



**REQUEST FOR PROPOSALS (RFP)**  
**- 2023 PAG Regional Orthophotography -**

To better synchronize and coordinate available imagery and elevation datasets for our regional partners, Pima Association of Governments (PAG), the greater Tucson region's metropolitan planning organization, is seeking proposals from qualified firms or individuals, either singly or through a joint venture with others, to obtain 4-band orthophotography in calendar year 2023 for eastern Pima County as well as the entirety of the Tohono O'odham Nation (approximately 8,200 square miles - see map in Exhibit A of Appendix A) and the University of Arizona (see Exhibit B). PAG is requesting proposals for orthoimagery at 30 cm ground sample distance (GSD), 15 cm GSD, and 7.5 cm GSD that can be acquired and stored on-premises at PAG and under ownership by PAG. The project will be managed by PAG.

Questions regarding this Request for Proposals are to be submitted to PAG in writing by email to the attention of Roy Cuaron at [rcuaron@pagregion.com](mailto:rcuaron@pagregion.com). Questions will be accepted until 5 p.m. Mountain Standard Time (MST) on June 23, 2023. Proposers are encouraged to submit their questions as early as possible to allow PAG adequate time to prepare accurate, timely and comprehensive responses. PAG responses will be provided online at <https://pagregion.com/info-center/rfp-rfqs/> as they are answered and all answers will be provided within 10 days and minimally and at the PAG office front desk by July 14, 2023.

A copy of this solicitation and future addenda may be obtained from the PAG internet site at: <https://pagregion.com/info-center/rfp-rfqs/> and at PAG office's front desk (address below). PAG takes no responsibility for informing recipients of changes to the original solicitation document. It is the proposer's responsibility to obtain a copy of any amendments relevant to this solicitation. Failure to submit amendments with the solicitation response may be grounds for deeming a proposal non-responsive.

A signed copy of the proposal and supporting data must be received by PAG before 10 a.m. MST on July 21, 2023, in BOTH digital and physical formats. Envelopes shall be SEALED, and shall be labeled with ORTHO 23, DUE 7/21, the proposer's name, and the proposer's address. Physical proposals must be mailed or hand delivered to: Pima Association of Governments, Director of Finance, 1 E. Broadway Blvd., Suite 401, Tucson, AZ 85701. Digital copies shall be delivered in a single compressed ZIP file as an email attachment or accessible through a download link and sent to [rcuaron@pagregion.com](mailto:rcuaron@pagregion.com) with the subject line: ORTHO 23, DUE 7/21, and the proposer's name. Proposals will be opened at 10:15 a.m. MST on this date. PAG reserves the right to disqualify any responses that are not in accordance with the prescribed requirements of this RFP.

All questions regarding this RFP should be directed to Roy Cuaron, Director of Finance, at (520) 495-1470 or [rcuaron@pagregion.com](mailto:rcuaron@pagregion.com).

If you need translation assistance, please contact Zonia Kelley at (520) 792-1093. Si necesita ayuda con traducción, llame por favor al (520) 792-1093 y comuníquese con Zonia Kelley.

Pima Association of Governments (PAGregion.com) operates its programs without regard to race, color and national origin in compliance with Title VI of the Civil Rights Act.

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## **INTRODUCTION**

Pima Association of Governments (PAG) is a nonprofit, regional planning organization comprised of a voluntary association of local governments including Pima County, the cities of Tucson and South Tucson, the towns of Marana, Oro Valley, and Sahuarita, the Pascua Yaqui Tribe and the Tohono O'odham Nation. A Regional Council that consists of chief elected officials from each of these jurisdictions and a representative from the Arizona State Transportation Board governs PAG. PAG also functions as the metropolitan planning organization (MPO) for the greater Tucson metropolitan area.

This RFP describes a scope of work to be performed that is intended to be representative of desired activities, products, and outcomes.

Potential respondents should carefully review all requirements contained in this document and prepare a written response addressing those requirements.

### **SCOPE OF WORK**

All work performed on this project must comply with federal requirements associated with the fund source(s) being used for this project. PAG and PAG authorized partners involved in the project will serve to coordinate this with the selected consultant. The scope of work is in Appendix A.

### **INSTRUCTIONS TO SUBMITTERS**

PAG reserves the right to cancel this solicitation in part or in whole at any time and reserves the right to reject all submissions. Additionally, PAG reserves the right to disqualify any responses which do not satisfy minimum acquisition and/or data requirements.

Respondents are cautioned to be concise and straightforward in the presentation of their submittal using the following format in 12-point, single space, aerial font with 1-inch margins.

#### **1. Letter of Transmittal**

- Provide a letter of transmittal to PAG Director of Finance that briefly states the respondent's understanding of the work to be done and a positive commitment to perform the work within the scheduled time period.
- Generally describe the level of effort required to perform the work and the timeline for all work.
- Provide a statement that the submission, including Product Cost Sheet, will remain valid and irrevocable for at least ninety (90) days.
- List the name, title, address, and phone number of the project manager.
- List the name and title of the officer authorized to make representations on behalf of the submitter.
- Provide an original signature by the officer authorized to sign, date, and submit the response.

#### **2. Title and Table of Contents**

- Indicate the project title, names, and addresses of the primary consultant firm and each subconsultant, if any.
- Provide a Table of Contents that clearly indicates the organization of the material by section heading and page number.

### **3. Contents**

- Describe the extent to which the proposal will meet or exceed the stated objectives of the work and discuss how the submitter would modify the project scope, schedule, and/or cost to better meet project objectives.
- Discuss any difficulties expected or anticipated in performing the work together with a discussion of how the submitter proposes to overcome or mitigate those difficulties.
- Detail the technical approach and methods to be employed in performing each of the tasks identified in this scope of work.
- Provide a detailed schedule for completion of the work, including performance and delivery schedules indicating phases or segments of the project, milestones, and other significant events.
- Explain what quality control and administrative processes will be used to ensure appropriate attention will be given to successful execution of the work.

### **4. Qualifications of Primary Consultant and Subconsultants**

- Describe the qualifications of the primary consultant firm and each subconsultant, if any.
- Describe relevant, recent experience for the primary consultant firm and each subconsultant in delivering a project of this scope and size.
- Provide a description and location of the facilities to be used where data processing, production and quality control will occur. Briefly describe the facilities, equipment, and technical and business services that will be available to support the work.
- Identify the key project individuals who will perform the work, including officers and the project manager and include their resumes and qualifications.
- Provide a statement disclosing whether any likely source of significant financial or other conflict of interest might arise in the conduct of performing the work.

### **5. Administrative Requirements**

- Include a Submitter's Information Form. (Appendix B)
- Include a Product Cost Sheet (Appendix C). This will be a fixed-fee contract for either one, or any combination, of the four data products requested.
- All invoices for this contract shall be delivered in person or sent by mail to PAG.
- The firm that is selected will be required to comply with Titles VI and VII of the Civil Rights Act of 1964. The contractor will comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41CFR Part 60).
- The firm selected will be required to comply with PAG insurance requirements, which may include the following: Worker's Compensation, Comprehensive General Liability Insurance, Business Automobile Liability Insurance, Valuable Papers Insurance, and Professional Liability Insurance.

- The Prime Contractor will pay Subcontractors for satisfactory performance of contracts no later than fourteen (14) calendar days from the date that the Prime Contractor receives payment from PAG.

## **6. References**

- Provide a list of at least three clients, with contact names, addresses, phone numbers, and brief descriptions and dates for projects where similar, recent work was performed.

## **CONFIDENTIAL INFORMATION**

- If a proposer believes any portion of its submission contains confidential information, state which portion is considered confidential and request that PAG make a determination.
- All submissions become the property of PAG upon submittal and a matter of public record subsequent to the awarding of a contract, including any confidential information.

## **NONDISCRIMINATION**

PAG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, the Civil Rights Restoration Act of 1987 (Public Law 100.259), Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this solicitation, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, religion, gender, age or disability in consideration for an award.

## **SMALL AND MINORITY BUSINESS AND WOMEN'S BUSINESS ENTERPRISES**

It is PAG's policy, as a federally assisted agency, to encourage small and minority businesses and women's business enterprises to submit responses.

State whether the primary consultant firm or any subconsultants are a small or minority business or a woman's business enterprise.

## **SUBMISSION**

A signed copy of the proposal and supporting data must be received in BOTH digital and physical formats. Envelopes shall be SEALED, and shall be labeled with ORTHO 23, DUE 7/21, the proposer's name, and the proposer's address. Physical proposals must be mailed or hand delivered to: Pima Association of Governments, Director of Finance, 1 E. Broadway Blvd., Suite 401, Tucson, AZ 85701. Digital copies shall be delivered in a single compressed ZIP file as an email attachment or accessible through a download link and sent to [rcuaron@pagregion.com](mailto:rcuaron@pagregion.com) with the subject line: ORTHO 23, DUE 7/21, and the proposer's name. If email confirmation of

submission is not received within two business days, please contact the Director of Finance. Submissions will not be accepted before June 9, 2023 and will be accepted until 10 a.m. MST on July 21, 2023. Submissions arriving after this time will be rejected.

[rcuaron@pagregion.com](mailto:rcuaron@pagregion.com)

Roy Cuaron, Director of Finance  
Pima Association of Governments

### **OPENING OF PROPOSALS**

- All proposals received by the above deadline will be opened by the Director of Finance at PAG during a virtual meeting beginning at 10:15 a.m. on July 21, 2023.
- Only the names of respondents will be read aloud when proposals are opened.
- Respondents are welcome to attend the opening of the proposals by virtual meeting by request. Please contact the PAG Director of Finance in advance if you wish to attend during submission openings.

### **SELECTION PROCESS**

- PAG will form an advisory evaluation committee consisting of persons individually and collectively knowledgeable of orthoimagery to review and rank the proposals received in accordance with the criteria described below.
- PAG may seek additional information and interview the top two proposers, if scores are similar, in order to combine interview scores with the evaluation scores, or may request best and final offers from individual respondents.
- PAG will begin contract negotiations with the firm determined to be the most qualified and responsive to the RFP criteria. If a contract cannot be negotiated with the first firm, PAG reserves the right to negotiate with the next qualified firm(s) until a contract can be reached.

### **EVALUATION OF PROPOSALS**

- All proposals will be evaluated according to Appendix D.
- The evaluation committee's ranking and recommendation will be forwarded to the PAG Executive Director, who will make a recommendation to the PAG Regional Council for final action. The recommendation and award of a contract, if any, will be to the Proposer whose response is most advantageous to PAG based on the evaluation criteria set forth below.
- PAG reserves the right to reject any and all proposals submitted or to conclude that none of the proposals are advantageous to PAG.

### **FUNDING AVAILABILITY**

- PAG may request additional work if additional funding is made available prior to contract approval by the Regional Council, or during the term of the contract.

- Funding for this project is contingent upon availability at the time of award. Potential respondents should understand clearly that the scope of work described herein is tentative.
- There is no expressed or implied obligation for PAG to reimburse responding firms for any expenses incurred in preparing submissions in response to this request.

### **CONTRACT TERMS AND CONDITIONS**

- The type of contract to be used, if any, will be a fixed-fee contract.
- Any award of a contract will be subject to terms and conditions as enumerated in PAG's Procurement Guidelines, including presentation of certificates of insurance and assurance of compliance with pertinent federal regulations, including audits and non-discrimination.
- Upon submittal of all deliverables, PAG will retain full ownership of all data products. Full copyrights to the data will be assigned to PAG, meaning that PAG is free to redistribute the data to its member jurisdictions, other agencies, the private sector, and the general public. This includes the display and distribution of the data through web services.
- Responses to this Request for Proposal must include a completed version of the Product Cost Sheet (Appendix C). Proposals must include a copy of any End-User License Agreement (EULA). Agreement must include terms that give PAG and its partners the right to own, display and share data and derivatives publicly in perpetuity. Response packet should not be larger than 20 pages in total.
- Response must also include a digital sample section of imagery for the proposed orthophotography data product on a thumb drive. Any additional content on electronic media besides sample sections will not be considered as part of the review materials.
- Professional Designation: All Bidders must have registered professional land surveyors in the State of Arizona and/or Certified Photogrammetrists or be able to demonstrate an equivalent of these registrations with their Bid submission. Failure to do so at the time of the Bid opening will disqualify the Bidder.
- PAG reserves the right to purchase any or all of the products listed in Appendix C.
- Contractor shall be prepared to negotiate contract between July and September and to begin contract on September 29,, 2023.
- Payment will be made upon receipt of the deliverables.

### **INQUIRIES**

Questions regarding the scope of work should be directed to Roy Cuaron, PAG Director of Finance, at (520) 495-1470 or [rcuaron@pagregion.com](mailto:rcuaron@pagregion.com) .

# Appendix A

## Scope of Work

### **PROJECT OBJECTIVES**

The intent of this Request for Proposals is to obtain 4-band (RBG & NIR) orthoimagery within Pima County and the Tohono O’odham Nation in late fall or early winter of 2023. Five cost estimates are requested for different areas with 7.5 cm, 15 cm or 30 cm GSD resolution. Specific cost estimates are requested for the University of Arizona Main Campus, corrected using a UArizona control point, and a 3D photo mesh.

See Exhibits A and B for maps, location descriptions, square miles, and more technical specifications. The bidder shall be responsible for all material, labor, and service costs and any other associated services and materials necessary to completely provide the required data for acceptance to Pima Association of Governments (PAG). Prices quoted shall be all-inclusive.

### **PRODUCT OWNERSHIP AND LICENSING**

All deliverable products and all information or data gathered as a part of this project shall be delivered to PAG prior to final close-out of the contract and shall be solely owned by PAG.

### **ACQUISITION DATES**

Imagery should be taken between September 30, 2023, and December 30, 2023.

- In the event that weather conditions are such as to prohibit quality aerial imagery acquisition, upon written request, extensions may be granted by PAG if flying conditions are adverse to aerial imagery acquisition and prevent the completion of final product on the scheduled dates.
- All aerial images which do not meet the quality of accuracy of the specifications shall be returned to the contractor at which time the contractor shall have thirty (30) days to provide PAG with a satisfactory replacement.

### **SCHEDULE FOR DELIVERY AND PENALTIES**

- All work shall be completed by May 10, 2024. The calendar days count from the date of the notice to proceed.
- Penalties for missing the schedule will be assessed as follows:
  - 2% penalty of the contracted amount for up to 1 week late
  - 5% penalty of the contracted amount for up to 2 weeks late
  - 7% penalty of the contracted amount for up to 3 weeks late
  - 10% penalty of the contracted amount for up to 4 weeks late or more

### **PRODUCT DELIVERABLES**

#### **1. Process Report**

A narrative report shall be prepared describing equipment, procedures, and



programs used for the aerial triangulation. Root-mean-square error summaries will be given for bundle adjustment photographic measurement residuals or strip tie point residuals and misclosures at control/check points. In addition, significant misfits encountered at control points, and steps taken to analyze such misfits and to rectify the discrepancies, will be described.

## **2. Orthophotography**

- Acquisition and Imagery Requirements
  - i. Cloud cover: less than 5% per square mile image
  - ii. Smoke/fire: less than 5% per square mile image
  - iii. Maximum allowable image shear: less than 3 pixels
  - iv. Sidelap: 20% or greater
  - v. Acceptable image blemishes and artifacts: Imagery should be blemish and artifact free.
  - vi. Occlusions: Smearing from DEM inaccuracies or occlusions that exceed 3% of a 3-by-3-mile area are not acceptable.
  - vii. Contrast and color balance: should be consistent across the block.
  - viii. Bridge smear: bridge or roadway warp is not acceptable.
- Accuracy
  - i. 15 cm imagery should be of sufficient quality and horizontal accuracy to support the potential future development of ASPRS Class 1 planimetric products if our partners so desire.
  - ii. 30 cm imagery should meet ASPRS Class 3 accuracy standards.
  - iii. 7.5 cm resolution orthoimagery corrected using UArizona control to achieve accuracy for 40 scale, 1-foot contour mapping, maintaining a 30 cm horizontal accuracy standard. (Control documentation including shapefile to be provided).
- Coordinate Reference System
  - i. Obtained orthophoto imagery must be provided in State Plane, Arizona Central Zone (FIPS Zone 0202), NAD83 (2011) International Feet (EPSG #2868) and include ancillary vector file of photo-points with date and time stamps.
- Labeling and Tiling
  - i. Data shall be delivered on hard drives or appropriate media as agreed to with PAG.
  - ii. The delivery media will become property of PAG after completion of the project.
  - iii. Format shall be TIFF uncompressed with world files (.tfw). All imagery data sets will be tiled in the Arizona PLSS with also a 300-foot buffer on all sides.

- iv. TIFF files shall be named as follows: TxxSyyEzz\_C06Y15.tif where xx is the PLSS Township number, yy is the PLSS Range number, and zz is the PLSS section number, and the last six characters represent the resolution and year.

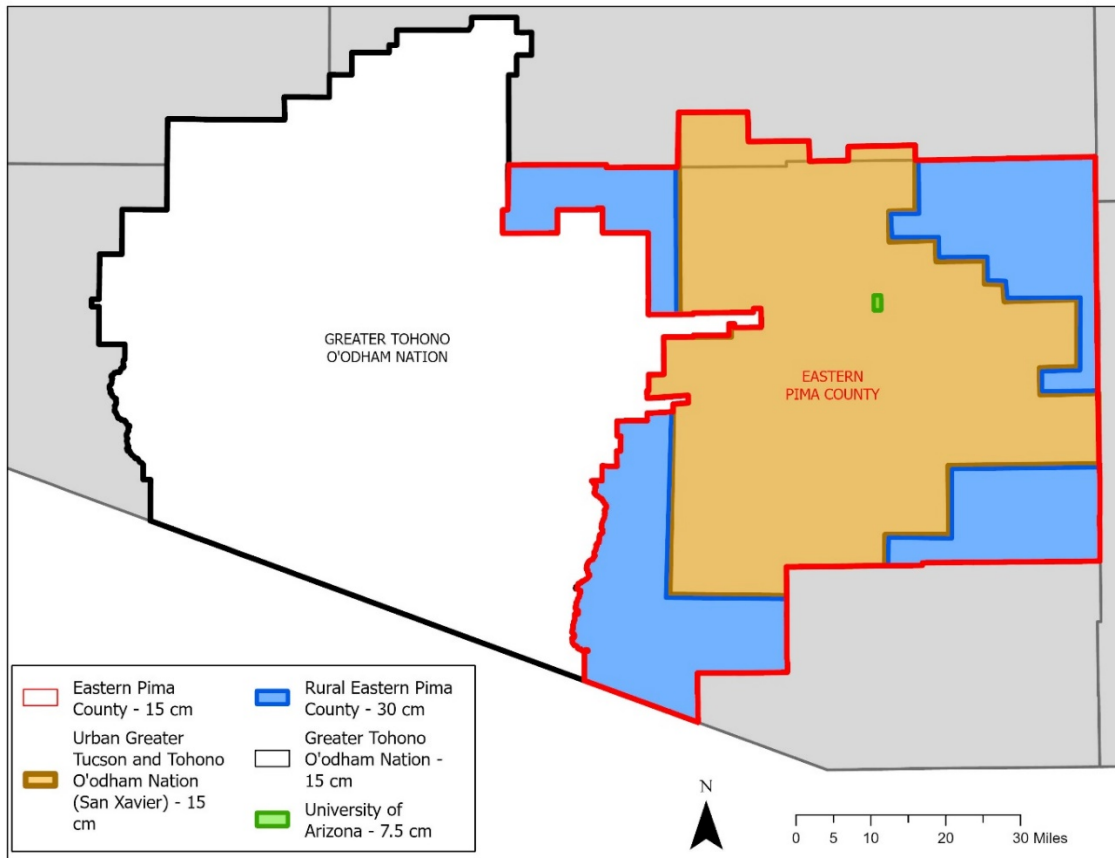
### **3. Photopoints**

- A vector dataset containing photopoints with date and time stamps for each imagery tile. Dataset can be delivered in a Esri GeoDatabase feature class, Shapefile, or GeoPackage format.

## **PROJECT EXTENTS**

These requested extents can be provided by Pima Association of Governments as GIS files on request.

Exhibit A:

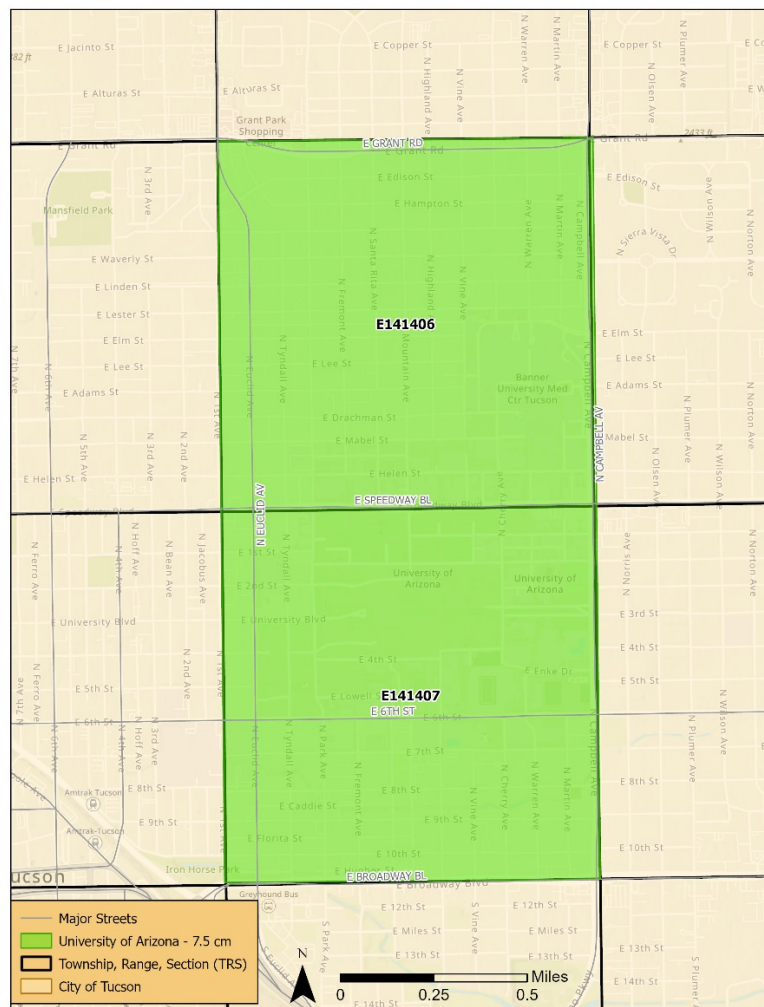


- Product 1 – All eastern Pima County: 4-band (RGB & NIR), minimum 15 cm GSD 2023 orthophotography covering full extent of Eastern Pima County, including the Tohono O'odham Nation's San Xavier District and a small area of urban area north of the county line, as outlined in **red** in the exhibit above (appx. 4,000 square miles).
- Product 2 – Urban eastern Pima County: 4-band (RGB & NIR), minimum 15 cm GSD 2023 orthophotography covering Urban Greater Tucson and the Tohono O'odham Nation's San Xavier District (combined appx. 2,500 square miles), as outlined in **brown** in the exhibit above. The urban area includes a small area north of the Pima County line included in the square miles listed.
- Product 3 – Rural eastern Pima County: 4-band (RGB & NIR), 30 cm GSD 2023 orthophotography covering just the rural areas in Pima County excluding the Tohono O'odham Nation, San Xavier District, and Urban Greater Tucson (appx. 1,500square miles), as outlined in **blue** in the exhibit above.

- Product 4 – Entire Tohono O’odham Nation: 4-band (RGB & NIR), 15 cm GSD 2023 orthophotography covering the Greater Tohono O’odham Nation (appx. 4,200 square miles), as outlined in **black with blue fill** in the exhibit above.

\*Note: All areas shown for Products 1 – 4 are approximate and rounded.

Exhibit B:



- Product 5 – University of Arizona: Aerial imagery for Township 14, Range 14, Section 06E (E141406) and Township 14, Range 14, Section 07E (E141407) which encompass the University of Arizona Main Campus (appx. 2 square miles), as outlined in **green** in the map above. Except as noted below, all other PAG standards and conventional orthophoto collection practices (4-band RGB & NIR, 2023) will be followed. Priced individually for each of the following:
  - 5A: 3-inch (7.5 cm) resolution orthoimagery

- 5B: The above orthoimagery corrected using UArizona control to achieve accuracy for 40 scale, 1-foot contour mapping, maintaining a 1-foot horizontal accuracy standard. (Control documentation including shapefile to be provided)
- 5C: 3D Photo Mesh of The University of Arizona Main Campus processed in 3D product format that can be consumed within ESRI products (Esri .js api 4.x, ArcGIS Online applications).

# Appendix B

## Proposers Information Sheet

**Please complete this form and return it with your response.**

If you have any questions about this form, please contact  
Roy Cuaron, Director of Finance, (520) 495-1470.

All firms proposing as prime contractors or subcontractors on Pima Association of Governments (PAG) projects are required to submit this form.

### 1. GENERAL INFORMATION

Name of Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, ZIP \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, ZIP \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email address: \_\_\_\_\_

Web Address: \_\_\_\_\_

Year Firm was established: \_\_\_\_\_

Check all that apply:

Is this firm a prime consultant? \_\_\_\_\_

Is this firm a subconsultant? \_\_\_\_\_ Identify specialty: \_\_\_\_\_

Is this firm a certified DBE? \_\_\_\_\_ If so, by whom? \_\_\_\_\_

Is this firm currently debarred? \_\_\_\_\_

Is this firm currently the subject of debarment proceedings? \_\_\_\_\_

### FINANCIAL INFORMATION

The undersigned swears that the above information is correct. Any material misrepresentation may be grounds for terminating any Contract which may be awarded. By signing below, the authorized representative of the consultant firm affirms that the firm has the financial capacity to perform the proposed work.

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

# Appendix C

## Product Cost Sheet

Submitters must complete and include the following product cost sheet:

Product #	General 2023 Ortho. Description*	Approx. Square Miles	Cost per mi <sup>2</sup>	Total Product Cost
Product 1	All eastern Pima County, min. 15 cm	4,000		
Product 2	Urban Pima County, min 15 cm	2,500		
Product 3	Rural eastern Pima County, 30 cm	1,500		
Product 4	Entire Tohono O'odham Nation, 15 cm	4,200		
Product 5	University of Arizona, 5A: 7.5 cm ortho.	2		
	5B: above ortho using UArizona control			
	5C: 3D Photo Mesh			

\*See Appendix A for full description

## Appendix D

### Evaluation Methodology\*

<b>Firm Qualification</b>	<b>30%</b>
<b>Project Understanding and Approach</b>	30%
<b>Price</b>	40%

\*Interview(s) of the top two candidates may occur to clarify and add to the final scores and/or Best and Final Offers collected (if warranted, may cause re-evaluation).



**Pima Association of Governments  
2023 Regional Orthophotography  
Request for Proposals (RFP)**

**Addendum Number 1**

- A. The attached document entitled Mandatory Terms and Conditions for Subrecipient Procurement is hereby incorporated into the RFP. Proposers acknowledge they will abide by all applicable terms and conditions noted in the document.
- B. There is no Disadvantaged Business Enterprise (DBE) goal for this project.

# **Mandatory Contract Terms and Conditions for SubRecipient Procurement**

## **using federal US DOT funds through ADOT MPD**

*(Not required for MicroPurchases)*

**Monitoring Activities:** Pursuant to 2 CFR 200.329, the project/work in this solicitation/contract is funded with federal funds through the Arizona Department of Transportation, Multimodal Planning Division (ADOT). In accordance with 2 CFR 200.329, ADOT shall monitor all activities performed by its staff or by sub-recipients of U.S. Department of Transportation funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met. The Contractor and its sub-contractors shall fully cooperate with such monitoring as requested.

**Governing Law:** This Contract is governed according to the laws of the State of Arizona. All cited statutes, public law, executive orders, and policies cited in the funding Agreement between the State of Arizona and are incorporated by reference as a part of this Contract.

**Compliance with Funding Agency Requirements:** Pursuant to 2 CFR 200.337 and 2 CFR 200.339, upon request, the Contractor shall provide information or reports to assist in adherence to relevant requirements from the agreements between ADOT, its sub-recipient, and the agencies of the US Department of Transportation. If ADOT, or the federal funding agency finds that the work performed fails to comply with any requirement (e.g., work elements or tasks are not conducted in accordance with approved scope, or work elements or tasks are found to be inconsistent with federal or state regulations or guidelines, or products/services were incorrectly procured), ADOT, or the federal funding agency may use the enforcement actions contained in 2 CFR 200.208 and then in 2 CFR 200.339 to remedy the situation and any other appropriate remedies available at law.

**Certification of Eligibility of Costs:** Pursuant to 2 CFR 200.402 - .414, 2 CFR 200.420 - .475, and 2 CFR 200.415, the Contractor shall assure that costs invoiced are consistent and eligible for federally funded projects.

To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment must include a certification, signed by an official who is authorized to legally bind the Contractor which reads as follows:

*“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”*

**Record Retention:** Pursuant to A.R.S. 35-214 and the State of Arizona Accounting Manual, sections 0045 and 7035, CONTRACTORS and SUBCONTRACTORS shall retain all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents, and shall be maintained for at least 5 years after final payment.

**Applicable Terms and Conditions:** Pursuant to 2 CFR 200.327, the Contractor's contracts with its sub-contractors shall include all the terms and conditions of 2 CFR 200 Appendix II, and additionally, those of this Contract. Each sub-contractor must agree to comply with all the terms and conditions to be awarded.

The Contractor certifies that it shall communicate contractual requirements to contractors and sub-contractors and ensure all the requirements of this Contract are incorporated by means of a contract or other legally binding documents stipulating the contractor and/or sub-contractor's responsibility to comply with this Contract.

**Administrative, contractual, or legal remedies for violation or breach of contract terms:** Pursuant to 2 CFR 200, Subpart F, Appendix II; 41 USC 1908, for contracts in excess of the simplified acquisition threshold in 41 USC 134 (currently \$250,000), failure by the Contractor to carry out the requirements of the Contract, especially in compliance with the Federal terms and conditions and programmatic requirements, represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the Issuer, with the funding agency's concurrence, deems appropriate, which may include, but is not limited to:

- Withholding payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding on the grounds of being non-responsible.

Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the Issuer may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

**Termination for cause or convenience:** Pursuant to 2 CFR 200, Subpart F, Appendix II, the issuer of this Contract reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the issuer without penalty or recourse. Upon receipt of written notice, the Contractor shall stop all work, as directed in the notice, notify all sub-recipients of the effective date of the termination and minimize all further costs to the issuer of this Contract. In the event of termination under this paragraph, all documents, data, and reports prepared by the Contractor and its sub-contractors under this Contract shall become the property of and be delivered to the issuer of this Contract upon request. The Contractor and its sub-contractors shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials/deliverables accepted before the effective date of the termination. The Contractor and its sub-contractors shall continue to perform in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

The issuer of this Contract shall reimburse the Contractor for those eligible expenses incurred during the Contract period which are

directly attributable to the completed portion of the work covered by this Contract, provided that the work has been completed in a manner satisfactory and acceptable to the issuer. The Contractor shall reimburse its sub-contractor in a similar fashion. The Contractor and its sub-contractors shall not incur new obligations for the terminated portion after the effective date of the termination.

In addition to the rights reserved in the Contract, the issuer may terminate the Contract in whole or in part due to the failure of the Contractor or its sub-contractors to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract.

This Contract may be terminated by either party provided that a termination shall not be effective until 30 days after a Party has served written notice upon the other Party. This Contract may be terminated by mutual consent of all Parties or unilaterally by either Party without cause.

**Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended:**

Pursuant to 2 CFR 200, Supart F, Appendix II, for contracts in excess of \$150,000, the Contractor herein agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the contracting agency and to ADOT, who will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**Debarment and Suspension / Excluded Parties List:** Pursuant to 2 CFR 200, Subpart F, Appendix II and 23 CFR 121 (J), the Contractor shall not award a Sub-contract to any parties listed on the governmentwide exclusions list in the System for Award Management (SAM).

**Anti-Lobbying Certification:** Pursuant to 2 CFR 200, Supart F, Appendix II (I), for any contract exceeding \$100,000, the Contractor and its sub-contractors shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**Procurement of recovered materials:** Pursuant to 2 CFR Part 200, Supart F, Appendix II (J) and 2 CFR 200.323, the Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**Telecommunications and Video Surveillance Services or Equipment:** Pursuant to 2 CFR Part 200, Supart F, Appendix II (K) and 2 CFR 200.216 the Contractor shall not procure or obtain, or extend or renew a contract to procure or obtain, or procure or obtain equipment, services, or systems that uses covered telecommunication equipment or services as a substantial or essential component

of any system, or as critical technology as part of any system, telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) as described in Public Law 115-232, section 889.

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**Domestic Preference:** Pursuant to 2 CFR Part 200, Supart F, Appendix II (L) and 2 CFR 200.32, as appropriate and to the extent consistent with law, the Contractor and its sub-contractors should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber."

**Patents:** Patents and inventions developed in the course of the Project are subject to federal standard patent rights at 37 CFR 401.14. The Contractor shall at a minimum cite the applicability of the Standard Patent Rights of 37 CFR 401.14 except for 401.14(g) or may include all the clauses, suitably modified to identify the parties, in all sub-contracts, regardless of tier. The clauses may be retrieved in their entirety from <https://www.ecfr.gov/current/title-37/chapter-IV/part-401/section-401.14>, or as the link may be updated from time to time, and shall be adjusted only to the extent to identify the parties.

To the extent permitted by A.R.S. §§ 41-621 and 35-154, the Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of this Contract's performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

**Rights to Inventions Made by Nonprofits and Small Business Firms:** Pursuant to 2 CFR 200 Appendix II (F) Rights to Inventions Made Under a Contract or Agreement. The funding provided for this Contract meets the definition of "funding agreement" under 37 CFR §401.2 (a) the Issuer of this Contract must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**Conflict of Interest:** Pursuant to 2 CFR 200.112 and 2 CFR 1201.112, the Contractor shall disclose in writing any potential conflict of interest to the federal funding agency, the contracting agency, or the Arizona Department of Transportation.

**Employment of Federal Personnel:** Contractors will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the contracting agency, the Arizona Department of Transportation or the Federal funding agency shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: The employee, officer or agent, any member of his immediate family, His or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. Department officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

**Equipment Use, Management, and Disposal:** Pursuant to 2 CFR 1201.313 the Contractor shall follow State of Arizona rules with respect to the use, management and disposal of equipment acquired under this contract.

**Prompt Payment:** The funding in this Contract includes reimbursement to the Issuer of expenditures necessary to accomplish the Project. Payment by the Issuer may not rely on receipt of funds from the Arizona Department of Transportation before paying Contractors.

Pursuant to 49 CFR 26.29 Contractors must pay Subcontractors for satisfactory performance (i.e., all the tasks called for in the subcontract for the invoicing period have been accomplished and documented as required by the Issuer and any deliverables are approved by the relevant approver no later than 7 days from receipt of each payment the Issuer makes to the Contractor. The prompt payment provision applies to Subcontractors at all tiers. This applies to all Subcontractors, not just DBEs.

In the event the Contractor fails to invoice the Issuer according to its scheduled invoicing activities, and in any case where a Contractor's invoice has been rejected through no fault of the sub-contractor's performance, the Contractor shall pay each Subcontractor for satisfactory work completed in no more than 30 calendar days from receipt of invoice for contractor-accepted work.

**Retainage:** Contractors are herein notified they are prohibited from holding retainage from SubContractors, nor are Contractors subject to retainage withholding by the Contracting Agency for this Project pursuant to 49 CFR 26.29.b(1).

**Travel:** All travel for the Contractor must comply with the State of Arizona (State) policies for Travel. Only actual expenses are reimbursable, within maximum reimbursement limits as described and established by the rates for travel: A.R.S. 38-621 through 38-627, Reimbursement for Expenses; State of Arizona Accounting Manual (SAAM), Section 50.65, Vendor Travel, Section 50.95 Reimbursement Rates available at <https://gao.az.gov/publications/saam>. In the event the MPO chooses to reimburse Contractors/Consultants at rates higher than those authorized in the State travel policies, when submitting travel reimbursement requests, each receipt must indicate the amount that exceeds the State rate. The Contractor shall also comply with the policies governing individually operated motor vehicles in Section 50.15 of the SAAM. Travel costs paid to Contractors/Consultants must always be supported by appropriate documentation and in the case of rental vehicles, the ADOT approved justification form.

**Tribal Consultation:** In the event that this project is located within tribal land or includes tribal involvement as a stakeholder, the Contracting Agency and the Contractor must exercise tribal consultation and coordination protocol when providing related services. The purpose for this provision is to ensure compliance with "ADOT's Tribal Consultation Policy" and Arizona Revised Statute Section 41-2051, Subsection C - Responsibilities of State

Agencies: <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/41/02051.htm>.

**Report Disclaimer:** Pursuant to 23 CFR 420.117(e), all reports and other project-related documents shall contain the following disclaimer statement:

"This report was funded in part through grant[s] from the Federal Highway Administration and/or Federal Transit Administration, U.S. Department of Transportation. The contents of this report reflect the views and opinions of the author(s) who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily state or reflect the official views or policies of the U.S. Department of Transportation, the Arizona Department of Transportation, or any other State or Federal Agency. This report does not constitute a standard, specification or regulation".

**Safe Operation of Motor Vehicles:** The contractor agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

(1) Adopting and promoting 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, and

(2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving.

The Contractor agrees to comply with:

(1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);

(2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and

(3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

(a) Safety. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,

(b) Contractor Size. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and

(c) Extension of Provision. The Contractor agrees to include the preceding section in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.



**Disadvantaged Business Enterprise:** The contracting Agency is receiving US DOT-assisted transportation funds for this Contract through the Arizona Department of Transportation and has adopted and implemented ADOT's DBE Program Plan, ADOT's DBE policy, DBE contract specifications and forms as a condition of receiving federal funds. ADOT Subrecipients/Subgrantees of federal funds must comply with ADOT DBE Plan and may not have a plan independent from ADOT.

The ADOT DBE Program Plan and LPA/SUBRECIPIENT DBE Guidelines are located online at <https://azdot.gov/business/business-engagement-and-compliance/dbe-contract-compliance> and are herein incorporated by reference.

#### Non-Discrimination

The contracting Agency, its Contractors and SubContractors will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age, or disability.

In compliance with the ADOT DBE Program Plan, the contracting Agency, its Contractors and SubContractors shall not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program. The Contractor will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age, or disability.

The Contractor shall take all necessary actions required under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

By executing this Agreement, the Contractor , agrees to perform the following minimum DBE Program Compliance Required Activities and include the following assurance with each contract with a contractor or consultant and each subcontract a prime signs with a subcontractor:

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 USDOT assisted contracts. Failure by the contractor to carry out these requirements represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting Agency, with ADOT's concurrence, deems appropriate, which may include, but is not limited to:

- Withholding payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding on the grounds of being non-responsible.

The Contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

The Contractor shall designate a full time employee who shall be responsible for the administration of the contractor's DBE program.

The Contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.

#### Subcontract Payment Reporting in the DBE system:

The Arizona Department of Transportation (ADOT) is required to collect data on DBE and non-DBE participation, including lower tier subcontracts, to report to funding agencies of the USDOT on Federal-aid projects. The contractor is notified that such record keeping is required by the Department for tracking DBE participation on both race neutral and race conscious projects (i.e. projects with and without DBE goals).

The Contractor shall respond to payment audits reported each month electronically through ADOT's web-based payment tracking system (<https://adot.dbesystem.com>), reporting its payments to all DBEs and non-DBE subcontractors working on the project. In addition, the Contractor shall require that all DBE and non-DBE subcontractors shall also respond to its audits and report lower-tier subcontractor payments in the same manner.

If, by the DBE system audit deadline, the Contractor has not submitted the required report for work performed during the preceding month, or the submitted report failed to include all amounts earned by and paid to all DBEs and non-DBEs, including all lower-tier DBE and non-DBE subcontractors, the contracting Agency will work with ADOT MPD Contracts Program Manager to determine if sanctions should be assessed. These liquidated damages shall be in addition to all other reductions or liquidated damages provided for elsewhere in the contract.

The Contractor shall include these provisions in all of its subcontracts, and ensure that its subcontractors include these provisions in any lower-tier subcontracts.

**Title VI/Non-Discrimination Assurances:** The CONTRACTOR HEREBY ACKNOWLEDGES that the Issuer, as a condition to receiving any Federal financial assistance through the Arizona Department of Transportation and provided by the U.S. Department of Transportation, must GIVE ASSURANCE THAT it shall comply with Title VI of the Civil Rights Act of 1964, as amended, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), the Civil Rights Restoration Act of 1987 (Public Law 100.259) and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the U.S. Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, 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 the U.S. Department of Transportation, including the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) and GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations. The Contractor shall also incorporate and comply with the terms and conditions established in Appendix A.



**Title VI/Non-Discrimination Assurances:** This Contract is subject to the provisions of Title VI of the Civil Rights Act and the Contractor is herein notified of such. Additionally, the Contractor shall include the following information in each of its sub-contracts associated with the project.

The Arizona Department of Transportation, 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."

## 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, 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.
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 or the Federal Highway Administration 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 or the Federal Highway Administration, 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 ,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 or the Federal Highway Administration 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.

## 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:

- 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); and 49 CFR Part 21.
- 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);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- 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)

**Non-Discrimination:** Pursuant to 49 CFR Part 26, The Contractor and its sub-contractor/subconsultant 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 USDOT-assisted contracts. Failure by the Contractor to carry out these requirements represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the Issuer, with the funding agency's concurrence, deems appropriate, which may include, but is not limited to:

- Withholding payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding on the grounds of being non-responsible.

The Contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

The Contractor shall designate a full time employee who shall be responsible for the administration of the contractor's DBE program.

The Contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.

**Subcontract Payment Reporting in the DBE system:** The Arizona Department of Transportation (the Department) is required to collect data on DBE and non-DBE participation, including lower tier subcontracts, to report to FAA, FTA and FHWA on Federal-aid projects. The Contractor is notified that such record keeping is required by the Department for tracking DBE participation on both race neutral and race conscious projects (i.e. projects with and without DBE goals).

The Contractor shall respond to Subrecipient payment audits reported each month electronically through the Department's web-based payment tracking system (<https://adot.dbesystem.com>), reporting its payments to all DBEs and non-DBE subcontractors working on every federally funded project. In addition, the contractor shall require that all DBE and non-DBE subcontractors, shall also respond to its audits and report lower-tier subcontractor payments in the same manner.

If, by the DBE system audit deadline, the Contractor has not submitted the required report for work performed during the preceding month, or the submitted report failed to include all amounts earned by and paid to all DBEs and non-DBEs, including all lower-tier DBE and non-DBE subcontractors, the contract issuer will work with the ADOT MPD Contracts Program Manager to determine if sanctions should be assessed. These liquidated damages shall be in addition to all other reductions or liquidated damages provided for elsewhere in the contract.

The Contractor shall include these provisions in all of its subcontracts, and ensure that its subcontractors include these provisions in any lower-tier subcontracts.

**Excluded Parties:** The federal funding in this Agreement is considered a covered transaction under 2 CFR 1200.220 for purposes of debarment and suspension considerations. Thus agreements for contractors/consultants and their sub-contractors/consultants are subject to this requirement. The Contractor and its Sub-contractors are prohibited from making any award or permitting any award at

any tier to any party which has not established and maintained its entity registration on the federal System for Award Management or one that is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs pursuant to 2 CFR 200.212. The Contractor agrees to comply, and assures the compliance of each third-party contractor at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government-wide Debarment and Suspension Non-procurement)," and 2 CFR 200.212. The Contractor agrees to and assures that its third party contractors will review the Excluded Parties Listing System and assure that its sub-contractors establish and maintain entity registration on the System for Award Management before entering into any contracts.

**Conflict of Interest:** The Contractor and their sub-contractors shall not enter into any contract, subcontract, or arrangement in connection with the project, in which a member, officer, or employee, during tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquired or had acquired prior to the beginning of his or her tenure any such interest, and if such interest is immediately disclosed to the Issuer of the Contract, who must further report this to its funding agency, and may waive the prohibition contained in this paragraph, provided, that any such present member, officer, or employee shall not participate in any action by the Contractor or the locality relating to such contract, subcontract, or arrangement. The Contractor must disclose any such interest to the Issuer within five business days of receipt of disclosure.

The contractor shall insert in all contracts entered into in connection with the project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer, or employee of the firm either during tenure or for one year thereafter shall have any interests, direct or indirect, in this contract or the proceeds thereof."

Pursuant to 2 CFR 1201.112, the Contractor shall disclose in writing any potential conflict of interest to the Issuer; this requirement is passed to the Contractor's sub-contractors. The issuer shall inform the funding agency who shall inform the Federal awarding agency in accordance with applicable Federal awarding agency policy.

**Indemnification:** The Contractor shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Contractor's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

**Copyright:** Pursuant to 23 CFR 420.121 (b), the State and their subrecipients may copyright any books, publications, or other copyrightable materials developed in the course of a Federal Highway Administration (FHWA) funded project. FHWA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

**Energy Conservation:** The Contractor is required to comply with mandatory standards and policies, as applicable relating to energy efficiency which are contained in the State Energy Conservation Plan issued by the State of Arizona in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

**Drug Free Workplace:** The Contractor agrees to comply with the laws governing a drug and alcohol-free workplace in compliance with the Federal Drug-Free Workplace Act of 1988 and 23 CFR 630.112(c)(3) when and where relevant.

**FTA Funding; Certifications and Assurances:** In the event there is FTA funding for work under this Contract, on an annual basis, the Contractor must agree to comply with all categories of the FTA Certifications and Assurances applicable to the Contract. The FTA Certifications and Assurances will be provided to the Contractor under separate packet as they are released by FTA. Continuation of this Agreement shall be contingent on completion and submission of that packet within the deadline expressed at time of distribution. The FTA Certifications and Assurances, as modified and accepted each year shall be considered incorporated into this Agreement by reference.

The Parties understand and agree that not every provision of the Certifications and Assurances will apply to every Project. The type of Project will determine which Certifications and Assurances apply.

The Contractor also understands and agrees that these Certifications and Assurances are pre-award requirements, generally required by Federal law or regulation, and do not include all Federal requirements that may apply.

The Contractor is ultimately responsible for compliance with the Certifications and Assurances that apply to itself or its Project, even if a Sub-contractor or other Third Party Participant may be involved in your Project, except as FTA determines otherwise in writing. For this reason, we require the Contractor to take the appropriate measures, including, but not limited to, obtaining sufficient documentation from each Sub-contractor and other Third Party Participant to assure the validity of applicable Certifications and Assurances.

Completion and Signing of an FTA Certification and Assurances document is a requirement and a condition to receive FTA funding for any project and does not relieve the contractor of any obligation of other certifications or assurances required in any contracting process, and should be treated as an addition to such certifications and assurances.

FTA Certification and Assurances are incorporated herein by reference. They may be obtained at <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances>.

**Incorporation of Federal Provisions:** All contractual provisions required by the U.S. Department of Transportation are hereby incorporated by reference. All applicable clauses shown in the FTA Master Agreement between the State and FTA apply to each



Project funded by the Arizona Department of Transportation using FTA funds. Any requirements of the Stewardship Agreement between the State and FHWA apply to each Project funded by the Arizona Department of Transportation using FHWA funds. This provision shall be incorporated in any sub-contractor/consultant, or lower-tier agreement for which funds from this contract shall be used for payment.

**Immigration and EVerify:** To the extent applicable under Arizona Revised Statutes Section 41-4401, each Party and its sub-contractors/consultants warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Parties. Each Party retains the legal right to randomly inspect the papers and records of the other Parties' or its subcontractors' employees who work on the Agreement to ensure that the Parties or its subcontractors are complying with the above-mentioned warranty.

**Americans with Disabilities Act:** The Contractor assures that it will comply with applicable provisions of the Americans with Disabilities Act (ADA), (Public Law No. 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act including 28 CFR parts 35-36, and applicable provisions of 49 CFR Parts 27, 37 and 38: Transportation for Individuals with Disabilities; Final Rule. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

**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 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.

**Israel Boycott Not Permitted:** State Legislation has been enacted to prohibit a public entity from contracting with a value of \$100,000 or more with a company currently engaged in a boycott of Israel. To ensure compliance with A.R.S. §35-393.01, the Contractor warrants that it is not engaged in a boycott of Israel as defined in A.R.S. 35-393 et seq.

**Forced Labor of Ethnic Uyghurs Ban:** Pursuant to Arizona Revised Statutes § 35-394, the Contractor warrants and by signing this Contract and so certifies that it does not currently, and agrees for the duration of the contract that it will not use the forced labor of ethnic Uyghurs in the People's Republic of China, any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China, or any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Contractor becomes aware during the term of this Agreement that the Contractor is not in compliance with this certification, the Contractor shall notify the Agency within five business days after becoming aware of the noncompliance, and within 180 calendar days after notice, provide written certification that the Contractor has remedied the noncompliance. This item does not apply to not-for-profit organizations or organizations with fewer than ten (10) full-time employees.

**Prohibition on certain telecommunications and video surveillance services or equipment:** Pursuant to 2 CFR 200.216, the Contracting Agency and Contractors and SubContractors are prohibited from procuring, obtaining, or renewing a contract to procure or obtain video surveillance and telecommunications equipment, equipment, services, or systems produced by Huawei Technologies Company or ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company or any subsidiary or affiliate of such entities; or from companies reasonably believed by the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**Promoting Free Speech and Religious Liberty:** The Contractor shall ensure that all funds under awarded in this Project shall be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

**Mandatory Disclosures:** Pursuant to 2 CFR 200.113, The Contractor shall disclose, in a timely manner, in writing to the Department, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the contract. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339.

**Contracts for construction, acquisition of goods, or rolling stock valued at more than \$150,000 - Buy America:** The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in US DOT funded projects are produced in the United States, unless a waiver has been granted by the funding USDOT agency, or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in USDOT-funded projects are produced in the United States, unless a waiver has been granted by the funding USDOT agency, or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 65% domestic content for FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on USDOT-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Construction Contracts - Equal Employment Opportunity:** Pursuant to 2 CFR 200 Appendix II (C) Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

**Construction Contracts - Davis-Bacon Act:** Pursuant to 2 CFR 200 Appendix II (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal

entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**Work Employing Mechanics or Laborers:** Pursuant to 2 CFR 200 Appendix II (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**Insurance:** The contracting agency shall INSERT the insurance requirements from their Grant Agreement as the minimum requirements to be met by the Prime and any Subcontractors.