORS NAME:	LOCATION:	AMENDMENT(S) ACKNOWLEDGED:
Avenu Insights & Analytics, LLC	Centreville, VA	YES
Sales Tax Assurance LLC dba HdL Companies	Houston, TX	YES
RFQs SOLICITED: 334 LOCAL RFQs SOLICITED: 111 RFQs RECEIVED: 2 LOCAL RFQs RECEIVED: 0 NO BIDS: 2		

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

Approved: _____/s/_____

Date: 9/23/2024

2024-0654R Audit of Sales Tax Collections
Viewer's List

<u>Participant Type</u>	<u>Participant Name</u>	<u>Response Date</u>	<u>Response Status</u>	<u>City</u>	<u>State</u>	<u>Zip Code</u>
1	Avenu Insights & Analytics, LLC	09/18/2024	Submitted	Centreville	VA	20120
2	WOFFORD TRUCK PARTS (TE EL PASO,LLC)	09/09/2024	No Bid	EL PASO	TX	79936
3	OLIVARES ELECTRIC OF EL PASO, LLC	08/20/2024	No Bid	El Pso	TX	79936
4	Trynise McKnight		Viewed	Grand Prairie	TX	75050
5	HdL Companies	09/17/2024	Submitted	Houston	TX	77024
6	Eight 20 Consulting (dba TeamZac)		Unsubmitted	Hudson Oaks	TX	76087
7	Marcum LLP		Viewed	West Palm Beach	FL	33401

RESOLUTION

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

THAT the City Manager be authorized to sign a Service Agreement (Solicitation 2024-0654R) for the auditing of City sales tax collections by and between the City of El Paso ("City") and Avenu Insights & Analytics, LLC ("Service Provider") for a contract term of three years from the date this Service Agreement is approved by the City Council, with an option to extend for two additional years. This award is a contingency-based contract, which shall not exceed 25% of the additional revenue to the City based on the Agency's documented findings.

In accordance with this award the City Manager or designee is authorized to exercise future options if needed. In addition, 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.

APPROVED this ___ day of _____ 2025.


CITY OF EL PASO:

Renard U. Johnson
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO CONTENT:




Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing Department



Edmundo S. Calderon, Chief Internal Auditor
Internal Audit Department

STATE OF TEXAS)
)
COUNTY OF EL PASO) **AGREEMENT FOR AUDIT OF SALES TAX COLLECTIONS
FOR INTERNAL AUDIT DEPARTMENT WITH AVENU
INSIGHTS & ANALYTICS, LLC**

This Agreement for Sales Tax Collections for the City of El Paso Internal Audit Department (the "Agreement") is entered into this ___ day of _____, 2025 ("*Effective Date*"), by and between the CITY OF EL PASO, a home rule municipal corporation of the State of Texas, (the "*City*") and AVENU INSIGHTS & ANALYTICS, LLC, a Virginia corporation, (the "*Service Provider*").

WHEREAS, the City solicited proposals for the services of sales tax collections audits for the City's Internal Audit Department through a request for qualifications ("*RFQ*") No. 2024-0654R Audit of Sales Tax Collections; and

WHEREAS, the Service Provider possesses the qualifications, certifications, credentials, experience, and expertise to perform said sales tax collections audit services for the City; and

WHEREAS, the City desires to engage the Service Provider to provide sales tax collections audit services for the Internal Audit Department according to the specification of the RFQ.

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. The effective date of this Agreement is as stated above and will remain in effect thereafter (36) months from the effective date. The term of this Agreement may be extended for one additional, two-year period at the mutual agreement of the parties under the same terms and conditions herein.

SECTION II. OTHER DOCUMENTS; CONFLICT. The following documents comprise this Agreement:

- A City's Request for Qualifications No. 2024-0654R ("*RFQ*").
- B Service Provider's Proposal ("*Proposal*").
- C Proposal Cost
- D This Supplemental Agreement including all Exhibits attached and incorporated to this Agreement.

The RFQ, and the Proposal are incorporated herein and made part of this Agreement for all purposes; provided, however, that in case of conflict in the language of the RFQ, the Proposal, and this Agreement, the terms and conditions of this Agreement shall control where they conflict with the RFQ and Proposal, and the terms and conditions of the RFQ shall control where they conflict with the Proposal.

SECTION III. SCOPE OF SERVICES. The Service Provider hereby agrees to perform the requested auditing services in accordance with the specifications of the City's RFQ, (attached and incorporated hereto as *Exhibit A*), the Proposal submitted by the Service Provider in response to the RFQ (attached and incorporated hereto as *Exhibit B*), and the Fee Proposal (attached and incorporated hereto as *Exhibit C*) pursuant to the terms and conditions set forth in the Contract Clauses of such RFQ and this Agreement. The scope of services identified within the RFQ and Proposal and clarified by this Agreement shall be referred to collectively as the "Services." All services shall be performed with reasonable care, skill, and diligence

as would be practiced by the accounting and auditing community within the County of El Paso, Texas.

The Service Provider perform an audit of State and City records to determine if: (i) All businesses operating within the City of El Paso are subject to City sales and use tax are in fact remitting to the Texas Comptroller of Public Accounts, (ii) All internet sales that are subject to local City of El Paso sales and use tax are in fact remitting to the Texas Comptroller of Public Accounts, (iii) The City of El Paso is being correctly allocated all City sales and use tax due each month from the Texas State Comptroller of Public Accounts, and (iv) Coordinate with the Office of the Texas Comptroller of Public Accounts to correct appropriate records in order to ensure that collection of any unrealized sales tax revenue to the City. To include performing the audit and examine records but also to be able to ensure correction of records, ensure collection of unrealized sales tax revenue, and provide recommendations for improvements.

The scope of work may change which the City will give notice in writing to the Service Provider of the changes of scope if applicable. The Service Provider and the City shall first agree in writing to the amendments to the scope of services before the amendment becomes part of this Agreement.

SECTION IV. NON-EXCLUSIVE AGREEMENT. This Agreement is non-exclusive. The City shall be entitled to enter into sale tax collection audit service agreements with other properly selected individuals or businesses that qualify to provide auditing services.

SECTION V. PRE-REQUISITE TO AGREEMENT. The Service Provider shall comply with applicable state and local licenses, certifications, and other qualification requirements as a prerequisite to entering into this Agreement. The Service Provider shall provide auditing services through a Texas State Board of Public Accountancy and licensed by the State of Texas.

SECTION VI. REPRESENTATIONS OF THE SERVICE PROVIDER. In addition to the prerequisite qualifications required prior to entering into this Agreement, the Service Provider also agrees to comply with the following requirements:

- A. It will comply with all applicable federal, state, and local government 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. The Service Provider, including each individual employed by the Service Provider and performing the services for the City, shall at all times during the performance of this Agreement maintain the licenses, certifications required by any applicable statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. The Service Provider warrants that it is duly authorized and licensed to perform its duties hereunder in the jurisdiction in which it will act. It further warrants that its employees shall maintain all required professional licenses during the term of this Agreement. If the Service Provider receives notice from a licensing authority of a suspension or revocation of a license of the Service Provider's employee(s), the Service Provider shall immediately remove such employee from performing any further services under this Agreement until such license is reinstated and in good standing and within 72 hours, notify the City of such actions. If the Service Provider fails to maintain such licenses or fails to remove any employee who performs services under this Agreement whose license has expired or been revoked or suspended, the City shall be entitled, at its sole discretion, to immediately terminate this Agreement upon written notice to the Service Provider.
- C. The City shall be informed of any changes to the Service Provider's personnel so that the City Manager may approve the qualifications of the different or additional Service Provider's personnel. Despite the City Manager's approval, the City shall in no event be obligated to any third party.

- D. The Service Provider shall not in any fashion discriminate in the performance of this Agreement against any person because of race, color, religion, national origin, sex, age, disability, political belief, sexual orientation or affiliation.

SECTION VII. INDEPENDENT SERVICE PROVIDER. Nothing herein shall be construed as creating a relationship of employer and employee between the parties hereto. The Service provider agrees to be responsible for its own acts and omissions and those of its subordinates and employees in the performance of any material services under this Agreement. The Service Provider is an independent Service Provider and nothing contained herein shall constitute or designate the Service Provider or any of his employees as employees of the City. Neither the Service Provider nor his employees shall be entitled to any of the benefits established for City employees, nor be covered by the City's Workers' Compensation Program.

SECTION VIII. COMPENSATION AND INVOICES. The City shall pay the Service Provider for each session of services at the rates set forth in the *Proposal Cost* attached hereto as *Exhibit C*. The Service Provider services shall be limited to those services delineated in the Section III of this Agreement. It is understood and agreed that the City shall not be liable for any costs that exceed the amount of this Agreement without the prior written approval of the City and compliance with applicable competitive bidding laws and City policies. Said approval must be obtained in writing prior to the Service Provider commencing the services that will result in the cost overrun.

The parties acknowledge and agree that the award of this Agreement is dependent upon the availability of funding. In the event that funds do not become available, the Agreement may be terminated, with a 30-day written notice to the Service Provider by the City. In such an event, the City shall incur no penalty or charge.

The Service Provider shall submit a monthly invoice to the Internal Audit Department for each month in which audit services are performed according to this Agreement. Invoices shall not be submitted more frequently than once per month. All invoices shall be made in writing and shall specify the number of sessions conducted by the type of services as provided in Section A of the RFQ. Invoices shall be delivered to the Chief Internal Auditor.

SECTION IX. [INTENTIONALLY DELETED]

SECTION X. INSPECTIONS AND AUDITS. The City reserves the right to inspect and audit the Service Provider's records. The Service Provider's records subject to review shall include but not be limited to records which, in the City's discretion, are connected with the Service Provider's work for the City and shall be open to inspection and subject to review and/or reproduction by the City's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of the Service Provider's compliance with Agreement requirements and to evaluate and verify all costs associated with services of this Agreement. The Service Provider agrees to provide the City with extracts of data files in computer readable format upon request by the City. Records review as described herein may require inspection and photocopying of selected documents from time to time at reasonable times and places. The Service Provider shall be required to keep such books and records available for such purposes for at least five (5) years after the 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 XI. REPORTS. The Service Provider shall provide monthly written report ("Utilization Reports") to the Police Chief of the services rendered pursuant to this Agreement. The Utilization Report shall provide an analysis of the progress of the program and recommendations. Oral reports detailing the progress of the Employee Assistance Program may be requested as the City deems reasonably necessary.

SECTION XII. INSURANCE REQUIREMENTS. With no intent to limit the Service Provider's liability or the indemnification provisions set forth hereinafter, the Service Provider 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. The

City shall be provided with certificates of insurance evidencing the required insurance prior to the Effective Date of this Agreement and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies.

A. INSURANCE.

1. Worker's Compensation. A third-party policy of Workers' Compensation insurance coverage providing Statutory Benefits according to the Workers Compensation Act of the State of Texas and/or any other state or federal law as may be applicable to the work and shall cover all of the persons engaged in the work.

2. Commercial Liability, Property Damage Liability and Vehicle Liability Insurance. The Service Provider shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Vehicle Liability Insurance as shall protect the Service Provider and the Service Provider's employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from services performed under this Agreement, whether such services be performed by the Service Provider or by anyone directly employed by the Service Provider. The minimum limits of liability and coverage shall be as follows:

a) **Commercial General Liability**

Personal Injury or Death

\$1,000,000 for each person

\$1,000,000 in the aggregate

Property Damage

\$1,000,000 for each occurrence

\$1,000,000 in the aggregate

b) **Vehicle Liability**

Combined Single Limit

\$1,000,000 per accident

B. ERRORS AND OMISSIONS LIABILITY INSURANCE. The Service Provider shall procure and maintain, at the Service Provider's sole expense, Professional Liability Insurance (Such as errors and omissions insurance) for the benefit of the City to cover the errors and omissions of the Service Provider, its principals or officers, agents or employees in the performance of this Agreement with a limit of \$1,000,000 on a claim made basis.

C. FORM OF POLICIES. The insurance required herein may be in one or more policies of insurance, the form of which must be approved by the City's Risk Manager.

D. 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.

E. INSURED PARTIES. Each policy, except those for Workers' Compensation and Employer's Liability, must name the City of El Paso (and their 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.

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. CANCELLATION. Each policy must expressly state that it may not be canceled or non-renewed unless sixty (60) days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Manager by the insurance company. The Service Provider shall also give written notice to the City's Purchasing Manager within fifteen (15) days of the date upon which total claims by any party against the Service Provider reduce the aggregate amount of coverage below the amounts required by this Agreement.

H. 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 Service Provider with the City's Purchasing Manager prior to beginning work under this Agreement, and thereafter before the beginning of each subsequent 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: Managing Director
300 N. Campbell El
Paso, TX 79901

Notwithstanding the termination notice provisions in this Agreement, the failure of the Service Provider to provide the City's Purchasing Manager 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 Service Provider entitling the City, upon three (3) days written notice to the Service Provider 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 Service Provider, throughout the term of this Agreement, continuously and without interruption, maintain in force the required insurance coverage set forth above. Failure of the Service Provider to comply with this requirement shall constitute a default of the Service Provider allowing the City, at its option, to terminate this Agreement as referenced above.

SECTION XIII. TERMINATION OF AGREEMENT. In addition to those termination provisions otherwise provided herein, 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. It is also understood and agreed that upon such notice of termination, the Service Provider shall cease all services under this Agreement. Upon such termination, the Service Provider shall provide a final invoice for all work completed prior to the City's notice of termination. The City shall compensate the Service Provider in accordance with this Agreement; however, the City may withhold any payment to the Service Provider for the purpose of set off until such time as the exact amount of damages due the City from the Service Provider is determined. Nothing contained herein, or elsewhere in this Agreement, shall require the City to pay for any work which is unsatisfactory, incomplete or not in compliance with the terms of this Agreement and its attachments.

B. TERMINATION FOR DEFAULT: It is further understood and agreed by the Service Provider and the City that either party may terminate this Agreement for cause. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of

the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate after thirty (30) consecutive calendar days, enumerating the failures for which the termination is being sought; b) a minimum of fifteen (15) consecutive calendar days to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination.

However, the City retains the right to immediately terminate this Agreement for default if the Service Provider fails to maintain its licenses, certifications and other standards required to be a qualified Service Provider pursuant and the laws of the State of Texas or violates any local, state or federal laws. In the event of termination by the City pursuant to this subsection, the City may withhold payments to the Service Provider for the purpose of set off until such time as the exact amount of damages due the City from the Service Provider is determined.

SECTION XIV. INDEMNIFICATION. Service Provider or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Service Provider every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Service Provider 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 Service Provider 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. Service Provider will pay all judgments finally establishing liability of the City in actions defended by Service Provider pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Service Provider, 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 Service Provider's property from any cause.

SECTION XV. GENERAL PROVISIONS.

A. TIME IS OF THE ESSENCE. The Service Provider understands and agrees that time is of the essence for all services and deliverables requested herein and that all tasks of this Agreement are to be completed as expeditiously as possible.

B. SUCCESSOR AND ASSIGNS. The Service Provider shall not assign or attempt to convey an interest in this Agreement without the prior written consent of the City. This Agreement shall be terminable, at the discretion of the City, without notice to the Service Provider if the Service Provider shall attempt to assign without prior written consent.

C. VENUE. For purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

D. 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 requires, 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 Manager of the City of El Paso or her designee.

E. COMPLIANCE WITH LAW. The Service Provider shall comply with all Federal, State and local laws and ordinances applicable to the work contemplated herein.

F. NOTICE. Any notice, demand, request, consent or approval that either party may or is required to provide to the other party be in writing and either personally delivered or sent via certified mail, return receipt requested, postage prepaid, to the following addresses:

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

With Copy to: City of El Paso Internal Audit
P.O. Box 1890
El Paso, Texas 79950-1890

SERVICE PROVIDER: Avenu Insights & Analytics, LLC
Attn: Daniel Wurz
5860 Trinity Parkway, Suite 120
Centreville, VA 20120

Changes may be made to the names and addresses noted herein through timely written notice to the other party.

G. FORCE MAJEURE. The Service Provider shall not be responsible or liable for any loss, damages or delay caused by force majeure which is beyond the control of the parties to this Agreement, including but not limited to riot, insurrection, embargo, fire or explosion, the elements, acts of nature, epidemic, war, earthquake, flood or the official act of any government.

H. COMPLETE AGREEMENT. This Agreement constitutes and expresses the entire agreement between the parties hereto in reference to the services described in this Agreement for the City, and in reference to any of the matters or things herein provided for, or hereinbefore discussed or mentioned in reference to such services, all promises, representations and understanding relative thereto herein being merged.

(Signatures Begin on Following Page)

IN WITNESS WHEREOF the parties hereto have executed this Agreement at El Paso, Texas effective as of the first date appearing heretofore.

CITY OF EL PASO:

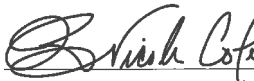
Dionne Mack
City Manager

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Nicole Cote, Managing Director
Purchasing & Strategic Sourcing Department



Edmundo Calderon, Chief Internal Auditor
Internal Audit Department

THE STATE OF TEXAS

§
§
§

COUNTY OF EL PASO

ACKNOWLEDGEMENT

This instrument was acknowledged before me on this _____ day of _____, 2025,
by **Dionne Mack**, as **City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas

My commission expires:

(Signatures Continue on Following Page)

SERVICE PROVIDER:
Avenu Insights & Analytics, LLC a Virginia corporation

By: [Signature]
Printed Name: Paul Colangelo
Title: CEO

Commonwealth of Virginia
~~THE STATE OF TEXAS~~
Fairfax
~~COUNTY OF EL PASO~~

ACKNOWLEDGEMENT

This instrument was acknowledged before me on this 30th day of December, 2024
by Paul Colangelo, as CEO (title) of the Avenu Insights & Analytics, LLC a Virginia corporation.

[Signature]
Notary Public, State of Texas
Commonwealth of Virginia

My commission expires:
August 31, 2028

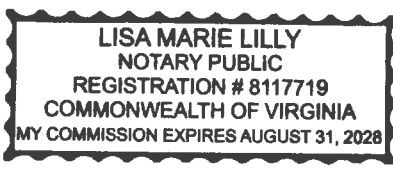


EXHIBIT A

RFQ NO. 2024-0654R

AUDIT OF SALES TAX COLLECTIONS



2024-0654R Addendum 1

Audit of Sales Tax Collections

Issue Date: 8/20/2024

Questions Deadline: 9/4/2024 05:00 PM (MT)

Response Deadline: 9/18/2024 02:00 PM (MT)

Contact Information

Contact: Paula Salas

Address: Purchasing & Strategic Sourcing

City 1

300 N. Campbell St.

El Paso, TX 79901

Phone: 1 (915) 262-9901

Email: SalasPX@elpasotexas.gov

Event Information

Number: 2024-0654R Addendum 1
 Title: Audit of Sales Tax Collections
 Type: Request for Qualifications
 Issue Date: 8/20/2024
 Question Deadline: 9/4/2024 05:00 PM (MT)
 Response Deadline: 9/18/2024 02:00 PM (MT)
 Notes:

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.

Event	Date and/or Time
Release	08/20/2024
Non-Mandatory Pre-Proposal Conference (Recommended to attend)	<p>On Wednesday August 28, 2024 @ 11:00 A.M.(MST)</p> <p>Location: Microsoft Teams Conference Call</p> <p>Click here to join the meeting</p> <p>Meeting ID: 241 946 216 548</p> <p>Passcode: 3zuAWq</p> <p>Download Teams Join on the web</p> <p>Or call In (audio only)</p> <p>Call Number: (915) 213-4096</p> <p>Conference ID: 586 188 046#</p>
Question Deadline	09/04/2024
Answers Provided	09/11/2024
Bid Due Date	09/18/2024 @ 2:00 P.M.

Bid Opening and Reading	09/18/2024 @ 2:30 P.M. The City of El Paso, Texas will be broadcasting Bid Openings Live at https://www.elpasotexas.gov/purchasing/
Evaluation	October 2024
Contract Award Date (approx.)	December 2024

Mail To or Hand Deliver To:

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

Ship To Information

Contact: Miguel A. Montiel
Address: Internal Audit
City 2
218 N Campbell St.
El Paso, TX 79901
Phone: 1 (915) 212-1367
Email: MontielMA@elpasotexas.gov

Billing Information

Contact: Miguel A. Montiel
Address: Internal Audit
City 2
218 N Campbell St.
El Paso, TX 79901
Phone: 1 (915) 212-1367
Email: MontielMA@elpasotexas.gov

Bid Attachments

Factor B - Experience - Comparable Contract Form #1.pdf

[Download](#)

Download PDF file, Open File, fill out required fields, save to your computer and upload to the "Response Attachments" tab

Factor B - Experience - Comparable Contract Form #2.pdf

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Factor B - Experience - Comparable Contract Form #3.pdf

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Factor B - Experience - Comparable Contract Form #4.pdf

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Factor B - Experience - Comparable Contract Form #5.pdf

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Form 1295 Instructions and Example.pdf

[Download](#)

Download PDF file, open file, follow instructions, file Form 1295 online, submit the filed form signed and upload to the "Response Attachments" tab

Amendment Acknowledgement (For Paper Bids Only).pdf

[Download](#)

Download, complete, print and submit with paper bid

Certification Regarding Boycotting of Energy Company.pdf

[Download](#)

Download PDF file, Open File, fill out required fields, save to your computer and upload to the "Response Attachments" tab

Certification Regarding Discrimination Against Firearm & Ammunition Industries.pdf

[Download](#)

Download PDF file, Open File, fill out required fields, save to your computer and upload to the "Response Attachments" tab

Certification Regarding Terrorist Organizations & Boycotting of Israel.pdf

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CIQ Form.pdf

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Download PDF file, Open File, fill out required fields, save to your computer and upload to the "Response Attachments" tab

Indebtedness Affidavit.pdf

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Download PDF file, Open File, fill out required fields, save to your computer and upload to the "Response Attachments" tab

Non Collusion and Business Disclosure Affidavit.pdf

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Subcontractors Form.pdf

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W-9.pdf

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2024-0645R A001.pdf

[Download](#)

[Download and Review Amendment A001](#)

Requested Attachments

Upload Factor A - General Overview of Agency and Services

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor B - Experience – Comparable Contract - Form #1

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor B - Experience – Comparable Contract - Form #2

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor B - Experience – Comparable Contract - Form #3

(Attachment required)

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Upload Factor B - Experience – Comparable Contract - Form #4

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor B - Experience – Comparable Contract - Form #5

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor D - Capacity and Capability of Agency's Resources

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor E - Number of Hours Dedicated to Engagement

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

CIQ Form - Upload Completed Document

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Certification Regarding Boycotting of Energy Company - Upload Completed Document

(Attachment required)

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Certification Regarding Discrimination Against Firearm & Ammunition Industries - Upload Completed Document

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Certification Regarding Terrorist Organizations & Boycotting of Israel - Upload Completed Document

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Completed Form 1295 - Upload Completed Document

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Disclosures - Upload Completed Document

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Financial Responsibility Document - Upload Completed Document

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Indebtedness Affidavit - Upload Completed Document

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Non-Collusion and Business Disclosure Affidavit - Upload Completed Document

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Disclosure of Campaign Contributions and Donations

(Attachment required)

I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.

W-9 - Upload Completed Document

(Attachment required)

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Bid Attributes

1	City of El Paso Mission, Vision and Values <u>MISSION</u> Deliver exceptional services to support a high quality of life and place for our community <u>VISION</u> Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government <u>VALUES</u> Integrity Respect Excellence Accountability People
2	Organizational Profile The City of El Paso was incorporated in 1873, and spans over 255 square miles. Located at the confluence of two countries, the United States and Mexico; and three states, Texas, Chihuahua and New Mexico, the City of El Paso serves just under 700,000 residents. The City of El Paso is the 22nd largest city in the United States and the 6th largest city in Texas. As part of the largest binational metroplex in the Western Hemisphere, the City of El Paso serves as the epicenter to a global, cultural and economic population of 2.5 million people. Among the fastest growing metropolitan areas in the nation, the City engages in systemic processes, empowering effective planning and increasing efficiency in order to be ready to respond to emerging changes. The City of El Paso has faced three unprecedented events that have required action, resolve and resilience. El Paso Strong is the mantra that expresses the community's shared focus to mobilize and take care of one another when facing: the humanitarian crisis created by the surge of asylum seekers crossing the border from Mexico into the US; the aftermath of the August 3, 2019, mass shooting tragedy; and the continuing response and recovery needs required during the ongoing COVID-19 pandemic. The City's organizational culture embodies the relentless spirit of the El Paso Strong mantra through a proactive commitment to providing a supportive workforce environment, empowering the organization to take care of the community through continuous improvement of service delivery, supporting a high quality of life and place for the community.
3	Strategic Goal 6: Set the Standard for Sound Governance and Fiscal Management Strategic Plan Subsection 6.8: Support transparent and inclusive government

4 Expiration Notice

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

I confirm that I have read, understand and agree
(Required: Check if applicable)

5 Solicitation Purpose

The City of El Paso is soliciting Proposals for Audit of Sales Tax Collections, primarily for the Internal Audit Department. The City shall order all of its services from one successful offeror from time to time as needed. Only personnel from Internal Audit Department are authorized to directly place orders against this Contract. Personnel from other City departments may only utilize this contract with express written authorization from Internal Audit Department and only if the additional usage is within reasonableness given the total awarded amount of the Contract.

6 Public Disclosure of Proposal Information

Offerors are cautioned that once a proposal 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 offeror does not apply after the procurement process 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" at the top right corner using minimum of 14+ font size and the basis of your claim of confidentiality has to be stated. Data so identified will be maintained as a protected record. Offerors who claim that information contained in a proposal 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.6/26/2023]

IMPORTANT NOTICE

Note: Any changes in due date or material changes for any solicitation will be posted on <https://elpasotexas.ionwave.net/CurrentSourcingEvents.aspx>

It is the offeror's responsibility to ensure that they have all pertinent information regarding solicitations, including all amendments prior to submitting their proposal. For paper submissions, please refer to Ionwave system <https://elpasotexas.ionwave.net/Login.aspx> to ensure you have viewed and received all amendments prior to submitting your formal proposal.

Recommendation(s) for formal awards shall be posted on the City's website the Thursday afternoons prior to the Tuesday City Council and/or Mass Transit meetings wherein the recommendation shall be presented. Offerors are responsible for monitoring the City's website for postings and awards.

I confirm that I have read, understand and agree
(Required: Check if applicable)

7 Title 2, Chapter 2.92, Section 2.92.080 Disclosure of Campaign Contributions and Donations

Individuals or entities benefiting by a City Council Agenda item must disclose contributions or donations made to current members of Council under the City's Ethics Code. The information on this form is being captured for transparency purposes and will be noted on the relevant City Council Agenda. **Contributions and Donations do NOT disqualify an applicant from doing business with the City.**

[Click here to view Ordinance No. 019581](#)

[Click here to download the Disclosure of Campaign Contributions and Donations form](#)

Complete and upload to "Response Attachments" tab

I have read, downloaded and completed form
(Required: Check if applicable)

8 Wage Theft

The City of El Paso Code – Chapter 3.46

3.46.010 Definition

1. Wage Theft Adjudication occurs when:

- (1) Employer is criminally convicted as an employer pursuant to Section 61.019 of the Texas Labor Code for failure to pay wages; or
- (2) Injunctive relief is granted in district court under Section 61.020 of the Texas Labor Code against the employer for repeated failures to pay wages as required by Chapter 61 of the Texas Labor Code; or
- (3) A wage payment determination order becomes final under Section 61.055 or Section 61.060 of the Texas Labor Code; or
- (4) The Texas Workforce Commission assesses an administrative penalty under Section 61.053 of the Texas Labor Code against the employer for acting in bad faith in not paying wages as required by Chapter 61 of the Texas Labor Code; or
- (5) Employer is convicted for Theft of Service under Section 31.04 of the Texas Penal Code; or
- (6) Court of competent jurisdiction finds that an employer engaged in wage theft.

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

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

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

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

Section 3.46.020 Wage Theft Coordinator

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

B. Duties. The Wage Theft Coordinator shall:

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

Section 3.46.030 Wage Theft Adjudication Database

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

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

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

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

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

Section 3.46.040 Wage Theft Complaints Procedure

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

B. City Contracts.

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

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

3. Texas Workforce Commissions.

(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 bid or proposal for City work prior to the award of a contract, the City shall deem the Employer non-responsible and refuse to enter into a City Agreement with such Employer for a period of five (5) years after the date of final adjudication.

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

9 Cooperative Purchasing

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

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

10 Cost Preparation

This solicitation does not commit the City of El Paso to pay any costs incurred in preparing and submitting a proposal or to contract for the services specified. This solicitation 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.

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Cone of Silence

Cone of Silence/Anti Lobbying Policy

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

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

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

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

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

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

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

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

1
2

Requests for Clarifications

In order to meet the City's schedule for awarding this requirement it is extremely important that requests for clarification or additional information, or requests for a change in the specifications, be submitted in the online bidding system no later than the date indicated in the Schedule of Events for this solicitation. Questions submitted after this date may not elicit a response.

Offerors shall promptly notify the Purchasing & Strategic Sourcing Department of any ambiguity or inconsistency which they may discover upon examination of a solicitation document. During the proposal process, offeror shall not contact any City staff except those designated in this solicitation or in subsequent documentation. Non-compliance with this provision may result in rejection of the bid involved.

1
3 **Contract Term and Contract Officer Information**

Initial Term

The successful Offeror(s) shall complete all work hereunder within the terms of the contract. The initial contract period shall be for three (3) years starting as indicated in Award Letter.

Option Terms

The City of El Paso shall have the option to extend the term of the Contract for up to one (1) additional term of two (2) years. 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.

1
4 **Scope of Work and Minimum Requirements**

Background Information

The City of El Paso imposes a one percent (1%) local sales tax on all retail sales, leases and rentals of most goods, as well as taxable services. Each month, the Texas Comptroller of Public Accounts allocates sales tax receipts entitled to the City of El Paso and sends a payment to the City for its share of local sales tax collected.

Solicitation Purpose

The City of El Paso, Texas, hereinafter referred to as "the City", is soliciting proposals for Audit of City Sales Tax Collections. It is the City's desire to contract with a firm to perform an audit of State and City records to determine if: (i) All businesses operating within the City of El Paso are subject to City sales and use tax are in fact remitting to the Texas Comptroller of Public Accounts, (ii) All internet sales that are subject to local City of El Paso sales and use tax are in fact remitting to the Texas Comptroller of Public Accounts, (iii) The City of El Paso is being correctly allocated all City sales and use tax due each month from the Texas State Comptroller of Public Accounts, and (iv) Coordinate with the Office of the Texas Comptroller of Public Accounts to correct appropriate records in order to ensure that collection of any unrealized sales tax revenue to the City. The Offeror submitting the successful proposal must clearly demonstrate its ability to not only perform the audit and examine the records but also to be able to ensure correction of records, ensure collection of unrealized sales tax revenue, and provide recommendations for improvements.

Scope of Work

The City of El Paso is soliciting proposals from qualified firms to perform an audit of city sales tax collections. Proposals from qualified sales tax audit firms must describe in detail the methodology, strategies, and timelines to be included in the audit plan for examining records in order to determine unrealized sales tax revenue is due to the City of El Paso.

A. Analysis & Compliance Review Services

- Determine if all businesses operating within the City of El Paso that are subject to city sales and use tax are in fact remitting to the Texas Comptroller of Public Accounts.
- Determine if all internet sales that are subject to local City of El Paso sales and use tax are in fact remitting to the Texas Comptroller of Public Accounts.
- Determine if the City of El Paso is being correctly allocated and paid all city sales and use tax due from the Texas State Comptroller of Public Accounts, and identify, document, and correct any business entity operating within the City limits of El Paso from which the City is not being allocated its share of city sales and use tax receipts by the Texas Comptroller.
- Identify, document, and correct misclassification of revenue subject to sales tax reported by any business entity operating within the City limits of El Paso resulting in the City not being allocated its share of city sales and use tax receipts by the Texas Comptroller.

- Identify, document, and correct any city sales and use tax reporting omissions and or errors.
- On behalf of the City, coordinate with the Office of the Texas Comptroller of Public Accounts to correct appropriate records in order to ensure collection of any unrealized sales tax revenue due to the City.

B. Comprehensive Reporting

- Review and recommendation reporting
- Audit finding reporting by firm
- Annual trends and revenue analysis reporting
- Reporting of other relevant information with regard to ordinance compliance and related matters.
- Provide written reports on a monthly basis on the findings and results of the ongoing examination.

C. Reports to be issued

- **Following the completion of the agreed upon procedures, the agency will issue a report addressed to the City Office of the Chief Internal Auditor as required by the agency's professional standards. All records are subject to public record.**

D. Working Paper Access

- A copy of any or all working papers will be provided to the City of El Paso, Texas – Office of the Chief Internal Auditor upon request. Any requests from outside parties will be routed through the City of El Paso-Office of the Chief Internal Auditor and working papers may not be disclosed unless approved by the City of El Paso- Office of the Chief Internal Auditor. In addition, the agency shall be in compliance with current auditing standards, respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance. Depending on circumstance, a copy of any or all working papers may also be routed through the City Attorney's Office.
- In addition to the previous information described, the selected agency shall consider the following, based on their assessment, to further satisfy the requirements of the Services Overview and needs of the Office of the Chief Internal Auditor. In general, the selected agency shall submit to the City a brief description of the agency, how it is organized, and how its resources will be utilized on behalf of the City. Additionally, the overview should include how the agency will approach the aforementioned services that the agency may provide as the agency of the City.

Minimum Requirements

- Relevant experience of the agency, especially when working with government and city sales tax, which demonstrates experience, responsiveness, a high level of customer service, documented results in tax compliance review and recovery services and the individuals assigned to the engagement;
- Provide verifiable examples by listing a maximum of five (5) projects for which sales tax compliance review and recovery services were provided or are being provided that are most relevant to this project and include as references the names and telephone numbers of client officials responsible for the projects listed;
- Provide an actual recovery amount for each client site to include the year(s) services were performed;
- Identification of the individual in charge of day-to-day management and the percentage of time committed for each individual on the engagement;
- The agency's overall audit approach to the engagement, including the use of any outside entities upon whose work will be relied upon to complete the engagement;
- The percentage, if any, of the use of any outside entities upon whose work will be relied upon to complete the engagement;
- The availability of sources of information to assist the City in determining specific accounting and reporting issues that may arise during the engagement;
- The level and types of insurance carried, including the deductible amount, to cover errors and omissions, improper judgments, or negligence; and
- Disclosure of any issues that could present a real or perceived conflict of interest, as well as any pending investigation of the agency or enforcement or disciplinary actions taken within the past three years by any regulatory bodies.

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Exceptions to Scope of Work

(Optional: Maximum 1000 characters allowed)

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Payment Terms and Conditions

NOTE: All vendors must accept an ACH payment effective immediately. If awarded a contract or order, an approved account is needed to complete contract execution and process future payments. A secure link to our PaymentWorks system will be provided to the point of contract in the bid submission.

Advance Payments

All contract payments shall be made in accordance with the Contract's invoice payment terms. The City of El Paso will make no advance payments for the goods and/or services that are subject of this bid unless otherwise noted in the Form of Contract. Invoices may be submitted on no more than a monthly basis. Invoices submitted for services rendered shall be forwarded to the address indicated on the "Bill to Information" located on the "Event Details" tab .

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 electronic funds are transferred.

Federal Excise Tax

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

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

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Evaluation Information

The City will award the contract to the offeror that submits a proposal which represents the "best value" to the City. The best value shall not be based solely upon price but the bid which receives the highest cumulative score for each of the evaluation factors delineated herein. The City considers 70 as a passing score. Scores below a 70 will not be considered for award.

The award shall be based upon the evaluation criteria and process delineated herein.

- a. Evaluation Committee: All properly submitted proposals will be reviewed by an Evaluation Committee.
- b. Weighted Evaluation Criteria: The following weighted criteria will be considered to determine which proposal offers the "best value" to the City.
- c. Offeror must fill out the appropriate forms delineated within the solicitation.

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 in the Evaluation Factors Attribute.

Evaluation and Award Process

1. An Evaluation Committee shall be established to evaluate proposals based solely on the Evaluation Factors included in this solicitation . Factors not specified in the solicitation will not be considered. The City reserves the right to waive any minor irregularities or technicalities in the offers received. Proposals will be evaluated on an individual basis against the requirements stated in the solicitation.
2. All proposals are subject to the terms and conditions of this solicitation. Material exceptions to scope of work or specification or failure to meet the City's minimum specifications, shall render the offer non-responsive to the solicitation.
3. 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 solicitation will result in disqualification? of an offeror's proposal.
4. 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 solicitation will involve a determination of the most favorable combination of various elements contained in this solicitation.
5. 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.
6. 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.
7. At the completion of the evaluation period, the City will enter into negotiations with the highest ranked offeror. 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 that appear to be unreasonably low may be determined to be evidence that pricing is not fair and reasonable and cause the proposal to be rejected and/or if the City cannot come to an agreement with that offeror it will formally end negotiations with that offeror and begin negotiations with the next highest ranked offeror.
8. 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 offeror.
9. Proposals to this solicitation that are considered non-responsive will not receive consideration and will not be evaluated. 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 offeror 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.
10. The successful Offeror's proposal to this solicitation 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 solicitation, unless clearly and specifically noted in the proposal and confirmed in the contract between the City and the Offeror selected.
11. The City reserves the right to award this contract to one Offeror or to make multiple awards. The City may reject any or all proposals 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.

Evaluation Factors

The evaluation process is designed to award the contract to the most qualified offeror based upon the evaluation factors specifically established for this solicitation. **Offerors must provide all information outlined in the Evaluation Factors to be considered responsive.** Proposal will be evaluated based on the responsiveness of the offeror's information to the Evaluation Factors which will demonstrate the offerors understanding of the Evaluation Factors and capacity to perform the required services of this solicitation. Proposals considered non-responsive will not be evaluated.

EVALUATION FACTORS	MAXIMUM POINTS
A. General Overview of Agency and Services	30 Points
B. Experience – Comparable Contracts	25 Points
C. References	10 Points

D. Capacity and Capability of Agency's Resources	25 Points
E. Number of Hours Dedicated to Engagement	10 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 offers on the basis of all the factors included in this solicitation.

Factor A – General Overview of Agency and Services30 Points

Offeror must specify in detail the terms the agency's understanding of the services to be provided and the approach as presented in this RFQ.

Factor B – Experience – Comparable Contracts25 Points

Offeror to provide five (5) contracts comparable in scope within the past five (5) years and to have performed at least for one year within the referenced contracts prior to bid opening. Contract will be considered comparable in scope if they include the following elements: Audit of City Sales Tax Collections and must clearly demonstrate its ability to not only perform the audit and examine the records but also to be able to ensure correction of records, ensure collection of unrealized sales tax revenue, and provide recommendations for improvements.

Offeror is required to use the Experience – Comparable Contract Form for this factor. See Attachment Downloads Tab. 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 5 (i.e. 25 total points ÷ 5 = 5 points per contract).

Factor C – References10 Points

Offeror shall provide references for five (5) contracts listed for Factor B.

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 5 (i.e. 10 total points ÷ 5 = 2 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 D – Capacity and Capability of Agency’s Resources.....25 Points

The offeror must specify in detail the capacity and capability to perform auditing services and deliverables utilizing its qualified resources. These resources should include core staff assigned to engagement. Resumes should reflect demonstrated references and history of performance for position assigned to the City of El Paso.

Factor E – Number of Hours Dedicated to Engagement.....10 Points

The offeror shall specify the agency’s organization and how the organization anticipates to identify in detail the best methodology to meet the specifications and to include the hours dedicated to perform auditing services as noted within this RFQ.

- 200 - 300 hours (15 Points)
- 199 – 100 hours (10 Points)
- Less than 100 hours (0 points)

MAXIMUM TOTAL POSSIBLE POINTS.....100 Points

Responsibility Determination

Offeror will be deemed non-responsible if financial information is not submitted with the proposal. The financial information referenced in section A is required at the time of submission.

The responsibility determination includes consideration of a Offeror'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 offer.

A. Financial Capacity Determination –

Financial Information

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

- (1) Consolidated financial statements as submitted to the Securities and Exchange Commission (SEC) on Form 10K.
- (2) Any Form 8K's filed subsequent to last Form 10K or
- (3) A letter of credit directly from the offeror's financial institution equal to the value of the project.

If a **privately** held organization:

- (1) Balance sheet for your last two fiscal years accompanied by audit reports by an independent Certified Public Accountant.
- (2) Statement of income of your last two fiscal years accompanied by audit reports by an independent Certified Public Accountant or
- (3) A letter of credit directly from the offeror's financial institution equal to the value of the project.

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 solicitation.

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

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

I have uploaded my financial documents

(Required: Check if applicable)

2
1 **Disclosures**

Offeror to disclose and describe any prior or pending litigation, acquisitions/mergers, 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 for those applicable items.

I have uploaded my disclosures
(Required: Check if applicable)

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2 **Contract Clauses**

Contract Clauses (Terms & Conditions)

1. TERM OF CONTRACT

Under which the City shall order all of its supplies and/or services described in specifications 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 or until 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.

2. INVOICES & PAYMENTS

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

3. CONTRACTUAL RELATIONSHIP

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

4. INDEMNIFICATION [Rev. 04-15-99] [Rev. 01-04-04] [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] [1/10/2020]

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.

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.

[section continued]

Contract Clauses

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 contract, 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

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

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:

Miguel Montiel, CIA, CGAP
Audit Manager
Telephone: (915) 212-1267
Email: MontielMA@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, Lead Procurement and Contract Analyst

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.

29. RIGHT OF INSPECTION

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

30. NO REPLACEMENT OF DEFECTIVE TENDER

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

31. PLACE OF DELIVERY

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

32. WARRANTY-PRODUCT

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

33. SAFETY WARRANTY

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

34. NO WARRANTY BY THE CITY AGAINST INFRINGEMENTS

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

like, the Contractor will save the City harmless (if the Contractor in good faith ascertains that production of goods according to the specifications will result in infringement or the like, this contract will be null and void except that the City will pay the Contractor the reasonable cost of his search as to infringements).

35. TERRORIST ORGANIZATIONS & BOYCOTTING OF ISRAEL [Rev. 4-30-18] [Rev. 10-14-18]

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.

36. 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.

37. 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.

[end of section]

2 4 Instructions to Offerors Submitting Paper Proposals

To download solicitation, click the "Documents" icon located next to "Response History" icon.

1. SIGNATURE OF PROPOSAL BY PERSON AUTHORIZED TO SIGN

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

2. REQUIRED NUMBER OF COPIES

Proposals must be submitted in original form with one additional copy.

3. PROPOSAL SUBMISSION INSTRUCTIONS

Proposal must be sealed when presented to the Purchasing & Strategic Sourcing Department. See event details for submission deadlines. Proposals will be publicly opened and read aloud (Offeror's Name, City and State). The City does not provide envelopes or any other office supply for the purpose of submitting Proposals

4. ADDRESSING INSTRUCTIONS

The envelope containing the proposal must be addressed as follows:

City of El Paso

Purchasing & Strategic Sourcing Department

300 N. Campbell, 1st Floor

El Paso, Texas 79901-1153

Attn: Purchasing Director

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

5. LABELING OF PROPOSALS [Rev 6/15/05]

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

6. 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 must be addressed to the Purchasing Director directly to the Purchasing & Strategic Sourcing Department.

U.S. Postal Service deliveries, including Express Mail, are only delivered to the Mail Room at City 2 and may or may not be delivered by the Mail Room to the Purchasing & Strategic Sourcing Department by the time and place proposals are opened. The offeror accepts all responsibility for delivering its proposal to the address stated above within the specified time or the proposal will be considered non-responsive and will be mailed back unopened. If the envelope does not reflect a return address, it will be opened for the sole purpose of obtaining the return address.

7. ADDITIONAL INFORMATION

Descriptive literature, where applicable, containing complete specifications or other information sufficient for the City to determine compliance with the specifications must accompany each proposal. Related data, where applicable, will be made part of the proposal. All documents, literature and related data submitted as part of the proposal become the property of the City of El Paso.

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.

8. ALTERNATE PROPOSALS

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

9. ACKNOWLEDGMENT OF SOLICITATION AMENDMENTS

All amendments must be acknowledged on the Amendment Acknowledgement Form. Failure to do so may cause the proposal to be rejected. It is the Offeror's responsibility to ensure that their response to a solicitation is incorporating all amendments into said proposal. Amendments may be posted at any time up to and including the due date.

10. PROPOSAL FORMAT AND STRUCTURE

All proposals 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 all evaluation factors described within this solicitation.
4. Major sections must have page breaks between them.
5. The proposal must be signed and titled by a duly authorized representative of the Offeror.
6. Introduction Page – include the following information:
 - a. 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 the solicitation.
 - b. Clearly label with the solicitation number, title, Offeror’s name, mailing address, and fax number, and the name, telephone number, and email address of a contact person.
 - c. 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.
7. The City will not be responsible for locating or securing information not included with proposal. 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.
8. Response to all factors must demonstrate the offeror’s comprehension of the objectives and services being procured. Do not merely duplicate the Scope of Work as presented within this Solicitation

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Notice to Offerors

1. 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 is determined to be the most favorable 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.

2. TIME

[Reserved]

3. TIME AND PLACE OF OPENING

Proposals will be opened and read in City Hall, at 2:30 P.M.(MST) on opening day. However, you are cautioned that proposals must be received in the Purchasing & Strategic Sourcing Department no later than 2:00 PM (MST).

4. RECIPROCAL PREFERENCE

Domestic Preferences

The City reserves the right to grant a preference to cooperative agreement programs, City contracts and Purchase Orders that are funded through federal awards and grants:

(a) As appropriate and to the extent consistent with law, the City may, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel,

cement, and other manufactured products).

(b) For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

State Reciprocal Preference

The City reserves the right to grant an offeror with its principal place of business in the State of Texas (Resident Offeror) a preference on a contract against the proposal of any offeror from another state which enforce or has a preference for its resident offeror. The amount of the preference to the resident offeror shall be equal to the preference in the other state. Regarding contracts involving federal funds, the City shall utilize said reciprocal preference unless expressly prohibited by the Grantor.

Municipality Reciprocal Preference

The City reserves the right to grant a offeror with its principal place of business within the City limits of El Paso, Texas (Local Offeror) a preference on a contract against the proposal of any offeror from another City within the State of Texas which enforce or has a preference for its local offerors. The amount of the preference to the local offeror shall be equal to the preference in the other City. Regarding contracts involving federal funds, the City shall utilize said reciprocal preference unless expressly prohibited by the Grantor.

5. EVALUATION RESULTS

Any questions concerning evaluation results should be directed to the Purchasing & Strategic Sourcing Representative.

6. REQUEST FOR QUALIFICATIONS TABULATIONS

The Request for Qualification tabulation will be available at <https://elpasotexaspurchasingtest.ionwave.net/CurrentSourcingEvents.aspx>.

No results will be given over the phone.

7. DEBRIEFING REQUESTS

A written request for a debriefing should be directed to the Purchasing & Strategic Sourcing Representative identified in this solicitation within five (5) days after the date of award. Debriefing requests will be scheduled with the designated City staff and Purchasing & Strategic Sourcing Representative.

8. PROTEST/DISPUTE PROCEDURE

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

Failure to follow the requirements of the Protest procedures established by the City of El Paso, Texas, shall constitute a waiver of all protest rights.

Protest must be made after the City Council agenda has been posted and by 5:00 p.m. the day before the City Council meeting in which the award will be made. The offeror must write a letter to the Purchasing Director using the phrase "Bid Protest" to City Hall – 300 N. Campbell, El Paso, TX 79901 – attention to the Purchasing & Strategic Sourcing Department. Protest must be sent by certified or registered mail or delivered in person. Note: the recommendation for award is posted on the City's website at least 72 hours before each Tuesdays Council meeting.

The written protest should include 1) the bid number and should clearly state, with particularity, the relevant facts believed to constitute an error in the award recommendation, or desired remedy; 2) a specific identification of the statutory or regulatory provision that the Protesting 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 Bidder has identified pursuant to item (2)

of this paragraph (mere disagreement with the decisions of City employees does not constitute grounds for protest). If there is no disputed issue of the material fact, the Protest must indicate this as well.

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Title VI requirement

Title VI Contract Provisions

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

NOTE TO CONTRACTORS:

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

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

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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.

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Form FHWA-1273

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. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels: 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, United States Code, as required in 23 CFR 633.102(b) (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). 23 CFR 633.102(e).

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. 23 CFR 633.102(e).

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) in accordance with 23 CFR 633.102. 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 solicitation-for-bids or request-for-proposals 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). 23 CFR 633.102(b).

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. 23 CFR 633.102(d).

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. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A 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 Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 230, Subpart A, 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 (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 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 Part 35 and 29 CFR Part 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. 23 CFR 230.409 (g)(4) & (5).

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, sexual orientation, gender identity, 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 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 or other knowledgeable company official.

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, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure 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. 23 CFR

230.409. 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 thereunder. 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, sexual orientation, gender identity, 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, 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. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient 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 recipient deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non- responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

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 more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, 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, sexual orientation, gender identity, 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), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101.

Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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 (29 CFR 5.5)

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, 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 Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(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.

[section continued]

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2. Withholding (29 CFR 5.5)

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 (29 CFR 5.5)

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. 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 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), 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 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 18 U.S.C. 1001 and 31 U.S.C. 231.

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 (29 CFR 5.5)

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. 23 CFR 230.111(e)(2). 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 as provided in 29 CFR 5.5.

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 as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, 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 (29 CFR 5.5)

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), 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. 29 CFR 5.5.

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 currently provided in 29 CFR 5.5(b)(2)* 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. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

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. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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" in paragraph 1 of Section VI 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: (based on longstanding interpretation)

- (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. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), 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. Pursuant to 23 CFR 635.116(c), 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. (based on long- standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

[section continued]

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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 Part 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. 23 CFR 635.108.

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 Part 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). 29 CFR 1926.10.

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 Part 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 11, 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 (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

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. 2 CFR 180.220 and 1200.220.

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. 2 CFR 180.320.

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. 2 CFR 180.325.

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. 2 CFR 180.345 and 180.350.

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, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 180.330.

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. 2 CFR 180.220 and 180.300.

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. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. 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 System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

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 CFR 180.325.

* * * * *

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 CFR 180.335;

(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, 2 CFR 180.800;

(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, 2 CFR 180.700 and 180.800; 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. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. 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). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant 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. 2 CFR 180.365.

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, Subpart I, 180.900 – 180.1020, 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 recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 1200.220 and 1200.332.

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. 2 CFR 180.220 and 1200.220.

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 System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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. 2 CFR 180.325.

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:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should 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 Part 20, App. A.

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

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

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

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

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

ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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

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

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

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract,

provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

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

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

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

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

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

[end of section]

3
1

Amendment A001

DESCRIPTION OF AMENDMENT

-
A. Responses to Bidders questions are on the following page(s).

Except as provided herein, all terms and conditions of the documents, as heretofore changed, remain unchanged and in full force and effect.

I confirm that I have read, understand and agree

(Required: Check if applicable)

Supplier Information

Company Name: _____

Contact Name: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Supplier Notes

By submitting your response, you certify that you are authorized to represent and bind your company.

Print Name

Signature

EXHIBIT B
AVENU INSIGHTS & ANALYTICS, LLC
PROPOSAL



2024-0654R Addendum 1 Avenu Insights & Analytics, LLC Supplier Response

Event Information

Number: 2024-0654R Addendum 1
 Title: Audit of Sales Tax Collections
 Type: Request for Qualifications
 Issue Date: 8/20/2024
 Deadline: 9/18/2024 02:00 PM (MT)
 Notes:

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.

Event	Date and/or Time
Release	08/20/2024
Non-Mandatory Pre-Proposal Conference (Recommended to attend)	<p>On Wednesday August 28, 2024 @ 11:00 A.M.(MST) Location: Microsoft Teams Conference Call</p> <p>Click here to join the meeting</p> <p>Meeting ID: 241 946 216 548 Passcode: 3zuAWq</p> <p>Download Teams Join on the web</p> <p>Or call In (audio only)</p> <p>Call Number: (915) 213-4096</p>

	Conference ID: 586 188 046#
Question Deadline	09/04/2024
Answers Provided	09/11/2024
Bid Due Date	09/18/2024 @ 2:00 P.M.
Bid Opening and Reading	09/18/2024 @ 2:30 P.M. The City of El Paso, Texas will be broadcasting Bid Openings Live at https://www.elpasotexas.gov/purchasing/
Evaluation	October 2024
Contract Award Date (approx.)	December 2024

Mail To or Hand Deliver To:

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

Contact Information

Contact: Paula Salas
Address: Purchasing & Strategic Sourcing
City 1
300 N. Campbell St.
El Paso, TX 79901
Phone: 1 (915) 262-9901
Email: SalasPX@elpasotexas.gov

Avenu Insights & Analytics, LLC Information

Address: 5860 Trinity Parkway, Suite 120
Centreville, VA 20120
Phone: (909) 496-8573

By submitting your response, you certify that you are authorized to represent and bind your company.

Daniel Wurz
Signature

proposals@avenuinsights.com
Email

Submitted at 9/18/2024 11:55:36 AM (MT)

Supplier Note

We truly appreciate our partnership with the City, and thank you for the consideration.

Requested Attachments

Upload Factor A - General Overview of Agency and Services

Avenu_01_Overview of Agency and Services_FINAL.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor B - Experience – Comparable Contract - Form #1

Avenu_02_Factor B - Experience - Comparable Contract Form #1.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor B - Experience – Comparable Contract - Form #2

Avenu_03_Factor B - Experience - Comparable Contract Form #2.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor B - Experience – Comparable Contract - Form #3

Avenu_04_Factor B - Experience - Comparable Contract Form #3.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor B - Experience – Comparable Contract - Form #4

Avenu_05_Factor B - Experience - Comparable Contract Form #4.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor B - Experience – Comparable Contract - Form #5

Avenu_06_Factor B - Experience - Comparable Contract Form #5.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor D - Capacity and Capability of Agency's Resources

Avenu_07_Capacity and Capability of Resources.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Factor E - Number of Hours Dedicated to Engagement

Avenu_08_Factor E-Number of Hours.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

CIQ Form - Upload Completed Document

Avenu_09_CIQ Form_SIGNED.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Certification Regarding Boycotting of Energy Company - Upload Completed Document

Avenu_10_Boycotting of Energy Company_SIGNED.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Certification Regarding Discrimination Against Firearm & Ammunition Industries - Upload Completed Document

Avenu_11_Certification Discrimination Against Firearm & Ammunition Industries.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Certification Regarding Terrorist Organizations & Boycotting of Israel - Upload Completed Document

Avenu_12_Certification Terrorist Organizations-Boycotting of Israel.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Completed Form 1295 - Upload Completed Document

Avenu_13_Form 1295_SIGNED.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Disclosures - Upload Completed Document

Avenu_14_DISCLOSURES.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Financial Responsibility Document - Upload Completed Document

Avenu_15_Financial Responsibility.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Indebtedness Affidavit - Upload Completed Document

Avenu_16_indebtedness affidavit.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Non-Collusion and Business Disclosure Affidavit - Upload Completed Document

Avenu_17_Non-Collusion_Business Disclosure.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Upload Disclosure of Campaign Contributions and Donations

Avenu_18_Contribution-Donations-Disclosure-Form.pdf

I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.

W-9 - Upload Completed Document

Avenu_19_W-9-2024.pdf

Failure to furnish required documentation with the proposal may result in the proposal being deemed incomplete and non-responsive, resulting in rejection.

Bid Attributes

1 City of El Paso Mission, Vision and Values

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

2 Organizational Profile

The City of El Paso was incorporated in 1873, and spans over 255 square miles. Located at the confluence of two countries, the United States and Mexico; and three states, Texas, Chihuahua and New Mexico, the City of El Paso serves just under 700,000 residents. The City of El Paso is the 22nd largest city in the United States and the 6th largest city in Texas.

As part of the largest binational metroplex in the Western Hemisphere, the City of El Paso serves as the epicenter to a global, cultural and economic population of 2.5 million people. Among the fastest growing metropolitan areas in the nation, the City engages in systemic processes, empowering effective planning and increasing efficiency in order to be ready to respond to emerging changes.

The City of El Paso has faced three unprecedented events that have required action, resolve and resilience. El Paso Strong is the mantra that expresses the community's shared focus to mobilize and take care of one another when facing: the humanitarian crisis created by the surge of asylum seekers crossing the border from Mexico into the US; the aftermath of the August 3, 2019, mass shooting tragedy; and the continuing response and recovery needs required during the ongoing COVID-19 pandemic. The City's organizational culture embodies the relentless spirit of the El Paso Strong mantra through a proactive commitment to providing a supportive workforce environment, empowering the organization to take care of the community through continuous improvement of service delivery, supporting a high quality of life and place for the community.

3 Strategic Goal 6: Set the Standard for Sound Governance and Fiscal Management

Strategic Plan Subsection 6.8: Support transparent and inclusive government

4 Expiration Notice

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

I confirm that I have read, understand and agree

5 Solicitation Purpose

The City of El Paso is soliciting Proposals for Audit of Sales Tax Collections, primarily for the Internal Audit Department. The City shall order all of its services from one successful offeror from time to time as needed. Only personnel from Internal Audit Department are authorized to directly place orders against this Contract. Personnel from other City departments may only utilize this contract with express written authorization from Internal Audit Department and only if the additional usage is within reasonableness given the total awarded amount of the Contract.

6 Public Disclosure of Proposal Information

Offerors are cautioned that once a proposal 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 offeror does not apply after the procurement process 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" at the top right corner using minimum of 14+ font size and the basis of your claim of confidentiality has to be stated. Data so identified will be maintained as a protected record. Offerors who claim that information contained in a proposal 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. 6/26/2023]

IMPORTANT NOTICE

Note: Any changes in due date or material changes for any solicitation will be posted on <https://elpasotexas.ionwave.net/CurrentSourcingEvents.aspx>

It is the offeror's responsibility to ensure that they have all pertinent information regarding solicitations, including all amendments prior to submitting their proposal. For paper submissions, please refer to Ionwave system <https://elpasotexas.ionwave.net/Login.aspx> to ensure you have viewed and received all amendments prior to submitting your formal proposal.

Recommendation(s) for formal awards shall be posted on the City's website the Thursday afternoons prior to the Tuesday City Council and/or Mass Transit meetings wherein the recommendation shall be presented. Offerors are responsible for monitoring the City's website for postings and awards.

I confirm that I have read, understand and agree

7 Title 2, Chapter 2.92, Section 2.92.080 Disclosure of Campaign Contributions and Donations

Individuals or entities benefiting by a City Council Agenda item must disclose contributions or donations made to current members of Council under the City's Ethics Code. The information on this form is being captured for transparency purposes and will be noted on the relevant City Council Agenda. **Contributions and Donations do NOT disqualify an applicant from doing business with the City.**

[Click here to view Ordinance No. 019581](#)

[Click here to download the Disclosure of Campaign Contributions and Donations form](#)

Complete and upload to "Response Attachments" tab

I have read, downloaded and completed form

8 Wage Theft

The City of El Paso Code – Chapter 3.46

3.46.010 Definition

1. Wage Theft Adjudication occurs when:

- (1) Employer is criminally convicted as an employer pursuant to Section 61.019 of the Texas Labor Code for failure to pay wages; or
 - (2) Injunctive relief is granted in district court under Section 61.020 of the Texas Labor Code against the employer for repeated failures to pay wages as required by Chapter 61 of the Texas Labor Code; or
 - (3) A wage payment determination order becomes final under Section 61.055 or Section 61.060 of the Texas Labor Code; or
 - (4) The Texas Workforce Commission assesses an administrative penalty under Section 61.053 of the Texas Labor Code against the employer for acting in bad faith in not paying wages as required by Chapter 61 of the Texas Labor Code; or
 - (5) Employer is convicted for Theft of Service under Section 31.04 of the Texas Penal Code; or
 - (6) Court of competent jurisdiction finds that an employer engaged in wage theft.
- 2. Employee and employer** have the meanings by Texas Labor Code, Section 61.001.
- 3. Wages** means compensation owed by an employer for labor or services rendered by an employee, whether computed on a time, task piece,

commission or other basis.

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

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

Section 3.46.020 Wage Theft Coordinator

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

B. Duties. The Wage Theft Coordinator shall:

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

Section 3.46.030 Wage Theft Adjudication Database

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

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

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

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

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

Section 3.46.040 Wage Theft Complaints Procedure

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

B. City Contracts.

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

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

3. Texas Workforce Commissions.

(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 bid or proposal for City work prior to the award of a contract, the City shall deem the Employer non-responsible and refuse to enter into a City Agreement with such Employer for a period of five (5) years after the date of final adjudication.

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

9 Cooperative Purchasing

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

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

10 Cost Preparation

This solicitation does not commit the City of El Paso to pay any costs incurred in preparing and submitting a proposal or to contract for the services specified. This solicitation 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.

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Cone of Silence

Cone of Silence/Anti Lobbying Policy

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

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

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

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

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

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

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

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

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Requests for Clarifications

In order to meet the City's schedule for awarding this requirement it is extremely important that requests for clarification or additional information, or requests for a change in the specifications, be submitted in the online bidding system no later than the date indicated in the Schedule of Events for this solicitation. Questions submitted after this date may not elicit a response.

Offerors shall promptly notify the Purchasing & Strategic Sourcing Department of any ambiguity or inconsistency which they may discover upon examination of a solicitation document. During the proposal process, offeror shall not contact any City staff except those designated in this solicitation or in subsequent documentation. Non-compliance with this provision may result in rejection of the bid involved.

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Contract Term and Contract Officer Information

Initial Term

The successful Offeror(s) shall complete all work hereunder within the terms of the contract. The initial contract period shall be for three (3) years starting as indicated in Award Letter.

Option Terms

The City of El Paso shall have the option to extend the term of the Contract for up to one (1) additional term of two (2) years. 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.

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Scope of Work and Minimum Requirements

Background Information

The City of El Paso imposes a one percent (1%) local sales tax on all retail sales, leases and rentals of most goods, as well as taxable services. Each month, the Texas Comptroller of Public Accounts allocates sales tax receipts entitled to the City of El Paso and sends a payment to the City for its share of local sales tax collected.

Solicitation Purpose

The City of El Paso, Texas, hereinafter referred to as "the City", is soliciting proposals for Audit of City Sales Tax Collections. It is the City's desire to contract with a firm to perform an audit of State and City records to determine if: (i) All businesses operating within the City of El Paso are subject to City sales and use tax are in fact remitting to the Texas Comptroller of Public Accounts. (ii) All internet sales that are subject to local City of El Paso sales and use tax are in fact remitting to the Texas Comptroller of Public Accounts, (iii) The City of El Paso is being correctly allocated all City sales and use tax due each month from the Texas State Comptroller of Public Accounts, and (iv) Coordinate with the Office of the Texas Comptroller of Public Accounts to correct appropriate records in order to ensure that collection of any unrealized sales tax revenue to the City. The Offeror submitting the successful proposal must clearly demonstrate its ability to not only perform the audit and examine the records but also to be able to ensure correction of records, ensure collection of unrealized sales tax revenue, and provide recommendations for improvements.

Scope of Work

The City of El Paso is soliciting proposals from qualified firms to perform an audit of city sales tax collections. Proposals from qualified sales tax audit firms must describe in detail the methodology, strategies, and timelines to be included in the audit plan for examining records in order to determine unrealized sales tax revenue is due to the City of El Paso.

A. Analysis & Compliance Review Services

- Determine if all businesses operating within the City of El Paso that are subject to city sales and use tax are in fact remitting to the Texas Comptroller of Public Accounts.
- Determine if all internet sales that are subject to local City of El Paso sales and use tax are in fact remitting to the Texas Comptroller of Public Accounts.
- Determine if the City of El Paso is being correctly allocated and paid all city sales and use tax due from the Texas State Comptroller of Public Accounts, and identify, document, and correct any business entity operating within the City limits of El Paso from which the City is not being allocated its share of city sales and use tax receipts by the Texas Comptroller.
- Identify, document, and correct misclassification of revenue subject to sales tax reported by any business entity operating within the City limits of El Paso resulting in the City not being allocated its share of city sales and use tax receipts by the Texas Comptroller.
- Identify, document, and correct any city sales and use tax reporting omissions and or errors.
- On behalf of the City, coordinate with the Office of the Texas Comptroller of Public Accounts to correct appropriate records in order to ensure collection of any unrealized sales tax revenue due to the City.

B. Comprehensive Reporting

- Review and recommendation reporting
- Audit finding reporting by firm
- Annual trends and revenue analysis reporting
- Reporting of other relevant information with regard to ordinance compliance and related matters.

- Provide written reports on a monthly basis on the findings and results of the ongoing examination.

C. Reports to be issued

- **Following the completion of the agreed upon procedures, the agency will issue a report addressed to the City Office of the Chief Internal Auditor as required by the agency’s professional standards. All records are subject to public record.**

D. Working Paper Access

- A copy of any or all working papers will be provided to the City of El Paso, Texas – Office of the Chief Internal Auditor upon request. Any requests from outside parties will be routed through the City of El Paso-Office of the Chief Internal Auditor and working papers may not be disclosed unless approved by the City of El Paso- Office of the Chief Internal Auditor. In addition, the agency shall be in compliance with current auditing standards, respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance. Depending on circumstance, a copy of any or all working papers may also be routed through the City Attorney’s Office.
- In addition to the previous information described, the selected agency shall consider the following, based on their assessment, to further satisfy the requirements of the Services Overview and needs of the Office of the Chief Internal Auditor. In general, the selected agency shall submit to the City a brief description of the agency, how it is organized, and how its resources will be utilized on behalf of the City. Additionally, the overview should include how the agency will approach the aforementioned services that the agency may provide as the agency of the City.

Minimum Requirements

- Relevant experience of the agency, especially when working with government and city sales tax, which demonstrates experience, responsiveness, a high level of customer service, documented results in tax compliance review and recovery services and the individuals assigned to the engagement;
- Provide verifiable examples by listing a maximum of five (5) projects for which sales tax compliance review and recovery services were provided or are being provided that are most relevant to this project and include as references the names and telephone numbers of client officials responsible for the projects listed;
- Provide an actual recovery amount for each client site to include the year(s) services were performed;
- Identification of the individual in charge of day-to-day management and the percentage of time committed for each individual on the engagement;
- The agency’s overall audit approach to the engagement, including the use of any outside entities upon whose work will be relied upon to complete the engagement;
- The percentage, if any, of the use of any outside entities upon whose work will be relied upon to complete the engagement;
- The availability of sources of information to assist the City in determining specific accounting and reporting issues that may arise during the engagement;
- The level and types of insurance carried, including the deductible amount, to cover errors and omissions, improper judgments, or negligence; and
- Disclosure of any issues that could present a real or perceived conflict of interest, as well as any pending investigation of the agency or enforcement or disciplinary actions taken within the past three years by any regulatory bodies.

1 5	Exceptions to Scope of Work
	None.

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Payment Terms and Conditions

NOTE: All vendors must accept an ACH payment effective immediately. If awarded a contract or order, an approved account is needed to complete contract execution and process future payments. A secure link to our PaymentWorks system will be provided to the point of contract in the bid submission.

Advance Payments

All contract payments shall be made in accordance with the Contract's invoice payment terms. The City of El Paso will make no advance payments for the goods and/or services that are subject of this bid unless otherwise noted in the Form of Contract. Invoices may be submitted on no more than a monthly basis. Invoices submitted for services rendered shall be forwarded to the address indicated on the "Bill to Information" located on the "Event Details" tab .

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 electronic funds are transferred.

Federal Excise Tax

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

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

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Evaluation Information

The City will award the contract to the offeror that submits a proposal which represents the "best value" to the City. The best value shall not be based solely upon price but the bid which receives the highest cumulative score for each of the evaluation factors delineated herein. The City considers 70 as a passing score. Scores below a 70 will not be considered for award.

The award shall be based upon the evaluation criteria and process delineated herein.

- a. Evaluation Committee: All properly submitted proposals will be reviewed by an Evaluation Committee.
- b. Weighted Evaluation Criteria: The following weighted criteria will be considered to determine which proposal offers the "best value" to the City.
- c. Offeror must fill out the appropriate forms delineated within the solicitation.

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 in the Evaluation Factors Attribute.

Evaluation and Award Process

1. An Evaluation Committee shall be established to evaluate proposals based solely on the Evaluation Factors included in this solicitation. Factors not specified in the solicitation will not be considered. The City reserves the right to waive any minor irregularities or technicalities in the offers received. Proposals will be evaluated on an individual basis against the requirements stated in the solicitation.
2. All proposals are subject to the terms and conditions of this solicitation. Material exceptions to scope of work or specification or failure to meet the City's minimum specifications, shall render the offer non-responsive to the solicitation.
3. 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 solicitation will result in disqualification of an offeror's proposal.
4. 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 solicitation will involve a determination of the most favorable combination of various elements contained in this solicitation.
5. 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.
6. 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.
7. At the completion of the evaluation period, the City will enter into negotiations with the highest ranked offeror. 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 proposal to be rejected and/or if the City cannot come to an agreement with that offeror it will formally end negotiations with that offeror and begin negotiations with the next highest ranked offeror.
8. 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 offeror.
9. Proposals to this solicitation that are considered non-responsive will not receive consideration and will not be evaluated. 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 offeror 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.
10. The successful Offeror's proposal to this solicitation 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 solicitation, unless clearly and specifically noted in the proposal and confirmed in the contract between the City and the Offeror selected.
11. The City reserves the right to award this contract to one Offeror or to make multiple awards. The City may reject any or all proposals 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.

Evaluation Factors

The evaluation process is designed to award the contract to the most qualified offeror based upon the evaluation factors specifically established for this solicitation. **Offerors must provide all information outlined in the Evaluation Factors to be considered responsive.** Proposal will be evaluated based on the responsiveness of the offeror's information to the Evaluation Factors which will demonstrate the offerors understanding of the Evaluation Factors and capacity to perform the required services of this solicitation. Proposals considered non-responsive will not be evaluated.

EVALUATION FACTORS	MAXIMUM POINTS
A. General Overview of Agency and Services	30 Points
B. Experience – Comparable Contracts	25 Points
C. References	10 Points
D. Capacity and Capability of Agency's Resources	25 Points
E. Number of Hours Dedicated to Engagement	10 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 offers on the basis of all the factors included in this solicitation.

Factor A – General Overview of Agency and Services30 Points

Offeror must specify in detail the terms the agency's understanding of the services to be provided and the approach as presented in this RFQ.

Factor B – Experience – Comparable Contracts25 Points

Offeror to provide five (5) contracts comparable in scope within the past five (5) years and to have performed at least for one year within the referenced contracts prior to bid opening. Contract will be considered comparable in scope if they include the following elements: Audit of City Sales Tax Collections and must clearly demonstrate its ability to not only perform the audit and examine the records but also to be able to ensure correction of records, ensure collection of unrealized sales tax revenue, and provide recommendations for improvements.

Offeror is required to use the Experience – Comparable Contract Form for this factor. See Attachment Downloads Tab. 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 5 (i.e. 25 total points ÷ 5 = 5 points per contract).

Factor C – References10 Points

Offeror shall provide references for five (5) contracts listed for Factor B.

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 5 (i.e. 10 total points ÷ 5 = 2 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 telephone 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 D – Capacity and Capability of Agency's Resources.....25 Points

The offeror must specify in detail the capacity and capability to perform auditing services and deliverables utilizing its qualified resources. These resources should include core staff assigned to engagement. Resumes should reflect demonstrated references and history of performance for position assigned to the City of El Paso.

Factor E – Number of Hours Dedicated to Engagement.....10 Points

The offeror shall specify the agency's organization and how the organization anticipates to identify in detail the best methodology to meet the specifications and to include the hours dedicated to perform auditing services as noted within this RFQ.

- 200 - 300 hours (15 Points)
- 199 – 100 hours (10 Points)
- Less than 100 hours (0 points)

MAXIMUM TOTAL POSSIBLE POINTS.....100 Points

Responsibility Determination

Offeror will be deemed non-responsible if financial information is not submitted with the proposal. The financial information referenced in section A is required at the time of submission.

The responsibility determination includes consideration of a Offeror'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 offer.

A. Financial Capacity Determination –

Financial Information

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

If a **publicly** held organization:

- (1) Consolidated financial statements as submitted to the Securities and Exchange Commission (SEC) on Form 10K.
- (2) Any Form 8K's filed subsequent to last Form 10K or
- (3) A letter of credit directly from the offeror's financial institution equal to the value of the project.

If a **privately** held organization:

- (1) Balance sheet for your last two fiscal years accompanied by audit reports by an independent Certified Public Accountant.
- (2) Statement of income of your last two fiscal years accompanied by audit reports by an independent Certified Public Accountant or
- (3) A letter of credit directly from the offeror's financial institution equal to the value of the project.

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 solicitation.

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

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

I have uploaded my financial documents

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Disclosures

Offeror to disclose and describe any prior or pending litigation, acquisitions/mergers, 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 for those applicable items.

I have uploaded my disclosures

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Contract Clauses

Contract Clauses (Terms & Conditions)

1. TERM OF CONTRACT

Under which the City shall order all of its supplies and/or services described in specifications 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 or until 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.

2. INVOICES & PAYMENTS

A. The Contractor will submit invoices, in single copy, on each contract after each delivery. Invoices covering more than one purchase order will not be accepted.

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

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

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

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

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

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

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

I. Contractor shall advise the Comptroller of any changes in its remittance addresses.

3. CONTRACTUAL RELATIONSHIP

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

4. INDEMNIFICATION [Rev. 04-15-99] [Rev. 01-04-04] [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] [1/10/2020]

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.

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.

[section continued]

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 contract, 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

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

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:

Miguel Montiel, CIA, CGAP
Audit Manager
Telephone: (915) 212-1267
Email: MontielMA@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, Lead Procurement and Contract Analyst

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.

29. RIGHT OF INSPECTION

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

30. NO REPLACEMENT OF DEFECTIVE TENDER

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

31. PLACE OF DELIVERY

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

32. WARRANTY-PRODUCT

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

33. SAFETY WARRANTY

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

34. NO WARRANTY BY THE CITY AGAINST INFRINGEMENTS

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

35. TERRORIST ORGANIZATIONS & BOYCOTTING OF ISRAEL [Rev. 4-30-18] [Rev. 10-14-18]

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.

36. 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.

37. 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.

[end of section]

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4 **Instructions to Offerors Submitting Paper Proposals**

To download solicitation, click the "Documents" icon located next to "Response History" icon.

1. SIGNATURE OF PROPOSAL BY PERSON AUTHORIZED TO SIGN

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

2. REQUIRED NUMBER OF COPIES

Proposals must be submitted in original form with one additional copy.

3. PROPOSAL SUBMISSION INSTRUCTIONS

Proposal must be sealed when presented to the Purchasing & Strategic Sourcing Department. See event details for submission deadlines. Proposals will be publicly opened and read aloud (Offeror's Name, City and State). The City does not provide envelopes or any other office supply for the purpose of submitting Proposals

4. ADDRESSING INSTRUCTIONS

The envelope containing the proposal must be addressed as follows:

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

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

5. LABELING OF PROPOSALS [Rev 6/15/05]

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

6. 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 must be addressed to the Purchasing Director directly to the Purchasing & Strategic Sourcing

Department.

U.S. Postal Service deliveries, including Express Mail, are only delivered to the Mail Room at City 2 and may or may not be delivered by the Mail Room to the Purchasing & Strategic Sourcing Department by the time and place proposals are opened. The offeror accepts all responsibility for delivering its proposal to the address stated above within the specified time or the proposal will be considered non-responsive and will be mailed back unopened. If the envelope does not reflect a return address, it will be opened for the sole purpose of obtaining the return address.

7. ADDITIONAL INFORMATION

Descriptive literature, where applicable, containing complete specifications or other information sufficient for the City to determine compliance with the specifications must accompany each proposal. Related data, where applicable, will be made part of the proposal. All documents, literature and related data submitted as part of the proposal become the property of the City of El Paso.

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.

8. ALTERNATE PROPOSALS

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

9. ACKNOWLEDGMENT OF SOLICITATION AMENDMENTS

All amendments must be acknowledged on the Amendment Acknowledgement Form. Failure to do so may cause the proposal to be rejected. It is the Offeror's responsibility to ensure that their response to a solicitation is incorporating all amendments into said proposal. Amendments may be posted at any time up to and including the due date.

10. PROPOSAL FORMAT AND STRUCTURE

All proposals 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 all evaluation factors described within this solicitation.
4. Major sections must have page breaks between them.
5. The proposal must be signed and titled by a duly authorized representative of the Offeror.
6. Introduction Page – include the following information:
 - a. 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 the solicitation.
 - b. Clearly label with the solicitation number, title, Offeror's name, mailing address, and fax number, and the name, telephone number, and email address of a contact person.
 - c. 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.
7. The City will not be responsible for locating or securing information not included with proposal. 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.
8. Response to all factors must demonstrate the offeror's comprehension of the objectives and services being procured. Do not merely duplicate the Scope of Work as presented within this Solicitation

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Notice to Offerors

1. 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 is determined to be the most favorable 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.

2. TIME

[Reserved]

3. TIME AND PLACE OF OPENING

Proposals will be opened and read in City Hall, at 2:30 P.M.(MST) on opening day. However, you are cautioned that proposals must be received in the Purchasing & Strategic Sourcing Department no later than 2:00 PM (MST).

4. RECIPROCAL PREFERENCE

Domestic Preferences

The City reserves the right to grant a preference to cooperative agreement programs, City contracts and Purchase Orders that are funded through

federal awards and grants:

(a) As appropriate and to the extent consistent with law, the City may, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(b) For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

State Reciprocal Preference

The City reserves the right to grant an offeror with its principal place of business in the State of Texas (Resident Offeror) a preference on a contract against the proposal of any offeror from another state which enforce or has a preference for its resident offeror. The amount of the preference to the resident offeror shall be equal to the preference in the other state. Regarding contracts involving federal funds, the City shall utilize said reciprocal preference unless expressly prohibited by the Grantor.

Municipality Reciprocal Preference

The City reserves the right to grant a offeror with its principal place of business within the City limits of El Paso, Texas (Local Offeror) a preference on a contract against the proposal of any offeror from another City within the State of Texas which enforce or has a preference for its local offerors. The amount of the preference to the local offeror shall be equal to the preference in the other City. Regarding contracts involving federal funds, the City shall utilize said reciprocal preference unless expressly prohibited by the Grantor.

5. EVALUATION RESULTS

Any questions concerning evaluation results should be directed to the Purchasing & Strategic Sourcing Representative.

6. REQUEST FOR QUALIFICATIONS TABULATIONS

The Request for Qualification tabulation will be available at <https://elpasotexaspurchasingtest.ionwave.net/CurrentSourcingEvents.aspx>.

No results will be given over the phone.

7. DEBRIEFING REQUESTS

A written request for a debriefing should be directed to the Purchasing & Strategic Sourcing Representative identified in this solicitation within five (5) days after the date of award. Debriefing requests will be scheduled with the designated City staff and Purchasing & Strategic Sourcing Representative.

8. PROTEST/DISPUTE PROCEDURE

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

Failure to follow the requirements of the Protest procedures established by the City of El Paso, Texas, shall constitute a waiver of all protest rights.

Protest must be made after the City Council agenda has been posted and by 5:00 p.m. the day before the City Council meeting in which the award will be made. The offeror must write a letter to the Purchasing Director using the phrase "Bid Protest" to City Hall – 300 N. Campbell, El Paso, TX 79901 – attention to the Purchasing & Strategic Sourcing Department. Protest must be sent by certified or registered mail or delivered in person. Note: the recommendation for award is posted on the City's website at least 72 hours before each Tuesdays Council meeting.

The written protest should include 1) the bid number and should clearly state, with particularity, the relevant facts believed to constitute an error in the award recommendation, or desired remedy; 2) a specific identification of the statutory or regulatory provision that the Protesting 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 Bidder has identified pursuant to item (2) of this paragraph (mere disagreement with the decisions of City employees does not constitute grounds for protest). If there is no disputed issue of the material fact, the Protest must indicate this as well.

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Title VI requirement

Title VI Contract Provisions

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

NOTE TO CONTRACTORS:

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

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

Appendix A

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

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

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

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

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

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

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

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

Form FHWA-1273**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. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion****XI. Certification Regarding Use of Contract Funds for Lobbying****XII. Use of United States-Flag Vessels: 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, United States Code, as required in 23 CFR 633.102(b) (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). 23 CFR 633.102(e).

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. 23 CFR 633.102(e).

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) in accordance with 23 CFR 633.102. 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 solicitation-for-bids or request-for-proposals 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). 23 CFR 633.102(b).

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. 23 CFR 633.102(d).

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. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A 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 Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504

of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 230, Subpart A, 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 (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 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 Part 35 and 29 CFR Part 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. 23 CFR 230.409 (g)(4) & (5).

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, sexual orientation, gender identity, 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 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 or other knowledgeable company official.

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, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure 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. 23 CFR

230.409. 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 thereunder. 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, sexual orientation, gender identity, 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, 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. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient 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 recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non- responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

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 more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, 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, sexual orientation, gender identity, 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), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101.

Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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 (29 CFR 5.5)

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, 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 Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(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.

[section continued]

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Form FHWA-1273

2. Withholding (29 CFR 5.5)

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 (29 CFR 5.5)

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. 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 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), 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 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 18 U.S.C. 1001 and 31 U.S.C. 231.

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 (29 CFR 5.5)

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. 23 CFR 230.111(e)(2). 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 as provided in 29 CFR 5.5.

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 as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, 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 (29 CFR 5.5)

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), 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. 29 CFR 5.5.

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 currently provided in 29 CFR 5.5(b)(2)* 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. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

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

forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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" in paragraph 1 of Section VI 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: (based on longstanding interpretation)

- (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. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), 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. Pursuant to 23 CFR 635.116(c), 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. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph

(1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

[section continued]

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Form FHWA-1273

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 Part 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. 23 CFR 635.108.

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 Part 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), 29 CFR 1926.10.

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 Part 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 11, 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 (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

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. 2 CFR 180.220 and 1200.220.

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. 2 CFR 180.320.

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. 2 CFR 180.325.

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. 2 CFR 180.345 and 180.350.

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, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 180.330.

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. 2 CFR 180.220 and 180.300.

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. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. 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 System for Award Management website (<https://www.sam.gov>). 2 CFR 180.300, 180.320, and 180.325.

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 CFR 180.325.

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 CFR 180.335;

(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, 2 CFR 180.800;

(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, 2 CFR 180.700 and 180.800; 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. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. 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). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant 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. 2 CFR 180.365.

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, Subpart I, 180.900 – 180.1020, 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 recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 1200.220 and 1200.332.

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. 2 CFR 180.220 and 1200.220.

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 System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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. 2 CFR 180.325.

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:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should 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 Part 20, App. A.

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

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

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

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

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

ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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

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

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

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

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

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

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

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

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

[end of section]

3
1

Amendment A001

DESCRIPTION OF AMENDMENT

-
A. Responses to Bidders questions are on the following page(s).

Except as provided herein, all terms and conditions of the documents, as heretofore changed, remain unchanged and in full force and effect.

I confirm that I have read, understand and agree



A V E N U

INSIGHTS & ANALYTICS

CITY OF EL PASO, TX

PROPOSAL FOR

AUDIT OF SALES TAX COLLECTIONS

2024-0654R

FACTOR A – GENERAL OVERVIEW OF AGENCY AND SERVICES

SEPTEMBER 18, 2024



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1 OVERVIEW OF AVENU

Founded in 1978, Avenu Insights and Analytics is a privately-owned revenue enhancement services company that specializes in helping public agencies across the nation to preserve, enhance, and manage their tax revenue base. Avenu focuses exclusively on the public sector and local government agencies, just like the City.

Avenu has partnered with the City of these services since 2019, where we also provide the City with similar services, Franchise Fee Auditing, and we have recovered over \$250,000 for the City during that time.

In our 40-year history, we have grown to a national footprint of over 700 employees and customers in all 50 states. Avenu supports these customers with a dedicated and highly experienced team of revenue consulting and tax audit experts which provide concierge-level services to over 900 jurisdictions throughout the nation.

Avenu has 10 office locations strategically stationed across the United States, including two (2) offices in Texas, with an additional two (2) offices in Canada. We offer our local government clients a full range of revenue enhancement and administrative solutions. Avenu works with communities of all sizes, from our smallest client with a population of just 150, to our largest client with a population of over ten (10) million. As a testament to our dedication to state and local governments, Avenu has been listed on the GovTech 100 list for the last six (6) consecutive years.

Since our founding over four decades ago, Avenu has successfully supported thousands of local jurisdictions with our full suite of compliance auditing and revenue enhancement services. We are public sector experts, and we understand the challenges faced by local jurisdictions like the City. We support many local jurisdictions in Texas with these same services. Our refined methodologies and processes are a direct result of the nearly 40 years we have been providing auditing services.

Avenu has closely reviewed the City's Request for Proposals (RFP) and we attest that we have the capabilities and expertise to meet all of the City's requirements. We offer the opportunity to form a partnership with a vendor capable of providing the City with consistent and quantifiable results, just as we have for the City of El Paso, the City of Dallas, and many more local jurisdictions. To demonstrate this, Avenu generates over **\$2.8 billion** in new general fund tax revenue for its local government clients each year. By doing this, we have earned our reputation as the premiere revenue enhancement partner to the public sector through our comprehensive audit services, proprietary data analytics, accurate forecasting, cost-effective administration services, and our commitment to our clients.

Avenu has a nationwide team of experts, comprised of Certified Public Accountants (CPA), Certified Revenue Examiners (CRE), audit managers, and analysts. The team works as a cohesive unit to pinpoint compliance issues, provide detailed reporting, and recover lost taxes on our government clients' behalf. Specific to sales tax and recovery services, Avenu's experts in Sales/Use Tax Audit and Recovery Services identify, correct, and optimize sales and use tax issues through comprehensive reviews. We have a dedicated team of

Avenu Qualification Highlights

- ▶ Sales Tax Audit experts with over 40 years of experience
- ▶ Provider of these services to El Paso since 2019
- ▶ Provide same services to some of the largest cities and Transit Agencies in Texas
- ▶ Two (2) offices in Texas – Houston and Dallas
- ▶ Same or similar services provided to over 900 agencies nationwide
- ▶ \$2.8+ billion in new general fund tax revenue generated for clients EACH year



examiners and accountants whose region-specific expertise has resulted in the discovery of millions in underreported taxes.

In addition to our auditing services, Avenu has been recognized by our clients for our accuracy in our forecasting services, which enable local governments to make informed business decisions and create sound public policy. Our proven success stems from our highly experienced nationwide team of certified examiners and accountants who use their region-specific expertise. These experts have decades of experience researching and interpreting local ordinances, regulations, statutes, and laws.

1.1 EXPERIENCE IN TEXAS

Avenu is a recognized expert in the field of Sales/Use Tax Audit and Recovery Services, one of Avenu's core services, that we have offered for over 40 years. Avenu currently provides these services to several cities in Texas. We invest heavily in our people and technology to stay ahead of the market and serve our clients. Innovation allows us to use technically advanced canvassing techniques in conjunction with traditional methods to cast a wide net in capturing businesses not in compliance. **For the last five (5) years, Avenu has recovered over \$50,000,000 for Texas local jurisdictions.**



Figure 1 - With Red representing Avenu offices, and Blue representing clients, Avenu has a nationwide footprint across all 50 states

Our strong presence in the state allows us to actively monitor local and state legislative and regulatory policies in Texas. In fact, Avenu's lobbying efforts helped to create the Sales/Use Tax Audit and Recovery Service market in Texas by drafting SB 190. We offer the City unmatched expertise as a result. We support some of the largest cities in the state, this includes the cities of Dallas, Houston, El Paso, Irving, Plano, Arlington, and Richardson, as well as the Austin and Fort Worth transportation authorities. Due to this strong presence, we actively track and monitor legislative and regulatory policy specific to the State of Texas. We are a strong supporter of the Texas Municipal League, a recent Silver Sponsor at Texas City Management Association, and a Gold Sponsor of the Government Finance Officers Association of Texas.



1.2 SIMILAR ENGAGEMENTS

City of Houston

Ms. Kiran Chandu, Assistant Director, Finance Department

611 Walker Street, 10th Floor, Houston, TX 77002

Email: kiran.chandu@houstontx.gov

Phone: 832.393.9067

Services/Results: Avenu has provided the City of Houston with Sales/Use Tax Audit and Recovery Services **since 2011**. To date, we have recovered over **\$23 million** in new sales tax revenue for the City of Houston.

City of Dallas

Mr. Mark Swann, City Auditor

1500 Marilla Street, Room 2FN, Dallas, TX 75201

Email: mark.swann@dallas.gov

Phone: 214.670.3222

Services/Results: Avenu provided the City of Dallas with Sales/Use Tax Audit and Recovery Services from 2010 through 2016 and recovered over **\$6.1 million** in new sales tax revenue for the City of Dallas. In late 2022, as result of the competitive bidding process, Avenu was once again awarded the City of Dallas' Sales/Use Tax Audit and Recovery Services contract. To date, we have recovered approx. **\$2.5 million** in new sales tax revenue for the City of Dallas for this second contract.

Capital Metropolitan Transportation Authority

Ms. Nadia Nahvi, Controller

2910 East Fifth Street, Austin, Texas 78702

Email: nadia.nahvi@capmetro.org

Phone: 512.297.0392

Avenu has provided the Capital Metropolitan Transportation Authority with Sales/Use Tax Audit and Recovery Services **since 2013**. To date, we have recovered over **\$7 million** in new sales tax revenue for the Capital Metropolitan Transportation Authority.

City of Plano

Ms. Karen Rhodes-Whitley, Director of Budget & Research

1520 K Avenue, Ste. 360, Plano, TX 75074

Email: karenr@plano.gov

Phone: 972.941.7472

Services/Results: Avenu has provided the City of Plano with Sales/Use Tax Audit and Recovery Services since 2016. To date, we have recovered over **\$8 million** in new sales tax revenue for the City of Plano.

2 QUALIFICATIONS / EXPERIENCE OF PERSONNEL

Avenu has a dedicated team of over 100 Revenue Enhancement professionals that provide a full suite of tax compliance, recovery, and consultation services to over 900 clients across the United States. This team has direct experience supporting the City and is comprised of Certified Public Accountants (CPAs), Certified Tax Examiners (CTEs), Certified Revenue Examiners (CREs), Audit Managers, Analysts, and support personnel. Avenu has two physical offices in Dallas and Houston, with additional support from our other 10 regionally placed offices across the nation. Avenu is well adept at leveraging our substantial corporate resources to ensure our clients are supported. Below we provide a view of each staff member's key roles and responsibilities along with relevant experience that makes them a good fit for the City.

2.1 KEY PERSONNEL

VP TEXAS SALES & USE TAX, CHRIS YEARY, CPA



As Vice President, Chris is responsible for overseeing the contract, managing day-to-day operations for Sales Tax Review services and serving as the primary contact for the City. Chris will use his vast experience with sales and use tax, and the City to play a key role in planning, executing, monitoring and controlling the project. He will conduct in-depth reviews to detect possible local sales and use tax errors, contacting taxpayers to discuss and determine local sales and use tax compliance, and facilitating corrective action to gain past and/or prospective local sales and use tax compliance. Highlights of Chris' relevant experience include:

- 28 years of experience in providing sales and use tax consulting services working on behalf of Texas local taxing jurisdictions and businesses
- Licensed Certified Public Accountant in Texas
- Previous experience with PriceWaterhouseCoopers' (PwC) State and Local Tax group in Dallas where he specialized solely in sales and use taxes by assisting his business clients with multistate and local sales/use tax refund compliance reviews,
 - defending/minimizing state sales and use tax audits,
 - negotiating voluntary disclosure agreements, and
 - analyzing state and local sales/use tax consequences of various business transactions.
- Education: BA in Business Administration (Accounting), University of Texas at Austin
Masters in professional accounting (Taxation), University of Texas at Austin
- Professional memberships include the Texas Society of CPAs and the American Institute of CPAs

MANAGER, TEXAS SALES & USE TAX, DEBBIE MENDOZA



Debbie is responsible for managing Avenu's examiners and analysts as well as performing in-depth reviews to detect local sales and use tax errors. She actively contacts taxpayers using a business-friendly and educational approach to discuss and determine local sales and use tax compliance. When needed, Debbie works to facilitate corrective action to gain past and/or prospective local sales and use tax compliance. Highlights of Debbie's relevant experience include:

- 30+ years of professional accounting experience in which the last 15 years have been with

Avenu

- Investigating sales tax permits to identify businesses not properly permitted for their places of business.

- Thoroughly reviewing and identifying businesses that may be incorrectly sourcing and reporting local sales/use taxes
- Partnering with Texas clients to provide local sales tax review services
- Contacting taxpayers to share Texas tax law, policies, and work with the businesses to achieve past and/or prospective local sales/use tax compliance.
- Working with the Texas Comptroller and taxpayers to correct sales tax permit and reporting errors
- Training and managing staff on local sales/use tax compliance review and recovery services
- 19 years with PricewaterhouseCoopers' State and Local Tax group located in Dallas where Debbie defended/minimized multistate and local sales/use tax audits and performed multistate and local sales/use tax research and refund review
- Education: BA (Technical Management), DeVry University
MBA (Accounting), Keller Business School of Management

DIRECTOR, ANALYTICS & REPORTING, IRENE REYNOLDS

Irene manages the Clearview Analytics (STARS) and Reporting Team and is responsible for providing critical and complex analytics, forecasting and reporting to Avenu's Texas sales and use tax clients. Under her leadership, the team takes the important first step of cleaning and standardizing raw sales tax data to ensure data integrity. Irene maintains geographic areas and creates sub-areas to further investigate sales tax generation and trends. Deadlines are seamlessly managed, and Irene is accustomed to responding quickly to time sensitive and urgent requests. She also partners with clients to develop meaningful custom reports, charts and/or tables to provide answers not addressed in standard reports. As required by the Texas State Comptroller, Irene oversees and ensures that only authorized personnel obtain credentials to access the application and budgetary information. Highlights of Irene's relevant experience include:



- 20 years with Avenu where she has worked with data and explored and experienced a vast array of both simple and complex anomalies
- 15 years of experience working closely with cities in Texas
- Managing production flow of data review cycle to meet critical deadlines and produce meaningful reports and metrics to Texas clients
- Actively providing research for Avenu's Economic Analysis Team
- Hosted several Clearview Analytics (STARS) training webinars to Texas clients to enhance their knowledge and leverage the application
- Previous Team Lead for the Data Intelligence Department where she assisted in directing the data processing for all of Avenu's clients
- An Associate in Science degree in Business Administration.
- Professional membership in Phi Theta Kappa (High Honor Society for Superior Scholastic Achievement)

2.2 SENIOR LEADERSHIP TEAM

VICE PRESIDENT OF TAX COMPLIANCE, MIKE PORTIS, CPA, CFE



As Avenu's Vice President of Tax Compliance, Mike oversees Avenu's strategy, determines resources, enhances internal structure, and positions the business unit and its clients for success. Ultimately, Mike is responsible for the success and management of client projects involving a full suite of compliance services across several tax types and data analytics/reporting. He oversees the team providing his leadership, expertise, direction, and training. Preferring a hands-on approach, Mike enjoys engaging directly with clients for touch points and as needed. Highlights of Mike's relevant experience include:

- Certified Public Accountant (CPA) in Texas
- Certified Fraud Examiner (CFE)
- 24 years of tax and examination experience which includes employment for Ernst & Young in NC and the following firms in Texas: KPMG, Enron, and Arthur Anderson
- Managing tax data analytics for \$12 billion annually of client accounts payable spend
- Adeptly advising clients on tax process and systems improvement
- Examining Fortune 500 firms for corporate income, franchise, and sales and use tax compliance
- Identifying and investigating potential non-filers
- U.S. Army Veteran
- Education: BA (Accounting), University of Texas at San Antonio.
Doctor of Jurisprudence, University of Houston Law Center

2.3 EXECUTIVE SPONSOR

CHIEF EXECUTIVE OFFICER, PAUL COLANGELO



Paul has nearly 25 years of executive leadership and a track record as a trusted advisor at the state and local levels. Paul not only leads the operations, strategy, and growth of Avenu, he is directly involved in the day-to-day operations of our Sales and Use Tax teams and has an avid interest in maintaining the City's contract. Paul previously served as President and COO at Library Systems & Services, as well as President of Appriss — where his strategic vision led to the portfolio revenue growth and diversification. Before Appriss, Paul was Vice President of Convergys Global Business Unit, managing client services programs in government, automotive, and transportation markets. Paul earned his bachelor's degree from Seton Hall University

and his MBA from Strayer University. And as part of his ongoing commitment to serving state and local communities nationwide, he serves an active Advisory Board member for the National Center for Missing & Exploited Children, Board Treasurer for Blessings in a Backpack, and Vice Chairman of the Board for Prince William County Service Authority.

- 25 years of serving state and local governments
- Serves as a direct line of Executive Leadership support
- Regularly meets with clients to ensure the highest level of support
- Deep commitment to a Customer-Driven Culture and Strategy including our Core Values (Client-Focused, Responsiveness, Caring, Passionate, Integrity)
- Direct oversight of all Customer Satisfaction (CSAT) reporting and KPIs on a quarterly basis

3 OVERVIEW OF SERVICES

Sales/Use Tax Audit and Recovery Services and Sales/Use Tax Analysis and Reporting Services are Avenu's core functions. Avenu will leverage all institutional knowledge gained surrounding the City, having provided these services to the City since 2019. Avenu has provided this service for over 40 years and our methodologies are a direct result of decades of constant refinement, having provided this service for over a hundred Texas local jurisdictions.

Sales and use tax compliance is burdensome for many businesses. The myriad of intricate statutes governing taxability and exemptions, as well as the collection and reporting of sales and use tax, coupled with at times changing boundaries, tax rates, and a varied tax base that can cross multiple jurisdictions only increases the complexity of business compliance with sales and use tax reporting requirements. As a result, businesses often file incomplete or incorrect sales and use tax returns. These errors and omissions can have a large impact on a taxing jurisdiction's revenue.

Through the comprehensive review services offered by Avenu, these sales and use tax errors and misallocations will be identified resulting in the collection of new and underreported sales and use tax revenue for the City. We have the institutional knowledge and information to detect and validate the business activity within the City. Our goal in providing these services is to maximize income and minimize the cost of lost revenue by detecting, documenting and securing past and/or prospective local sales/use tax compliance, as applicable, before the revenues become unrecoverable.

Past compliance results in the past misreported local sales and use taxes being reallocated to the City. Prospective compliance results in the taxpayer reporting future sales and use tax payments correctly to the City.

The primary focus of the Sales/Use Tax Audit and Recovery Service is based on the following types of reviews:

3.1 PERMIT REVIEWS

Our permit reviews result in the identification of businesses not properly permitted for their places of business located within the City's jurisdiction.

The businesses will be contacted, as needed, to confirm physical location and applicable location dates, and we will work with the business and the Texas Comptroller of Public Accounts (Comptroller) to correct and update the sales tax permit in order to obtain both past and prospective local sales and use tax compliance, as applicable.

3.2 PAYMENT REVIEWS

Our payment reviews focus on those businesses where Avenu has observed an aberration in the City's sales and use tax revenue that is substantially different than what has been reported on a historical trend basis.

The businesses with material anomalies will be researched and/or contacted to determine the reason for those changes and appropriate action will be taken. We will work with the business and the Comptroller to obtain both past and prospective local sales and use tax compliance, as applicable.

3.3 SOURCING REVIEWS

Our sourcing reviews seek to identify those businesses that may be sourcing and reporting local sales and use taxes incorrectly to other local jurisdictions, when based on the nature of the business and the application of local sales and use tax laws, the sales and use taxes should be sourced to the City instead. Our sourcing review utilizes a variety of sources and methods to identify these types of businesses.

We will contact the businesses, share Texas tax law, policies, etc., and if applicable, will work with the business and the Comptroller to achieve both past and prospective local sales and use tax compliance, as applicable.

3.4 CORRECTIONS AND COORDINATION WITH THE COMPTROLLER

Avenu's business inquiries are predicated on a non-controversial, constructive, public relations approach that emphasizes the importance of each business to the City and the mutual benefits of correcting reporting errors. Avenu will copy or blind copy the City on meaningful correspondence with the businesses and the Comptroller throughout the project.

We will work with the business and the Comptroller to obtain both past and prospective local sales and use tax compliance, as applicable. We will offer to assist those businesses with confirmed errors with the preparation and filing of amended returns and/or reallocation requests in order to achieve past compliance. We will work with the business' in-house tax team and/or outside CPA to request and receive a summary of all applicable past sales tax remittances via an open records request from the Comptroller and then use this data to prepare the necessary amended sales tax returns for the business' final review and approval before filing the amended returns on behalf of the business with the Comptroller.

Correction of each sales and use tax error is deemed complete once both past and prospective local sales and use tax, as applicable, has been achieved and the City has received the funds from the Comptroller. As needed, Avenu will represent the City before the Comptroller for the purpose of correcting sales and use tax errors that have deprived the City of the revenue to which it is entitled. Our team will regularly monitor submissions for correction and follow up with the Comptroller, when necessary, in an effort to compel the Comptroller to correct an error.

The nature of any one sales and use tax correction, and the length of time for revenue to begin flowing to the jurisdiction creates several variables in terms of the volume and timing of the revenue that each client will discover and recover. The level of complexity of the misallocation or misapplication of the tax typically determines how long it takes for correction, and ultimately the receipt of the funds. Simple errors correct quickly, while errors that involve interpretations of the statutes and regulations can take considerably longer. Avenu is committed to starting the process immediately upon award and contract signing.

3.5 ASSISTANCE FROM the City

Avenu does not anticipate that it will require any special assistance from the City to successfully fulfill this engagement.

Some of the things we anticipate the City to assist us with are:

- ▶ Provide a letter of introduction identifying Avenu as an authorized agent of the City to perform sales and use tax reviews and to receive and examine taxpayer records necessary to assure sales and use tax compliance and revenue forecasts.
- ▶ Pursue in good faith corrective action on errors and omissions detected by Avenu.
- ▶ Issue necessary documentation to the state to allow us access to confidential data and to correct errors validated by Avenu.

the City and/or the State Comptroller retain exclusive authority and responsibility to administer, interpret and enforce the City's sales and use tax, and recognize that Avenu's role is limited to employing its unique expertise and proprietary tools for: i) detecting and documenting errors/omissions by taxpayers in the application, calculation, collection, and/or remittance of sales and use taxes and, ii) providing the City with technical assistance, without assuming or being delegated the authority or responsibility of the City to administer, interpret, and enforce its sales and use taxes.

3.6 PROPRIETARY ANALYSIS TOOLS AND METHODOLOGIES

In conjunction with quarterly billing invoices, Avenu will provide the City with information detailing the compliance achieved and being billed for which will include recovered amount, what economic period the recovery is for, the taxpayer's name, permit number, and other identifying information. At the direction of the City, Avenu is able to provide any other relevant information/reports as desired by the City.

Proprietary Analysis Tools and Methodologies

Avenu's team of experts will employ proprietary processes, technologies and procedures along with professional inquiry techniques to identify the City's sales and use tax errors and misallocations. Avenu has invested over three decades of intensive research and development into the data sources utilized for detecting local sales tax errors and subsequently designed proprietary information systems that allow for maximum flexibility in utilizing numerous data sources, and thereby providing the City with greater accuracy in error identification and correction. We are constantly updating and supplementing our efforts in this regard.

Avenu specializes in providing innovative revenue enhancement audit and technology services to local and state governments. We are the only firm in the United States offering proprietary revenue enhancement audit services and technology encompassing all general sources of local tax revenue.

- ▶ We truly have a National perspective on compliance issues and have extensive experience in Texas.
- ▶ We perform thousands of reviews each year, producing millions for our clients.
- ▶ We have a large staff of experts.
- ▶ We offer competitive performance-based pricing with no risk to the City.
- ▶ We only provide services to government agencies and therefore have no conflicts of interest with taxpayers and other business groups.
- ▶ We are a member of many state and national associations and actively participate in the organizations that set policy and practice for revenue enhancement.
- ▶ We continuously work to understand the needs of local government so we can better serve our clients.

Avenu uses **powerful analytics** to discover, recover and analyze revenue for our clients. A perfect example of this, which differentiates us from our competitors, is our analytics platform called "Clearview".

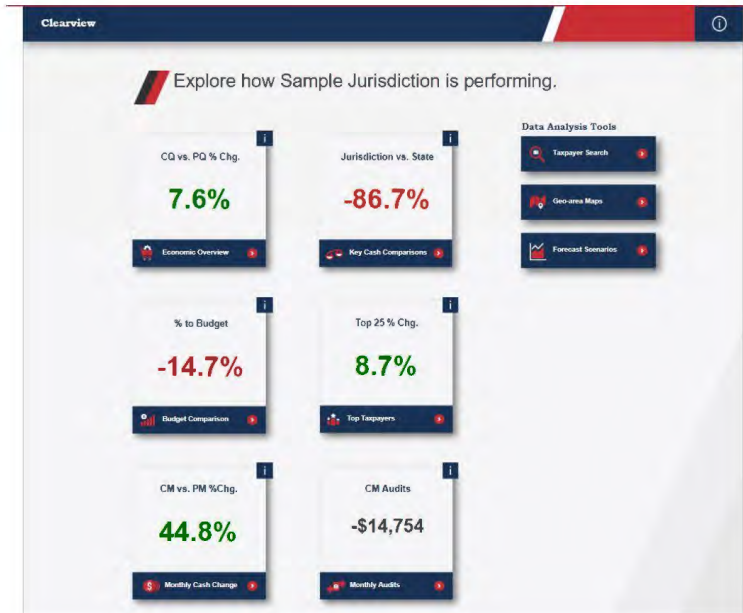
Clearview (Sales & Use Tax Analytics and Reporting) OPTIONAL ADD -ON

Avenu utilizes state-of-the-art proprietary software called Clearview. It is a powerful data analytics platform that allows Avenu, as well as the City staff (for an additional fee), to research local business activity and export data for further analysis. Our Clearview software includes the following key features:



Consolidated Economic Reports

- ▶ See key trends at the category, segment, and retailer levels.
- ▶ Access a quick view of how your key retailers are performing.
- ▶ View customized cash forecast by fiscal year.
- ▶ Search for any retailer in your jurisdiction and view their recent payment history.
- ▶ Review and export the rankings of the sales tax producers in your jurisdiction for recent periods.
- ▶ Locate potential one-time payments.
- ▶ Export the Excel data behind the reports for further analysis or export the visualization to pdf for inclusion in your internal reports.
- ▶ Access our analysts to support your use of our tools.



Geo Area Reports (Economic)

- ▶ Review trends and where the growth or declines within the geo-area are concentrated and uncover the key drivers of those changes.
- ▶ Export a 3-year history of each geo-area directly to excel for use in your internal reports.

Geo Area Payments

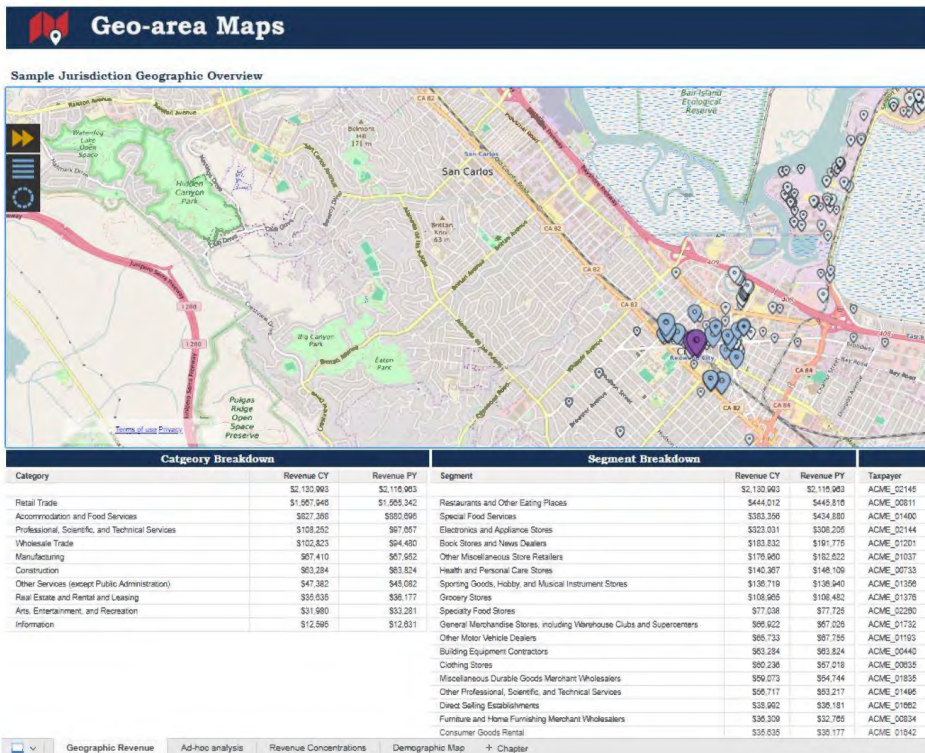
Balance Of City

FILTERS

GeoArea	Taxpayer	STPermit	SubPermit	Address	Category	Qtr_Econ	3	4th Quarter 2023	
								Segment	Q
Balance Of City	ACME_16708	10102221065	0	175 GATE HOUSE RD	SANFORD TX 04073	NotProvided	NotProvided	'6	19,548
Balance Of City	ACME_16367	10102338943	0	PO BOX ATTN: BLAINE MARTINEAU 1609	LEWISTON TX 04241	Professional, Scientific, and Technical Services	Advertising, Public Relations, and Related Services	'8	3,896
Balance Of City	ACME_16210	10103300256	0	555 MAIN ST STE 242	RACINE TX 53403	Manufacturing	Other Miscellaneous Manufacturing	'2	17,570
Balance Of City	ACME_08805	10103327317	0	955 BENTON AVE	WATERVILLE TX 04901	NotProvided	NotProvided	'1	18,260

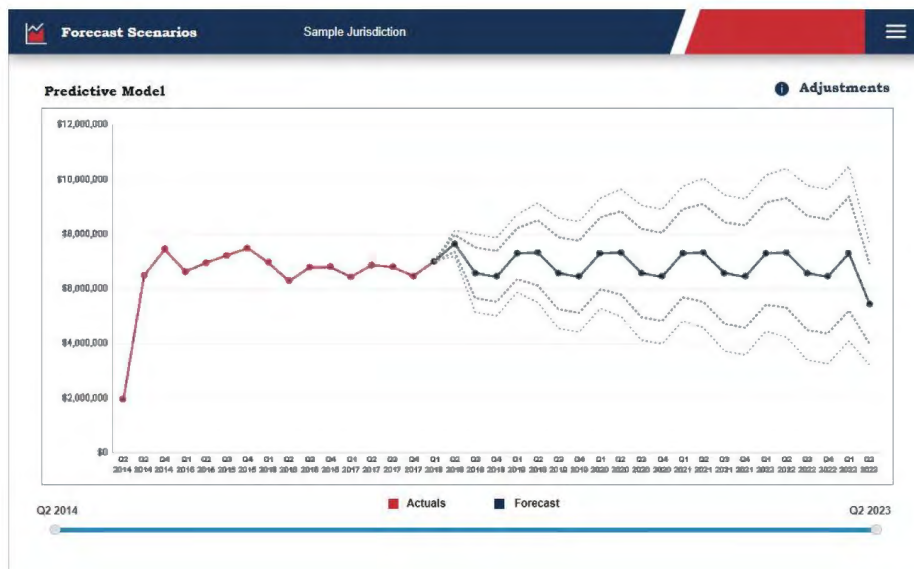
GIS Maps

- ▶ Visualize your geo-areas and summarize by category and segment.
- ▶ Dynamically view the revenue changes in your geo-areas over time.
- ▶ Compare the performance of one geo-area to another.



Cash Trends and Distribution Summaries

- ▶ Review the fiscal year-to-date totals for your cash.
- ▶ See which parts of your economy changed and the key retailers driving those cash changes.
- ▶ Compare your cash performance to other jurisdictions as a quick way of benchmarking performance.
- ▶ Review your cash distributions from the State (including pool amounts, where applicable).



Although this powerful analytics platform has been developed from a client use perspective (as outlined in the list of key features above), Avenu will use this tool internally in its efforts to discover payment and reporting errors. Please note that Clearview is not included with the Sales/Use Tax Audit and Recovery Service. Clearview is a separate product and service that is available for the City to purchase at an additional fee. Avenu can provide the City with a demonstration and free trial, should the City be interested in seeing how Clearview can help provide a greater understanding of the City's sales/use tax revenues and overall business community.

3.7 PROJECT SCHEDULE

Below, Avenu has outlined a general workplan for the City that shows our suggested schedule for these services.

Kick-off meeting. the City and Avenu's project teams will have an initial meeting to clarify the goals, objectives, timing, and responsibilities. As Avenu is and will be seen as an extension of the City's taxing authority, setting a clear understanding of this role within the local business community is important to overall success of this initiative.

Proposed Schedule. The timing for the proposed scope of work includes the following procedures and tasks designed to identify and correct reporting errors and secure revenue that is due to the City. As an example, if the services were to begin today:

- ▶ **Today** - Meet with designated the City official(s) to review updated service objectives and scope, Avenu's work plan schedule, public relations and logistical matters.
- ▶ **1st month and Ongoing** - Receive and process the monthly sales and use tax detailed confidentiality reports provided by the Comptroller.
- ▶ **2nd month and Ongoing** - Permit, payment and sourcing reviews to detect and document sales/use tax reporting errors.
- ▶ **3rd month and Ongoing** - Contact identified businesses to confirm errors exist and file correction claims with the Comptroller to secure past and/or prospective compliance, as applicable.
- ▶ **4th month and Ongoing** – Review, monitor and analyze the detailed confidentiality reports to confirm past and/or prospective compliance has been achieved.
- ▶ **Ongoing** - Maximize the City's income and minimize cost of lost revenue by detecting and documenting errors and misallocations before the revenues become unrecoverable.

Experience – Comparable Contract Form #1

2024-0654R Audit of Sales Tax Collections

Contract ID and Name: Sales and Use Tax Auditing and Recovery Services

Client Name: City of Houston, TX

Contract Administrator: Kiran Chandu, Assistant Director, Finance Department

Address: 611 Walker Street 10th Floor, Houston TX 77002

Phone Number: (832) 393-9067

Email Address: kiran.chandu@houstontx.gov

Performance Period: From: 06/01/2011 to Ongoing (within the past 5 years)
MM/DD/YYYY MM/DD/YYYY

Contract Details: Refer to Factor B for elements comparable in scope. Enter all appropriate details that will make this contract comparable in scope. No details or lack of details will be reflected in the score given to this factor.

Avenu has provided the City of Houston with Sales/Use Tax Audit and Recovery Services since 2011. To date, we have recovered over \$23 million in new sales tax revenue for the City of Houston. This contract involved the same scope elements of that which is required by El Paso. Avenu performs the Auditing of City Sales Tax Collections and examine the records but also ensure correction of records, ensure collection of unrealized sales tax revenue, and provide recommendations for improvements.

Offeror's Name: Avenu Insights & Analytics, LLC

Experience – Comparable Contract Form #2

2024-0654R Audit of Sales Tax Collections

Contract ID and Name: Sales Tax Auditing and Recovery Services

Client Name: City of Dallas, TX

Contract Administrator: Mark Sann, City Auditor

Address: 1500 Marilla Street, Room 2FN, Dallas, TX 75201

Phone Number: 214.670.3222

Email Address: mark.swann@dallas.gov

Performance Period: From: 09/2022 to Ongoing (within the past 5 years)
MM/DD/YYYY MM/DD/YYYY

Contract Details: Refer to Factor B for elements comparable in scope. Enter all appropriate details that will make this contract comparable in scope. No details or lack of details will be reflected in the score given to this factor.

In this contract, Avenu performs the audits of sales tax records and performs all the required scope functions required by the City of El Paso in this RFP.

Avenu provided the City of Dallas with Sales/Use Tax Audit and Recovery Services from 2010 through 2016 and recovered over \$6.1 million in new sales tax revenue for the City of Dallas. In late 2022, as result of the competitive bidding process, Avenu was once again awarded the City of Dallas' Sales/Use Tax Audit and Recovery Services contract. To date, we have recovered approx. \$2.5 million in new sales tax revenue for the City of Dallas for this second contract.

Offeror's Name: Avenu Insights & Analytics, LLC

Experience – Comparable Contract Form #3

2024-0654R Audit of Sales Tax Collections

Contract ID and Name: Sales Tax Auditing and Recovery Services

Client Name: City of Plano, TX

Contract Administrator: Karen Rhodes-Whitley, Director of Budget & Research

Address: 1520 K Avenue, Ste. 360, Plano, TX 75074

Phone Number: 972.941.7472

Email Address: karenr@plano.gov

Performance Period: From: 02/01/2016 to Ongoing (within the past 5 years)
MM/DD/YYYY MM/DD/YYYY

Contract Details: Refer to Factor B for elements comparable in scope. Enter all appropriate details that will make this contract comparable in scope. No details or lack of details will be reflected in the score given to this factor.

Avenu performs all elements of the City's Scope of Work for this project.

Avenu has provided the City of Plano with Sales/Use Tax Audit and Recovery Services since 2016. To date, we have recovered over \$8 million in new sales tax revenue for the City of Plano.

Offeror's Name: Avenu Insights & Analytics, LLC

Experience – Comparable Contract Form #4

2024-0654R Audit of Sales Tax Collections

Contract ID and Name: Sales and Use Tax Auditing and Recovery Services

Client Name: City of Irving, TX

Contract Administrator: Mr. Bret Starr, Chief Financial Officer

Address: 825 W Irving Blvd, Irving, TX 75060

Phone Number: 972.721.2401

Email Address: bstarr@cityofirving.org

Performance Period: From: 04/2013 to Ongoing (within the past 5 years)
MM/DD/YYYY MM/DD/YYYY

Contract Details: Refer to Factor B for elements comparable in scope. Enter all appropriate details that will make this contract comparable in scope. No details or lack of details will be reflected in the score given to this factor.

Avenu has provided the City of Irving with Sales/Use Tax Compliance Review and Recovery Services since 2013. To date, we have recovered over \$12.3 million in new sales tax revenue for the City of Irving.

In this contract, Avenu performed the same services as those requested by the City of El Paso, which include the audit of sales tax collections, examine the City's records and ensure the correction of those records, Avenu ensures the collection of unrealized sales tax revenue, and provide recommendations for improvements.

Offeror's Name: Avenu Insights & Analytics, LLC

Experience – Comparable Contract Form #5

2024-0654R Audit of Sales Tax Collections

Contract ID and Name: Sales and Use Tax Auditing and Recovery Services

Client Name: City of Arlington, TX

Contract Administrator: Ethan Klos, Treasurer

Address: 101 W. Abram Street, Arlington, TX 76010

Phone Number: (817) 459-6303

Email Address: Ethan.Klos@arlingtontx.gov

Performance Period: From: 01/2008 to Ongoing (within the past 5 years)
MM/DD/YYYY MM/DD/YYYY

Contract Details: Refer to Factor B for elements comparable in scope. Enter all appropriate details that will make this contract comparable in scope. No details or lack of details will be reflected in the score given to this factor.

Since 2008, Avenu has provided the City of Arlington, TX with Sales and Use Tax Compliance Review Services, and Clearview Analytics and Reporting services. Avenu has recovered over \$4,100,000 for the City.

Avenu provides the same services as requested by the City of El Paso.

Offeror's Name: _____



A V E N U
INSIGHTS & ANALYTICS

CITY OF EL PASO, TX

PROPOSAL FOR

AUDIT OF SALES TAX COLLECTIONS

2024-0654R

FACTOR D – CAPACITY AND CAPABILITY OF AGENCY’S RESOURCES

SEPTEMBER 18, 2024



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1 CAPACITY AND CAPABILITY OF RESOURCES

As mentioned in our response to Factor A – General Overview of Agency and Services, Avenu has over 40+ years of proven capability and capacity to successfully execute Sales and Use Tax projects across the State of Texas. With over 700 employees, 10 national offices, being privately-owned provides Avenu the agility needed to support contracts all over the United States. As a demonstration of our capability, Avenu has provided similar services to the City, Franchise Fee Auditing, where we have recovered over **\$250,000** for the City. Avenu also provides the City with Hotel Occupancy Tax Auditing, where we have recovered over **\$550,000** in HOT revenue for the City.

Avenu maintains two (2) strategic offices in Texas, in Houston and Dallas, to best support our Texas clients. We offer our local government clients a full range of revenue enhancement and administrative solutions. Avenu works with communities of all sizes, from our smallest client with a population of just 150, to our largest client with a population of over ten (10) million. As a testament to our dedication to state and local governments, Avenu has been listed on the GovTech 100 list for the last six (6) consecutive years.

Since our founding over four decades ago, Avenu has successfully supported thousands of local jurisdictions with our full suite of compliance auditing and revenue enhancement services. We are public sector experts, and we understand the challenges faced by local jurisdictions like the City. We support many local jurisdictions in Texas with these same services. Our refined methodologies and processes are a direct result of the nearly 40 years we have been providing auditing services.

Avenu generates over **\$2.8 billion** in new general fund tax revenue for its local government clients each year. By doing this, we have earned our reputation as the premiere revenue enhancement partner to the public sector through our comprehensive audit services, proprietary data analytics, accurate forecasting, cost-effective administration services, and our commitment to our clients.

Avenu has a nationwide team of experts, comprised of Certified Public Accountants (CPA), Certified Revenue Examiners (CRE), audit managers, and analysts. The team works as a cohesive unit to pinpoint compliance issues, provide detailed reporting, and recover lost taxes on our government clients' behalf. Specific to sales tax and recovery services, Avenu's experts in Sales/Use Tax Audit and Recovery Services identify, correct, and optimize sales and use tax issues through comprehensive reviews. We have a dedicated team of examiners and accountants whose region-specific expertise has resulted in the discovery of millions in underreported taxes.

Avenu Qualification Highlights

- ▶ 40+ years of Sales Tax Audit experience
- ▶ Provider of these services to El Paso since 2019
- ▶ Provider of similar services, Hotel Occupancy Tax Auditing, and Franchise Fee Auditing to the City
- ▶ Provide same services to some of the largest cities and Transit Agencies in Texas
- ▶ Two (2) offices in Texas – Houston and Dallas
- ▶ Same or similar services provided to over 900 agencies nationwide
- ▶ \$2.8+ billion in new general fund tax revenue generated for clients EACH year



1.1 EXPERIENCE IN TEXAS

Avenu is a recognized expert in the field of Sales/Use Tax Audit and Recovery Services, one of Avenu's core services, that we have offered for over 40 years. Avenu currently provides these services to several cities in Texas. We invest heavily in our people and technology to stay ahead of the market and serve our clients. Innovation allows us to use technically advanced canvassing techniques in conjunction with traditional methods to cast a wide net in capturing businesses not in compliance. **For the last five (5) years, Avenu has recovered over \$50,000,000 for Texas local jurisdictions.**



Figure 1 - With Red representing Avenu offices, and Blue representing clients, Avenu has a nationwide footprint across all 50 states

Our strong presence in the state allows us to actively monitor local and state legislative and regulatory policies in Texas. In fact, Avenu's lobbying efforts helped to create the Sales/Use Tax Audit and Recovery Service market in Texas by drafting SB 190. We offer the City unmatched expertise as a result. We support some of the largest cities in the state, this includes the cities of Dallas, Houston, El Paso, Irving, Plano, Arlington, and Richardson, as well as the Austin and Fort Worth transportation authorities. Due to this strong presence, we actively track and monitor legislative and regulatory policy specific to the State of Texas. We are a strong supporter of the Texas Municipal League, a recent Silver Sponsor at Texas City Management Association, and a Gold Sponsor of the Government Finance Officers Association of Texas.

1.2 SIMILAR ENGAGEMENTS

City of Houston

Ms. Kiran Chandu, Assistant Director, Finance Department
 611 Walker Street, 10th Floor, Houston, TX 77002

Email: kiran.chandu@houstontx.gov

Phone: 832.393.9067

Services/Results: Avenu has provided the City of Houston with Sales/Use Tax Audit and Recovery Services **since 2011**. To date, we have recovered over **\$23 million** in new sales tax revenue for the City of Houston.

City of Dallas

Mr. Mark Swann, City Auditor
 1500 Marilla Street, Room 2FN, Dallas, TX 75201

Email: mark.swann@dallas.gov



Phone: 214.670.3222

Services/Results: Avenu provided the City of Dallas with Sales/Use Tax Audit and Recovery Services from 2010 through 2016 and recovered over **\$6.1 million** in new sales tax revenue for the City of Dallas. In late 2022, as result of the competitive bidding process, Avenu was once again awarded the City of Dallas' Sales/Use Tax Audit and Recovery Services contract. To date, we have recovered approx. **\$2.5 million** in new sales tax revenue for the City of Dallas for this second contract.

City of Arlington, TX

Name: Ethan Klos, Treasurer

Phone: (817) 459-6303

E-Mail: Ethan.Klos@arlingtontx.gov

Since 2008, Avenu has provided the City of Arlington, TX with Sales and Use Tax Compliance Review Services, and Clearview Analytics and Reporting services. Avenu has recovered over **\$4,100,000** for the City.

Capital Metropolitan Transportation Authority

Ms. Nadia Nahvi, Controller

2910 East Fifth Street, Austin, Texas 78702

Email: nadia.nahvi@capmetro.org

Phone: 512.297.0392

Avenu has provided the Capital Metropolitan Transportation Authority with Sales/Use Tax Audit and Recovery Services **since 2013**. To date, we have recovered over **\$7 million** in new sales tax revenue for the Capital Metropolitan Transportation Authority.

City of Plano

Ms. Karen Rhodes-Whitley, Director of Budget & Research

1520 K Avenue, Ste. 360, Plano, TX 75074

Email: karenr@plano.gov

Phone: 972.941.7472

Services/Results: Avenu has provided the City of Plano with Sales/Use Tax Audit and Recovery Services since 2016. To date, we have recovered over **\$8 million** in new sales tax revenue for the City of Plano.

1.3 QUALIFICATIONS / EXPERIENCE OF PERSONNEL

As described in our response in Factor A – General Overview of Agency and Services. Avenu offers the City of El Paso a team of experts with the capacity and capability to continue supporting the City in this project. Avenu has a dedicated team of over 100 Revenue Enhancement professionals that provide a full suite of tax compliance, recovery, and consultation services to over 900 clients across the United States. This team has direct experience supporting the City and is comprised of Certified Public Accountants (CPAs), Certified Tax Examiners (CTEs), Certified Revenue Examiners (CREs), Audit Managers, Analysts, and support personnel.

Avenu has two physical offices in Dallas and Houston, with additional support from our other 10 regionally placed offices across the nation. Avenu is well adept at leveraging our substantial corporate resources to ensure our clients are supported. Below we provide a view of each staff member's key roles and responsibilities along with relevant experience that makes them a good fit for the City.

On the following pages, Avenu offers summary biographies of our Key Personnel that will support the City of El Paso.

1.3.1 KEY PERSONNEL

VP TEXAS SALES & USE TAX, CHRIS YEARY, CPA



As Vice President, Chris is responsible for overseeing the contract, managing day-to-day operations for Sales Tax Review services and serving as the primary contact for the City. Chris will use his vast experience with sales and use tax, and the City to play a key role in planning, executing, monitoring and controlling the project. He will conduct in-depth reviews to detect possible local sales and use tax errors, contacting taxpayers to discuss and determine local sales and use tax compliance, and facilitating corrective action to gain past and/or prospective local sales and use tax compliance. Highlights of Chris' relevant experience include:

- 28 years of experience in providing sales and use tax consulting services working on behalf of Texas local taxing jurisdictions and businesses
- Licensed Certified Public Accountant in Texas
- Previous experience with PriceWaterhouseCoopers' (PwC) State and Local Tax group in Dallas where he specialized solely in sales and use taxes by assisting his business clients with multistate and local sales/use tax refund compliance reviews,
 - defending/minimizing state sales and use tax audits,
 - negotiating voluntary disclosure agreements, and
 - analyzing state and local sales/use tax consequences of various business transactions.
- Education: BA in Business Administration (Accounting), University of Texas at Austin
Masters in professional accounting (Taxation), University of Texas at Austin
- Professional memberships include the Texas Society of CPAs and the American Institute of CPAs

MANAGER, TEXAS SALES & USE TAX, DEBBIE MENDOZA



Debbie is responsible for managing Avenu's examiners and analysts as well as performing in-depth reviews to detect local sales and use tax errors. She actively contacts taxpayers using a business-friendly and educational approach to discuss and determine local sales and use tax compliance. When needed, Debbie works to facilitate corrective action to gain past and/or prospective local sales and use tax compliance. Highlights of Debbie's relevant experience include:

- 30+ years of professional accounting experience in which the last 15 years have been with Avenu
- Investigating sales tax permits to identify businesses not properly permitted for their places of business.
- Thoroughly reviewing and identifying businesses that may be incorrectly sourcing and reporting local sales/use taxes
- Partnering with Texas clients to provide local sales tax review services
- Contacting taxpayers to share Texas tax law, policies, and work with the businesses to achieve past and/or prospective local sales/use tax compliance.
- Working with the Texas Comptroller and taxpayers to correct sales tax permit and reporting errors
- Training and managing staff on local sales/use tax compliance review and recovery services
- 19 years with PricewaterhouseCoopers' State and Local Tax group located in Dallas where Debbie defended/minimized multistate and local sales/use tax audits and performed multistate and local sales/use tax research and refund review
- Education: BA (Technical Management), DeVry University
MBA (Accounting), Keller Business School of Management

DIRECTOR, ANALYTICS & REPORTING, IRENE REYNOLDS

Irene manages the Clearview Analytics (STARS) and Reporting Team and is responsible for providing critical and complex analytics, forecasting and reporting to Avenu's Texas sales and use tax clients. Under her leadership, the team takes the important first step of cleaning and standardizing raw sales tax data to ensure data integrity. Irene maintains geographic areas and creates sub-areas to further investigate sales tax generation and trends. Deadlines are seamlessly managed, and Irene is accustomed to responding quickly to time sensitive and urgent requests. She also partners with clients to develop meaningful custom reports, charts and/or tables to provide answers not addressed in standard reports. As required by the Texas State Comptroller, Irene oversees and ensures that only authorized personnel obtain credentials to access the application and budgetary information. Highlights of Irene's relevant experience include:



- 20 years with Avenu where she has worked with data and explored and experienced a vast array of both simple and complex anomalies
- 15 years of experience working closely with cities in Texas
- Managing production flow of data review cycle to meet critical deadlines and produce meaningful reports and metrics to Texas clients
- Actively providing research for Avenu's Economic Analysis Team
- Hosted several Clearview Analytics (STARS) training webinars to Texas clients to enhance their knowledge and leverage the application
- Previous Team Lead for the Data Intelligence Department where she assisted in directing the data processing for all of Avenu' clients
- An Associate in Science degree in Business Administration.
- Professional membership in Phi Theta Kappa (High Honor Society for Superior Scholastic Achievement)

1.3.2 SENIOR LEADERSHIP TEAM

VICE PRESIDENT OF TAX COMPLIANCE, MIKE PORTIS, CPA, CFE



As Avenu's Vice President of Tax Compliance, Mike oversees Avenu's strategy, determines resources, enhances internal structure, and positions the business unit and its clients for success. Ultimately, Mike is responsible for the success and management of client projects involving a full suite of compliance services across several tax types and data analytics/reporting. He oversees the team providing his leadership, expertise, direction, and training. Preferring a hands-on approach, Mike enjoys engaging directly with clients for touch points and as needed. Highlights of Mike's relevant experience include:

- Certified Public Accountant (CPA) in Texas
- Certified Fraud Examiner (CFE)
- 24 years of tax and examination experience which includes employment for Ernst & Young in NC and the following firms in Texas: KPMG, Enron, and Arthur Anderson
- Managing tax data analytics for \$12 billion annually of client accounts payable spend
- Adeptly advising clients on tax process and systems improvement
- Examining Fortune 500 firms for corporate income, franchise, and sales and use tax compliance
- Identifying and investigating potential non-filers
- U.S. Army Veteran
- Education: BA (Accounting), University of Texas at San Antonio.
 Doctor of Jurisprudence, University of Houston Law Center

1.4 EXECUTIVE SPONSOR

CHIEF EXECUTIVE OFFICER, PAUL COLANGELO



Paul has nearly 25 years of executive leadership and a track record as a trusted advisor at the state and local levels. Paul not only leads the operations, strategy, and growth of Avenu, he is directly involved in the day-to-day operations of our Sales and Use Tax teams and has an avid interest in maintaining the City's contract. Paul previously served as President and COO at Library Systems & Services, as well as President of Appriss — where his strategic vision led to the portfolio revenue growth and diversification. Before Appriss, Paul was Vice President of Convergys Global Business Unit, managing client services programs in government, automotive, and transportation markets. Paul earned his bachelor's degree from Seton Hall University

and his MBA from Strayer University. And as part of his ongoing commitment to serving state and local communities nationwide, he serves an active Advisory Board member for the National Center for Missing & Exploited Children, Board Treasurer for Blessings in a Backpack, and Vice Chairman of the Board for Prince William County Service Authority.

- 25 years of serving state and local governments
- Serves as a direct line of Executive Leadership support
- Regularly meets with clients to ensure the highest level of support
- Deep commitment to a Customer-Driven Culture and Strategy including our Core Values (Client-Focused, Responsiveness, Caring, Passionate, Integrity)
- Direct oversight of all Customer Satisfaction (CSAT) reporting and KPIs on a quarterly basis



A V E N U

INSIGHTS & ANALYTICS

CITY OF EL PASO, TX

PROPOSAL FOR

AUDIT OF SALES TAX COLLECTIONS

2024-0654R

FACTOR E – NUMBER OF HOURS DEDICATED TO ENGAGEMENT

SEPTEMBER 18, 2024



FACTOR E - NUMBER OF HOURS

We have provided our Sales Tax Compliance Review service to some of the largest cities in the state (e.g. Arlington, Dallas, Garland, Houston, Irving, Plano, etc.)

We believe that our commitment level and track record demonstrate our abilities to serve the largest of Texas local jurisdictions and provide a similar level of service and results for the City of El Paso. Avenu will commit to devoting all of the expertise and institutional knowledge of the team to this project. Based on our extensive experience, we would fully anticipate falling somewhere in the 200-300 hours range as provided for in this RFP.



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

Certification Regarding Discrimination Against Firearm & Ammunition Industries

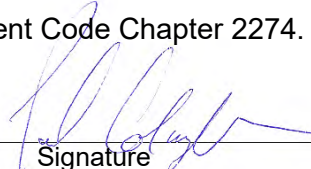
THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

I, Paul Colangelo (Full Name) the undersign
representative of Avenu Insights & Analytics, LLC (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 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.



Signature

09/18/24

Date



**City of El Paso
Purchasing & Strategic Sourcing Department
Certification Regarding Boycotting of Energy Company**

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

I, Paul Colangelo (Full Name) the undersign
representative of Avenu Insights & Analytics, LLC (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 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.



Signature

09/18/24

Date



Purchasing & Strategic Sourcing Department

Certification Regarding Terrorist Organizations & Boycotting of Israel

THIS IS AN OFFICIAL PURCHASING DOCUMENT

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 _____

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

FORM CIQ

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

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

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

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

OFFICE USE ONLY

Date Received

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

Avenu Insights & Analytics, LLC

2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

N/A

Name of Officer

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.

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?

Yes No

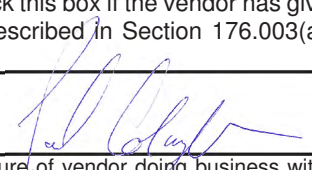
B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

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.

N/A

6 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).

7 

Signature of vendor doing business with the governmental entity

09/14/24

Date

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with [Title 2, Chapter 2.92, Section 2.92.080](#)

Introduction:

Individuals or entities benefiting by a City Council Agenda item must disclose contributions or donations made to current members of Council under the City's Ethics Code. The information on this form is being captured for transparency purposes and will be noted on the relevant City Council Agenda. **Contributions and Donations do NOT disqualify an applicant from doing business with the City.**

Definitions:

- "Contribution" A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit.
- "Contributor" A person making a contribution, including the contributor's spouse.
- "Donation" Cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district.
- "Donor" An individual and spouse, a business entity, or an individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item.
- "Benefiting" Shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.

Instructions: Please read and complete this form carefully. If you have made campaign contributions or donations to any current City Council member(s) totaling an aggregate of \$500 or more during their campaign(s) or term(s) of City office, you are required to disclose the information as specified below. If you have not made such contributions or donations past the limit specified in the ordinance, you are required to affirm your compliance with the municipal code. Please submit this completed form along with your application or proposal to the relevant city department. Failure to disclose campaign contributions or donations as required by the ordinance may result in a violation of the City's Ethics Code requirements, and sanctions under the Ethics Code 2.92.

Contributor / Donor Information:

Full Name N/A

Business Name _____

Agenda Item Type _____

Relevant Department _____

Disclosure Affirmation: Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.

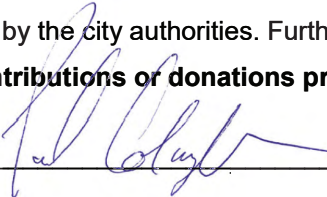
I have **NOT** made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office, as specified in Section 2.92.080 of the El Paso Municipal Code.

OR

I have made campaign contributions or donations totaling an aggregate of \$500 or more to the following City Council member(s) during their campaign(s) or term(s) of City office:

OFFICE	CURRENT COUNCIL MEMBER NAME	AMOUNT (\$)
Mayor	N/A	
District 1		
District 2		
District 3		
District 4		
District 5		
District 6		
District 7		
District 8		

Declaration: I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.

Signature: 

Date: 09/18/24



September 18, 2024

DISCLOSURE – Audit of Sales Tax Collections - 2024-0654R

Avenu Insights & Analytics, LLC attests that it has no pending litigation, acquisitions or mergers, civil or criminal, or otherwise any other matters that would impact our ability to successfully provide these services to the City of El Paso.

Thank you,

A handwritten signature in blue ink, appearing to read 'Paul Colangelo', is positioned below the 'Thank you,' text.

Paul Colangelo, CEO

Avenu Insights & Analytics, LLC

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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 CERTIFICATION OF FILING

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

Avenu Insights & Analytics, LLC
Centreville, VA United States

Certificate Number:
2024-1216065

Date Filed:
09/18/2024

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

City of El Paso, TX

Date Acknowledged:

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.

2024-0654R
Audit of Sales Tax Collections

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.

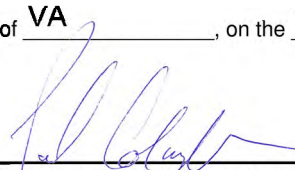
6 UNSWORN DECLARATION

My name is Paul Colangelo, and my date of birth is 06/26/72.

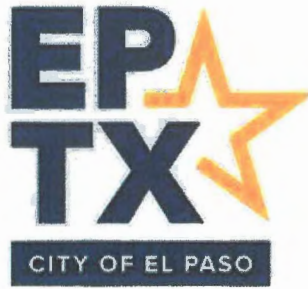
My address is 5860 Trinity Pkwy, Suite 120, Centreville VA 20120
(street) (city) (state) (zip code) (country)

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

Executed in Fairfax County, State of VA, on the 18 day of September, 2024.
(month) (year)



 Signature of authorized agent of contracting business entity
 (Declarant)



Purchasing & Strategic Sourcing Department

Indebtedness Affidavit

THIS IS AN OFFICIAL PURCHASING DOCUMENT

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

- A. Affiant is authorized and competent to give this affidavit and has personal knowledge of the facts and matters herein stated.
- B. Affiant is an authorized representative of the following company or firm: Avenu Insights & Analytics, LLC
[Contracting Entity's Corporate or Legal Name] (hereafter, "*Contracting Entity*").
- C. Affiant is submitting this affidavit in response to the following bid: *Solicitation No. 2024-0654R Audit of Sales Tax Collections* which is expected to be in an amount that exceeds \$50,000.00.,
- D. Contracting Entity is organized as a business entity as noted below (check box as applicable):

For Profit Entity (select below):

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

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

- Non-Profit Corporation
- Unincorporated Association

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

Contracting Entity:

Name	N/A
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	None
Business Address [No./Street]	
City/State/Zip Code	
Telephone Number	
Resident Address (if applicable)	
City/State/Zip Code	
Telephone Number	

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

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

N/A

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

N/A

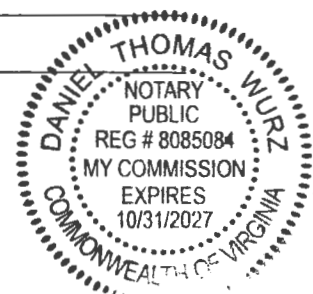
- K. In the event that the City refuses to do business with a Contracting Entity due to any indebtedness listed above or as determined by the City Financial Services Department, the Contracting Agency may appeal this determination in accordance with the appeal regulations in Ordinance 016529.

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

SUBSCRIBED AND SWORN to before me on this

Signature _____
 18 day of September, 2024

Notary Public
 Daniel Wurz
 Printed Name
 10/31/27
 Commission Expires





Purchasing & Strategic Sourcing Department

Non-Collusion and Business Disclosure Affidavit

THIS IS AN OFFICIAL PURCHASING DOCUMENT

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

1. I am over the age of 18, have never been convicted of a crime and am competent to make this affidavit.
2. I am a duly authorized representative of the following company or firm (the "Bidder") which is submitting a response to 2024-0654R Audit of Sales Tax Collections
Avenu Insights & Analytics, LLC (Name of Bidder).
3. **BY SUBMITTING THIS BID, I CERTIFY THAT BIDDER AND ITS AGENTS, OFFICERS OR EMPLOYERS HAVE NOT DIRECTLY OR INDIRECTLY ENTERED INTO ANY AGREEMENTS, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THIS PROPOSAL OR WITH ANY CITY OFFICIAL.**
4. I have listed in Paragraph 10 below all the names the Bidder uses and has used in the past and certify that I have disclosed all such names, including any assumed (DBA) names.
5. **Certificate of Organization.** In completing this Affidavit, I have attached a copy of the organization certificate issued by the Secretary of State of the state in which the company was organized (i.e. Certificate of Formation, Certificate of Good Standing, Statement of Operation or Registration and/or a copy of Assumed Name Certificate if the bidder/proposer used a trade name in the Solicitation documents is other than the name under which company was organized).
6. **Material Change in Organization or Operation.** *Except as described in Paragraph 10 below*, I certify that Bidder is not currently engaged nor does it anticipate that it will engage in any negotiation or activity that will result in the merger, transfer of organization, management reorganization or departure of key personnel within the next twelve (12) months that may affect the Bidder's ability to carry out the contract with the City of El Paso.
7. **Debarment/Suspension.** *Except as described in Paragraph 10 below*, I certify that Bidder and its subcontractors, officers or agents are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any covered transactions by any federal, state or local department or agency. If such an event has occurred, state in Paragraph 10 below, the reason for or the circumstances surrounding the debarment or suspension, including but, not limited to, the name of the governmental entity, the period of time for such debarment or suspension and provide the name and current phone number of a governmental contact person familiar with the debarment or suspension.

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



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

Avenu has included our Certificate from Delaware, the state in which Avenu was organized, along with our W-9.

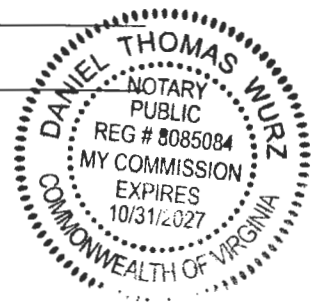
(Attach additional pages if needed)

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 Bidder it could be considered not responsible on this and future solicitations, and such determination could result in the discontinuation of any/all business or contracts with the Bidder by the City of El Paso.

Signature [Signature]
 SUBSCRIBED AND SWORN to before me on this 18 day of September, 2024.
 Notary Public [Signature]
Daniel Wurz
 Printed Name
10/31/27
 Commission Expires



Request for Taxpayer Identification Number and Certification

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

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	<p>1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <p>Avenu Insights & Analytics, LLC</p>	
	<p>2 Business name/disregarded entity name, if different from above</p>	
	<p>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.</p> <p><input type="checkbox"/> Individual/sole proprietor or single-member LLC</p> <p><input type="checkbox"/> C Corporation</p> <p><input type="checkbox"/> S Corporation</p> <p><input type="checkbox"/> Partnership</p> <p><input type="checkbox"/> Trust/estate</p> <p><input checked="" type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ <u> P </u></p> <p>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.</p> <p><input type="checkbox"/> Other (see instructions) ▶</p>	<p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p><small>(Applies to accounts maintained outside the U.S.)</small></p>
	<p>5 Address (number, street, and apt. or suite no.) See instructions.</p> <p>5860 Trinity Parkway, Suite 120</p>	<p>Requester's name and address (optional)</p>
	<p>6 City, state, and ZIP code</p> <p>Centreville, VA 20120</p>	
	<p>7 List account number(s) here (optional)</p>	

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 *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
-				-					
or									
Employer identification number									
3	4	-	2	0	5	0	1	2	1

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- 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	<p>Signature of U.S. person </p>	<p>Date ▶ 08/01/24</p>
------------------	----------------------------------	-------------------------------

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-INT (interest earned or paid)

- 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.*

EXHIBIT C
PROPOSAL COST



Purchasing & Strategic Sourcing Department

ELECTRONIC SUBMITTAL

MAYOR

Oscar Leeser

November 1, 2024

CITY COUNCIL

District 1

Brian Kennedy

District 2

Dr. Josh Acevedo

District 3

Cassandra Hernandez

District 4

Joe Molinar

District 5

Isabel Salcido

District 6

Art Fierro

District 7

Henry Rivera

District 8

Chris Canales

CITY MANAGER

Dionne Mack

Avenu Insights and Analytics, LLC
Attn: Daniel Wurz
5860 Trinity Parkway, Suite 120
Centreville, VA 20120

RE: Negotiations – 2024-0654R Audit of Sales Tax Collections

Dear Mr. Wurz,

The City of El Paso has evaluated the proposal that your company submitted in response to RFQ Number 2024-0654R Audit of Sales Tax Collections. It is my pleasure to inform you that, after the evaluation of proposals, we have selected Avenu Insights and Analytics, LLC as one of the offerors to proceed to the "Negotiation" phase of the contractor selection process.

Therefore, in accordance with Attribute 18 Evaluation and Award Process, Item #7 of the RFQ, we invite you to submit a negotiation letter to the City of El Paso. Specific list of requested items is shown on the following page. You must submit the letter to the City of El Paso by e-mail, on or before, November 8, 2024 before 5:00 p.m. MST to be considered for selection for the award of the contract.

This letter is only an invitation to participate further in the RFQ process; it does not convey or imply anything more. This letter is not intended to be a binding commitment to contract with your company, nor will the City of El Paso be obligated in any manner until the City Council takes formal action to award a contract. Accordingly, all activities in furtherance of this process, including your compliance with the conditions set forth in this letter, are considered to be at your sole cost.

Sincerely,

for *Rhonda N Easter*

K. Nicole Cote
Managing Director
Purchasing & Strategic Sourcing Department

cc: Miguel A. Montiel, Internal Audit Department
Bid File

(PS:KNC)

K. Nicole Cote – Managing Director

Purchasing & Strategic Sourcing | 300 N. Campbell | El Paso, TX 79901
(915) 212-0043 | CoteKN@elpasotexas.gov





Purchasing & Strategic Sourcing Department

MAYOR
Oscar Leaser

November 1, 2024

RE: Negotiations – 2024-0654R Audit of Sales Tax
Collections Page 2 of 2

CITY COUNCIL

District 1
Brian Kennedy

District 2
Dr. Josh Acevedo

District 3
Cassandra Hernandez

District 4
Joe Molinar

District 5
Isabel Salcido

District 6
Art Fierro

District 7
Henry Rivera

District 8
Chris Canales

CITY MANAGER
Dionne Mack

NEGOTIATIONS FEE PROPOSAL

Term: Initial term of 3 years with a one, two-year option to extend for a total of 5 years.

Initial Term	Annual Audit Service Fee
Year 1	\$ 0 _____
Year 2	\$ 0 _____
Year 3	\$ 0 _____
Initial Term Total	\$ 0 _____

Option to Extend	Annual Audit Service Fee
Year 4	\$ 0 _____
Year 5	\$ 0 _____
Total Option to Extend	\$ 0 _____
Grand Total (Initial Term + Option Years)	\$ 0 _____

Revenue Recovery Assumption

Estimated Revenue Recover Over 5 Years	Contingency Fee Rate	Fees Over 5 Years
\$ TBD _____	25 %	\$ 0 _____

K. Nicole Cote – Managing Director
Purchasing & Strategic Sourcing | 300 N. Campbell | El Paso, TX 79901
(915) 212-0043 | CoteKN@elpasotexas.gov

