

INVITATION TO BID
CITY OF NEW ORLEANS, DEPARTMENT OF FINANCE, PURCHASING BUREAU
CITY HALL, 1300 PERDIDO ST., ROOM No. 4W07, NEW ORLEANS, LA 70112

THIS IS A FORMAL CITY BID SOLICITATION FOR PUBLIC WORKS AND CAPITAL PROJECTS. INTERESTED PERSONS SHOULD CAREFULLY READ AND ATTEND ALL STATED INFORMATION AND REQUIREMENTS, INCLUDING THOSE CONTAINED IN ATTACHMENTS.

BID TYPE:	<input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Capital Projects	BID NO. 656	ISSUE DATE: June 24, 2020
SPONSORING CITY DEPT. OR AGENCY: Department of Public Works			
PROJECT DESCRIPTION: (as provided by sponsoring city dept. or agency) RR131 Milneburg Group B (FRC)			
BID CONFERENCE:	<input type="checkbox"/> None	<input checked="" type="checkbox"/> Optional	<input type="checkbox"/> Mandatory-The City will receive bids only from persons/firms shown on the City's attendance list.
	Date: July 1, 2020	Time: 1:00pm	Place: <input checked="" type="checkbox"/> Purchasing Conf. Room, #4W05, 4 th Floor, City Hall, 1300 Perdido Street, New Orleans, LA 70112 followed by a site walk-through at _____ or <input type="checkbox"/> Public Works Conference Room, Rm 6W03, 6th Fl. City Hall
<p><i>Note: The City may prepare a conference report showing attendance, summarized Q&A, and matters discussed. The City will publish such report by issuing an Addendum to the Invitation to Bid. Said Addendum will be posted to the City's supplier portal at (https://www.nola.gov/purchasing/).</i></p>			
BID INSTRUCTIONS:			
<p>Once a bid is submitted to the City, it becomes City property. A bidder should mark documents or information claimed confidential and justify any claimed exemption from public records disclosure. The City will not credit blanket confidentiality claims. The treatment of all confidentiality designations will be governed by Louisiana Public Records Law, La. R.S. 44:1, <i>et seq.</i></p> <p>All bids remain valid for 90 calendar days after the Bid Deadline.</p> <p>Specification references to certain brands, makes, or manufacturers state only the general style, type, character, and quality desired. Equivalent products are acceptable.</p> <p>The City is not responsible for bid costs.</p> <p>Procurements produce no exclusive right to City work or purchases.</p> <p><u>Project Manual and/or Specifications may provide additional information for bidders.</u></p> <p><u>Bidders should closely monitor the City's purchasing website for new or revised specifications, bid instructions, notices, et c. The City will change the invitation to bid ONLY by issuing formal addendum. In no case shall verbal communication override written communication.</u></p> <p>Bidders commit to abide by City Code, Chap. 2, Art. XIII, Sect. 2-1120 (relative to the operations and authority of the City Inspector General).</p> <p>The City adheres to the Louisiana Code of Governmental Ethics, contained in the Louisiana Revised Statutes Annotated, R.S. 42:1101, <i>et seq.</i> By submitting a bid, prospective bidders warrants that there are no "conflict of interest" related to this solicitation that would violate applicable Louisiana Law. Violation of the Louisiana Code of Governmental Ethics may result in rescission of contract, permit or licenses, and the imposition of fines and/or penalties, without contractual liability to the public in accordance with applicable law.</p> <p>The City's protest policy applies to this invitation to bid. The policy is available at: https://www.nola.gov/getattachment/Purchasing/Foms/No-130-Procurement-Protest-Policy.pdf/.</p> <p>Prospective bidders shall familiarize themselves with and shall comply with all applicable Federal and State Laws, parish/municipal ordinances, resolutions, and the rules and regulations of all authorities having jurisdiction over the solicitation. These laws and/or ordinance will be deemed to be included in the contract, the same as though herein written in full.</p>			
<p>DOCUMENTS: APPLIES? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Bidding Documents may be obtained online at https://www.nola.gov/purchasing/ or through the City of New Orleans webpage www.nola.gov, by selecting "Supplier Portal". Addenda will be transmitted to all bidders who login and acknowledge download of Bidding Documents online from the City's Supplier Portal, i.e. answer 'yes' when downloading Bidding Documents.</p>			
A. SUBMISSION DUE:	Date: July 21, 2020	Time: 1:00pm	Location: Purchasing Bureau, City Hall, 1300 Perdido Street, Room 4W07, New Orleans, LA 70112
<p><i>Note: The City will not accept bids delivered by fax, or by email address, or at any other location than the one above, or past the date and time of submission set forth above (the "Bid Deadline"). The purchasing date and time stamp clock will be the official and sole device for determining time of receipt for all mailed and hand delivered bids. Bids received after the Bid Deadline will be date stamped and returned to the bidder unopened.</i></p>			
B. BID OPENING:	The City will open the bids in public at <input checked="" type="checkbox"/> the Purchasing Bureau or <input type="checkbox"/> immediately following the Bid Deadline.		

C. SUBMISSION OF BID PACKAGE:	The bidder can submit its bid package either via a sealed envelope or online at https://www.nola.gov/purchasing/ <i>Note: The bidder should submit bids according to means that produce a written proof of delivery. The City will not credit delivery claims lacking a written proof of delivery.</i>
D. REQUIRED CONTENTS:	
1. BID	The bidder can: Either <u>TYPED OR PRINTED BID.</u> Said bid must bear the original signature (IN BLUE INK) by the bidder, or an authorized representative, on the Louisiana Uniform Public Work Bid Form provided with required attachments if any. <u>When the bidder submits its bid package via SEALED ENVELOPE, said envelope must bear the Project Description AND the bidder's Louisiana Contractor's License Number(s) for the project classification(s).</u> Or <u>SUBMIT BID ONLINE</u> at https://www.nola.gov/purchasing/ . The bidder must attach a completed and signed digital copies of the Louisiana Uniform Public Work Bid Form, the Unit Price Form (if the contract includes unit prices), a signature authorization, and any other required bid submissions or attachments as required in the Bidding Documents. Bid Bond Certificate number must be entered online (if required).
2. SIGNATURE AUTHORIZATION	At the time of bidding, the bidder shall submit a corporate resolution or written evidence of the authority of the person signing the bid package. The authority of the signature of the person submitting the bid shall be deemed sufficient and acceptable if any of the conditions set forth in La. R.S. 38:2212 (B)(5) are met.
3. LICENSE	REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO The bidder shall include in the bid the applied current license(s) number(s) for the following project classification(s): <input checked="" type="checkbox"/> Highways, Street, & Bridges <input checked="" type="checkbox"/> Municipal and Public Works Construction <input type="checkbox"/> Building Construction <input type="checkbox"/> Other(s): _____ <i>Note: When the bidder submits its bid package via SEALED ENVELOPE, said envelope must bear the Project Description AND the bidder's Louisiana Contractor's License Number(s) for the project classification(s).</i>
4. BID BOND	REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO A bid bond or security in an amount not less than <input type="checkbox"/> \$ _____ or <input checked="" type="checkbox"/> five percent (5%) of bid amount, conditioned on the bidder's failure to execute a contract with the City to supply the specified goods or services. <u>IF SUBMITTING A BID ONLINE,</u> electronic bid bond submission is enabled through two participating surety agencies or clearinghouses, <u>InSure Vision Technologies</u> and <u>Surety2000</u> . Bidders should contact its bonding agent for information about submitting an online Bid Bond. The City requires a Bid Bond Validation Number entered Online. <u>IF SUBMITTING A BID VIA SEALED ENVELOPE,</u> the City will accept a cashier's check, certified check or satisfactory bid bond payable to the City. <i>Note: The City will retain bid securities of the three (3) lowest responsible bidders until the Contract is executed or until final bid disposition. The City will return other bid securities after the bid canvass. At contract execution, the City will return bid securities not forfeited for failure to execute a contract with the City.</i>
E. POST-BID DEADLINE SUBMISSION:	The two (2) apparent lowest bidders shall submit to the Purchasing Bureau the following documents within three (3) business days of the Bid Deadline. <i>Note: In addition to the following items, the City may require the submission of other documents.</i>
1. BIDDER'S ATTESTATION	REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Required by La. R.S. 38:2212.10(C), 38:2224 and 38:2227. (Attached) (<i>To be notarized</i>)
2. DBE	REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Required by City Code Sec. 70-456 <i>et seq.</i> DBE CONTRACT GOAL 35% (Attached)
3. HIRE NOLA	REQUIRED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Required by City Code Sec. 70-496 <i>et seq.</i> Hire NOLA: GFE Form, Manpower Utilization and Local Hire Plan. See form provided in Project Manual and/or Specifications.
4. SECTION 3 COMPLIANCE	REQUIRED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Required by 12 U.S.C. 1701u and 24 CFR Part 135. Section 3 Compliance Packet for Contractors. See form provided in Project Manual and/or Specifications.
F. AWARD:	The City may require additional information from bidders, and it may conduct inquiries to determine the bidder's responsiveness, responsibility, and/or the accuracy of furnished information. Subject to merit-based cancellation and confirmed City funding, the City will award the solicitation to the lowest responsive and responsible bidder. The City reserves the right to reject any and all bids in accordance with the requirements of Louisiana Public Bid law.

G. CONTRACT:	
1. TYPE	<input checked="" type="checkbox"/> Fixed Price: Obtain the specified good(s) or service(s) at the bid price. <input type="checkbox"/> Requirements/Price Protection: Commit to supply the good(s) or service(s) as requested, at bid price, during term of the contract.
2. TERM	<input type="checkbox"/> _____ year[s] with City option to renew. <input checked="" type="checkbox"/> As provided in Project Manual and/or Specifications.
3. ADDITIONAL PROVISIONS	The contract will contain additional terms and conditions shown in Project Manual and/or Specifications.
4. FEES	The contractor is responsible for any recordation, notary, and copy fees.
5. ADDITIONAL NEEDS: THE SUCCESSFUL BIDDER MUST SATISFY INDICATED NEEDS ON OR BEFORE IT RECEIVES A CONTRACT.	PERFORMANCE BOND: REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Supply a performance bond acceptable to the City upon written request by the City, issued in the sum of: <input checked="" type="checkbox"/> 100% of bid amount. <input type="checkbox"/> \$ _ _ <input type="checkbox"/> Specified amount.
	PAYMENT BOND: REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Supply a payment bond acceptable to the City upon written request by the City, issued in the sum of: <input checked="" type="checkbox"/> 100% of bid amount. <input type="checkbox"/> \$ _ _ <input type="checkbox"/> Specified amount.
	INSURANCE: REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Supply insurance certificates upon written request by the City showing coverage required in the General Terms and Conditions.
	TAX CLEARANCE: REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO City Code Sec. 2-8. Supply the tax clearance form to the City upon written request by the City.
	LICENSES: REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Supply copy to the City of all applicable and required licenses upon written request by the City.
	SPECIAL CDBG REQUIREMENTS: APPLY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO When CDBG funds are used to fund any portion of this Project, the selected bidder must observe the requirements as to conditions of employment and pay minimum wage rates under the Contract, Section 3, Segregated Facilities, Section 109, Executive Order 11246, and all applicable laws and regulations of the Federal Government and State of Louisiana and bonding and insurance requirements.
	CITY'S HIRING REQUIREMENTS: REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO City Code Sec. 2.8. Supply said affidavit upon written request by the City.
H. ATTACHMENTS	Applies? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Project Manual and Related Drawings or Plans or Specifications if applicable. (Attached Separately)
I. POINTS OF CONTACT FOR INQUIRIES:	Bidders and their representatives are prohibited from contacting City employees or officials or architect(s) and/or engineer(s) hired for this project about this invitation to bid prior to the Bid Deadline. If a bidder violates the established prohibition on communications, the City may disqualify its bid package. For DBE, Purchasing related inquires, a bidder shall submit its question in writing to the appropriate point of contact no later than seven (7) business days prior to the Bid Deadline.
1. PURCHASING	For all inquiries (except DBE), please direct them to the following Designated Purchasing Official: Name: Tania Laurent, Address: 1300 Perdido Room 4W07, New Orleans, LA 70112, Telephone (504) 658-1566. E-mail: tnlaurant@nola.gov. <i>Note: If the bidder contacts the Designated Purchasing Official via email, please include in the email the following subject line: "Bid No.656 question(s)".</i>
2. DBE	Please direct inquiries via email to supplierdiversity@nola.gov , or via mail to the City of New Orleans, Office of Supplier Diversity, 1340 Poydras Street, Suite 1000, New Orleans, LA 70112, or by telephone at: (504) 658-4200. <i>Note: If the bidder contacts the Office of Supplier Diversity via email, please include in the email the following subject line: "Bid No.656 – DBE - question(s)".</i>
3. HIRE NOLA	Please direct inquiries via email to hirenola@nola.gov , or via mail to the Office of Workforce Development, 3400 Tulane Avenue, 2 nd Floor, New Orleans, LA 70119, or by telephone at: (504) 658-4500. <i>Note: If the bidder contacts Hire Nola via email, please include in the email the following subject line: "Bid No.656 – Hire Nola - question(s)".</i>
4. SECTION 3 COMPLIANCE	Please direct inquiries via email to laborcompliance@nola.gov , or via mail to the Office of Community Development, 1340 Poydras Street, Suite 1000, New Orleans, LA 70112. <i>Note: If the bidder contacts Labor Compliance via email, please include in the email the following subject line: "Bid No.656 – Labor Compliance question(s)".</i>

**GENERAL TERMS AND CONDITIONS
FOR CONSTRUCTION CONTRACTS WITH THE CITY OF NEW ORLEANS**

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1. **ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION COVERAGE.** The Contractor herein expressly agrees and acknowledges that it is an independent contractor as defined in R.S. 23:1021 (6) and as such, it is expressly agreed and understood between the parties hereto, in entering into this Contract, that the City shall not be liable to the Contractor for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of R.S. 23:1034 anyone employed by the Contractor shall not be considered an employee of the City for the purpose of Worker's Compensation coverage.

2. **ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE.** The Contractor herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City under this Contract as noted and defined in R.S. 23:1472 (E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this Contract and in connection with unemployment compensation only, that:

- A. The Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this Contract; and
- B. Services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and
- C. The Contractor has been independently engaged in performing the services listed herein prior to the date of this Contract.

Consequently, neither the Contractor nor anyone employed by the Contractor shall be considered an employee of the City for the purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

3. **ASSIGNABILITY.** The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same without prior written consent of the City.

4. **AMENDMENT.** The Contract shall not be modified except by written amendment and/or change order executed by duly authorized representatives of the parties.

5. **AUDIT AND INSPECTION.**

- A. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Contract maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.
- B. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the Contract. The Contractor agrees that it is

subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

6. **CHOICE OF LAWS.** This Contract shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of laws provisions.

7. **COMPLIANCE WITH CITY'S HIRING REQUIREMENTS - BAN THE BOX.**

A. The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Contract, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.

B. Failure to maintain compliance with the City's hiring requirements throughout the term of the Contract, or to provide sufficient written reasons for deviation, is a material breach of this Contract. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow Contractor 30 days to come into compliance. If, after providing notice and 30 days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Contract, or take any such legal action permitted by law or this Contract.

C. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Contract will remain in full force and effect.

D. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

8. **CONFLICT OF INTEREST.** In the interest of ensuring that efforts of the Contractor do not conflict with the interests of the City, and in recognition of the Contractor's responsibility to the City, the Contractor agrees to decline any offer of employment if its independent work on behalf of the City is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Contractor. It is incumbent upon the Contractor to notify the City and provide full disclosure of the possible effects of such employment on the Contractor's independent work in behalf of the City. Final decision on any disputed offers of other employment for the Contractor shall rest with the City.

9. **CONSTRUCTION OF AGREEMENT.** Neither party will be deemed to have drafted the Contract. The Contract has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of the Contract will be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of the Contract are provided for convenience only and are not intended to have effect in the construction or interpretation of the Contract. Where appropriate, the singular includes the plural, and neutral words and words of any gender include the neutral and other gender.

10. CONVICTED FELON STATEMENT. The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

11. DECLARED DISASTER.

- A. **Declaration.** During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours / 7 days per week) during the declaration of an emergency.
- B. **Task Order. Notification and Personnel.** Prior or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.
- C. **Purchase Order.** Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional needs for services, or may issue a modified purchase order if changes are made to the initial purchase order.
- D. The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

12. DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM.

- A. **In General.** The Contractor agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Contract, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.
- B. **Monitoring.** To ensure compliance with DBE requirements during the term of this Contract, the DBECO will monitor the Contractor's use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:
 - 1. Job site visits;
 - 2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
 - 3. Routine audits of contract payments to all subcontractors;
 - 4. Reviewing of records and reports; and/or

5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor or DBE Entities.

C. **Cooperation.** The Contractor shall:

1. Designate an individual as the “DBE Liaison” who will monitor the Contractor’s DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 1. The Contractor shall provide the DBECO with copies of said contracts within thirty (30) days from the date this Contract is fully executed between the City and the Contractor.
 2. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
 1. Copies of written contracts with DBE Entities and purchase orders;
 2. Documentation of payments and other transactions with DBE Entities;
 3. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
 4. Any other records required by the OSD.

The Contractor is required to maintain such records for three (3) years after completion or closeout of this Contract. Such records are necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.
 1. The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, “DBE Utilization” reports shall be due on or before the fifteenth (15th) day of each month until all DBE subcontracting work is completed.
 2. Reports are required even when no activity has occurred in a monthly period.
 3. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
 4. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.

5. Conform to the established percentage as approved by the OSD.
 1. The total dollar amount of the Contract shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
 2. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
 3. The City will not adjust the Contract for any increase in cost due to replacement of DBE Entities.

D. **Post-Award Modification.** The OSD may grant a post-award modification request if:

- A. for a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Contract will also apply to the substitution of DBE subcontractors during the performance of the Contract; or
- B. the Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Contract.

13. DURATION. The services to be provided under the terms of this Contract shall begin upon issuance of the Notice to Proceed. It is understood and acknowledged by all signers to this Contract that work described under these terms is to be accomplished with the Contract Time period specified herein in Article H of Section 00110-2 of the Bidding Documents.

14. EMPLOYEE VERIFICATION. The Contractor swears that (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Contractor will provide to the City

a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

15. ENTIRE AGREEMENT. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

16. NON-DISCRIMINATION.

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

B. **Non-Discrimination.** In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

17. EXCLUSIVE JURISDICTION AND VENUE. For all claims arising out of or related to this Contract, the Contractor hereby consents and yields to the jurisdiction of the Civil District Court

for the Parish of Orleans, and expressly waives any (A) pleas of jurisdiction based upon Contractor's residence and (B) right of removal to federal court based upon diversity of citizenship.

18. HIRENOLA PROGRAM. The Contractor agrees to abide by City Code sections 70-496, *et seq.*, to demonstrate good faith efforts to fully carry out the applicable requirements of the HireNOLA Program as defined in the City Code. If the Contractor fails to comply with the requirements of the HireNOLA Program during the term of the Agreement, said failure may result in termination of the Agreement or pursuit of other remedies. This applies to projects funded by General Funds.

19. INCORPORATION INTO SUBCONTRACTS. The Contractor will incorporate these Contract Terms and Conditions into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

20. INDEMNIFICATION.

A. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "Indemnified Parties") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents or employees while engaged in or in connection with the discharge or performance of any services under this Contract; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Contract.

B. **Limitation.** The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents or employees contributed to such gross negligence or willful misconduct.

C. **Independent Duty.** The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Contractor is ultimately absolved from liability.

D. **Expenses.** Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

21. INDEPENDENT CONTRACTOR STATUS. The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

22. INSURANCE. The Contractor shall purchase in its name and maintain at its sole cost and expense such liability and other insurance as set out in the insurance requirements of this Invitation to Bid and/or Project Manual/Specifications. This insurance shall apply on a primary basis for all liability, demands, claims and/or suits which may arise out of or result from the Contractor's performance and furnishing of the Work, whether it is performed by the Contractor, any sub-contractor, partner, supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, including loss of use, or by anyone for whose acts any of them may be liable, and any insurance carried by Owner shall be excess and non-contributory. Additionally, the Contractor should be aware of, and comply with, any requirements of its own insurance policies. If applicable, the Contractor shall require all sub-contractors to maintain, in limits equal to or greater than the Contractor's, the same insurance coverage for Work performed or materials provided for the Work. The Contractor shall insert this requirement in all contracts or agreements, whether written and/or oral, with all entities and/or persons who perform any Work under this contract. At no time shall the Contractor allow any sub-contractors to perform Work without the required types and limits of insurance coverage. Insurance shall be purchased and maintained in the name of the Contractor and shall contain the following limits and coverage extensions and, if necessary, purchasing an umbrella or excess liability policy:

A. Workers' Compensation:

1. State Act - Louisiana Statutory Requirements; Provide Other States coverage;
2. Employer's Liability with Minimum acceptable limits of \$1,000,000;
3. Waiver of Subrogation to include both written and oral contracts in favor of The City of New Orleans, its elected and appointed officials, agents, directors, servants, employees, volunteers, and any other entities who may require waivers by specific contract;
4. Alternate Employer endorsement in favor of The City of New Orleans, its elected and appointed officials, agents, directors, servants, volunteers, and employees;
5. Thirty (30) days prior written notice of cancellation, non-renewal, or adverse material change.

B. General Liability:

1. Commercial General Liability Form CG 00 01, or pre-approved form providing equivalent coverage, including Personal Injury and Advertising Injury; minimal acceptable per occurrence limits as follows:
 - \$2,000,000 for projects valued under \$5,000,000;
 - \$4,000,000 for projects valued from \$5,000,000 to \$10,000,000;
 - \$5,000,000 for projects valued from \$10,000,001 to \$25,000,000;
 - \$10,000,000 for projects valued over \$25,000,000.
2. Products/Completed Operations Aggregate Limit; minimal acceptable aggregate limit to follow from the above project values acceptable;

3. Any applicable aggregate limit shall be at minimum twice the occurrence limit;
4. Coverage to be written on a per project aggregate basis;
5. Additional Insured endorsement Forms #CG 20 10 and Form #CG 20 37, in favor of The City of New Orleans, its elected and appointed officials, agents, directors, servants, employees and volunteers;
6. Waiver of Transfer of Rights of Recovery Against Others to Us to include both written and oral contracts in favor of The City of New Orleans, its elected and appointed officials, agents, directors, servants, employees, and volunteers;
7. Thirty (30) days prior written notice of cancellation, non-renewal or adverse material change;
8. Care, Custody or Control of Property of Others;
9. Coverage to be provided for explosion, collapse and underground property damage (x,c,u);
10. Independent Contractors; and
11. Contractual Liability

Note: The general liability policy shall not exclude any standardized coverage included in the required basic form or limit Contractual Coverage for the Work in any way that would prohibit or limit the reporting of any claim or suit and the subsequent defense and indemnity that would normally be provided by the policy.

C. Auto Liability:

1. Business Auto coverage shall be written on Form #CA 00 01 with minimal acceptable limit \$1,000,000 Combined Single Limits;
2. Liability coverage to be provided for Any Auto or All Owned Autos and Hired and Non-Owned Autos;
3. Waiver of Transfer of Rights of Recovery Against Others to Us to include both written and oral contracts in favor of The City of New Orleans, its elected and appointed officials, agents, directors, servants, employees, and volunteers;
4. Thirty (30) days prior written notice of cancellation, non-renewal or adverse material change;
5. If transporting any pollutants, as defined by the policy, the policy is to include the Broad Form Transportation Pollution Form CA 99 48, or most current form available.

D. Contractor's Pollution: If the construction project or the scope of services for this Contract involves pollutants of any kind, this section applies:

1. Covering losses caused by pollution conditions that arise from the operations of the Contractor;

2. The insurance shall apply to bodily injury, property damage, including loss of use of damaged property that has not been physically injured, and defense, including costs and expenses incurred in the investigation, defense or settlement of claims;
3. Minimum acceptable limits \$1,000,000; \$2,000,000 aggregate;
4. Broad Form Named Insured endorsement;
5. Fines, penalties and punitive damages to be included;
6. Clean up costs to be included;
7. Additional Insured endorsement in favor of The City of New Orleans, its elected and appointed officials, agents, directors, servants, employees, and volunteers;
8. Waiver of Transfer of Rights of Recovery Against Others to Us to include both written and oral contracts in favor of The City of New Orleans, its elected and appointed officials, agents, directors, servants, employees, and volunteers;
9. Sixty (60) days prior written notice of cancellation, non-renewal or adverse material change.
10. If written on a Claims-Made basis, the retroactive date of coverage shall be no later than the inception date of claims made coverage;
11. Any retrospective date applicable to coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning when the Contract is completed or terminated.

Note: If this coverage is required, then continuous Pollution Coverage shall be purchased and maintained or an extended discovery period in the name of the Contractor will be exercised for a period of three (3) years beginning from the time that the Work under this Contract is completed and accepted by the City and final payment made to the Contractor.

E. **Umbrella Liability**: If applicable

1. Following form of the underlying policies and scheduling the following underlying policies as applicable: Employer's Liability, General Liability, Automobile Liability; and Pollution Liability;
2. Thirty (30) days prior written notice of cancellation, non-renewal or adverse material change.

F. **Builder's Risk**: The Contractor shall purchase and maintain Builder's Risk insurance upon the entire Work at the site to the full insurable value thereof.

1. The policy shall not contain a co-insurance requirement. The Contractor shall purchase the policy with the City as the Named Insured and maintain an "all risk" builder's risk coverage on a replacement cost basis, including flood on the entire Work. These policies must at a minimum cover for such amount of the Work as is determined by the Engineer and/or Architect.

2. This insurance shall include, the Contractor, Subcontractors, Sub-Subcontractors, and/or vendors deemed appropriate by the Contractor shall also be Named Insureds, and shall insure against the perils of fire, flood, and extended coverage and shall include, "all risk", insurance for physical damage including, without duplication of coverage, theft, mysterious disappearance, changes or extremes of temperature and/or humidity, operation of ordinance or law in an amount of ten percent (10%) of the project price, not to exceed \$1,000,000; mechanical breakdown or electrical injury, testing as appropriate for the type of project, earthquake and/or other earth movement, pile driving, debris removal, damage to any Work-related personal property in the open resulting from a non-excluded peril, vandalism and malicious mischief. Bidder shall include in bid, costs to determine required flood elevations.
3. If not covered under the "all risk" insurance or otherwise provided in the Contract, the Contractor shall effect and maintain similar insurance on portions of the Work stored off the site when such portions of the Work are to be included in any applications for payment and such procedures have been approved by the City.
4. The property insurance shall include the fees of the Engineer and/or Architect necessary to be incurred in repairs or reconstruction of the work to be conducted under the Contract.
5. The Builder's Risk insurance shall be written and provided such that any portions of a building or site vacated by the City to accommodate the Work are protected and covered by the terms of the insurance. The insurance shall not be cancelled or permitted to lapse because of such vacancy.
6. Coverage is to provide for use and/or occupancy, without qualification, of any and all portions of the Work, or the premises where the Work is being conducted, whether the Work has been accepted by the City or not.
7. The Contractor shall obtain consent of the insurance company that no action will be taken with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.
8. Coverage for Builder's Risk Soft Cost is to be included in the policy.

G. **General Specifications and Requirements for All Insurance:** The following provisions apply to all insurance required for the Contract:

1. ***Qualifications of Insurers:***

- a. All insurance required for this Contract shall be purchased and maintained by the Contractor from insurance companies that are duly licensed and lawfully authorized by the State of Louisiana to issue insurance policies for the limits and coverage so required. Such insurance companies utilized are to have a minimum rating of a A-VII (seven) or higher as of the most current edition of A.M. Best's Key Rating Guide.
- b. If the insurance company providing any insurance coverage furnished by the Contractor is declared bankrupt, becomes insolvent, its right to do business in

Louisiana is terminated or it ceases to meet the requirements of this Document, the Contractor shall, within thirty (30) days thereafter, substitute another insurance company(s) acceptable to the City. The City reserves the right to mandate cessation of all Work until the receipt of acceptable replacement insurance.

2. **Partnerships:** If the Contractor is a partnership then the evidence of all primary and excess liability insurance required to be maintained during the term hereunder shall be furnished in the name of the partnership. Evidence of continuing primary commercial general liability insurance, which shall remain in effect in the name of the partnership, shall also be furnished.

3. **Certificates of Insurance/Policies of Insurance:**

- a. The Contractor shall deliver to the City Certificates of Insurance, with copies to each additional insured identified in the Contract, evidencing all insurance, which the Contractor has purchased and shall maintain in accordance with this Document. It is mandatory that prior to the commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance, the Contractor shall furnish to City the certificates of insurance and a copy of the additional insured endorsement(s) to the policies required in this Document. It is imperative that the certificates show all form numbers and edition dates and that all Certificates are in compliance with this Document. Where Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) forms do not provide the coverage, then, at a minimum, "sample" or "draft" policies and/or forms and endorsements shall be furnished to City attached to the Certificate.
- b. All Certificates of insurance for policies that contain an aggregate limit must be accompanied by a statement that the aggregate limit is not impaired, or, if the aggregate limit is impaired, to what extent. The City may require that any impaired aggregate(s) be replenished in its favor prior to commencement of work and/or during the progress of the Work.
- c. If the ACORD Certificate of Insurance Form is used, the cancellation portion of the Certificate to be modified by deleting the words "endeavor to" which appear before the number of cancellation days and by deleting the phrase "but failure....agents or representatives." The Certificate shall also be modified by stipulating that the City will receive thirty (30) days prior written notice of any material adverse change(s) to and/or non-renewal of the respective policy(s). All Certificates of insurance shall list all endorsements attached to the respective policies and if the listed endorsements are not ISO and/or NCCI forms then a copy of the endorsements to be attached to the respective Certificate of Insurance. The City reserves the right to request removal of any endorsement(s) that it finds jeopardizes its own insurance portfolio. Owner reserves the right to request certified copies of any policy(s) evidenced by the Certificate(s) of Insurance. The requested certified copies should be provided to the City within ten (10) days of the written request.

- d. Any and all communications regarding the insurance policies shall include the Project name, Project number, proposal number and the City's address as identified in the Contract.
4. **Objection by the City:** If the City has any objection to the coverage afforded by, or any other provisions of, the insurance required to be purchased and maintained by the Contractor in accordance with the insurance requirements for the Work on the basis of non-conformance with the Contract, the City shall notify the Contractor in writing within fifteen (15) days after receipt of the Certificates. The Contractor shall provide a written response to the City's objections within ten (10) days from the date of the letter request.
 5. **Contractor's Failure:** Upon failure of the Contractor or his subcontractor to purchase, furnish, deliver or maintain such insurance as provided herein, the Contract, at the election of the City, may be forthwith declared suspended, discontinued, or terminated. Failure of the Contractor to purchase and maintain insurance shall not relieve the Contractor from any liability under the Contract, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.
 6. **No Waiver of Liability:** Acceptance of evidence of the insurance requirements by the City in no way relieves or decreases the liability of the Contractor for the performance of the Work under this Contract. Additionally, the Contractor is responsible for any losses, expenses, damages, claims and/or suits and costs of any kind which exceed the Contractor's limits of liability or which may be outside the coverage scope of the Contractor's insurance policies. The insurance requirements outlined in this Document shall in no way be construed to limit or eliminate the liability of the Contractor that may arise from the performance of Work under the Contract. The Contractor's coverage is to be primary for any and all claims and/or suits related to or arising from the Work and any of the insurance coverage(s) maintained by the City is/are to be deemed as excess of the Contractor's insurance coverage and shall not contribute with or to it in any way.
 7. **No Recourse against the City:** The insurance companies issuing the policies shall have any recourse against the City for payment of any premiums, deductibles, and retentions or for assessments under any form of policy. These shall be borne by and be the sole responsibility of the Contractor.
 8. **Owner's Liability Insurance:** In addition to the insurance required to be provided by the Contractor above, the City, at its option, may purchase and maintain at the City's expense its own liability insurance as will protect the City against claims which may arise from operations under the Contract
 9. **Continuing Completed Operations Liability Insurance:** For at least three (3) years following acceptance of the Work by the City and final payment made to the Contractor, the Contractor shall purchase and maintain in its name Commercial

General Liability Insurance and, if necessary, Umbrella and/or Excess Liability Policy, both applicable to liability arising out of the Contractor's Completed Operations, with a limit of not less than the minimal acceptable aggregate limits indicated in this Document described as Insurance Requirements. The Continuing Commercial General Liability Insurance shall be written on ISO occurrence Form #CG 00 01 or pre-approved form providing equivalent coverage) and shall, at a minimum, cover liability arising from Products/Completed Operations, minimal Products/Completed Operations Aggregate Limit that applies to the Liability Limit indicated in this Document and liability assumed under an insured contract.

- 23. INVOICES.** The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Contract) to the City electronically, via its supplier portal, for goods and/or services provided under this Contract no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information: contract or purchase order number issued by the City, and the name of the city department to be invoiced. The City may require changes to the form or the content of the invoice. The City may also require additional supporting documentation to be submitted with invoices.
- 24. LIMITATIONS OF THE CITY'S OBLIGATIONS.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.
- 25. NO THIRD PARTY BENEFICIARIES.** The Contract is entered into for the exclusive benefit of the City and the Contractor, and the City and the Contractor expressly disclaim any intent to benefit anyone not a party to this Contract.
- 26. NOLA 311.** The Contractor will provide work progress updates and other information as required by the City through the City's designated customer service system ("NOLA 311") within forty-eight (48) hours of any event. The Contractor is responsible for ensuring that it has the capabilities to use NOLA 311 as required by this paragraph and will not be entitled to any additional compensation for the performance of these requirements.
- 27. NON-EXCLUSIVITY.** This Contract is non-exclusive and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Contract and the City may engage the services of others for the provision of some or all of the work to be performed under this Contract.
- 28. NON-SOLICITATION.** The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject Contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject Contract.
- 29. NON-WAIVER.** The failure of the City to insist upon strict compliance with any provision of the Contract, to enforce any right or to seek any remedy upon discovery of any default or breach of the Contractor at such time as the initial discovery of the existence of such noncompliance, right,

default or breach shall not affect or constitute a waiver of the City's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

- 30. OWNERSHIP INTEREST DISCLOSURE.** The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.
- 31. PAYMENT.** Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Contract have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.
- 32. PERFORMANCE MEASURES.**
- A. **Factors.** The City will measure the performance of the Contractor according to the following non-exhaustive factors: timeliness of delivery; condition of delivery; ability to follow instructions; product quality; handling of complaints; technical assistance; ability to satisfy obligations; level of customer service staff; staff availability; staff professionalism; staff experience; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).
 - B. **Failure to Perform.** If the Contractor fails to perform according to the Contract, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Contract and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting Contractor.
- 33. PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT.** No elected official or employee of the City shall have a financial interest, direct or indirect, in the Contract, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of the Contractor, will render this Contract voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Contractor pursuant to this Contract without regard to the Contractor's satisfactory performance.
- 34. PROHIBITION ON POLITICAL ACTIVITY.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Contract shall be used in the performance of

this Contract for any partisan political activity, or to further the election or defeat of any candidate for public office.

- 35. REMEDIES CUMULATIVE.** No remedy set forth in the Contract or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.
- 36. SEVERABILITY.** If a court of competent jurisdiction finds any provision of the Contract to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or, if reformation is not possible, the unenforceable provision will be fully severable and the remaining provisions of the Contract will remain in full force and effect and will be construed and enforced as if the unenforceable provision was never a part the Contract.
- 37. SUBCONTRACTOR REPORTING.** The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Contract's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Contract with the City, the Contractor must provide notice to the City within thirty (30) days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty (30) days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.
- 38. SURVIVAL.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, venue, choice of law, and warranties shall survive the expiration, suspension, or termination of the Contract and continue in full force and effect.
- 39. SUSPENSION.** The City may suspend this Contract at any time and for any reason by giving two (2) business day's written notice to the Contractor. The Contractor will resume work upon five (5) business day's written notice from the City.
- 40. TERMINATION FOR CAUSE.** The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

41. TERMINATION FOR CONVENIENCE. The City may terminate this Contract at any time during the term of the Contract by giving the Contractor written notice of the City's intention to terminate at least thirty (30) days before the date of termination.

42. TERMINATION FOR NON-APPROPRIATION. This Contract will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Contract without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Contract.

43. TERMS BINDING. The terms and conditions of the Contract are binding on any heirs, successors, transferees, and assigns.

44. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS. It is expressly agreed and understood between the parties entering into this Contract that the Contractor, acting as an independent agent, shall not receive any sick and annual leave benefits from the City of New Orleans.

45. WASTE DISPOSAL.

- A. **Applicability.** This Article applies to any Agreement involving construction services, or for any Agreement for "Public Work" as defined by La. Rev. Stat. 38:2211(12).
- B. **Waste Disposal.** Contractor shall dispose of trash, refuse, material, or hazardous liquid (collectively "Waste") generated through, or arising out of, the provision of services under this Agreement, in accordance with applicable federal, state, and local laws, including, without limitation, City Code sections 54-154, et seq. and City Code sections 66-281, et seq. The costs related to collection, storage, handling, transportation, movement, disposal, and release of Waste are solely the Contractor's responsibility. The Contractor shall utilize their best efforts to minimize generation of Waste by recycling, reusing, or salvaging materials whenever possible.
- C. **Maintenance of Public Drainage Systems.** The Contractor shall not dispose of Waste using the City's public drainage system, which includes, but is not limited to catch basins and drainage canals. The Contractor shall ensure there are no obstructions to the City's public drainage system prior to and during the performance of services under this Agreement. The Contractor guarantees that the public drainage system near the work site will be clean and free of obstructions upon the termination of this Agreement.
- D. **Site Plan.** Contractor shall provide the Department responsible for administration of this Agreement with a site plan for Waste disposal. The site plan must include the following: anticipated types of waste, identification of required permits, disposal locations, frequency of disposal, and the anticipated time to clean the site. Contractor must notify the City within five business days of any material changes to the site plan and include the justification for any changes.
- E. **Costs.** The Contractor shall be solely responsible for any costs and expenses related to compliance with this Article. No change order or amendment shall be permitted to increase compensation by the City for any foreseeable costs related to Waste disposal or removing obstructions from the City's public drainage system.

- F. **City's Remedies for Breach.** If Contractor fails to comply with this Article upon termination of the Agreement, the City shall have the right to select a vendor to perform any necessary cleanup and Waste disposal, and the Contractor shall be liable for any such costs of cleanup, and statutorily authorized penalties of \$5,000.00 per violation of City Code sections 54-154, et seq. or City Code sections 66-281, et seq.
- G. **No Limitation of Liability.** The remedies available to City under this Article shall be in addition to any other rights and remedies available to the City. Nothing in this Article shall be interpreted to limit the remedies available to the City.

END OF GENERAL TERMS AND CONDITIONS

CITY OF NEW ORLEANS LABOR PROVISIONS

Article 1 – General

The City of New Orleans requires the payment of prevailing wage rates, as determined by the U.S. Department of Labor, to all workers on all construction projects in excess of \$25,000. All general contractors and subcontractors must submit weekly Certified Payroll Reports on the wages paid to their employees. Reports must be prepared electronically through the use of an online program available at <http://www.LCPtracker.com>.

1.1. The LCPtracker system is a paperless online system of entering certified payrolls, as opposed to the previous method of submitting paper Prevailing Wage Rate forms, Affidavits of Prime Contractor, Subcontractor, Statements of Compliance, and Weekly Payroll Spreadsheets. Contractors and subcontractors will now enter all payrolls and related information directly into the online system. All project-specific wage rates and classifications will be indicated in the system, and the contractor and subcontractors will choose specific rates and jobs from a menu. If an employee's classification is not indicated on the wage determination, the contractor and subcontractors must submit a Request for Additional Classification to the Labor Compliance Analyst assigned to the project.

Article 2 – Instructions for Preparing Payroll Reports

2.1 Trades – Classes of laborers or mechanics that are not listed should be requested and classified in conformance with the wage determination. See articles below for apprentice, trainee, helper, foreman and superintendent.

2.2 Apprentices – Individuals may be employed as apprentices on a prevailing wage project provided they meet one of the following definitions:

- A. A person is employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or State Apprenticeship Agency recognized by the Bureau, or;
- B. A person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified to be eligible for probationary employment as an apprentice.

2.3 Trainees – Individuals employed as trainees must be persons registered in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs, and which have been so certified by that Administration.

2.4 Helper – This classification may be issued in or added to a wage determination only where (a) the duties of the helpers are clearly defined and distinct from those of the journeyman classification and from the laborer, (b) the use of such helpers is an established prevailing practice in the area, and (c) the term “helper” is not synonymous with “trainee” in an informal training program.

2.5 Apprentices and Trainees – Information on wage rates to be paid apprentices and trainees is not reflected in the wage determination. Similarly, their addition through the additional classification procedure (conformance) is neither necessary nor appropriate. The proper wage rates to be paid to apprentices and trainees are those specified by the particular programs in which they are enrolled, expressed as a percentage of the journeyman rate on the wage determination. In the event employees reported as apprentices or trainees on a covered project have not been properly registered within the meaning of the regulations and contract stipulations, or are utilized at the site in excess of the ratio to journeymen permitted under the approved program, they must be paid the applicable wage rates for laborers and mechanics employed on the project performing in the classification of work they actually performed. This applies regardless of work classifications, which may be listed on the submitted payrolls, and regardless of their level of skill.

- 2.6 Foremen and Superintendents – The wage rates for bona fide supervisory employees are not regulated under the prevailing wage because their duties are primarily administrative or executive in nature rather than those of laborers or mechanics. However, such employees who devote more than 20 percent of their time during a workweek to mechanic or laborer duties are laborers and mechanics for the time so spent, and must be paid at least the appropriate wage rates specified in the wage determination

Article 3 – LCPtracker Submittal Requirements

- 3.1 The contractor will need a computer and an internet connection. There are public computers available at the City's public libraries for those contractors who may not have a computer and internet connection available.
- 3.2 Training is available through the LCPtracker website in the form of downloadable instruction manuals, as well as free online training seminars that are offered every Tuesday at 11:00 am, and Thursday at 9:30 am and 1:00 pm. A City of New Orleans Labor Compliance Analyst is also available to assist the contractor and subcontractors in setting up passwords in order to log in to the system. Contact information is as follows:

Office of Community Development, Labor Compliance Unit - laborcompliance@nola.gov
1340 Poydras Street, Suite 1000 - New Orleans, LA 70112 (504) 658-4200

- 3.3 Please note that the contractor must first register with the Labor Compliance Analyst assigned to the project to set up an account and receive a password in order to begin using the system. Bidders are advised that all contractors and subcontractors must submit their payroll reports through LCPtracker. Paper copies will not be accepted.

Article 4 – Wage Determination

- 4.1 The wage determination applicable to the project shall be the one that is in effect as of ten (10) days before the bid opening date. For construction activity performed under a maintenance or service contract, the wage determination shall be the one that is in effect at the start of any amendment that extends the term of the contract, or any applicable update or modification published thereafter. Current effective wage determinations may be obtained from the Labor Compliance Unit.

END OF LABOR PROVISIONS

CITY OF NEW ORLEANS TAX CLEARANCE AUTHORIZATION

According to Section 2-8 of the Code of the City of New Orleans, the City cannot enter into or make payments under a contract, grant or cooperative endeavor agreement with any person, corporation, or entity delinquent in City taxes. This form supplies the needed tax clearance. This clearance is issued without prejudice to any tax liabilities discovered by audit.

Please refer to the instructions on the back of this form

BUSINESS NAME:

OWNER'S NAME:

TYPE OF BUSINESS:

BUSINESS ADDRESS:

MAILING ADDRESS:

CONTACT TELEPHONE:

FAX NUMBER:

E-MAIL ADDRESS:

REAL ESTATE TAX NUMBER:

PERSONAL PROPERTY TAX NUMBER:

SALES TAX/OCCUPATIONAL LICENSE NUMBER:

PRINT NAME:

TITLE:

AUTHORIZED SIGNATURE:

DATE SIGNED:

I certify that I have the authority to execute this form with respect to the tax matters covered and that the above is true and correct. The City of New Orleans is authorized to inspect and/or receive confidential tax information.

BUREAU OF REVENUE (Room 1W15)

This clearance covers Occupational License and Sales/Use taxes.

I hereby assert that after review of the taxpayer's records of this date that the taxpayer **IS NOT** delinquent in any taxes owed to the city. This clearance covers the period today through March 1, 20____. The above clearance may be revoked for failure to pay sales tax.

BUREAU OF TREASURY (Room 1W37)

This clearance covers Ad Valorem taxes for Real Estate and Business Property taxes.

I hereby assert that after review of the taxpayer's records of this date that the taxpayer **IS NOT** delinquent in any taxes owed to the city. This clearance covers the period today through March 1, 20____.

COLLECTOR OF REVENUE – PRINT NAME

DATE

TREASURY CHIEF – PRINT NAME

DATE

I attest that the taxpayer named above is not delinquent in any taxes owed to the city.

DIRECTOR OF FINANCE – PRINT NAME

DATE

CITY OF NEW ORLEANS TAX CLEARANCE AUTHORIZATION

INSTRUCTIONS

This form authorizes the City of New Orleans to inspect and/or receive your confidential tax information. This Tax Clearance Authorization will not be honored for any purpose other than contracting with the City of New Orleans.

It is recommended that all outstanding tax and business registration be completed prior to processing the form to expedite contract execution.

1. Complete this form by providing all of the information requested. Failure to fill in ALL information requested will delay processing.
2. Sign and date the authorization form and submit to the Department with whom you are contracting. If the form is not signed and dated, the form will not be processed.
3. The following requirements must be met in order for a Tax Clearance Authorization form to be approved by the City of New Orleans.

Real Estate/Personal Property Tax

- Businesses are required to be current in payment of all Real Estate Tax and Personal Property Tax.
- A business can visit the City of New Orleans' website, www.nola.gov at the Bureau of Treasury webpage to pay outstanding Real Estate and Personal Property taxes due.
- A business can mail outstanding tax payments to City of New Orleans, Bureau of the Treasury 1300 Perdido St., Room 1W38, New Orleans, La. 70112.

Sales Tax/Occupational License

- Businesses located within Orleans Parish are required to obtain an annual Occupational License. A City of New Orleans Sales Tax number will also be issued at the same time.
- If the business is domiciled outside of Orleans Parish, a registration is required to be completed to obtain a Certificate of Registration and a City of New Orleans Sales Tax number.
- If a business is not registered, a New Business Application must be completed.
- Non-profit organizations must comply with the Occupational License requirements by completing a New Business Application.
- Once exempt status is confirmed for the non-profit organization, the organization is exempt from Occupational License fees. Please be prepared to provide 501(c) documentation and/or Louisiana Secretary of State Status.
- All applications can be found on the City of New Orleans' website, www.nola.gov, at the OneStop Shop webpage.
- Any questions may be forwarded to the OneStop Shop at (504)658-7100.

CITY OF NEW ORLEANS
Bidder Attestations
For Public Works Solicitations

City solicitation no. _____ for _____

The bidding entity, _____, attests that no individual partner, incorporator, director, manager, officer, organizer, or member, who has a minimum of a ten percent ownership in the bidding entity, has been convicted of, or has entered a plea of guilty or nolo contendere to any of the following crimes or the equivalent federal crimes after July 2, 2010.

R.S. 38:2212.10 Verification of Employees

- A. At the time of Bidding, Appearer is registered and participates in a status verification system to verify that all new hires in the state of Louisiana are legal citizens of the United States or are legal aliens.
- B. If awarded the contract, Appearer shall continue, during the term of the contract, to utilize a status verification system to verify the legal status of all new employees in the state of Louisiana.
- C. If awarded the contract, Appearer shall require all subcontractors to submit to it a sworn affidavit verifying compliance with Paragraphs (A) and (B) of this Subsection.

R.S. 38:2227. B.(1)

- a. Public bribery (R.S. 14:118)
- b. Corrupt influencing (R.S. 14:120)
- c. Extortion (R.S. 14:66)
- d. Money laundering (R.S. 14:230)

R.S. 38:2227. B.(2)

- e. Theft (R.S. 14:67)
- f. Identity Theft (R.S. 14:67.16)
- g. Theft of a business record (R.S. 14:67.20)
- h. False accounting (R.S. 14:70)
- i. Issuing worthless checks (R.S. 14:71)
- j. Bank fraud (R.S. 14:71.1)
- k. Forgery (R.S. 14:72)
- l. Contractors; misapplication of payments (R.S. 14:202)
- m. Malfeasance in office (R.S. 14:134).

Attest (signature): _____
(date)

Name and title (print): _____

Authorized Representative for Bidding Entity (print): _____

Sworn to and subscribed before me, _____, Notary Public, this ____ day of _____,
20__.

Notary Public (signature)
Notary ID#/Bar Roll #

CITY OF NEW ORLEANS DBE PROGRAM INFORMATION

I - DBE PROGRAM COMPLIANCE

The requirements of the City of New Orleans (“City”) Disadvantaged Business Enterprise (“DBE”) Program apply to this Agreement. It is the policy of the City to practice nondiscrimination based on social and economic disadvantage, race, color, gender, disability and national origin in the award and performance of contracts.

In consideration of this policy and pursuant to Division 2 of Article IV of Chapter 70 of the Code of the City, the City enacted the DBE Program for all City contracts.

Contractor agree to use its best efforts to fully and completely carry out the applicable requirements of the City’s DBE Program in the award and administration of this Agreement, including without limitation, all reporting requirements and established DBE participation percentage. The Contractor’s failure to carry out these requirements, as determined in good faith by the City’s Office of Supplier Diversity (“OSD”), shall be deemed a material breach of this Agreement. This material breach may result in the termination of this Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City’s Policy Memorandum for the DBE Program

II - DBE CONTRACT GOAL

The requested DBE Contract Goal is listed in the contract section of the invitation to bid.

NOTE: All non-public works contracts have a default goal of 35% DBE participation.

Participation shall be counted toward meeting the contract goal based on the following:

1. Only business entities certified as SLDBE or LAUCP-DBE are counted toward the contract DBE participation goal.
2. The Bidder/Proposer may count only the total dollar value of the subcontract awarded to certified DBE subcontractor/supplier(s) toward the contract goal.
3. A Bidder/Proposer can count 100 % of the DBE’s participation provided that the DBE has committed to performing at least 51% of the work with its own forces.
4. Bidder/Proposer may count 100 % of DBE Manufacturer Supplier’s participation and 60 % of DBE Non-Manufacturer supplier’s participation toward its contract goal.
5. When the Bidder/Proposer is in a joint venture with one or more DBE business entities, the OSD, after reviewing the joint venture agreement, shall determine the percent of participation that will be counted toward the contract goal.
6. Bidder/Proposer may count toward its contract goal only those DBE subcontractors/suppliers performing a Commercially Useful Function.

“DBE Commercially Useful Function means” a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the DBE firm by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the DBE firm is responsible. In determining whether a certified firm is performing a commercially useful function, factors including, but not limited to, the following shall be considered:

- a. Whether the business entity has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses;

- b. Whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized;
- c. Whether the DBE subcontractor is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract.
- d. Whether the DBE subcontractor performed at least thirty percent (30%) of the cost of the subcontract (including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own forces.

III - DBE DIRECTORY

Contractors may only utilize certified SLDBE and/or Louisiana Unified Certification Program (LAUCP) DBE firms from the following lists to meet the City’s DBE Program goals.

- a. Contractors agree to utilize the City’s SLDBE directory of certified firms as a first source when searching for certified DBE business entities. The SLDBE directory includes entities certified through Sewerage and Water Board of New Orleans, New Orleans Aviation Board and Harrah’s New Orleans. The SLDBE directory is available at www.nola.gov.
- b. The Louisiana Unified Certification Program (“LA UCP”) directory is available at www.dotd.louisiana.gov.

Information on locating these directories may also be requested from the OSD at supplierdiversity@nola.gov.

IV - GOOD FAITH EFFORT POLICY

In accordance with Sec.70-461 of the City Code, the City shall reject any bid and shall not award, enter into or amend any contract that is not supported by documentation establishing that the Bidder/Proposer has met the applicable contract DBE participation Goal or made Good Faith Efforts to the applicable contract DBE participation goal.

Good Faith Efforts are steps taken to achieve a contract DBE participation goal or other requirements which, by their scope, intensity and usefulness demonstrate the Bidder’s or Proposer’s responsiveness to fulfilling the City’s DBE Program goals prior to the award of a contract, as well as the Contractor’s responsibility to put forth measures to meet or exceed the contract DBE participation goal throughout the duration of the contract.

The OSD shall be responsible for determining whether a Bidder/Proposer has made their best efforts to achieve the DBE Program contracting objectives. In making this determination, the DBE Compliance Officer shall consider the following factors:

A. SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR:

- i. Bidder/Proposer listed all selected scopes or portions of work to be performed by DBEs in order to increase the likelihood of meeting the contract goal for the project
- ii. Bidder/Proposer listed the estimated value of each scope or portions of work identified.

B. NOTIFYING CERTIFIED DBEs OF CONTRACTING OPPORTUNITIES:

- i. Bidder/Proposer contacted the OSD to request submission of subcontracting opportunities on the DBE Opportunities page.
- ii. Bidder/Proposer included a copy of each announcement or notification.

C. INITIAL SOLICITATION & FOLLOW-UP:

- i. Bidder/Proposer listed all certified DBE firms that received written notification of work items to be subcontracted and documented the certified firm's response.
- ii. Bidder/Proposer included copies of the written notice(s) sent to certified firms.

D. NEGOTIATE IN GOOD FAITH:

- i. Bidder/Proposer provided an explanation for any rejected DBE bid or price quotation.
- ii. Bidder/Proposer included a copy of the written rejection notice including the reason for rejection to the rejected DBE firm.

If a Bidder/Proposer fails to submit documented Good Faith Efforts as outlined, the bid shall be considered non-responsive.

The OSD may take into account the performance of other Bidders/Proposers in meeting the contract DBE participation goal and may, if deemed advisable, request further information, explanation or justification from any Bidder/Proposer. For example, Bidder's past performance on similar contracts with similar scopes and/or a Proposer's prior history utilizing DBEs will also be taken in consideration when determining Good Faith Efforts.

Good Faith Efforts shall be monitored throughout the life of the contract and evaluated on a case-by-case basis in making a determination whether a Bidder or Proposer is in compliance with the Good Faith Effort policy.

To obtain a copy of the Good Faith Effort Policy contact OSD at supplierdiversity@nola.gov.

V - REQUIRED DBE FORMS for BIDs/RFPs/RFQs

A. BIDs:

In accordance with Louisiana Public Bid Law, the two apparent lowest bidders on an invitation to bid shall complete and submit all required post bid documents within three (3) business days of the bid opening. If the required post bid documents are not received within three (3) business days of the bid opening it shall be determined that bidder was non-responsive.

The following DBE documents must be received within three (3) business days of the bid opening:

1. DBE Compliance Form-1: This form is used to establish your DBE commitment on a City of New Orleans bid, RFP or solicitation response. The Bidder shall provide a list of all proposed DBE subcontractor(s).

If the Bidder has attained the amount of DBE participation to meet the contract goal, only submit DBE Compliance Form-1.
2. DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal. The Bidder shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.
3. After receipt and review of the required post-bid documents, the OSD will determine if the Bidder has provided valid DBE Compliance Forms and (if applicable) evidence of demonstrated Good Faith Efforts.

Thereafter, the Bidder/Contractor shall be bound by the established percentage, as approved by the OSD.

B. Request for Proposals (“RFP”) / Request for Qualifications (“RFQs”):

To ensure the full participation of DBE’s in all phases of the City’s procurement activities, all Proposers at time of proposal submission shall complete and submit a DBE Participation Plan.

- 1. DBE Participation Plan (Attachment “C”):** A completed DBE Participation Plan shall be considered a methodology on how the Proposer plans to meet the contract DBE participation goal if awarded the project.
 - a. If a DBE Participation Plan (Attachment “C”) is not submitted, it shall be determined that the Respondent was non-responsive to the DBE provisions and the proposal will not be evaluated by the selection committee.
- 2. Within ten (10) days of the City’s issuance of the Notice to Award letter, the selected Proposer shall complete and submit a DBE Compliance Form-1:** This form is used to establish your DBE commitment on a City Bid, RFP or solicitation response. The selected Proposer shall provide a list of all proposed DBE subcontractor(s).
 - a. If the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal, the selected Proposer shall complete DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the contract DBE participation goal. The selected proposer shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.

The OSD shall review the contents of all required DBE Compliance Forms and may, if deemed advisable, request further information, explanation or justification from any Bidder/Respondent. Thereafter, the Contractor shall be bound by the established percentage, as approved by the OSD.

VI - CONTRACTOR COOPERATION

The Contractor shall:

- A.** Designate an individual as the “DBE Liaison” who will monitor the Contractor’s DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE subcontractors/suppliers (“DBE Entities”).
- B.** Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - 1.** The Contractor shall provide the DBE Compliance Officer (“DBECO”) with copies of said contracts within thirty (30) days from the date the Agreement is fully executed between the City and the Contractor.
 - a. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
- C.** Establish and maintain the following records for review upon request by the OSD:
 - 1.** Copies of written contracts with DBE Entities and purchase orders;
 - 2.** Documentation of payments and other transactions with DBE Entities;
 - 3.** Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
 - 4.** Any other records required by the OSD.

The Contractor is required to maintain such records for three (3) years after completion or closeout of the Agreement. Such records are necessary to determine compliance with their DBE obligations.

- D. Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.
1. The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, “DBE Utilization” reports shall be due on or before the fifteenth (15th) day of each month until all DBE subcontracting work is completed.
 2. Reports are required even when no activity has occurred in a monthly period.
 3. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
 4. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
- E. Conform to the established percentage as approved by the OSD.
1. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
 2. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
 3. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

VII - POST-AWARD MODIFICATION

The OSD may grant a post-award modification request if:

- A. for a reason beyond the Contractor’s control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document “Good Faith Efforts” to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing “Good Faith Efforts” in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or
- B. the Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document “Good Faith Efforts” to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

VIII - MONITORING DBE PARTICIPATION

To ensure compliance with DBE requirements during the term of the Agreement, the DBECO will monitor the Contractor’ use of DBE subcontractors/suppliers (“**DBE Entities**”) through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or other

means as approved by the OSD;

3. Routine audits of contract payments to all subcontractors;
4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor or DBE Entities.

IX - FAILURE TO COMPLY

If the DBECO determines in good faith that the Contractor failed to carry out the requirements of the DBE Program, such failure shall be deemed a material breach of this Agreement. This material breach may result in the termination of the Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program.

All DBE Compliance forms are maintained by the OSD and are subject to change.

Please contact the OSD at supplierdiversity@nola.gov to request a copy of all DBE referenced documents.

**CITY OF NEW ORLEANS
AFFIDAVIT OF COMPLIANCE WITH CITY'S HIRING REQUIREMENTS**

STATE OF _____

PARISH OF _____

Before me, the undersigned authority, came and appeared _____, who, after being duly sworn, deposed and said that:

1. He/She is the _____ (*title*) and authorized representative of _____ (*entity*), the "Bidder."

2. The Bidder submits the attached proposal in response to City of New Orleans Invitation to Bid # _____.

3. The Bidder hereby confirms that _____ (*entity*) is

- compliant with the City of New Orleans' hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f), unless otherwise excluded by city, state, or federal laws or regulations.
- unable to comply with the City of New Orleans' hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f) for the following reasons:

_____.

Bidder Representative (Signature)

(Print or type name) (Address)

Sworn to and subscribed before me, _____, Notary Public, this ____ day of _____, 20____.

Notary Public (signature)

Notary Public (print)

Notary ID#/Bar Roll # _____

END OF DOCUMENT



OFFICE OF SUPPLIER DIVERSITY
CITY OF NEW ORLEANS

DBE Compliance Form-1
DBE RESPONSIVENESS

Contact Office of Supplier Diversity for questions on completing this form.
Via email: supplierdiversity@nola.gov
OR
1340 Poydras Street, 18th Floor
New Orleans, LA 70112

Instructions: Prior to award of a city contract, please complete and submit DBE Compliance Form-1. List all DBE and Non-DBE firms that will be utilized, and list scopes of work/services or goods they will perform or provide. Please ensure that all authorized signatories of each DBE firm listed signs this form. If you have not attained the amount of DBE participation to meet the contract goal, you are required to complete and submit DBE Compliance Form-2 along with all required supporting GFE documentation. Please reference the GFE Policy for further guidance. The GFE Policy is available via www.nola.gov or by request at supplierdiversity@nola.gov.

BIDDERS: *This completed form along with all required supporting documentation must be furnished to the Bureau of Purchasing by the two (2) apparent lowest bidders within three (3) days of the bid opening. Should the bidder fail to comply with this request, the bid shall be considered non-responsive.*

- The bidder is requested to provide a list of "All Non-DBE Subcontractors and Suppliers" (See page 3)*

RESPONDENTS: *This completed form must be furnished to the Bureau of Purchasing within ten (10) days upon notice of award.*

RFP/RFQ/Bid/Solicitation/Other #: _____ Bid/Proposal Amount \$ _____ Date: ____/____/____

Description: _____

Name of Bidder/Proposer: _____ has satisfied the requirements of the bid/proposal specifications for the above referenced BID/RFP/RFQ or solicitation by the City of New Orleans in the following manner:

(Please check the appropriate space)

- The bidder/proposer is committed to the contract goal of _____ % DBE utilization on this contract.**
- The bidder/proposer, is unable to meet the DBE contract goal, however is committed to a minimum of _____ % DBE utilization on this contract and will submit documentation demonstrating good faith efforts. (Please complete and submit DBE Compliance Form-2 along with all required supporting documentation)**

DBE COMMITTEMENT TO CONTRACT GOAL: (Attach additional pages if necessary)

NAME of DBE FIRM	PHONE	SOURCE OF CERTIFICATION (SLDBE or LAUCP)	Scope of Work to be performed by the DBE	VALUE of PROPOSED CONTRACT with DBE	% OF TOTAL CONTRACT	OFFICE VERIFICATION ONLY
1.				\$	%	
2.				\$	%	
3.				\$	%	
4.				\$	%	
5.				\$	%	



OFFICE OF SUPPLIER DIVERSITY
CITY OF NEW ORLEANS

DBE Compliance Form-1
DBE RESPONSIVENESS

Contact Office of Supplier Diversity for questions on completing this form.
Via email: supplierdiversity@nola.gov
OR
1340 Poydras Street, 18th Floor
New Orleans, LA 70112

6.				\$		%	
TOTALS				\$		%	

RFP/RFQ/Bid/Solicitation/Other #: _____ Bid/Proposal Amount \$ _____

Date: ____/____/____

Description: _____

Name of Bidder/Proposer: _____ has satisfied the requirements of the bid/proposal specifications for the above referenced BID/RFP/RFQ or solicitation by the City of New Orleans in the following manner:

(Please check the appropriate space)

- The bidder/proposer is committed to the contract goal of _____ % DBE utilization on this contract.
- The bidder/proposer, is unable to meet the DBE contract goal, however is committed to a minimum of _____ % DBE utilization on this contract and will submit documentation demonstrating good faith efforts. *(Please complete and submit DBE Compliance Form-2 along with all required supporting documentation)*

DBE AFFIRMATION: (Attach additional pages if necessary)

The listed DBE firm(s) below affirm(s) that it will perform the Scope of Work for the estimated dollar value as stated in the DBE Commitment to Contract Goal section on page 1 of the DBE Compliance Form-1.

NAME of DBE FIRM	PRINT NAME of DBE FIRM'S AUTHORIZED SIGNATORY	SIGNATURE of DBE FIRM'S AUTHORIZED SIGNATORY	DATE
1.			
2.			
3.			
4.			
5.			
6.			

(Bidder/Proposer)



OFFICE OF SUPPLIER DIVERSITY
CITY OF NEW ORLEANS
 DBE Compliance Form-1
DBE RESPONSIVENESS

Contact Office of Supplier Diversity for questions on completing this form.
 Via email: supplierdiversity@nola.gov
 OR
 1340 Poydras Street, 18th Floor
 New Orleans, LA 70112

RFP/RFQ/Bid/Solicitation/Other #: _____ Bid/Proposal Amount \$ _____

Date: ____/____/____

Description: _____

Name of Bidder/Proposer: _____ has satisfied the requirements of the bid/proposal specifications for the above referenced BID/RFP/RFQ or solicitation by the City of New Orleans in the following manner:

NON-DBE SUBCONTRACTORS AND SUPPLIERS: (Attach additional pages if necessary)

NAME of FIRM	PHONE	Scope of Work to be performed by the Subcontractor	VALUE of PROPOSED CONTRACT	% OF TOTAL CONTRACT
1.			\$	%
2.			\$	%
3.			\$	%
4.			\$	%
5.			\$	%
6.			\$	%

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

PRINT NAME: _____ SIGNATURE: _____ TITLE: _____ DATE: _____



OFFICE OF SUPPLIER DIVERSITY
CITY OF NEW ORLEANS

DBE Compliance Form-2
DOCUMENTATION OF GOOD FAITH EFFORTS

Contact Office of Supplier Diversity for questions on completing this form.

Via email: supplierdiversity@nola.gov

OR

1340 Poydras Street, 18th Floor
New Orleans, LA 70112

Prior to award of a city contract, Good Faith Efforts (GFE) are required to be made and demonstrated on all applicable City of New Orleans contracts. If you have not attained the amount of DBE participation to meet the contract goal you are required to complete and submit DBE Compliance Form-2 along with all required supporting GFE documentation. Please reference the GFE Policy for further guidance. The GFE Policy is available via www.nola.gov or by request at supplierdiversity@nola.gov.

BIDDERS: *This completed form along with all required supporting documentation must be furnished to the Bureau of Purchasing by the two (2) apparent lowest bidders within three (3) days of the bid opening. Should the bidder fail to comply with this request, the bid shall be considered non-responsive.*

RESPONDENTS: *This completed form must be furnished to the Bureau of Purchasing with your proposal.*

RFP/RFQ/Bid/Solicitation/Other #: _____ Bid/Proposal Amount \$ _____ Date: ____/____/____

Description: _____

Name of Bidder/Respondent: _____ has satisfied the requirements of the bid/proposal specifications for the above referenced BID/RFP/RFQ or solicitation by the City of New Orleans in the following manner: *(Please check the appropriate space)*

- The Bidder/Respondent is unable to meet the DBE contract goal and has completed and submitted DBE Compliance Form-2 along with all required supporting GFE documentation.
- The Bidder/Respondent is unable to meet the DBE contract goal, however is committed to a minimum of _____% DBE utilization on this contract and has completed and submitted DBE Compliance Form-2 along with all required supporting GFE documentation.

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

PRINT NAME: _____ SIGNATURE: _____, TITLE: _____

Instructions: Please complete sections A through D and include all specific supporting documentation as outlined below. All sections of this form must be completed or your response will be deemed non-responsive. If you feel that any section of this form is not applicable, do not respond/write not applicable or NA. You must provide a written statement as to why section is not applicable to your response. Attach additional pages if necessary.

- SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR: Complete section A.
- NOTIFYING CERTIFIED DBEs OF CONTRACTING OPPORTUNITIES: Please attach a copy of the announcement and written notices distributed to DBE(s). Example: Newspaper, email, mail correspondence, and community outreach notices, etc.
- INITIAL SOLICITATION & FOLLOW-UP OF INITIAL SOLICITATION: Bidders/Respondents may only solicit from the State and Local Disadvantaged Business Enterprise (SLDBE) or Louisiana Unified Certification Program (LAUCP) directories located on the City's website.



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- A. **SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR:** You must list all selected scopes or portions of work to be performed by DBE(s) in order to increase the likelihood of meeting the contract goal for this project and the estimated value of each scope or portions of work identified. Use additional pages if warranted.

Scope or Portions of Work Identified for DBE Participation	Estimated Value	% of Contract Value
1.	\$	
2.	\$	
3.	\$	
4.	\$	
5.	\$	
6.	\$	
7.	\$	
8.	\$	
9.	\$	
10.	\$	
11.	\$	
12.	\$	
TOTAL	\$	

- B. **NOTIFYING CERTIFIED DBEs OF CONTRACTING OPPORTUNITIES:** Please complete all fields below, list all sources of advertisement and outreach to DBE subs.

- I. Did you attend all pre-bid and/or outreach meetings scheduled by the City to inform DBEs of subcontracting opportunities?

YES	NO	Date of Meeting

- II. Did you contact the City of New Orleans Office of Supplier Diversity to request submission of your subcontracting opportunities on the DBE Opportunities page?

YES	NO	Date of Submission



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III. **ADVERTISING SUBCONTRACTING OPPORTUNITIES:** You must identify publications in which announcements or notifications were placed and published. Include a copy of each announcement or notification.

Source of Advertising/Outreach	What subcontracting areas of work were advertised?	Date of Ad	Due Date & Time for Sub Bids		OSD VERIFICATION
			Date	Time	
1.					
2.					
3.					
4.					

C. **INITIAL SOLICITATION & FOLLOW-UP:** You must complete all fields below, list all certified DBE firms that received telephone or e-mail notification of work items to be subcontracted. If no response was received to the initial solicitation, you must indicate when firms received subsequent telephone or email solicitations (list delivery date, or read receipt date, and certified firm's response). You must include copies of the physical and/or electronic notice(s) sent to certified firms. Use additional pages as warranted.

DBE FIRM & CONTACT	PHONE	Scope of Work Solicited	Date of Written Notification	Result of Initial Communication	Date of Follow-up and Method of Contact (Phone, Fax, Email)	Result of Follow-up Communication
<i>Ex. ABC Company /Jane Smith</i>	<i>(504) 123-4567</i>	<i>Legal services</i>	<i>01/01/14</i>	<i>Will submit a quote</i>	<i>01/10/14</i> <i>email</i>	<i>Quote received</i>
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IV. **OTHER:** Please provide narrative details of any other efforts your firm conducted to attain the DBE goal. Use additional pages as warranted.