Request for Proposals

for

Consulting Services for the Yavapai Passenger Transportation Study

for

Northern Arizona Council of Governments (NACOG)
in Partnership with
Central Yavapai Metropolitan Planning Organization

Issued:
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Proposals Due:
August 12, 2019

Project Funding Provided By:

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SECTION I  NOTICE

Notice is hereby given that Northern Arizona Council of Governments (NACOG) is seeking qualified firms to complete a Yavapai Passenger Transportation Study. The plan will be prepared under the direction of NACOG staff with the active involvement of, and consultation with, public, private, and non-profit transportation providers, transportation users, stakeholders and Central Yavapai Metropolitan Planning Organization (CYMPO).

Pre-submittal Conference. Respondents are encouraged to attend a pre-submittal conference, to be held at the Maricopa Association of Governments’ office (302 N. 1st Ave., Phoenix, AZ, 85003 in the Chaparral Room, Second Floor). Please note that this meeting will be held in Phoenix, not Flagstaff, at a NACOG partner’s office, Maricopa Association of Governments (MAG); parking will not be validated. A call-in option will also be provided. Any questions, concerns or doubts as to the requirements of this RFP should be presented to NACOG at this conference. NACOG will then determine the appropriate action and, if necessary, issue a written addendum to the RFP. See the schedule in Section 2 for the conference date and time. Attendees are requested to confirm attendance by emailing Jennifer O’Connor at joconnor@nacog.org by 5:00 pm two days before the conference.

Questions. Questions may be submitted in writing on or before the deadline for written questions, by email (joconnor@nacog.org). NACOG’s responses will be posted to www.nacog.org by the date indicated in the schedule and any addenda to the RFP will also be made available on the website prior to the RFP due date.

SECTION II  SCHEDULE

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<th>Date</th>
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<tr>
<td>07.01.19</td>
<td>RFP released</td>
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<td>07.15.19</td>
<td>Registration for Pre-submittal Conference begins</td>
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<td>07.24.19</td>
<td>Pre-submittal Conference at 9:00am MST</td>
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<td>07.26.19</td>
<td>Respondents to submit written questions to NACOG</td>
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<td>07.31.19</td>
<td>NACOG issues written response to questions</td>
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<td>08.12.19</td>
<td>Responses to RFP and sealed proposals due by 3:00pm MST</td>
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<td>Invitation to Interviews</td>
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<td>Follow-up Interviews (as needed)</td>
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<td>09.16.19</td>
<td>Selection</td>
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<td>10.04.19</td>
<td>Contract Execution/Notice to Proceed</td>
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<td>09.01.20</td>
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NACOG reserves the right to amend the schedule as necessary. Notification of schedule modification will be made available at www.nacog.org.

SECTION III  SCOPE OF WORK AND BUDGET

Northern Arizona Council of Governments (NACOG), in collaboration with partner organization Central Yavapai Metropolitan Planning Organization (CYMPO), is seeking a consulting firm to conduct the Yavapai County Passenger Transportation Study (YPTS). With a budget of $100,000, the CONSULTANT...
will begin by assessing the existing passenger transportation conditions, needs and opportunities as well as the context in which these services are provided. A YPTS vision, along with strategies and projects, will then encompass recommendations to enhance community mobility by increasing transportation options for residents to get to medical appointments, employment and shopping. Finally, the YPTS will offer strategies for local implementation while encouraging regional connections, and encourage innovative collaboration amongst partners, including public and private transit providers and human services agencies.

Introduction

Region Overview

Located in north central Arizona, Yavapai County covers approximately 8,128 square miles. Yavapai County is located roughly 48 miles north of Phoenix and 29 miles south of Flagstaff. The Mingus Mountain Range and the eastern portion of Prescott National Forest divide the area into two distinct regions referred to as Central Yavapai and the Verde Valley. Yavapai County is large and also contains smaller communities in the northern and southern parts of the county that do not identify with either of these two regions. The population in Yavapai County was 231,993 according to the 2018 US Census population estimates. This was a 10% increase since 2010. Growth is a reflection of the consistent expansion of the regional and local economy.

Yavapai County area transportation planning organizations, including Northern Arizona Council of Governments (NACOG), Central Yavapai Metropolitan Planning Organization (CYMPO), and Arizona Department of Transportation (ADOT), conduct transportation planning throughout the county. CYMPO provides transportation planning services in the federally designated urbanized area around Prescott, which includes Prescott, Prescott Valley, Chino Valley, and Dewey-Humboldt. NACOG’s serves the rest of the county including Sedona, the Verde Valley and rural communities such as Yarnell and Ash Fork. The Verde Valley Transportation Planning Organization (VVTPO), a group of jurisdictions and planning partners facilitated by Yavapai County, also coordinate transportation planning in the Verde Valley.
NACOG and CYMPO have established a formal relationship through an Intergovernmental Agreement (IGA) in which NACOG conducts Mobility Management services in the CYMPO region on behalf of CYMPO. Both CYMPO and NACOG planning funds will be used for this study and NACOG will manage the project. By expanding its coordination planning beyond the rural areas of Yavapai County, NACOG will hire a Yavapai Mobility Manager who will provide mobility management services across the entire county. The YPTS will serve as a foundation for the work plan for the Mobility Manager. The partners envision a significant increase in coordination activities as NACOG builds on its successful coordination implementation strategies established in the NACOG region.

Three public transit providers offer service to the general public and typically focus on a geographic or political area. Yavapai Regional Transit (YRT) is based in Chino Valley and operates local fixed route service in Chino Valley, along with four trips per week to Prescott and one trip per week to Prescott Valley. Yavapai Apache Nation (YAN Transit) operates fixed route service between the Yavapai-Apache Reservation in Middle Verde and the tribal community of Clarkdale. CAT and YAN Transit provide service within the large sub-region of Yavapai County known as the Verde Valley.

Cottonwood Area Transit (CAT) operates four local fixed routes that connect Cottonwood, Clarkdale, and Verde Village and a commuter line between Cottonwood and Sedona, called The Lynx. CAT has been closely involved with the Sedona Transit study, including planning work to expand services into Oak Creek Village. Additionally, CAT is looking to expand services into the unincorporated community of Cornville and has had conversations about transit supports to the city of Jerome.

Many human service agencies in the area provide transportation to program clients in Yavapai County. Typically, program requirements are based on age, disability status, and income. The region is home to
two award-winning human service transportation providers: New Horizons Disability Empowerment Center and Verde Valley Caregivers Coalition.

Verde Valley Caregivers Coalition (VVCC), which is a volunteer driver program serving seniors and persons with disabilities, was recognized as a volunteer transportation program of excellence by Toyota and the National Volunteer Transportation Center. VVCC program provides approximately 30,000 rides per year, but faces financial challenges to maintain and expand services to meet a growing need. This program has outgrown the 5310 program and has and will continue to face funding cutbacks from this resource. VVCC has a partnership with CAT to provide “Beyond-ADA services” to seniors and persons with disabilities throughout the Verde Valley.

Additional volunteer driver programs in Yavapai County, such as Beaver Creek Transportation and People Who Care, are also in need of additional funding resources and sustainability guidance.

There are a number of other mobility services beyond volunteer driver programs that provide tremendous service in the county. New Horizons Disability Empowerment Center, which serves seniors and persons with disabilities, has quickly become the primary transportation service in the Central Yavapai region. The service was recognized as the Top Human Service Transportation program at the 2018 AzTA conference and has been a leader in transportation in Yavapai County. However, similar to VVCC, New Horizon's funding needs exceed the availability of the 5310 program and are in need of identifying additional funding to maintain current operations.

The 2017 Yavapai County Coordination Plan recommended identifying and funding pilot projects to strengthen employment transportation and other mobility & transit services for residents of rural Yavapai County. Vanpools for employment transportation were also identified as a potential strategy in the plan. This area has been identified as a major priority not only for rural areas, but also for the CYMPO area. NAIPTA has a vanpool program for trips with an origin or destination in Coconino County. For additional mobility needs, Yavapai County has several high performing transit providers that have expressed interest in increasing coordination with human service providers. The YPTS will likely build off Yavapai County Coordination Plan findings and the needs analysis that is part of this study to identify local communities and service models for pilot projects, such as vanpool services, volunteer driver expansion, human service transportation expansion, and coordination with 5311 providers.

Existing Studies

Numerous transit planning studies have been conducted across the county in recent years including several active studies in 2018-2019. The intention of this plan is to build off of and integrate these efforts to address county-wide transportation needs and identify opportunities for regional collaboration across Yavapai County. Careful examination of published plans and continuous communication with current planning efforts is essential to the development of this plan. Provided below is an overview of related plans for consideration:

- **2018- NACOG Passenger Transportation Study Phase I**
- **2017- NACOG Community Needs Assessment**
- **2017- Yavapai County Mobility Implementation Plan (YCMMP) aka Yavapai County Coordination Plan**
- **2016- NACOG Coordinated Mobility Plan**
Additionally, there are 3 major transit studies that will overlap with the timing of the Yavapai County Passenger Transportation Study. Provided in Appendix-A are the scopes for these projects:

- City of Sedona’s “Greater Sedona/Oak Creek Canyon Transit System Development and Implementation Plan”
- Central Yavapai Metropolitan Planning Organization’s “Regional 2019 Transit Implementation Plan (TriP) Update”
- Maricopa Association of Governments’ “Age Friendly Arizona- Rural Transportation Incubator Initiative”

Yavapai Passenger Transportation Study Overview

The term “passenger transportation” is intended to cover a wide range of modes and service models that address community mobility. This plan will provide a strategy for enhancing passenger transportation services in Yavapai County and provide justification for federally funded public transportation projects in the Transportation Investment Plan (TIP). The YPTS vision, strategies and projects, should include both long-range and short-term recommendations, offer strategies for local implementation while encouraging regional connections, and encourage innovative collaboration amongst partners, including public and private transit providers and human services agencies. As Yavapai County has received recent transit planning attention, the YPTS will ensure previous planning efforts are not duplicated and will focus on funding recommendations and implementation efforts to move passenger transportation initiatives forward, as identified in Task 5.3. The YPTS will not include any evaluation of transit services in the CYMPO region as this item is addressed in the CYMPO 2019 Transit Implementation Plan (TriP); however, it will evaluate transit in the areas of Yavapai County outside of the CYMPO region such as Yavapai Region Transit and Yavapai Apache Nation Transit.

The Yavapai Passenger Transportation Study will also satisfy ADOT requirements for an updated Human Service Coordination Plan for the CYMPO region. Many core requirements for this task will be included throughout the YPTS, but a summary of Human Service Coordination findings and activities is required as part of the deliverables. Additionally, this study provides an opportunity to explore recommendations in the Yavapai County Coordination Plan such as the governance structure for coordinated services, fleet management and customer information.

In order to meet FTA and ADOT requirements for Coordination Plans the YPTS must include:

- An inventory of available services and resources including: transportation providers and their services, fleet inventories and availability, and key human service programs and how transportation is provided to those human service clients;
- An assessment of transportation needs for targeted groups of people, including supporting demographic and employment data;
- An evaluation of areas of redundant transportation service and gaps in service;
- Identification of coordination actions and strategies to eliminate or reduce duplication in services, to improve customer access to services and to improve utilization of resources;
- Priorities for projects, strategies and actions (including vehicle replacement plans); and,
- An annual listing of projects eligible for funding in the region.
The above elements are incorporated into the scope below.

**Activity One. Project Initiation**

**Task 1.1 Refinement of Study Goals and Objectives and Formalized Scope of Work**

The CONSULTANT will work with NACOG to refine the study goals and objectives and Scope of Work. This exercise will serve to guide the overall work effort and will ensure that the CONSULTANT understands the perspectives and viewpoints of NACOG and its member agencies relative to the study purpose and expectations. The formalized Scope of Work will include the specific tasks, deliverables, and schedule of the project. In addition, the Scope of Work will provide a plan for innovative, cost-effective outreach and engagement of key stakeholders and the general public per the guidelines established in Activity 2 below.

**Activity Two. Public and Stakeholder Outreach**

**Task 2.1 Project Information Content Generation**

The CONSULTANT will periodically generate project status reports to post on the NACOG project website, which will serve as the online hub of this project, according to a schedule agreed upon with NACOG. This will include, but not be limited to, graphic/pictorial content, written content, or videos. Graphic design and branding will be coordinated to the greatest extent possible with NACOG. Respondents should include in their proposals examples of public information media tools and documents created to support a planning process such as this.

**Task 2.2 Project Advisory Committee Meetings**

NACOG intends to recruit and seat a project advisory committee from key stakeholders involved in the Yavapai Passenger Transportation Study and service delivery. The CONSULTANT will work with NACOG to determine the make-up of the advisory committee which could include: NACOG executive director; the CYMPO administrator; county, tribal and state representatives; aging and adult services stakeholders; economic development representatives; transit providers; and non-profit transportation providers. The CONSULTANT will plan and conduct meetings with the project steering committee at appropriate junctures in the process. Respondents should demonstrate experience and understanding of public and steering committee/stakeholder meeting preparation and management. The project approach and timeline should delineate where the respondent would position meetings for both the project steering committee and the general public.

**Task 2.3 Public and Stakeholder Outreach and Solicitation of Input**

The CONSULTANT will identify gaps in previous outreach efforts and design public input opportunities in order to obtain an understanding of the public’s and stakeholders’ perspectives on unmet passenger transportation needs in the region along with potential solutions. Emphasis should be placed on identifying transit needs that might be reasonably met by establishing or contracting for new public transportation or specialized transportation services or by expanding existing public, private and non-profit services. When meeting with local coordination councils, the CONSULTANT will briefly summarize the recently completed planning efforts and ensure that previous recommendations are not duplicated.
The CONSULTANT will rely on innovative methods for reaching the general public and stakeholders, above and beyond the use of public meetings, to educate them about the study and obtain their input on passenger transportation needs and the regional transit vision. Respondents should demonstrate knowledge and experience with these tools and describe how they will be applied in the region. Methods could include “Meetings on a Bus” (a technique employed during Phase 1 of the Passenger Transportation Study), attendance and information sharing at community events, and the use of 76 Engage, an online public engagement tool that CYMPO currently uses.

Task 2.4 Creation of Yavapai Passenger Transportation Vision

The CONSULTANT will guide the Advisory Committee in the creation of a regional passenger transportation vision and determine if a county-wide approach to passenger transportation planning has broad support or if they prefer to focus on sub-regions. Sample questions to be addressed during a stakeholder visioning workshop include: 1) What is your vision for passenger transportation? 2) What is the appropriate role of transit (both public and private) and human services transportation in the region, from both a county and sub-region perspective? 3) How should the regional passenger transportation vision be funded? 4) How should implementation of the regional passenger transportation vision be managed/administered? The CONSULTANT shall lead a conversation among Advisory Committee members to develop a regional definition of transportation need, which could be based on examples from rural regions around the country and those definitions used in competitive grants. In addition, the CONSULTANT will guide the Advisory Committee in coming to agreement on county-wide projects.

The CONSULTANT will use a dynamic and interactive design for the visioning process to ensure inclusion from participants on and off-site. Respondents should demonstrate experience in orchestrating and successfully leading a visioning process with the general public and stakeholders, and communicate their understanding of the elements of successful stakeholder process in such a large geographic area with diverse participants. The project approach and timeline should clearly delineate where the respondent would insert the stakeholder visioning process.

Activity Three. Define Framework for County-wide Planning and Provide an Overview of the Region

The CONSULTANT will provide an enhanced understanding of the context in which passenger transportation services are provided in Yavapai County. By describing the history of passenger transportation service and planning efforts in the region, the CONSULTANT will create a framework for moving forward to defining shared goals and initiatives that can be implemented across the region. The overview of the existing services in Yavapai County will include public, private and non-profit providers that provide fixed route, demand response and commuter transportation services.

Task 3.1 Provide an Overview of the Study Area and Fiscal Stakeholders

Up to this point, transit studies in Yavapai County have only been conducted on a sub-regional basis, focusing on a specific area such as the CYMPO region or Sedona. The CONSULTANT will lay the groundwork for this county-wide study by describing the geography, demographics and growth of Yavapai County, while also incorporating in its descriptions the cities, the CYMPO region, the Verde Valley region and the smaller rural communities such as Yarnell, Seligman, Ash Fork, Bagdad, Black Canyon City, Cordes Lake, as well as Chino Valley and Paulden. This overview will ensure that the YPTS
takes a holistic approach to understanding the county and proposes service, funding and governance recommendations that meet individual community needs as well as those of the region.

In addition, the CONSULTANT will conduct a fiscal stakeholder evaluation that will include an overview of transportation funding in Yavapai County, funding history and the goals and visions of those contributing stakeholders and funders. This task is fundamental to planning the future of coordination and regional transportation services moving forward.

The CONSULTANT will also provide examples of peer communities (regions or counties) with details about their transit performance, transit investments and governance structure. The CONSULTANT will explain the benefits and challenges of both a county-wide approach and a sub-regional approach to planning and governance.

Task 3.2 Summary and Analysis of Recommendations from Recent Planning Efforts

The CONSULTANT will provide summaries of the existing plans in order to inform the YPTS of related planning activities; the summaries will cover the scope, findings and recommendations of the studies. As mentioned in the Existing Studies section above, much transit planning is currently taking place in the region. CYMPO is currently conducting a Transit Implementation Plan which covers the communities of Prescott, Prescott Valley, Chino Valley, and Dewey-Humboldt and will recommend services as well as funding and a governance structure to implement the services. The City of Sedona is conducting a Greater Sedona/Oak Creek Canyon Transit Study, which will include a multi-phased approach to creating local circulator service for residents and visitors along with shuttle service to popular hiking and tourist destinations. The City of Sedona plan will also include funding and governance structure recommendations, which could align with those in the CYMPO 2019 Transit Implementation Plan. Having all these plans summarized and in one place will provide a valuable foundation for additional plan objectives.

The CONSULTANTS will provide an analysis of the studies and identify areas of agreement or overlap which could allow for joint planning in the future. The CONSULTANT will summarize the following elements of the plans: 1) outreach, 2) identified transportation needs, 3) gaps in service, 4) proposed solutions/recommendations, 5) progress/status update on recommendations. The CONSULTANT will create a county map showing the service recommendations form the CYMPO 2019 Transit Implementation Plan and Sedona Transit Study, layered with existing transit services. Completion of this task will be required within the first 45 days of this project but ongoing communication with concurrent efforts is required.

Task 3.3 Provide Case Studies of Communities That Have Initiated Transit Service in the Past Five Years

For many communities, starting a new transit service can be daunting task. Even with support from potential riders, elected officials and jurisdiction management are hesitant to direct precious financial resources to public transit with no guarantee of success. Yavapai Counties communities could benefit from learning about peer communities around the country that have initiated transit service in the past five years and effectively navigated a process that requires local funding, knowledge of federal transit regulations, an understanding of the basics of transit service planning and the ability to develop a funding relationship with the Arizona Department of Transportation staff.
The CONSULTANT will provide four to five case studies of peer communities from around the country that have begun transit services in the past five years. Each case study will include: 1) an overview of key decisions made in the process to create a transit program; 2) a description of the challenges encountered during the development of the transit program and how the jurisdiction responded to those challenges; 3) a description of the level of satisfaction in the community with the transit service, if available; 4) a list of impacts of transit on the community, including the economic benefits; and 5) recommendations for potential and start-up communities. The case studies should also include information about the transit service provided, including the level of service, transit system performance, cost, funding source(s), governance structure and management type.

Activity Four. Sub-Regional Analyses of Existing Conditions, Needs and Opportunities

The CONSULTANT will conduct analyses of the existing conditions, needs and opportunities within each of the following sub-regions: 1) CYMPO, 2) Verde Valley and 3) rural areas beyond those two regions such as Yarnell, Seligman, Ash Fork, Bagdad, Black Canyon City, Cordes Lake, Chino Valley and Paulden. The final document will report on each of the three sub-regions individually, followed by county-wide recommendations as described under Task 5.

Task 4.1 Inventory, Evaluation and Opportunities for Enhancements of Human Service Transportation Providers and Transit Providers

The Yavapai County Coordination Plan/YCMMIP provided a solid overview of existing human service transportation in Yavapai County, both in the body of the final report and in Appendix A “Regional Profile”. The CONSULTANT will update the Existing Providers information from the Yavapai County Coordination Plan, including transit providers, for each of the three sub-regions. A summary of the resources, findings and recommendations for enhancements will be included in the body of the final document, while the detailed Inventory and Evaluation should be provided in an appendix.

In the “Inventory”, the CONSULTANT will include a description of the transportation providers and their services, fleet inventories and availability, and key human service programs and how transportation is provided to those human service clients.

In the “Evaluation” section, the CONSULTANT will provide an analysis of system performance, revisiting each program’s performance, goals and financial information from the Yavapai County Coordination Plan and summarizing any progress toward those goals.

In the “Recommendations for Enhancements” section, the CONSULTANT will identify opportunities for service improvements or enhancements and provide implementation guidance for those opportunities.

The CONSULTANT will build on the transit findings in the Yavapai County Coordination Plan by developing a robust evaluation of the three transit providers: Cottonwood Area Transit (CAT), Yavapai-Apache Nation (YAN) and Yavapai Regional Transit (YRT). The analysis will include an inventory, evaluation and service recommendations for the transit providers and identify long range goals and partnership opportunities. The CONSULTANT will offer planning supports and advice to transit providers on areas of need such as marketing, performance enhancements and training. Where possible, the CONSULTANT will develop implementation plans for the recommended service expansions and offer guidance on implementation activities identified in the Sedona Transit Plan and CYMPO Transit Implementation Plan. Recommendations for new or expand services for the region’s 5311 transit
providers should also be incorporated into Task 5.1, “Identify Priority Corridors and Communities for Future Service or Service Enhancements.”

Task 4.2 Passenger Transportation Needs Assessment

The Yavapai County Coordination Plan conducted a brief analysis of service availability and transit needs in Yavapai County. The YPTS will place a greater emphasis on the level of service needed to address Yavapai County passenger transportation needs both between communities and within the sub-regions. The passenger transportation needs analysis is expected to guide service expansion or enhancements and the development of county-wide and sub-regional strategies.

The needs analysis will incorporate feedback from the general public, government officials, local stakeholders, service providers and an updated demographic analysis similar to the overview provided in Phase I of the PTS. Research on this item will build on, not duplicate, analyses in existing plans, including the Sedona Transit Study and the CYMPO Transit Implementation Plan, as identified in Task 3.2.

The CONSULTANT will identify the passenger transportation needs of the region by conducting an assessment of the size and location of identifiable population groups in the region likely to be transit-dependent or transit-disadvantaged. Transit dependency indicators will include, but not be limited to, age, disability and income/unemployment based on the most recent demographic data. The CONSULTANT will utilize the most effective method for assessing the region’s travel needs within the context of this study based on industry standard definition of needs, tools and techniques. The needs assessment will include both a review of passenger transportation needs within the community and in reaching regional activity centers. A Transit Dependency Index (TDI), which is an aggregate measure displaying relative concentrations of transit dependent populations, will also be developed for the study area based on demographic data and shown in map format by density and percentage of population (see “PTS Technical Memorandum 2A Demographic and Passenger Needs”. Additionally, the needs assessment will identify areas of redundant transportation service and gaps in service.

The CONSULTANT will forecast demographic changes and passenger transportation needs for the mid and long term in the planning region. The demographic data will be shown on a map with corridor overlays; electronic images of the maps will be provided to NACOG for use in future documents. As appropriate, the CONSULTANT will also show forecasted passenger transportation needs on the map.

Task 4.3 Regional Map(s) and Visualization Tools

The CONSULTANT will develop regional transportation maps based on existing service maps from the public transit providers in the region and data provided by human services transportation providers and included in the Yavapai County Coordination Plan. In addition to the maps, the CONSULTANT should create other visualization tools and infographics, as appropriate, to help planning participants and the public understand service gaps, travel trends and other passenger transportation data. The maps and visualization tools will be consistent with those in the PTS Phase 1 Plan, such as the “Existing Fixed Route, Deviated Fixed Route and Community Transportation Services Map”, “Locations of Population Centers Map”, “Regional Trip Generators Map”, and “Corridors Lacking Public Transit Map” in the PTS. From the Yavapai County Coordination Plan, the “Commuter Work Flow Map” and the “Human Services Transportation in CYMPO in Verde Valley Regions Map” (see YCMMIP/Yavapai County Coordination Plan
Appendix A) will be updated for the YPTS. At the end of the study, all visual tools (maps, charts, graphs, and infographics) should be made available to NACOG as individual electronic files so that they can be inserted into future documents.

The CONSULTANT will create needs assessment maps consistent with those developed in Phase I of NACOG’s PTS, such as the “Locations of Population Centers Map”, “Regional Trip Generators Map”, and “Need Corridors Map”. The data and maps will be used to identify passenger transportation needs and priority corridors and communities.

Activity Five. Passenger Transportation Recommendations and Coordination Strategies

To create a cohesive planning strategy for Yavapai County, the CONSULTANT will provide clear guidance for how the region can move forward with its Yavapai Passenger Transportation Vision, coordination activities and the recommended services both across the county and within the sub regions. NACOG and CYMPO will use the study recommendations and guidance to help identify and support strategic passenger transportation investments into the future with assistance from a new Yavapai Mobility Manager to be hired in Fall 2019.

Task 5.1 Identify Priority Corridors and Communities for Future Service or Service Enhancements

The CONSULTANT, using industry standard transit modeling, will identify corridors for future service or service enhancements in rural Yavapai County based on their potential to support improved mobility. The CONSULTANT will utilize the results of the transit and human services transportation evaluations to define and prioritize the corridors, modes and routes for future service enhancements to address demand as well as how potential funding changes could impact local, regional, and intercity passenger transportation services. The regional framework should emphasize connectivity to regional activity centers within and outside the county when identifying the service improvements needed to most efficiently deliver an effective regional transportation network. Recommendations should include both public transit and human services transportation providers as appropriate to create one regional network of transportation services.

Task 5.2 Coordination Strategies and Implementation Steps

The CONSULTANT will familiarize themselves with the Goals, Objectives and Strategies, as well as the Alternative Strategies and Projects, from the Yavapai County Coordination Plan. Leading up to the study, NACOG will work with the Central Yavapai Local Coordination Committee to select three priority projects from the Yavapai County Coordination Plan that they would like included in the YPTS and define how those projects fit into the CYMPO Transit Implementation Plan. Therefore, the CONSULTANTS will focus on identifying projects and priorities for the rural portions of Yavapai County and identifying opportunities and implementation steps to integrate projects across the rural and urban areas.

The CONSULTANT will propose Coordination Strategies that can be taken by one or more transportation provider to increase transportation options and service in the study area. The types of strategies should include policy recommendations, creative financing tools (new funding sources and techniques for obtaining local financial support), identification of opportunities to consolidate efforts, and technical assistance for demand response services to support best practices on trip planning. The strategies should also encourage and strengthen partnerships where appropriate and clearly outline the roles and responsibilities of the region’s passenger transportation partners as needed. Where possible, the
CONSULTANT should specify estimated costs, proposed timeframe, recommended champions/partners, performance measures and potential funding sources so that projects are ready for implementation.

Specifically, ADOT requires the following coordination elements to be included in the YPTS:
- Identification of coordination actions and strategies to eliminate or reduce duplication in services, to improve customer access to services and to improve utilization of resources
- Priorities for projects, strategies and actions (including vehicle replacement plans)

The CONSULTANT will identify workforce transportation needs both within the sub regions, such as the Verde Valley, and between them, such as from the Verde Valley to Prescott. The CONSULTANT will then provide vanpool recommendations to support the identified needs, including guidance on maximizing vanpool capacity to support non-employment trips. The CONSULTANT will also propose pilot programs for communities not currently receiving service to meet passenger transportation needs, along with recommendations for coordination between 5311 transit providers and human services providers.

In order to provide clear direction to all stakeholders in region, the CONSULTANT will group the strategies and implementation steps by sub-region (CYMPO, the Verde Valley and the rural areas beyond those two regions) as well as by Yavapai County, for projects that cross sub regions, as well as out-of-county connections. The CONSULTANT will also identify cost savings strategies to address long distance transportation to Phoenix and Flagstaff and practices to increase efficiency, which may include enhanced coordination between service providers. The CONSULTANT will define the roles and responsibilities of stakeholders – including planning organizations, jurisdictions, and human services providers. Elements of the YPTS that are tied to the Coordination Plan must be completed by February 2020 in order to meet the ADOT deadline.

**Task 5.3 Funding Sources and Governance Structures**

To improve the financial capacity and sustainability of mobility services across Yavapai County, the CONSULTANT will identify transportation funding sources beyond the traditional FTA 5310, 5307 and 5311 grants to support passenger transportation across the region. Potential funding sources include Medicaid and other mileage reimbursement for volunteer drivers, and funding through local governments, healthcare providers, and foundations.

The CONSULTANT will provide a synthesis of the Governance and Management recommendations from the Yavapai County Coordination Plan, the CYMPO Transit Implementation Plan and the Sedona Transit Plan. If a Governance and Management structure was not already selected during one of the studies, the CONSULTANT will present two to three Governance and Management options for Yavapai County and work with the YPTS Steering Committee and elected officials to select a recommended option. The CONSULTANT will then provide implementation support for the identified Governance and Management structure, along with guidance on how to move forward. For example, if a Regional Transportation Authority is selected, the CONSULTANT will prepare a list of passenger transportation projects to be included in the proposed ballot initiative. In addition, the CONSULTANT will provide sub regional Governance and Management options for rural Yavapai County in the event that a county-wide initiative is not recommended.
Beyond the county-wide the funding and governance recommendations, the CONSULTANT will prepare sustainability recommendations for select providers in consultation with NACOG, including recommended efficiency improvements to reduce costs and potential new funding sources.

**Task 5.4 Risk Assessment**

As part of its analysis, the CONSULTANT will assess the risk to the region of maintaining the status quo and not implementing the recommendations of the CYMPO 2019 Transit Implementation Plan, Sedona Transit Study and YPTS. The CONSULTANT will describe the effects of a “do nothing” approach, along with associated costs to residents, businesses, and governments, as well as impacts to congestion and community health.

**Task 5.5 Educating the Public**

Based on the selected county-wide or sub regional Governance and Management structure(s), the CONSULTANT will develop public outreach materials to educate the public and elected officials about the proposed funding mechanism and governance structure. The materials will be used by CYMPO, NACOG, jurisdiction staff and transportation providers to increase the public’s awareness and understanding of transportation services, and the need for and benefits of adequate funding and supports for passenger transportation.

**Activity Six. Proposal for Phase 3 and Future Studies**

The CONSULTANT will provide direction on the scope of work for the next phase of this Passenger Transportation Study which could include a financial plan to forecast revenues, expenses, and funding as well as guide future passenger transportation investments, and provide direction on the implementation of the selected passenger transportation scenario. The next phase(s) could also propose how advancements in existing and future transportation technologies can impact the provision of transportation services and increase awareness of transportation options within and to/from rural communities.

In addition, the CONSULTANT will make recommendations for local-level transit studies based on the conclusions from the Yavapai Passenger Transportation Study.

**Activity Seven: Project Closeout**

The project will be completed in maximum of eleven (11) months from the date of the Notice to Proceed.

**Task 7.1 Summary Plan Materials for Distribution**

The CONSULTANT will develop summary media for distribution and presentation suitable for a general audience, focusing on the essential features of the Passenger Transportation Study.

**Task 7.2 Study Record**

The CONSULTANT will deliver a product that documents the study process, finding, recommendations and implementation strategy.
A. **DELIVERABLES**

Required products of this project are listed below; a final list of deliverables will be determined upon contract negotiation and based on the successful proposer’s Scope of Services. An administrative draft of each deliverable will be submitted in electronic form and, when requested, hard copy format, to the NACOG project manager for review. Comments from NACOG will be incorporated into the deliverable by the CONSULTANT, before it is distributed for external review. Comments received during the external review process will be incorporated into the final drafts.

**Activity One. Project Initiation**

Deliverable 1. Formalized Scope of Work. Refinement of study goals, objectives and Scope of Work including a detailed work program that identifies the specific tasks, deliverables, and schedule. Along with a public outreach summary that outlines engagement of key stakeholders and the general public.

Deliverable 2. Project Purpose. A description of the purpose of the Yavapai Passenger Transportation Study, informed by content collected during Activity Three, to be used in communicating the project purpose to the public.

**Activity Two. Public and Stakeholder Outreach**

Deliverable 3. Project Information Content Generation for Website. Periodically develop project status reports to post on the NACOG project website.

Deliverable 4. Project Steering Committee Meetings. Facilitate project steering committee meetings as appropriate through the planning process.

Deliverable 5. Public Outreach and Solicitation of Input. Conduct public meetings and obtain public input through the use of innovative tools to reach communities. Submit public outreach support materials (e.g., maps, PowerPoint, etc.).

Deliverable 6. Yavapai Passenger Transportation Vision. A Yavapai passenger transportation vision, developed by stakeholders under CONSULTANT guidance. Include documentation of visioning process.

**Activity Three. Define Framework for County-wide Planning and Provide an Overview of the Region**

Deliverable 7. Overview of the Region with Analysis of Transit and Coordination Plans. Content includes:

A. Overview of the Study Area. A description of the geography, demographics and growth of Yavapai County and its communities, along with a history of transit and coordination planning across the region.

B. Summary and Analysis of Transit Plans and Coordination Plans. Review of recent and on-going transit planning efforts and Coordination Plans and analysis of recommendations.

Deliverable 8. Case Studies. Four to five case studies of peer communities with information about their process to initiate transit services, including transit performance, transit investments and governance structure.
Activity Four. Sub-Regional Analysis of Existing Conditions, Needs and Opportunities

Deliverable 9. Existing Conditions and Needs Assessments. Content includes:

A. Inventory, Evaluation and Opportunities for Enhancement of Human Servicers Transportation Providers and Transit Providers. Update of the Existing Providers information from the Yavapai County Coordination Plan, including transit providers, for each of the three sub-regions: 1) CYMPO, 2) Verde Valley and 3) rural areas beyond those two regions. Service recommendations for Yavapai County mobility programs. Evaluation of the three transit providers and implementation plans for recommended service expansions.

B. Passenger Needs Assessment and Needs Forecast. An assessment of the size and location of identifiable population groups in the region that are currently likely to be transit-dependent or transit-disadvantaged, followed by forecasted demographic changes and passenger transportation needs.

C. Regional Passenger Transportation Map(s) and Visualization Tools. A map or maps of existing services inclusive of the three public transit providers in the region and the human services providers.

Activity Five. Passenger Transportation Recommendations and Coordination Strategies

Deliverable 10. Comprehensive Recommendations-From Services and Strategies to Funding and Governance. Content includes:

A. Identify Priority Corridors and Communities for Future Service or Service Enhancements. A list of key corridors and communities across the county to benefit from new service or service enhancements, along with out-of-county connections.

B. Coordination Strategies and Implementation Steps. Per ADOT requirements, coordination actions, strategies, and implementation steps, including for transit services and vanpool programs. Sustainability and service recommendations for select providers.

C. Funding Sources and Governance Structures. Recommendations for new funding sources, a synthesis of recommended governance structures and selection of recommended option by Steering Committee.

D. Risk Assessment. Description of potential effects from a “do nothing” approach in which, recommendations from this and previous plans are not implemented, and associated costs.

E. Educating the Public. Preparation of outreach materials for educating the public and elected officials about preferred funding mechanism and governance structure.

Activity Six. Proposal for Phase 3 and Future Studies

Deliverable 11. Future Planning Recommendations. Guidance on the scope of work for an additional phase(s) of the PTS and recommendations for local-level transit studies based on the conclusions from the YPTS.

Activity Seven. Project Closeout

Deliverable 13. Study Record. A product that documents the study process, findings, recommendations and implementation strategy.

Study administrative activities, including meeting summaries and related documentation, are not defined but assumed as part of delivered products.

In addition:

- The CONSULTANT will prepare an electronic copy of the Plan.
- Upon Regional Council approval, the CONSULTANT will provide up to 25 print copies.
- Electronic copies of all supporting meeting materials for the public involvement process including any power point presentations, hand-outs, comments, surveys, etc. will be made available to NACOG.
- Data tables, GIS files, print & web graphics, and document production files will be made available as requested by NACOG.

PROJECT MANAGEMENT AND REPORTING

The CONSULTANT will name a single point of contact for the project, and all communications between NACOG and the CONSULTANT will be through that individual. NACOG’s Transit Planner, Jennifer O’Connor, will be the CONSULTANT’S primary contact. Although from time-to-time the CONSULTANT may be directed to talk to others, the CONSULTANT will keep the NACOG Transit Planner advised of all communications with other NACOG staff. The CONSULTANT will submit regular progress reports to the NACOG Transit Planner indicating the status of the project relative to the original budget and timeline. The progress reports will note any instances of expected deviations from the original project budget and timeline, and will either describe corrective actions, or offer a revised budget and timeline to meet the new circumstances. Adjustments to the total budget will be strongly discouraged, but re-allocation of existing budget among tasks will be considered.

B. CHANGES TO PROJECT REQUIREMENTS

During the term of this project, including any extension thereof, NACOG may choose to make changes to the scope of this project. In such event, NACOG will provide the consultant with a description of the changes to be implemented, including any modification to the consultant’s requirements and responsibilities related to such change and timing thereof.

SECTION VI SUBMITTAL GUIDELINES

Interested parties responding to this RFP are expected to submit proposals that respond to the specific activities described in this section. All proposals should be clear, concise and provide sufficient information to minimize questions and assumptions. Proposals should be limited to 25 pages (no smaller than 11-point font on 8.5” x 11” paper) including the cover letter, table of contents, cost proposal, resumes, and narrative. Assurances, certifications and other exhibits are not included in the pagination limit. NACOG accepts no financial responsibility for costs incurred in the preparation of proposals. All accepted proposals submitted in this RFP will become property of NACOG. The process, terms and conditions will be in strict accordance with the requirements and guidance contained herein.
A. COVER LETTER

One-page summary of proposal.

B. CONTENT

Respondent must provide discussion that demonstrates understanding of services to be provided, challenges for each task, and significance for NACOG.

C. TECHNICAL APPROACH

Respondent describes approach to delivery of services by demonstrating understanding of NACOG including the agency’s purpose and structure, regional cultural dynamics, operators, and planning partners; types of issues that may arise during delivery of professional services; and clear method or approach to prioritize and address task items.

D. MANAGEMENT APPROACH

Include names of all project personnel including subcontractors along with duties, responsibilities, and capacities. Project Management should be identified along with specialty sub-contractors available on as-needed basis.

E. EXPERIENCE & REFERENCES

Provide description of at least one but not more than three previous projects applicable to the Scope of Work; experience should include work in rural areas where long distances of travel are required and work with tribes and tribal governments. Provide title, timing, budget, sponsoring agency, project manager and roles of individuals involved with the project. Include contact name of project sponsor for whom work was performed. Also include existing and expected job commitments indicating availability to execute Scope of Work.

F. PROJECT SCHEDULE

Provide timetable for accomplishing Scope of Work.

G. PROJECT BUDGET

Provide standard line item budget reflecting Scope of Work, including at minimum all direct expenses (personnel, forecasted hours, wages, operating costs) and indirect costs.

H. SIGNED CERTIFICATIONS, ASSURANCES, INSURANCE AND FEDERALLY REQUIRED FORMS

I. SUBMITTAL

Ten (10) bound copies of the proposal will be submitted by the deadline to NACOG Planning (address below) as well one electronic copy to Jennifer O’Connor, NACOG Transit Planner, at joconnor@nacog.org. The mailing address is:

NACOG Planning
323 N. San Francisco Street
Flagstaff, AZ 86001

The submittal envelope shall indicate the name and address of respondent, and be addressed to NACOG Planning, 323 N. San Francisco Street, Flagstaff, AZ, 86001. Please note on the outside of the envelope: NACOG Yavapai Passenger Transportation Study RFP.
Questions regarding this RFP must be received by the due date listed in Section 2: SCHEDULE. Questions must be submitted in writing. NACOG will respond to questions in writing by making them available on the agency’s website. Verbal statements or instructions from NACOG shall not constitute an amendment to the RFP. Written or emailed questions should be submitted to:

Jennifer O’Connor, Transit Planner
NACOG
(816) 730-7070
joconnor@nacog.org

Proposal may be withdrawn by written notice received any time prior to the award.

Proposals will be reviewed by a selection committee comprised of NACOG staff and regional stakeholders. The proposals will be ranked in accordance with the criteria described in Section VII Evaluation Criteria and Selection Process. NACOG reserves the right to amend the evaluation criteria, and reject any or all proposals if deemed nonresponsive.

SECTION VII  EVALUATION CRITERIA AND SELECTION PROCESS

A panel comprised of staff and regional stakeholders will review proposals to score proposals under the following criteria. The results will be sorted according to highest-to-lowest scores.

Selected proposers may be required to participate in an interview. Each proposal is required to be presented by key personnel with whom NACOG will be directly conducting the day-to-day business of the project. A formal presentation will be part of the interview and the presentation will be limited to 30 minutes in duration. The remainder of the interview period will be dedicated to discussion of project specific criteria and responses to questions from the review panel members.

<table>
<thead>
<tr>
<th>CRITERIA FOR WRITTEN SUBMITTALS</th>
<th>VALUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project understanding, knowledge of region</td>
<td>20</td>
</tr>
<tr>
<td>Clarity of proposal, realistic approach, soundness</td>
<td>30</td>
</tr>
<tr>
<td>Experience, capabilities, qualifications of assigned staff</td>
<td>20</td>
</tr>
<tr>
<td>Innovation</td>
<td>10</td>
</tr>
<tr>
<td>Cost Proposal</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
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</table>

The panel may elect to interview the top two or more candidates. A list of questions will be submitted to candidates in advance.

A contract/professional service agreement will be negotiated, and is required to be approved by the NACOG Executive Director and/or Regional Council. If negotiations are unsuccessful, NACOG staff will terminate negotiation efforts and open negotiations with the 2nd ranked firm. The process will continue until negotiations are successful.

SECTION VIII  RESPONSE TO PROPOSALS

A. NOTICE OF AWARD
A Notice to Proceed (NTP) will be provided to the CONSULTANT stating the date the CONSULTANT can begin work subject to the conditions of the contract. The performance of the contract begins with the NTP date. The contract will be deemed to include all provisions of this RFP, and all provisions required in public contracts by local, state and federal law.

B. ACCEPTANCE/REJECTION OF PROPOSALS

NACOG reserves the right to reject any and all responses and proposals received as a result of this request for sound, documentable business reasons. Late submittals will not be accepted and will be returned to responder. Faxed or email proposals will not be accepted.

NACOG may reject a proposal that includes unacceptable deviations.

C. CANCELLATION OF PROCUREMENT

NACOG reserves the right to cancel the procurement, for sound business reasons, at any time before the Contract is fully approved and executed on behalf of NACOG. NACOG will not pay CONSULTANTS any costs incurred in the preparation of a proposal responding to this RFP.

SECTION IX  ADDITIONAL TERMS AND CONDITIONS

1. Note all costs incurred for the proposal preparation, presentation, or contract negotiations are the responsibility of the consulting firm.

2. This solicitation does not commit NACOG to award an Agreement or to pay for costs associated with the preparation of the RFP or pre-agreement expenses.

3. NACOG reserves the right to make an award considered to be in the best interest of the region.

4. NACOG reserves the right to accept or reject any or all RFP responses received, to cancel all of part of the RFP, or to negotiate with all qualified firms.

5. NACOG may, at its discretion, require additional terms and conditions at the time the final Agreement is negotiated. The additional terms and conditions would be for clarification of particular language or correcting errors in the RFP including for example omissions or misstatements that are discovered.

6. No prior, current or post-award verbal agreement(s) with any officer or employee of NACOG shall affect, modify or supersede any terms or modifications of this RFP.

7. The Firm chosen may be required to submit revisions of their responses as a result of negotiations.

8. The selected Firm will be required to furnish evidence of insurance coverage to include, but not limited to Professional Liability, Workers Compensation and automobile. Set limits will be provided at contract negotiations.

9. The selected consultant and sub-consultants shall possess any necessary Arizona licenses and permits necessary to operate in the State and shall provide evidence of such to NACOG.

10. The selected consultant and sub-consultants shall not assign or subcontract services or responsibilities without prior written approval from the NACOG.

11. Any changes to the response requirements will be made by written addendum.
12. NACOG reserves the right to waive any minor irregularities, informalities or oversights in the RFP documents, or any corresponding responses that do not materially affect or alter the intent and purpose of the RFP, that is not in violation of Arizona or Federal Government rules, laws and regulations.

13. All materials and data used for this study are the property of NACOG.

14. The selected consultant shall at all times comply with all applicable Federal Funding Agency regulations, policies, procedures and directives, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

15. NACOG reserves the right to engage in a contract extension with the selected consultant should additional funding becomes available. This optional extension would serve to meet NACOG’s continued passenger transportation planning needs, in either Yavapai County or in the three northern NACOG counties, Apache, Coconino and Navajo Counties, for up to 12 months after the scheduled YPTS project completion.
FEDERAL THIRD PARTY AGREEMENTS

APPLICABLE LAWS AND REGULATIONS:

The following terms are required for federally funded projects. These terms may be waived for non-federal funded projects upon written request from the CONSULTANT. The CONSULTANT agrees to include these requirements in each applicable subcontract issued for services under this contract. Because the solicitation is funded by a Federal agency of the US Department of Transportation (USDOT), the more restrictive of Federal or State Regulations applies.

Where any conflict with Federal laws occurs concerning the programs and functions of the Arizona Department of Transportation (ADOT) as established by the law of this State, such Federal law shall control. For purposes of this section, “Federal law” means any statute passed by the Congress of the United States, any final regulations adopted by any administrative agency of the United States government and published in the Code of Federal Regulations (CFR) or the Federal Register or any final decision of the Federal judiciary.

CODE OF FEDERAL DOMESTIC ASSISTANCE (CDFA):

A component of the Federal Funding Accountability and Transparency Act requires that sub-awards greater than $25,000 document the funding Catalog of Federal Domestic Assistance (CFDA) program number, participating Federal Agency name, and percentage of participation. This requirement provides data relevant to the Department’s FFATA and/or Recover Act compliance reporting. FTA requires reporting for All Procurements, not just that > $25,000.

PROCUREMENT AND CONTRACT PROVISIONS REQUIREMENTS:

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.36 Contract provisions. All other non-Federal entities, including sub recipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

COMPLIANCE WITH FEDERAL REQUIREMENTS – INCORPORATION OF FUNDING FEDERAL AGENCY TERMS:

Pursuant to ARS 41.2637, if procurement involves the expenditure of Federal assistance or contract monies, NACOG shall comply with Federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this chapter.

The Federal Terms and Conditions include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in these CONTRACT provisions. All contractual provisions required by the USDOT are hereby incorporated by reference. Anything to the contrary herein notwithstanding, as authorized by Common Law (49 CFR Part 18) the most restrictive of State or Federally-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this CONTRACT. The CONSULTANT shall not perform any act, fail to perform any act, or
refuse to comply with any funding Federal agency requests which would cause NACOG to be in violation of the Federal terms and conditions. All applicable clauses shown in the funding Federal Agency Grant Agreement with NACOG apply to this CONTRACT.

Federal Highways Administration: The Stewardship and Oversight Agreement for Arizona in effect at this time this solicitation was advertised is located at: Stewardship and Oversight Agreement for Arizona

Federal Transit Administration: The FTA Master Agreement in effect at the time this solicitation was advertised is located at: FTA Master Agreement FY 2019

NO FEDERAL GOVERNMENT OBLIGATIONS:

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

The CONSULTANT agrees to include the above clause in each subconsultant agreement. It is further agreed that the clause shall not be modified, except to identify the subconsultant who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS:

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

The CONSULTANT also acknowledges that if it makes, causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a construction project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C 5307(n)(1) on the CONSULTANT, to the extent the Federal Governments deems appropriate.

The CONSULTANT agrees to include the above two clauses in each subcontract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ACCESS TO THIRD PARTY CONTRACT RECORDS:

Representatives of the State and the funding Federal agency, the Secretary of Transportation, the Comptroller General of the United States or any of their duly authorized representatives with access to
any books, documents, papers, and record of the CONSULTANT which are directly pertinent to this CONTRACT for the purposes of making audits, examinations, excerpts, and transcriptions and are authorized to review and inspect the CONTRACT and procurement activities and facilities during normal business hours. The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The right of access must not be limited to the required retention period but shall last as long as the records are retained.

Therefore, pursuant to A.R.S. § 35-214, the CONSULTANT and is subconsultant(s) shall keep and maintain all books, papers, records, accounting records, files, accounts, expenditure records, reports, costs proposals with backup data and all other such materials related to the CONTRACT and other related project(s). The CONSULTANT shall make all such materials related to the project(s) available at any reasonable time and place during the term of the CONTRACT and for five (5) years. All documents shall be retained for auditing inspection and copying upon NACOG or at FHWA’s request, or any other authorized representative of the Federal Government.

**CHANGES TO FEDERAL REQUIREMENTS:**

The CONSULTANT shall at all times comply with all applicable Federal regulations, policies, procedures, and directives, including without limitation those listed directly or by reference between NACOG and the Federal agency providing funding for this CONTRACT, as they may be amended or promulgated from time to time during the term of this CONTRACT. CONSULTANT’s failure to so comply shall constitute a material breach of this CONTRACT.

Changes to CONTRACT Scope: Federal legislation and implementing regulations allow for change orders within the Scope of Work covered by the CONTRACT. In the event of changed conditions, an adjustment of CONTRACT Scope is permissible if the altered character of the work does not differ materially from that of the original CONTRACT as long as the work is approved by NACOG with the requirement that the change must involve the work covered by the CONTRACT. Changes that materially differ from the Scope of Work are considered Cardinal Changes and are not permissible. All work changes must be reviewed by NACOG, ADOT Contracts Program Manager, and/or ADOT Procurement Officer in advance of proceeding to ensure the change is permissible under State and Federal requirements and regulations. Work cannot proceed until appropriate financial and administrative processing has occurred and any federal approvals are received when and where necessary and a modified CONTRACT is issued.

**TERMINATION:**

Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient’s property, contractor shall account for same, and dispose of it as the recipient directs.

Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting
forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

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

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

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

Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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

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

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

NON-DISCRIMINATION

The CONSULTANT is required to comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, Title 49, Code of Federal Regulations, Part 26 through Appendix H and Title 23, CFR 710.405 (b) are made applicable by reference and are hereinafter considered a part of this CONTRACT. The
CONSULTANT is required to comply with the provisions of Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41-CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this CONTRACT.

DISADVANTAGE BUSINESS ENTERPRISE (DBE)

The CONSULTANT and subconsultant(s) are required to comply with all Disadvantaged Business Enterprise (DBE) requirements as part of the Arizona Department of Transportation Disadvantage Business Enterprise Plan. Appendix F outlines DBE provisions for the CONTRACT.

DEBARMENT AND SUSPENSION CERTIFICATION

In accordance with 49 CFR 29.505, and by signature on this CONTRACT, the CONSULTANT certifies its compliance, and the compliance of any subconsultants or subcontractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving Federal Funds:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;

2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any Federal Agency within the past three (3) years;

3. Does not have a proposed debarment pending; and

4. Had not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years as specified by 49 CFR 29.305(a).

Each participant of Federal funding must certify “that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency, and that they have not been convicted or had civil judgement rendered within the past three years for certain types of offenses.”

Therefore, CONSULTANT shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension”.

ANTI-LOBBYING

The CONSULTANT agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress, in connection with any of the following covered Federal actions: 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; the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
CONSULTANTS who apply or bid for an award of $100,000 or more shall file the certification required by Attachment pursuant to 49 CFR part 20, “New Restrictions of Lobbying”. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any persons or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-Federal funds with respect to the Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier to the recipient.

The CONSULTANT agrees to comply with the provisions of 31 U.S.C. § 1352 (Public Law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11. The legislation prohibits Federal funds from being expended by a recipient or any lower tier subrecipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the award of any Federal contract, the making of any Federal grant or loan, or entering into any cooperative agreement, including the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. All disclosure statements are to be furnished to NACOG.

The CONSULTANT certifies, by signing and submitting the offer, to the best of his/her knowledge and belief, that:

1. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or 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 any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any fund other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and 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 the “Disclosure of Lobby Activities” form in accordance with its instructions (http://www.whitehouse.gov/omb/grants/sflllin.pdf).

3. 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 and 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 or not less than $10,000 and not more than $100,000 for each such failure.

4. The CONSULTANT also agrees, by submitting its offer that it shall require that the language for this certification be included in subcontracts with all Subcontractor(s) and lower-tier Subcontractors which exceed $100,000 and that all such Subcontractors and lower-tier Subcontractors shall certify and disclose accordingly.
5. NACOG shall keep the firm’s certification on file as part of its original offer. The CONSULTANT shall keep individual certifications from all Subcontractors and lower-tier Subcontractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

6. Disclosure forms for the CONSULTANT and its Subcontractors and lower-tier Subcontractors shall be submitted with the offer on the date the offers are due. The CONSULTANT and each Subcontractor and lower-tier Subcontractor shall file revised disclosure forms at the end of each calendar quarter in which events occur that materially affect the accuracy of any previously filed disclosure form. The Disclosure forms shall be submitted by the Procurement Officer to the FHWA for further review.

ENVIRONMENTAL PROTECTION

(This clause is applicable if the Contract exceeds $100,000. It applies to Federal-aid contracts only)

In reference to the Clean Air Act, the CONSULTANT agrees to:

1. Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The CONSULTANT agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the funding Federal agency and the appropriate EPA Regional Office.
2. Include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by an agency of USDOT.

In reference to the Clean Water Act, the CONSULTANT agrees to:

1. Comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
2. To report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the funding Federal agency and the appropriate EPA Regional Office.
3. To include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by an agency of USDOT.

Also, the CONSULTANT is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. § 1857 (h), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement (EN-329).
ENERGY CONSERVATION

The CONSULTANT is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency, which is contained in the State Energy Conservation Plan issued by the ADOT in compliance with the Energy Policy Conservation Act (Public Law. 94-163).

DRUG-FREE WORK PLACE

The CONSULTANT agrees that it will comply with the provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; U.S.C. § 701 et seq.) and maintain a drug-free work place.

INSURANCE

CONSULTANT and, if applicable, SUBCONSULTANTS, shall procure and maintain, for the duration of the CONTRACT, insurance against claims for injuries to persons or damages to property which may arise from, or in conjunction with, the performance of the work hereunder by the CONSULTANT, its agent’s representatives or employees. Insurance required by NACOG must be met following award of a CONTRACT and prior to CONSULTANT and, if applicable, SUBCONSULTANTS, beginning work of project.

FLY AMERICA REQUIREMENTS

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000). CONSULTANT shall comply with 49 USC 40118 (the “Fly America” Act” in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their SUBCONSULTANTS are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. CONSULTANT shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. CONSULTANT shall include the requirements of this section in all subcontracts that may involve international air transportation.

PROMPT PAYMENT

Applicability – All contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000). The prime CONSULTANT agrees to pay each SUBCONSULTANT under this prime CONTRACT for satisfactory performance of its CONTRACT no later than 30 days from the receipt of each payment the prime CONTRACT receives from the Recipient. The prime CONSULTANT agrees further to return retainage payments to each SUBCONSULTANT within 30 days after the SUBCONSULTANTS work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE SUBCONSULTANTS.
INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

All contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000). The preceding provisions include, in part, certain Standard Terms & Conditions required by US DOT, whether or not expressly stated in the preceding CONTRACT provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this AGREEMENT. The CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

FULL AND OPEN COMPETITION

In accordance with 49 U.S.C § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

PROHIBITION AGAINST EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by Federal statue or regulations, the CONSULTANT shall comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

CONFORMANCE WITH ITS NATIONAL ARCHITECTURE


ACCESS REQUIREMENT FOR PERSONS WITH DISABILITIES

CONSULTANT shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. CONSULTANT shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

NOTIFICATION OF FEDERAL PARTICIPATION

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of $500,000 or more, CONSULTANT shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of Federal assistance as a percentage of the total cost of the third party contract.
INTEREST OF MEMBERS OR DELEGATES TO CONGRESS

No members or, or delegates to, the US Congress shall be admitted to any share or part of this CONTRACT nor to any benefit arising therefrom.

INELIGIBLE CONSULTANT AND SUBCONSULTANTS

Any name appearing upon the Comptroller General’s list of ineligible CONSULTANTS for federally-assisted contracts shall be ineligible to act as a SUBCONSULTANT for CONSULTANT pursuant to this CONTRACT. If CONSULTANT is on the Comptroller General’s list of ineligible CONSULTANTS for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this CONTRACT.

OTHER CONTRACT REQUIREMENTS

To the extent not inconsistent with the foregoing Federal requirements, this CONTRACT shall also include those provisions attached hereto, and shall comply with the recipient’s Procurement Guidelines, available upon request from the recipient.

COMPLIANCE WITH FEDERAL REGULATIONS

Any CONTRACT entered pursuant to this solicitation shall contain the following provisions: All USDOT required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provision contained in this AGREEMENT. CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. CONSULTANT shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this CONTRACT. CONSULTANT’S failure to comply shall constitute a material breach of this CONTRACT.

ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY


ENVIRONMENTAL JUSTICE

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, “Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 Fed Reg. 18377, April 15, 1997, and (3) The most recent

ENVIRONMENTAL PROTECTIONS

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

GEOGRAPHIC INFORMATION AND RELATED SPATIAL DATA

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

GEOGRAPHIC PREFERENCE

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

ORGANIZATIONAL CONFLICTS OF INTEREST

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows:

(1) **When it Occurs.** An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:

a. To that Third Party Participant or another Third Party Participant performing the Project work, and

b. That impairs that Third Party Participant’s objectivity in performing the Project work, or

(2) **Other.** An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions,

(3) **Disclosure Requirements.** Consistent with FTA policies the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient:

a. Any instances of organizational conflict of interest, or
b. Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and

(4) **Failure to Disclose.** Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

**FEDERAL SINGLE AUDIT REQUIREMENTS FOR STATE ADMINISTRATION FEDERALLY AID FUNDED PROJECTS ONLY**

Non Federal entities that expend $750,000 or more in a year in Federal Awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, “Audits of States, Local Governments, and Non-Profit Organizations” (replaced with 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215(a) of OMB Circular A-133 Subpart B—Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptroller’s Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity’s fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation’s Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

**VETERANS PREFERENCE**

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

(1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. Chapter 53, and

(2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, and individual with a disability, or a former employee.

**SAFE OPERATION OF MOTOR VEHICLES**

The CONSULTANT is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles...
owned or leased either by the CONSULTANT or AGENCY. The CONSULTANT agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle CONSULTANT owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this AGREEMENT.

**CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) IDENTIFICATION NUMBER**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.
CERTIFICATION FORM

Please read the statements below. Responders to this RFP are **required to sign and return with their response the “Request for Proposal Certification Form”** that are included herein on the next page.

*Failure to sign and submit the certification form specified in this RFP, with the RFP, will result in the RFP being rejected.*
Request for Proposal Certification Form

Contract #: _______________________  Consultant Name: ______________________________

Please read the statements below. The statements are to ensure Consultants are aware and in agreement with Federal, and State guidelines related to the award of this contract. Consultants shall submit this Certification Form attached to each Proposal for each RFP advertised, as revisions to the form may occur from time to time. Failure to sign and submit the certification form specified in this RFP with the Proposal will result in the Proposal being rejected.

Submission of the Proposal by the Consultant certifies that to the best of its knowledge:

| 1. | The Consultant and its sub-consultants have not engaged in collusion with respect to the contract under consideration. |
| 2. | The Consultant, its principals and sub-consultants have not been suspended or debarred from doing business with any government entity. |
| 3. | The Consultant shall have the proper Arizona license(s) and registration(s) for services to be performed under this contract. Furthermore, the Consultant shall ensure that all Sub-consultants have the proper Arizona license(s) and registration(s) for services to be performed under this contract. Key members of the Project Team, including sub-consultants, are currently licensed to provide the required services as requested in the RFP package. |
| 4. | The Consultant’s signature on any RFP or contract constitutes an authorization to NACOG to ascertain the eligibility of the Consultant, its principals and subconsultants to enter into contract with NACOG and with any other governmental agency. |
| 5. | The Consultant’s Project Team members are employed or sub-contracted by the Consultant on the date of submittal. |
| 6. | All information and statements written in the proposal are true and accurate and that NACOG reserves the right to investigate, as deemed appropriate, to verify information contained in proposals. |
| 7. | Consultant shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from, or in conjunction with, the performance of the work hereunder by the Consultant, its agents representatives or employees. |
| 8. | No Federally appropriated funds have been paid or shall be paid, by or on behalf of the Consultant for the purpose of lobbying. |
| 9. | If project is funded with Federal Aid funds, the Consultant affirmatively ensures that in any subcontract entered into pursuant to this advertisement, minority business enterprises shall be afforded full opportunity to submit proposals/bids in response to this invitation and shall not be discriminated against on the grounds of race, color, or national origin, in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation. |
| 10. | The Consultant will utilize all Project Team members, sub-consultants and DBE firms, if applicable, submitted in the RFP, and will not add other Project Team members or sub-consultants, unless the Consultant has received prior written approval from NACOG. |
| 11. | The Consultant shall meet its DBE goal commitment and any other DBE commitments as stated in its RFP proposal or Cost Proposal; and shall report on a timely basis its DBE utilization as detailed in the contract. |
12. If selected, the Consultant is committed to satisfactorily carry out the Consultant’s commitments as detailed in the contract and its RFP proposal.

13. The Consultant is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h), Section 508 of the Clean Water Act (33 U.S.C. 1368).

14. The Consultant is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency.

15. The Consultant agrees that it will comply with the provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, subtitle D; U.S.C. § 701 et seq.) and maintain a drug-free work place.

16. The Northern Arizona Council of Governments, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

17. In Compliance with 49 CFR Part 26.11, the Consultant is required to register with the AZ UTRACS web portal and complete the Online Bidder’s List. Please Note: any firm being awarded work as a prime or sub-consultant on a federally funded project must be AZ UTRACS registered. Failure to submit the corresponding Bidder’s List email confirmation as part of the Proposal will result in rejection of the proposal. Please use ADOT Project # MPD176575.19.8.

18. The Consultant agrees to comply with all Federal and State requirements listed in the section titled “Federal Third Part Agreement: Applicable Laws and Regulations.”

I hereby certify that I have read and agree to adhere to the statements above and that the statements are true to the best of my knowledge as a condition of award of this contract.

______________________________  ________________________________
Print Name               Print Title

______________________________  ________________________________
Signature                Date

______________________________
Print Proposing Consultant Firm Name
TITLE VI ASSURANCES

The Northern Arizona Council of Governments (herein referred to as the "Recipient"), HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through Federal Highway Administration and Arizona Department of Transportation, is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation--Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- 23 C.F.R. Part 200 Subchapter C-Civil Rights (Title VI program implementation and related statues)

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda and/or guidance, the Recipient hereby gives assurances that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federal Aid Highway Program.

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "an "activity") facilitated, or will be (with regard to a
"facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal Aid Highway Program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

"The Northern Arizona Council of Governments, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to a construct a facility or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

   a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
   b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

   a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.
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 (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *Federal Highway Administration or the Arizona Department of Transportation*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will 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 will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, 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 will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient, the *Federal Highway Administration or Arizona Department of Transportation* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation*, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration or Arizona Department of Transportation*, may determine to be appropriate, including, but not limited to:

   a. withholding payments to the contractor under the contract until the contractor complies; and/or
   b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the
Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.
The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW, THEREFORE,** the U.S. Department of Transportation as authorized by law and upon the condition that **Northern Arizona Council of Governments** will accept title to the lands and maintain the project constructed thereon in accordance with Title 23, United States Code the Regulations for the Administration of Federal Aid for Highways, and the policies and procedures prescribed by the Arizona Department of Transportation, Federal Highway Administration and the U.S. Department of Transportation in accordance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the **Northern Arizona Council of Governments** all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

**(HABENDUM CLAUSE)**

TO HAVE AND TO HOLD said lands and interests therein unto **Northern Arizona Council of Governments** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the **Northern Arizona Council of Governments**, its successors and assigns.

The **Northern Arizona Council of Governments**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and] [2] that the **Northern Arizona Council of Governments** will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.*
APPENDIX C
CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Northern Arizona Council of Governments pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities,

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Northern Arizona Council of Governments will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Northern Arizona Council of Governments will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will thereupon revert to and vest in and become the absolute property of the Northern Arizona Council of Governments and its assigns*.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.
APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Northern Arizona Council of Governments pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, Northern Arizona Council of Governments will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Northern Arizona Council of Governments will there upon revert to and vest in and become the absolute property of Northern Arizona Council of Governments and its assigns.*

*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.
APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 et seq).
APPENDIX F
PROFESSIONAL SERVICE CONTRACTS – WITH NO DBE GOAL

DISADVANTAGED BUSINESS ENTERPRISES:

1.0 Policy:

The Arizona Department of Transportation (hereinafter the Department) has established a Disadvantage Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Department to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. To assist in the development of firms that can compete successfully in the market place outside the DBE program; and
7. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined in Subsection 3.0, in USDOT-assisted contracts. The Department encourages consultants to take reasonable steps to eliminate obstacles to SBCs’ participation and to utilize SBCs in performing contracts.

Local Public Agencies (LPA) and or Subrecipients of Federal financial assistance will administer and manage the contracts from advertising, consultant selection, negotiation, contract execution, processing payment reports and contract modifications, audits, DBE compliance (e.g., reporting and monitoring) through contract closeout.

2.0 Assurances of Non-Discrimination:

The consultant, subrecipient, or subconsultant shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant 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 LPA/Subrecipient with the Department’s concurrence deems appropriate, which may include, but are not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages;
4. Disqualifying the consultant from submitting SOQs, or any other forms of proposals, as non-responsible;
5. Cancellation, termination, or suspension of the Contract, in whole or in part.

The consultant, subrecipient, or subconsultant shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions:

(A) Commercially Useful Function (CUF): Commercially Useful Function is defined fully in 49 CFR 26.55, which definition is incorporated herein by reference.

(B) Disadvantaged Business Enterprise (DBE): A for-profit small business concern which meets both of the following requirements:

1. Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,

2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(C) NAICS Code: The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

(D) Non-DBE: Any firm that is not a DBE.

(E) Race-Conscious (RC): A measure or program focused specifically on assisting only DBEs, including women-owned DBEs.

(F) Race-Neutral (RN): A measure or program used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

(G) Small Business Concern (SBC): A small business that meets all the following conditions:

1. Operates as a for-profit business registered to do business in Arizona;
(2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;

(3) Is independently owned and operated;

(4) Is not dominant in its field on a national basis; and

(5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.

(H) Socially and Economically Disadvantaged Individuals: Any individual who is citizen (or lawfully admitted permanent resident) of the United States and who is:

(1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

   i. **“Black Americans”** – which includes persons having origins in any of the Black racial groups of Africa;

   ii. **“Hispanic Americans”** – which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

   iii. **“Native Americans”** – which includes persons who are enrolled members of federal or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;

   iv. **“Asian-Pacific Americans”** – which includes persons who origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

   v. **“Subcontinent Asian Americans”** – which includes persons who origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

   vi. **“Women;”**

   vii. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.
4.0 Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction program. All proposers should contact the Department’s Business Engagement and Compliance Office (BECO) by phone, through email, or at the address shown below, for assistance in their efforts to use DBEs in the highway construction industry. BECO contact information is as follows:

- Arizona Department of Transportation
  - Business Engagement and Compliance Office
  - 1801 W. Jefferson St., Suite 101, Mail Drop 154A
  - Phoenix, AZ 85007
  - Phone: (602) 712-7761
  - FAX: (602) 712-8429
  - Email: ContractorCompliance@azdot.gov
  - Website: www.azdot.gov/bec

4.01 Mentor-Protégé Program:

The Department has established a Mentor-Protégé program as an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The program encourages prime consultants to provide certain types of assistance to certified DBE subconsultants. ADOT encourages consultants and certified DBE subconsultants to engage in a Mentor-Protégé agreement under certain conditions. Such an agreement must be mutually beneficial to both parties and to ADOT in fulfilling requirements of 49 CFR Part 23. For guidance regarding this program refer to the Mentor-Protégé Program Guidelines available on the BECO website.

The Mentor-Protégé program is intended to increase legitimate DBE activities and is not intended to diminish nor circumvent existing DBE rules or regulations.

5.0 Applicability:

The Department has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends for the goal to be met with a combination of race conscious efforts and race neutral efforts. Race conscious participation occurs when the consultant uses a percentage of DBEs, as defined herein, to meet the contract-specified goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race neutral as when a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

The DBE provisions are applicable to all consultants including DBE consultants.
6.0 Certification and Registration:

6.01 DBE Certification:

Certification as a DBE shall be predicated on:

(1) The completion and execution of an application for certification as a “Disadvantaged Business Enterprise.”

(2) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.

(3) The submission of any additional information which the Department or the applicable Arizona Unified Certification (UCP) agency may require to determine the firm’s eligibility to participate in the DBE program.

(4) The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed online with the Department or the applicable UCP agency at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at http://www.azutracs.com.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

ADOT is a member of the A Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT projects. A list of DBE firms certified by AZUCP is available on the internet at http://www.azutracs.com. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

The Department’s certification of DBE is not a representation of qualifications and/or abilities nor does it mean that a DBE firm is guaranteed or entitled to receive or be awarded a contract. Being certified simply means that a firm has met the criteria for DBE certification as outlined in 49 CFR Part 26. The consultant bears all risks of ensuring that DBE firms selected by the consultant are able to perform the work.

6.02 SBC Registration:

To comply with 49 CFR Part 26.39, ADOT’s DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for-profit businesses authorized to do businesses in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.
While the SBC component of the DBE program does not require utilization of goals on projects, ADOT and the LPA/Subrecipient strongly encourages consultants to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification requirement. The consultant may use the AZ UTRACS website to search for certified DBEs and registered SBCs that can be used on the contract. However, SBCs that are not DBEs will not be counted toward the DBE participation.

SBCs can register online at the AZ UTRACS website.

The Department’s registration of SBCs is not a representation of qualifications and/or abilities nor does it mean that an SBC firm is guaranteed or entitled to receive or be awarded a contract. Being SBC registered simply means that a firm has met the criteria for SBC registration as outlined in 49 CFR Part 26. The consultant bears all risks of ensuring that the SBC firms selected by the consultant are able to perform the work.

7.0 DBE Financial Institutions:

The Department thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its service area and makes reasonable efforts to use these institutions. The Department encourages prime consultants to use such institutions on USDOT assisted contracts. However, use of DBE financial institutions will not be counted toward the DBE participation.

The Department and the LPA/Subrecipient encourages prime consultants to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Arizona derived from Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

8.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

9.0 Computation of Time:

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, Federal or State holiday. In circumstances where the LPA/Subrecipient Procurement Office is closed for all or part of the last day, the period extends to the next day on which the LPA/Subrecipient Procurement Office is open.

10.0 Consultant and Subconsultant Requirements:

10.01 General:

The consultant shall establish a DBE program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.
Agreement between the proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other proposers are prohibited.

10.02 DBE Liaison:

The consultant shall designate a DBE Liaison responsible for the administration of the consultant’s DBE program. The name of the designated DBE Liaison shall be included on the DBE Intended Participation Affidavit Summary.

11.0 DBE Goal:

The Department has not established contract goals for DBE participation in this contract. Consultants are still encouraged to employ reasonable means to obtain DBE participation. Consultants must retain records in accordance with these DBE specifications. The consultant is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

12.0 Bidders/Proposers List and AZ UTRACS Registration Requirement:

Under Title 49 CFR of the Code of Federal Regulations, Part 26.11, DOTs are required to collect certain information from all consultants and subconsultants who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects this information when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at http://www.azutracs.com/ a centralized database for companies that seek to do business with ADOT. This information will be maintained as confidential to the extent allowed by federal and state law.

Prime consultants and all subconsultants, including DBEs listed in the SOQ must be registered in AZ UTRACS. Proposers may verify that their firm and each subconsultant is registered using the AZ UTRACS website. Proposers may obtain additional information at the AZ UTRACS website or by contacting the LPA/Subrecipient.

All proposers shall create a Bidders/Proposers list in the AZ UTRACS by selecting all firms, service providers, and vendors that expressed interest or submitted proposals or quotes for this contract. The Bidders/Proposers List form must be complete and must include the names for all subconsultants, service providers, and vendors that submitted proposals or quotes on this project regardless of the proposer’s intentions to use those firms on the project.

All proposers must complete and submit the Bidders/Proposers List online at AZ UTRACS prior to Cost Proposal submittal. A confirmation email will be generated by the system. This email confirmation shall be submitted with the Cost Proposal.

FAILURE TO SUBMIT THE REQUIRED BIDDERS/PROPOSERS LIST CONFIRMATION EMAIL WITH THE COST PROPOSAL BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED AND AS OUTLINED IN THE RFP SHALL BE CAUSE FOR THE PROPOSER’S COST PROPOSAL TO BE REJECTED.
13.0 Payment Reporting:

The consultant shall report on a monthly basis indicating the amounts paid to all subconsultants, of all tiers, working on the project. Reporting shall be in accordance with Prompt Pay and Payment Reporting requirements of the contract specifications once developed.

14.0 Crediting DBE Participation:

14.01 General Requirements:

To count toward DBE participation, the DBE firms must be certified at the time of Cost Proposal submission in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS website. General descriptions of all NAICS codes can be found at http://www.naics.com/search/.

Credit towards the consultant’s DBE participation is given only after the DBE has been paid for the work performed.

The entire amount of a contract that is performed by the DBE’s own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subconsultant purchase or leases from the prime consultant or its affiliate will not be credited toward DBE participation.

The consultant bears the responsibility to determine whether the DBE possesses the proper consultant’s license(s) to perform the work and, if DBE credit is requested, that the DBE subconsultant is certified for the requested type of work.

The Department’s certification is not a representation of a DBE’s qualifications and/or abilities. The consultant bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime consultant, subconsultant, or as a vendor of materials or supplies. The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

The consultant may credit second-tier subcontracts issued to DBEs by non-DBE subconsultants. Any second-tier subcontract to a DBE must meet the requirements of a first-tier DBE subcontract.

A prime consultant may credit the entire amount of that portion of a contract that is performed by the DBE’s own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as the cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime consultant or its affiliate(s).
When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards the DBE participation only if the DBE’s subconsultant is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward a DBE participation.

A prime consultant may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consulting, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

14.02 Effect of Loss of DBE Eligibility

If a DBE is deemed ineligible (decertified) or suspended in accordance with 49 CFR 26.87 and 26.88, the DBE may not be considered to count toward DBE participation on a new contract, but may be considered to count toward DBE participation under a subcontract that was executed before the DBE suspension or decertification is effective.

When a DBE firm or a DBE prime consultant loses its DBE eligibility and a subcontract or contract has not been executed before a decertification notice is issued to the DBE firm by its certifying agency, the ineligible firm does not count toward DBE participation.

When a subcontract is executed with the DBE firm before the Department notified the firm of its ineligibility, the consultant may continue to use the firm on the contract and may continue to receive DBE participation credit for the firm’s work.

14.03 Notifying the Consultant of DBE Certification Status:

Each DBE contract at any tier shall require any DBE subconsultant or supplier that is either decertified or certified during the term of the contract to immediately notify the consultant and all parties to the DBE contract in writing, with the date of decertification or certification. The consultant shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

14.04 Police Officers:

DBE credit will not be permitted for procuring DPS officers. For projects on which officers from other agencies are supplied, DBE credit will be given only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

14.05 Commercially Useful Function:

A prime consultant can credit expenditures to a DBE subconsultant toward DBE participation only if the DBE performs a Commercially Useful Function (CUF).

A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and
installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, the LPA/Subrecipient will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the LPA/Subrecipient will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, LPA/Subrecipient will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The Department will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The LPA/Subrecipient will notify the consultant, in writing, if it determines that the consultant’s DBE subconsultant is not performing a CUF. The consultant will be notified within seven calendar days of the LPA/Subrecipient’s decision.

Decisions on CUF may be appealed to the ADOT BECO. The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the ADOT BECO. The appeal must be received by ADOT BECO no later than seven calendar days after the LPA/Subrecipient’s decision. LPA/Subrecipient’s decision remains in place unless and until the ADOT BECO reverses or modifies the LPA/Subrecipient’s decision. ADOT BECO will promptly consider any appeals under this subsection and notify the consultant of the ADOT BECO finding and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The LPA/Subrecipient may conduct project site visits on the contract to confirm that DBEs are performing a CUF. The consultant shall cooperate during the site visits and the LPA/Subrecipient staff will make every effort not to disrupt work on the project.

15.0 Required Provisions for DBE Subcontracts:

All subcontracts of any tier, all supply contracts, and any other contracts in which a DBE is a participant shall include as a physical attachment, DBE Subconsultant Compliance Assurances available from the LPA/Subrecipient and all of the Uniform Terms and Conditions set forth in other sections of this contract.

Consultants executing agreements with subconsultants, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the LPA/Subrecipient and ADOT deem appropriate as outlined in DBE Subsection 2.0.
The LPA/Subrecipient reserves the right to conduct random reviews of DBE and non-DBE subcontract documentation to ensure compliance with federal requirements.

The consultant shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26 provisions.

The consultant shall provide electronic copies of signed subcontract agreements for all DBE Subconsultants listed on the DBE Intended Participation Affidavit Summary by uploading them within 15 calendar days of an approved contract to the LPA DBE System.

**16.0 Certification of Final DBE Payments:**

DBE participation on the contract is measured by actual payments made to the DBEs. The consultant shall submit the “Certification of Final DBE Payments” form for each DBE firm working on the contract. This form shall be signed by the consultant and the relevant DBE, and submitted to the LPA/Subrecipient no later than 30 days after the DBE completes its work.

The LPA/Subrecipient and ADOT will use this certification and other information available to determine applicable DBE credit allowed to date by the Prime Consultant and the extent to which the DBE firms were fully paid for that work. By the act of filing the forms, the consultant acknowledges that the information is supplied in order to justify the payment of state and federal funds to the consultant.

The consultant will not be released from the obligations of the contract until the “Certification of Final DBE Payments” forms are received and deemed acceptable by the LPA/Subrecipient.

**17.0 False, Fraudulent, or Dishonest Conduct:**

In addition to any other remedies or actions, the Department will bring to the attention of the US Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of “Program Fraud and Civil Penalties” rules provided in 49 CFR Part 31.
APPENDIX G
PROMPT PAY AND PAYMENT REPORTING PROVISIONS

MEASUREMENTS AND PAYMENTS:

Partial Payments:

If satisfactory progress is being made, the contractor will receive a payment based on the amount of work completed. Progress payments may be made by the LPA/Subrecipient Procurement Office to the contractor on the basis of an approved estimate of the work performed during a preceding period of time. The progress payments shall be paid on or before 14 days after the estimate of the work is approved. The estimate of the work shall be deemed received by the LPA/Subrecipient Procurement Office on submission to the persons designated by the LPA/Subrecipient Procurement Office on submission to the person designated by the LPA/Subrecipient Procurement Office for the submission, review or approval of the estimate of the work. The LPA/Subrecipient Procurement Office by mutual agreement may make progress payments on contracts of less than 90 days and shall make monthly progress payments on all other contracts. Payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under the contract may include payment for material and equipment.

An estimate of the work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the LPA/Subrecipient Procurement Office or Designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the contract. The contractor shall work with the LPA/Subrecipient or the LPA/Subrecipient Designee to finalize monthly estimate. The progress payments shall be paid on or before 14 days after the estimate of the work is certified and approved in accordance with Arizona Revised Statutes Section 34-221.

The contractor shall pay to the contractor’s subcontractors or material suppliers and each subcontractor shall pay to the subcontractor’s subcontractor or material supplier, within seven days of receipt of each progress payment the respective amounts allowed the contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor’s interest, except that no contract for construction services may materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment.

A subcontractor may notify the LPA/Subrecipient Procurement Office in writing requesting that the subcontractor be notified by the Subrecipient Procurement Office in writing within five days from payment of each progress payment made to the contractor.

Subcontractor Payments:

(1) Retention

If the prime contract does not provide for retention, the contractor and each subcontractor of any tier shall not withhold retention on any subcontract. If the prime contract provides for retention, the prime contractor and each subcontractor of any tier shall not retain a higher percentage than the LPA/Subrecipient may retain under the prime contract.
(2) No Set-offs Arising from Other Contracts:

If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.

(3) Partial Payment:

The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the LPA/Subrecipient Procurement Office. Notwithstanding any provision of Arizona Revised Statutes Section 34-221, the parties may not agree otherwise.

(4) Final Payment:

The contractor and each subcontractor of any tier shall make prompt final payment to each of its subcontractors. The contractor and each subcontractor of any tier shall pay all monies, including retention, due to its subcontractor within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 34-221, the parties may not agree otherwise.

(5) Payment Reporting:

For the purposes of this subsection “Reportable Contracts” means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any tier with a DBE material supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the LPA DBE System which can be accessed at AZ UTRACS on the Arizona Transportation Business Portal at www.azutracs.com. No later than fifteen calendar days after the preconstruction conference, the contractor shall log into the system and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the contractor shall enter the subcontractor information in the LPA DBE System. Reportable contracts information shall be entered into the system no later than five calendar days after approval by the LPA/Subrecipient Procurement Office.

The contractor shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. The contractor shall provide information for payments made on all Reportable Contracts during the previous month by the last day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the LPA DBE System.

In addition, the contractor shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract within 15 days of receipt of electronic payment notification
and the contractor shall actively monitor the system to ensure that the verifications are input. The contractor shall proactively work to resolve any payment discrepancies in the system between payment amounts it reports and payment confirmation amounts reported by others.

The contractor shall ensure that all Reportable Contract payment activity is in the LPA DBE System. This includes all lower-tier Reportable Contracts.

The contractor shall maintain records for each payment explaining the amount requested by the subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the system.

The contractor shall ensure that a copy of this Subsection is included in every Reportable Contract of every tier.

a) Sanctions of Inadequate Reporting:

For each Reportable Contract on which the contractor fails to submit timely and complete payment information the LPA/Subrecipient Procurement Office will retain $1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to $2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

(6) Completion of Work:

A subcontractor’s work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the LPA/Subrecipient Procurement Office.

(7) Disputes:

If there is a discrepancy between what is reported by the contractor in the LPA DBE System and what the subcontractor indicates, an alert email will automatically be sent to the contractor. The email will be sent to the email address provided by the contractor in the LPA DBE System. It is the contractor’s responsibility to ensure that the email address in the system is kept current.

The contractor shall provide a verifiable explanation of the discrepancy in the LPA DBE System as early as practicable but in no case later than seven days after the date of the alert email.

The LPA/Subrecipient will determine whether the contractor has acted in good faith concerning any such explanations. The LPA/Subrecipient and ADOT BECO reserve the right to request and receive documents from the contractor and all subcontractors of any tier, in order to determine whether prompt payment requirements are met.
The contractor shall implement and use the dispute resolution process outlined in the subcontract or by following the LPA/Subrecipient escalation process, to resolve payment disputes.

(8) Non-Compliance

Failure to make prompt partial payment, or prompt final payment including any retention, within the time frames established above, will result in remedies, as the LPA/Subrecipient Procurement Office deems appropriate, which may include but are not limited to:

a) Liquidated Damages: These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

   i. The LPA/Subrecipient Procurement Office will withhold two times the disputed dollar amount not paid to each subcontractor.

   ii. If full payment is made within 30 days of the LPA/Subrecipient Procurement Office’s payment to the contractor, the amount withheld by the LPA/Subrecipient Procurement Office will be released.

   iii. If full payment is made after 30 days of the LPA/Subrecipient Procurement Office’s payment to the contractor, the LPA/Subrecipient Procurement Office will release 75 percent of the funds withheld. The LPA/Subrecipient Procurement Office will retain 25 percent of the monies withheld as liquidated damages.

b) Additional Remedies: If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more projects within 24 months, the LPA/Subrecipient Procurement Office may, in addition, invoke the following remedies:

   i. Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors, subject to the liquidated damages described in paragraph (a) above,

   ii. Terminate the contract for default,

   iii. Disqualify the contractor from future bidding, temporarily or permanently, depending on the number and severity of violations, if applicable.

In determining whether liquidated damages will be assessed, the extent of the liquidated damages, or additional remedies assessed, the LPA/Subrecipient will consider whether there have been other violations on this or other federal-aid contracts, whether the failure to make prompt payment was due to circumstances beyond the contractor’s control, and other circumstances. The contractor may, within 15 calendar days or receipt of the decision of the LPA/Subrecipient, escalate the decision according to the contract’s escalation process.