



**RFP COMPLIANCE DECLARATION**

**RFP TITLE:** Transit Facility Construction Management Services  
**RFP NO.:** 21-22-036  
**DUE DATE/TIME:** November 30, 2021 / 4:00 p.m.

In compliance with the requirements of this RFP, I, the undersigned, offer and agree to furnish any or all materials and/or services to the City of Las Cruces within the time agreed.

I further certify that this company has not been debarred, suspended, or otherwise made ineligible for participation in Federal Assistance programs under Executive Order 12549 Debarment and Suspension as described in the Federal Rules and Regulations.

Receipt of Addenda Nos.: \_\_\_\_\_ is hereby acknowledged (where none received, place a zero in this space)

Company Name and Address:

_____	_____
_____	Authorized Signature
_____	_____
_____	Typed or Printed Name
_____	_____
_____	Title
_____	_____
_____	Email Address
_____	_____

Telephone number \_\_\_\_\_ Fax number \_\_\_\_\_

NM Tax & Revenue Dept. CRS # \_\_\_\_\_

Current NM Secretary of State Business ID # \_\_\_\_\_ (corporations only)

Current CLC Business Registration # \_\_\_\_\_ (respondents located in Las Cruces only)

Federal I.D. number \_\_\_\_\_ (mandatory for all respondents)

NM Resident Certificate from NM Tax and Revenue Department enclosed \_\_\_\_ Yes \_\_\_\_ No

**THIS FORM MUST BE COMPLETED AND INCLUDED WITH PROPOSAL  
FAILURE TO INCLUDE WILL SUBJECT RESPONSE TO REJECTION**

**CITY OF LAS CRUCES  
REQUEST FOR PROPOSAL**

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**RFP TITLE: Transit Facility Construction Management Services**

**RFP NO.: 21-22-036**

**DUE DATE/TIME: November 30, 2021 / 4:00 p.m.**

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**I. GENERAL**

- A. The City of Las Cruces (City), a New Mexico Municipal Corporation, is soliciting proposals from qualified firms interested in entering into an agreement for transit facility construction management services as described herein.
- B. Responses to this solicitation must be received by the DUE DATE/TIME at the City Purchasing Section subject to requirements and conditions of the enclosed Schedule A (General Conditions of Proposing).
- C. The conduct of this procurement is subject to the City Procurement Code, Chapter 24 of the Las Cruces Municipal Code (LCMC), 1998, incorporated herein by reference.

**D. City Contact:**

**Except for:**

- 1. Communications during any pre-proposal conference conducted by the City for this solicitation,**
- 2. Any related interviews initiated by the City,**
- 3. Any related negotiations initiated by the City, and,**

**to ensure information is consistent to all prospective respondents, any direct or indirect contact with City elected officials or City staff, other than the City Purchasing Section staff, relating to this solicitation is strictly prohibited during this solicitation process until contract award. Upon such finding, the violating party will be deemed non-compliant and a proposal from such party will not be considered for award.**

- E. A pre-proposal conference will be held on November 9, 2021, at 10:00am. Due to the current public health situation, the pre-proposal meeting will be held electronically. It is not mandatory to attend the pre-proposal conference, but all prospective proposers are encouraged to attend to obtain additional details or to inquire for more details regarding this solicitation. Inquiries will be addressed at this meeting followed by written addendum(a) as deemed appropriate by the City. The pre-proposal meeting for this solicitation will be held through the following link: <https://zoom.us/j/9972568333> on Zoom Meeting ID # 997 256 8333.
- F. The agreement to be entered for the proposed services will be in a format acceptable to the City and awarded firm. The agreement will be for the term of the agreement will be for the time period established in the professional services agreement between the City and the Consultant as required to complete the delivery of the contracted services.
- G. The City intends to award to the highest-ranking firm to meet its need for services based upon the criteria herein.

## II. BACKGROUND

The City of Las Cruces is soliciting competitive, qualification-based proposals for Transit Facility Construction Management Services following the Federal Transit Administration Project and Construction Management Guidelines. The proposed Operation and Maintenance (O&M) facilities will be located at 674 N. Motel Blvd. The project includes construction of all site development of 11.47 acres, the O&M building, associated bus maintenance equipment, electric vehicle charging station infrastructure and pathways at fixed route bus parking, wash building, and fuel service building. The Construction Manager (CM) is responsible for assuring contractors comply with the contract, for project construction and for certain equipment and material procurement administration from start of construction to the final turnover to the City's O&M personnel. Where responsibilities for related activities are under the control of the City, the CM is responsible for integration and coordination of those activities.

## III. SCOPE

A. During construction, the CM is responsible for monitoring contract compliance with the drawings, specifications, and other requirements including construction warranties, contract documentation and as-built records, affirmative action and EEO, DBE participation, LEED documents coordination and contract closeout. Additionally, the CM is responsible for overseeing contract administration procedures and construction safety and security. The CM provides construction management personnel to supplement City of Las Cruces Construction Management. The CM is required to follow FTA Construction management guidelines: [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA\\_Project\\_and\\_Construction\\_Mgmt\\_Guidelines\\_2016.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Project_and_Construction_Mgmt_Guidelines_2016.pdf)

### B. Insurance Requirements

The awarded firm shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. Professional Liability
  - a. \$1,000,000 per occurrence
2. General Liability Insurance
  - a. \$1,000,000 per occurrence / \$2,000,000 aggregate
  - b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
  - c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
  - d. Coverage must be primary and non-contributory.
  - e. Coverage must be per project or per location.
  - f. Coverage must be on an occurrence form.
  - g. Subrogation must be waived.
3. Commercial Auto Liability
  - a. \$1,000,000 per occurrence
  - b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
4. Workers Compensation and Employers Liability
  - a. Statutory Limits
  - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
  - c. Subrogation must be waived.

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

#### **IV. PROPOSAL CONTENT**

Each copy of the proposal must include a completed and signed RFP COMPLIANCE DECLARATION (page 1 of this solicitation document). Failure to submit the RFP COMPLIANCE DECLARATION page will subject the response to rejection.

##### **A. Technical Proposal Content**

The respondent's Technical Proposal shall include the following items, and in the sequence presented:

1. To address Evaluation Criteria No. 1 (Technical approach) below,
  - a. Provide description of the proposed technical approach of all professional, technical and customary services provided,
  - b. Major tasks to be accomplished,
  - c. A detailed statement of services to be provided under each task.
2. To address Evaluation Criteria No. 2 (Qualifications/competence) below,
  - a. Provide the names of key personnel who will be assigned to provide the services described herein. For each person listed, a description of experience, areas of competence and percent of time assigned to the project shall be provided,
  - b. Name, address, telephone number, of the principal member/officer of the firm responsible for administration of the contract. If applicable, list of subcontractors, including addresses, qualifications and areas of responsibility.
  - c. Location(s) of office(s) where the work will be performed, and percent of work to be performed at each.
3. To address Evaluation Criteria No. 3 (Performance of the firm) below, provide the following: Description and name of a minimum of three past contracts similar to the scope herein that have been completed by the firm including the name, email id and telephone number of the contact person for each project.

##### **B. Cost Proposal Content**

1. The cost proposal will not be used in the evaluation of the RFP, it will be used as a basis for negotiating a contract. The cost proposal must be submitted in a separate sealed envelope and may contain the following:
  - a. Direct costs
  - b. Indirect costs
  - c. Labor (hours) by major tasks
  - d. Materials
  - e. Equipment
  - f. Subcontractors
  - g. Any other proposed costs that may be incurred by the City.
2. Evaluation of responses offering A/E services must be subject to the requirements of the Brooks Act. The Brooks Act requires that:
  - a. An offeror's qualifications be evaluated.

- b. Cost be excluded as an evaluation factor.
- c. Negotiations be conducted with only the most qualified offeror, and
- d. Failing agreement with the highest ranked offeror, negotiations will terminate with that firm and proceed with the next most qualified offeror. This process will continue until an agreement is reached with the most qualified offeror whose proposed contract terms/conditions are satisfactory to the City.

**V. PROPOSAL EVALUATION AND SELECTION**

- A. Evaluation of the technical proposals determined to be responsive to the submittal requirements will be conducted by the Selection Advisory Committee.

	<b>EVALUATION CRITERIA</b>	<b>Points</b>
1.	Technical approach to the requested services	40
2.	Qualifications/competence of team members to manage services to be provided	40
3.	Performance of the firm with previous clients, based upon quality of the work, control of costs, ability to meet schedules or deadlines; and responsiveness to the client	20
	<b>Total</b>	<b>100</b>

- B. Should it be determined that there is a need for interviews to be conducted, the highest-scoring respondent and respondents within ten (10) percent of the highest-scoring respondent may be interviewed. If there are less than three (3) respondents within the top ten (10) percent, then the top three respondents, regardless of their relative scores, may be interviewed. The Purchasing staff will coordinate with the qualifying interviewees as to the time, date, and place for the interviews, and the time allowed for each interview. Interviews will be closed to any persons not representing the interviewee. At the conclusion of all interviews, each member shall freshly score each interviewee in accordance with the RFP criteria, and the scores will be added to the previous scores of the interviewees to arrive at a composite score.
- C. Upon completion of the evaluation process, a recommendation for award of contract(s) will be issued by the evaluation committee to the Council for review and approval. Contract(s) will have been negotiated prior to the committee’s recommendation.

## SCHEDULE A

### GENERAL CONDITIONS FOR RESPONSES UNLESS OTHERWISE SPECIFIED IN THE RFP DOCUMENT, THE FOLLOWING CONDITIONS APPLY

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1. Proponents are advised that this solicitation is subject to the provisions of the City of Las Cruces (City) Procurement Code, incorporated herein by reference.
2. **Inquiries and Related Addenda:**

**Except for communications during any informational meeting conducted by the City for this solicitation and to ensure information is consistent to all prospective respondents, any direct or indirect contact with City elected officials or staff other than the City Purchasing Section staff relating to this solicitation is strictly prohibited throughout the duration of the solicitation and evaluation process and, upon such finding, will render a respondent and/or related proposal non-compliant.**

  - a. Any and all inquiries must be submitted by the prospective respondent to the Purchasing Section no later than one week before the due date/time unless otherwise specified in the solicitation documents. Inquiries received after the deadline may not be considered.
  - b. Inquiries must be emailed to [bidclerk@las-cruces.org](mailto:bidclerk@las-cruces.org).
  - c. Telephone inquiries will not be responded to, including the results of this solicitation.
  - d. Inquiries will be compiled and responded to via written addendum issued before the due date/time.
  - e. In the event addendum is received by a proponent after its response is submitted, the proponent must acknowledge receipt of the addendum by notice to the Purchasing Section via email.
  - f. In the event addendum is received by a proponent after its response is submitted and forces a change to its response, the proponent must submit a revised response, clearly marked as a revised response.
  - g. Failure to acknowledge receipt of addenda may render response as non-compliant.
3. **Response Format Requirements:**
  - a. Responses include following two (2) components:
    1. A technical proposal of the submittal requirements called out in solicitation documents.
    2. A cost proposal in a separate file consisting of itemized cost elements expected to be incurred by the City in obtaining the proposed services from the respondent.
  - b. Responses are limited to a maximum of 15 pages (excluding index; transmittal letter; title page). Any and all forms incorporated in the RFP solicitation documents and submitted with response also do not count towards the specified page limit.
  - c. Pages incorporated within the specified page limit must be numbered and typed in no less than 12 points per inch.
  - d. Responses must include the **RFP COMPLIANCE DECLARATION** page that is included within the solicitation documents. This requirement cannot be waived as the page confirms the respondent's understanding and compliance with the RFP submittal requirements, any required federal certification and conduct of this solicitation. This declaration must be completed and signed with each copy of response. **FAILURE TO RETURN THE RFP COMPLIANCE DECLARATION SHEET WILL SUBJECT THE RESPONSE TO REJECTION.**
    1. If applicable, respondents should provide business, tax, registration numbers etc. on the RFP COMPLIANCE DECLARATION page where listed. Such numbers shall be listed as City, County, State, or Federal. These may be submitted on a separate sheet if not enough room is available.
  - e. Response shall be submitted in PDF format, with technical proposal content included in a single file. Respondents are encouraged to minimize the size of their PDF files prior to submission by optimizing to reduce the resolution of scanned content. 100 dots per inch (DPI) or less is acceptable for viewing files on a computer.
  - f. In a separate PDF file, include one copy of the cost proposal, **unless otherwise specified in the RFP**; marked as **COST PROPOSAL** and clearly showing the proposal number and proponent name. For the purposes of these conditions of proposing, Total Price shall include all costs except gross receipts tax.
  - g. Proposals must be submitted electronically via e-mail to the City Purchasing Section Bid Clerk at [bidclerk@las-cruces.org](mailto:bidclerk@las-cruces.org). Please list **the RFP number and title, "Proposal," due date and time**, and the respondent's company name in the subject line of the e-mail. For example: "21-22-036 (TITLE) Proposal MM/DD/YY ##:##pm, (Company Name)." The e-mail must be delivered to the Bid Clerk inbox no later than the proposal due date/time. Proposals received after the due date/time will be considered non-responsive and not acceptable for award. The City will only accept proposals via e-mail. The Bid Clerk inbox has an attachment size limit of 150MB.
  - h. Should include any samples or other material required by the City on or before the specified due date and time provided in the request for proposal.
  - i. No other materials are to be submitted, unless specifically requested in proposal.
4. **Proposals must be submitted by the due date/time to [bidclerk@las-cruces.org](mailto:bidclerk@las-cruces.org).**
  - a. Please note, e-mails with large attachments may be delayed during transmission, and will subject response to rejection in the event it is received by the City Purchasing Section after the due date/time.
  - b. Proposals delivered after the closing date and time will not be accepted and will be deleted unopened.
  - c. Faxed proposals will not be accepted.
5. **The City of Las Cruces reserves the sole right to:**

- a. Determine responsible respondents and responsive proposals.
- b. Determine and waive minor technicalities in the responses from requirements not affecting price, quality, quantity of items, or services sought.
- c. Delete, decrease or increase quantities of proposed items or service within effective price dates.
- d. Reject any or all responses/proposals and terminate this solicitation process.

**6. Law Application:**

Respondents shall be responsible for complying with the New Mexico laws prohibiting bribes, gratuities, and kickbacks.

**7. Award:**

- a. The evaluation of proposals and final selection typically takes 45 to 60 days after the closing date.
- b. After the evaluation is complete, the award will be posted on the New Mexico Purchasing Group website (BidNet): <https://www.bidnetdirect.com/new-mexico>
- c. All proponents will receive a summary of the results via email.
- d. Successful proponent will receive notice of award via email and will be contacted to negotiate a contract.
- e. For negotiated contracts exceeding \$75,000, a recommendation for award shall be forwarded to the City Council for review and approval.

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# **Federal Certifications**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement that results from this solicitation, 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.

## **No Federal Government Obligation to Third Parties.**

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies,"

49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious,

or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent

the Federal Government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

49 U.S.C. § 5323(l) (1)  
31 U.S.C. §§ 3801-3812  
18 U.S.C. § 1001  
49 C.F.R. part 31



### **Access to Records and Reports**

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

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

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

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

49 U.S.C. § 5325(g)

2 C.F.R. § 200.333

49 C.F.R. part 633

### **Termination for Convenience or Default**

The AGENCY may terminate this contract in whole or in part, for the AGENCY's convenience or

because of the failure of the Contractor to fulfill the contract obligations. The AGENCY shall terminate

by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date

of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the AGENCY's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. AGENCY has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

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

If the termination is for failure of the Contractor to fulfill the contract obligations, the AGENCY

may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost

incurred by the AGENCY.

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

### **Civil Rights and Equal Opportunity**

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

**1. Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as

amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising,

layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the

Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

### **Disadvantaged Business Enterprises**

- a.** This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national aspirational goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The City's overall goal for DBE participation for FY2021-FY2023 is 0.00%. A DBE certification form is included at the end of this Attachment.
- b.** The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Las Cruces deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c.** The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

### **Incorporation of Federal Transit Administration (FTA) Terms**

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

### **Suspension and Debarment**

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

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

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

### **Resolution of Disputes, Breaches, or Other Litigation.**

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

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

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

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

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

### **Lobbying Restrictions**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **Clean Air**

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **Clean Water**

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **Fly America**

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

#### **Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

### **Energy Conservation**

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

### **ADA Access**

Design and Construction Accessibility. Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 et seq. and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB's "Americans with Disabilities Act Accessibility Guidelines" (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

### **Conformance with ITS National Architecture**

Contractor shall conform, to the extent applicable to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

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

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

Signature of Contractor's Authorized Official:

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

**NOTICE TO CONTRACTORS**

**THIS FORM IS A MANDATORY SUBMITTAL WITH BID/PROPOSAL**

**CITY OF LAS CRUCES  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM  
RACE NEUTRAL**

**FORM: RN- 1 (DBE Utilization)**

**Rev: November 2, 2021**

**RFP#: 21-22-036**

**Project Name: Transit Facility Construction Management Services**

The undersigned has satisfied the requirements of the specifications in the following manner (please check the appropriate space):

- The bidder is committed to a minimum of \_\_\_\_ % DBE utilization on this project.
- The bidder, if unable to meet the goal of \_\_\_\_ % DBE, is committed to a minimum of \_\_\_\_ % DBE utilization on this project and has submitted documentation showing good faith effort.
- The bidder is not at DBE and does not utilize subcontractors.

Prime Contractor: \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

State Registration No. \_\_\_\_\_ Contact E-mail: \_\_\_\_\_

Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

By: \_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Title