

# CITY OF YAKIMA

**Request for Qualifications No. 11221-P**

**To Provide**

Yakima Gang Free Initiative  
Youth & Family Development Programming



**September 6, 2012**

**Notice to Proposers  
Request for Qualifications (RFQ)  
No. 11221-P**

Notice is hereby given by the undersigned that sealed Requests for Qualifications will be accepted in the office of Yakima City Purchasing, Yakima City Hall, 129 N. 2nd Street, Yakima, Washington 98901 until the hour of **2:00 PM, September 21, 2012**. At such time, all Respondents names will be publicly read and proposals received will be opened and accepted for consideration for:

**Yakima Gang Free Initiative  
Youth & Family Development Programming**

**The City of Yakima has set aside up to \$140,000 for professional services and reimbursable expenses for Youth & Family Development programming. The selected vendor(s), individually or in conjunction with subcontractors, will work with the City to provide gang prevention and intervention services as specified in the RFQ Scope of Work.**

**This RFQ is being funded in part by the “Yakima County Youth Services” Federal Grant and “Yakima County Gang Resistance & Intervention Project” Federal Grant.**

It is the policy of the City of Yakima that women and minority business enterprises shall have the maximum opportunity to participate in the performance of work relating to the City's activities. To this end, the City is committed to take all necessary and reasonable steps in accordance with state and federal rules and regulations to ensure women and minority business enterprises the maximum opportunity to compete for and to perform contracts.

Request for Qualification Packets are available in the office of the Purchasing Manager, City Hall, 129 N 2<sup>nd</sup> Street, Yakima, Washington, 98901. 509-575-6093. Packets are also available on the City's Purchasing Webpage at [www.ci.yakima.wa.us](http://www.ci.yakima.wa.us).

The City of Yakima reserves the right to reject any and all RFQ's.

Dated this 6<sup>th</sup> day of September, 2012.

(Seal)

Colleen Bailey, CPPB  
Purchasing Buyer II

Publish on:  
September 6<sup>th</sup> and 7<sup>th</sup>

**CITY OF YAKIMA  
REQUEST FOR QUALIFICATIONS NO. 11221-P**

**Yakima Gang Free Initiative – Youth & Family Development Programming**

This Request for Qualifications (RFQ) invites responses from applicants interested in providing Youth & Family Development Programming for the Yakima Gang Free Initiative (GFI).

**1. PURPOSE:**

The selected vendor(s), individually or in conjunction with subcontractors, will work with the City to provide services as specified in the RFQ scope of work.

**2. DEFINITIONS:**

- A. City The City of Yakima, Washington, and its departments.
- B. Applicant The person or firm submitting the proposal.
- C. RFQ The Request for Qualification, including any amendments or other addenda hereto. In case of conflict between the RFQ and exhibits, the RFQ governs.
- D. Selection Committee The RFQ Selection Committee is comprised of the RFQ Coordinator, City Council Public Safety Committee, City staff and GFI Advisory Group. Committee will not exceed 7 people.
- E. Qualification Packet/Proposal The materials submitted by each Applicant in response to the RFQ, including all attachments.

**3. RFQ ADMINISTRATION:**

Upon release of this RFQ, all applicant communication should be directed in writing to the RFQ Coordinator listed below. Any oral communications with other City employees will be considered unofficial and non-binding on the City.

**4. RFQ COORDINATOR:** The RFQ Coordinator is:

Colleen Bailey, Purchasing Buyer II  
City of Yakima  
129 No. 2nd Street  
Yakima, WA 98901  
Ph: 509-576-6787 Email: colleen.bailey@yakimawa.gov

**5. PRELIMINARY RFQ SCHEDULE (may be revised as needed):**

	Date
RFQ Released .....	09/06/2012
Qualification Packets Due .....	09/21/2012 at 2:00 P.M.
Interviews .....	TBD
Faxing or mailing of letters to successful applicant .....	TBD
Contract Negotiations .....	TBD
Award of Contract by City Council.....	TBD
Proposed Start Date .....	TBD

## 6. A BRIEF DESCRIPTION OF THE GANG FREE INITIATIVE:

The City of Yakima GFI is based on the five principles of the Office of Juvenile Justice and Delinquency Prevention's Comprehensive Gang Model. This model and other "Best Practices" are being used by communities across the country to effectively address gang crime and violence. The mission of the Yakima Gang Free Initiative is to engage the community to develop suppression, prevention and intervention strategies that support and promote positive youth development. The City of Yakima has appointed an advisory group for implementation of the GFI Action Plan.

The City of Yakima Community Action Plan for the Prevention, Intervention, and Suppression of Gangs (The Plan) represents the recommendations of the GFI Advisory Group to the City of Yakima for addressing the gang issue (can be viewed at <http://www.yakimawa.gov/services/purchasing/openings/>). Unlike other plans, it emphasizes prevention and intervention strategies at the neighborhood level and positions the City of Yakima together with community partners in a researched based, data driven, and outcome focused effort over the next 3 to 5 years.

Four central assumptions frame the overall architecture to the Committee's recommended strategy. The City of Yakima and its partners endeavor to:

- A. Facilitate total community involvement through strategic guidance and leadership.
- B. Prevent the growth of gang activity and violence in Yakima through multidimensional collaborative efforts.
- C. Pursue necessary funding through collaborative efforts.
- D. Restore Yakima neighborhoods by reducing gang violence and problem activity throughout the City.

While key findings are outlined in the Introduction to this Plan, the Advisory Group's Community Action Plan is based on the following fundamental constructs:

- E. A multidimensional anti-gang strategy should target youth between the ages 11-20 who exhibit high-risk behaviors and gang involvement.
- F. Young people who would move up the ladder of gang membership and activity are those who commit intentional acts of violence or are arrested for gang related incidents.
- G. The impact of gang members' actions not only adversely affects their parents, siblings, and other family members but the whole community—including the victims of gang violence who must deal with the horror of losing a loved one and the agony of having to deal with a variety of agencies to get restitution and support.
- H. No single program will fix the gang problems in our community.
- I. Strong public leadership by the City Council, City Manager and Chief of Police is essential.
- J. A coordinated and organized effort among all City departments, other government and community agencies is required to see results that integrate prevention, intervention, and suppression.
- K. To be effective, all programs and services focused on gang prevention and intervention must be culturally competent, linguistically sensitive, and accessible to the entire community.

These constructs must be evident in the partnership agreements entered into by collaborating entities with the City of Yakima.

This action plan targets the greater City of Yakima with special emphasis on “hubs” of gang activity in three neighborhoods—Northeast, North Central, and Southeast. In addition the Committee has established the following goals:

1) Establish the OJJDP Comprehensive Gang Model as the operating system,

and

2) Reduce youth crime, violence, delinquency and academic failure through the prevention, intervention and suppression of youth gangs.

Focusing on the goals stated above, the Advisory Group recommends to the City of Yakima the following five strategic objectives:

Objective 1: Establish an effective coordinated collaboration process to impact gang activity citywide.

Objective 2: Develop joint partnerships to help address the gang issues within the City of Yakima.

Objective 3: Establish a data and research analysis process to keep the City Council, City Manager and GFI Committee aware of gang trends and anti-gang research on an ongoing basis.

Objective 4: Based on existing funding, build capacity in existing, effective and promising gang prevention and intervention programs/strategies on a neighborhood basis.

Objective 5: Develop a sustainable funding strategy for the Community Action Plan.

#### **7. DEADLINE FOR DELIVERY OF QUALIFICATION PACKETS/PROPOSALS:**

**One original Qualification Packet/Proposal with six (6) complete copies and one (1) complete copy on disc (CD), to be submitted to and date stamped by the City Purchasing Office:**

City of Yakima  
Purchasing Office  
129 No. 2<sup>nd</sup> St.  
Yakima, WA 98901

**Qualification Packets/Proposals must be received and stamped in by 2:00 p.m. on September 21, 2012**, in a sealed package labeled *RFQ No. 11221-P Yakima Gang Free Initiative - Youth & Family Development Programming*, with the date and time of proposal opening written on the face of it.

If you plan on attending the proposal opening, **DO NOT BRING YOUR PROPOSAL WITH YOU INTO THE OPENING ROOM. It must be received and date stamped by the Purchasing Office. FAXED OR E-MAILED PACKETS WILL NOT BE ACCEPTED.**

QUALIFICATION PACKETS RECEIVED AFTER 2:00 P.M. PST, September 21, 2012 WILL NOT BE ELIGIBLE FOR CONSIDERATION. THE DEADLINE WILL BE STRICTLY ADHERED TO. LATE PROPOSALS WILL NOT BE CONSIDERED. Qualification Packets, which do not include all requested information and required documentation, may be considered non-responsive.

#### **8. CONTRACT PERIOD:**

Projects will be funded for one 12-month contract period, October 1, 2012 – September 30, 2013 (may be revised as needed). Non-competitive continuation requests will be considered up to five years depending on performance and availability of funds.

## **9. PROPOSED SCOPE OF SERVICES:**

The City Administration and the City Council will prioritize funding of existing, effective, promising programs that establish targets for outcomes and outputs in a coordinated and collaborative manner with the City's funding source, i.e. Parks and Recreation, Police Department or private foundations. In addition, the City will enter into collaborative funding ventures only in instances where the partner has provided assurances regarding the use of evidence based programs and adherence with the core operating principles adopted by the GFI Advisory Group.

Applicants may submit qualifications for one or more of the following prevention and intervention service components:

### **A. Outreach**

The primary focus of the outreach services is to build an ongoing and pro-social relationship with youth and families while linking them to appropriate services. Targeted outreach should focus on core gang involved youth, with special capacity to connect pre-adjudication and in the local community setting. Outreach activities should be carefully integrated with existing and new prevention services not to become a primary focus, but rather as a means to build relationships with clients and provide access to essential resources and services.

Outreach should describe a method for providing information that helps the Youth Development Team gain a better understanding of the issues within the target population and in the target area so that team interactions with gang members will be more informed.

The GFI Advisory Group recommends that outreach be conducted in a manner that includes the following routine activities:

- 1) Identify youths' needs and goals to help the team develop a more comprehensive intervention plan.
- 2) Coach and provide role models for each youth.
- 3) Coordinate appropriate crisis responses to project clients following episodes of violence in the community.
- 4) Provide assistance to families in distress, ranging from accessing basic services to helping resolve family conflicts.
- 5) Visit clients who are incarcerated and helping to reconnect them to services when they are released from custody.
- 6) Resolve conflicts and/or mediating between clients, their families, other youth, and/or agencies.
- 7) Act as a liaison between project clients and service providers/schools to facilitate client access to services.
- 8) Work with clients who are seeking employment, from helping these youth develop résumés, to identifying their skills and qualifications, to helping them apply for jobs or work with workforce services programs.
- 9) Conduct gang awareness presentations in schools.

### **B. Referral & Screening**

The GFI Advisory Group recommends that a referral and screening mechanism be established. Referral is an informal, ongoing process for reviewing information related to youth who show signs of being at risk of gang involvement or have been determined to be gang involved. The referral process should integrate with the Youth Development Team review of screening and other information on targeted youth, and the Youth Development Teams decision about whether to add the youth to the caseload.

Screening or "Triage" is a brief assessment of the youth's current status to determine individual and family priorities. It is important that team members create a protocol for screening and assessing new clients. Outreach workers present information about prospective youth to the Youth Development

Team, outlining how each youth meets the screening criteria. The team members can then come to consensus about whether a youth is suitable for case management.

A screening team including outreach workers and members of the Youth Development Team should meet regularly to review the referral materials that have come in. The screening process may indicate the need to refer the youth to crisis services. Upon gathering all information and determining eligibility based on the established criteria, the screening team will make a determination. They will also take into consideration the ability of the program to serve the family based on current caseloads. A waiting list could be created in the future if we reach capacity.

### **C. Individual Needs Assessments**

Proposal should describe an individual needs assessment instrument either in existence or to be developed that will ascertain the status of each client when he/she is accepted into the project. Needs Assessment services should be appropriate for diagnosis, placement, and treatment planning and applicable in a variety of settings (i.e., school, jail, social service). The assessment should include information on:

- 1) The client's future goals, abilities, talents, and desires.
- 2) Family situation and structure.
- 3) Gang involvement of family members.
- 4) Other family issues that may affect the client's gang involvement.
- 5) Criminal history.
- 6) Gang history (and gang affiliation).
- 7) School history, including special issues such as learning disabilities or a history of behavioral problems.
- 8) Gang climate in the client's neighborhood.
- 9) Substance abuse or mental health issues.
- 10) History of abuse or neglect.
- 11) Client's employment history and skill levels.
- 12) Special circumstances, such as a client who is a teen parent.
- 13) Agencies that are currently serving the client.
- 14) Possible safety issues involving the client.
- 15) Current needs assessments from any of the team agencies.
- 16) Court requirements such as community service hours and restitution.

### **D. Family Reunifications Services**

The Advisory Group recommends that a major component of intervention include Family Reunification Services that integrates aspects of family psycho-education, behavioral therapy and multiple-family approaches. In this context FRS will bring families of gang members or those at-risk of joining gangs together for learning and problem-solving, all oriented to the improved functioning both of the family member who's receiving services and the family unit as a whole.

The FRS's primary working method is to help each family and youth to apply whole-family guidelines to their specific problems and circumstances. Proposed methodology should be linked to the severity of gang involvement of the youth. The methodology should also maintain stability by systematically applying a group problem-solving method, case-by-case, to difficulties in implementing the whole-family guidelines and fostering change.

### **E. Positive Youth Development Programming**

Positive Youth Development Programming refers programs and activities that target youth during non-school hours including scheduled school closures (holidays) and summer months. Programming serves to provide an alternative to participation in youth problem behaviors (gangs, delinquency, substance abuse, etc.) Positive Youth Development services should focus on promoting programs that

have outcomes that are effective and reflect a direct impact on gangs and at-risk youth's ability to make positive choices.

Proposals should describe activities that target one or more of the following strategic actions:

- 1) Improve Parent/Youth communication.
- 2) Increase utilization of modern technological mediums including social networking in anti-gang activities.
- 3) Increase personal discipline, leadership and team playing skills among Yakima youth.
- 4) Increase opportunities for personal story telling through drama, writing, talking circle as a means for healing, hope giving.
- 5) Identify and expand opportunities for youth self expression (i.e., artistic, cultural, recreational).
- 6) Facilitate school reentry.
- 7) Expand structured out-of-school programming.
- 8) Expand gun safety education opportunities for youth.
- 9) Increase target youth understanding of risks associated with substance abuse/misuse.
- 10) Identify and expand youth supported suppression activities.
- 11) Increase target youth understanding of risks associated with guns and violence.
- 12) Identify and expand community supported suppression activities.

**10. QUALIFICATION PACKET/PROPOSAL DOCUMENTS:**

Provide a detailed description of the proposed services including the following:

- A. Schedule of Activities
- B. Service Capacity (Number of Youth/Families to be served)
- C. Staffing and required qualifications
- D. Intended Outcomes
- E. 12 month Work Plan
- F. Literature Citation(s) providing evidence of the effectiveness of the proposed service.

**11. QUALIFICATION REQUIREMENT:**

Applicants should address the following areas in their Qualification Packet:

**A. Experience:**

- 1) Explain the qualifications your firm has to provide the proposed services.
- 2) Describe your experience in providing similar services.
- 3) Describe existing partnerships that may contribute to your success.

**B. Cultural Competency:**

- 1) Describe your plan for ensuring services and activities which are capable of serving the cultural, economic, language, and other unique characteristics of the targeted population.

**C. Budget**

- 1) Provide a twelve month total project budget and justification including the following:

- A. Personnel
- B. Benefits
- C. Supplies
- D. Travel
- E. Other

- 2) Provide a description of your agencies matching contribution. Partner agencies will be required to match city funds at a rate of 2 to 1.\* For example: An agency requesting \$10,000 of City funding, a total of \$20,000 must be described as matching contribution for a total project budget of \$30,000.

**\*MATCH REQUIREMENTS ARE NEGOTIABLE ON A CASE BY CASE BASIS as in the best interest of the City. If your agency submits a budget with less than a 2 to 1 matching contribution a separate request for match reduction and or waiver must be included in your packet.**

**12. EVALUATION BY ANALYSIS COMMITTEE:**

All Qualification Packets will be screened to determine whether the minimum requirements of the RFQ are met. The Selection Committee (SC) will then evaluate those proposals, which meet the minimum RFQ requirements. Each responsive proposal will be rated on a point system with the top-scoring proposer selected to enter into negotiations.

A. **Qualification Evaluation Criteria:** The following are the criteria, which will be used in the selection of applicants. A maximum score of 100 points will be used by each evaluator to score applicants. Each of the following elements shall have the stated maximum point value:

	<b><i>Qualification and Experience</i></b>	<b><i>Points</i></b>
1)	Program Description	40
2)	Experience (See pg 8 -11)	25
3)	Cultural Competency (See p 8-11)	5
4)	Budget Appropriateness (See p 8-11)	20
5)	Matching Contribution & Sources (See p 8-11)	10
	<b><i>TOTAL</i></b>	<b><i>100</i></b>

**13. POST EVALUATION EVENTS AND AWARD:**

The RFQ Coordinator will fax or e-mail written notices to all applicants who submitted qualifications, informing them of their status.

The successful applicant will be offered the opportunity to negotiate a contract and enter into an agreement with the City of Yakima to provide consultant services. **Applicants should enclose a copy of their proposed agreement.** The City reserves the right to negotiate any element of this RFQ, if it is determined to be in the best interest of the City. If an agreement cannot be reached, the City reserves the right to enter into negotiations with the next highest ranked Consultant.

The Selection Committee (SC) intends to complete contract negotiations with the successful applicant and execute all contracts during October, 2012. City Council will make the final award of contract.

**14. OTHER INFORMATION:**

**A. Reservation:** The City reserves the right to award the contract to the applicant that it deems to offer the best overall qualifications/proposal in its sole discretion. The City reserves the right to revise the RFQ schedule, to revise the RFQ and/or to issue amendments to the RFQ. The City also reserves the right to cancel or to reissue the RFQ in whole or in part prior to the execution of a contract. The City also reserves the right to refrain from contracting with any and all applicants. The release of the RFQ does not compel the City to enter into any contract pursuant to the RFQ. The City reserves the right to

correct obvious ambiguities and errors in the Contractor's proposal and to waive non-material irregularities and/or omissions.

**B. Applicant's Cost to Develop Qualification Packet:** Costs for developing qualification packets in response to the RFQ are entirely the obligation of the Applicant and shall not be chargeable in any manner to the City.

**C. Applicants' Questions:** Any person contemplating submitting an RFQ who is uncertain as to the intended meaning of any part of the RFQ or other contract documents, or who finds discrepancies in, or omissions from the RFQ may request interpretation, clarification, or correction of this RFQ. Such request must be in writing and must be delivered to the RFQ Coordinator by mail, email, or hand delivery. The person submitting the request is responsible for its timely delivery. Any interpretation or correction of the RFQ will be made only by written addendum and will be mailed or delivered to each person receiving this RFQ, in addition to being posted on the City Purchasing webpage. Any information given to any applicant concerning the solicitation or any changes to the RFQ shall be provided in writing to all applicants to ensure that all applicants receive the same information relating to the RFQ. The City will not be responsible for any other interpretation, clarification, or correction of this RFQ. Applicants must acknowledge receipt of any addenda received in their response by either stating they received the addenda, or returning said addenda with their response.

Each applicant should verify that it has received all addenda to this RFQ by direct inquiry to the City Contact Person before submitting proposals.

**D. Clarification of Responses:** As part of the evaluation process, and at the discretion of the SC staff, applicants may be asked to clarify specific points in their respective responses. The SC reserves the right to request oral interviews of applicants. Whether there will be interviews and who will be invited to make a presentation to the SC will be at the sole discretion of the City.

**E. Proprietary Material Submitted:** Any information contained in the RFQ submitted that is proprietary must be clearly designated. Marking the entire bid as proprietary will be neither accepted nor honored. If a request is made to view a applicant's submittal, the City of Yakima will comply according to the Open Public Records Act, Chapter 42.17 RCW. If any information is marked as proprietary in the proposal, such information will not be made available until the affected applicant has been given an opportunity to seek a court injunction against the requested disclosure.

**F. Public Disclosure:** Proposals shall become the property of the City. All proposals shall be deemed a public record as defined in RCW 42.56 "Public Records." Any proposal containing language which copyrights the proposal, declares the entire proposal to be confidential, declares that the document is the exclusive property of the Applicant, or is any way contrary to state public disclosure laws or this RFP will be declared non responsive and removed from consideration. Any information in the proposal that the successful Applicant desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56 must be clearly designated as described in Section Proprietary Information. The particular exception from disclosure upon which the Applicant is making the claim and the RFP page it is found on must be identified. RFP's will not be disclosed prior to release to potential respondents. With the exception of lists of prospective Applicants, the City will not disclose RFP records until execution of the contract(s). At that time, all information about the competitive procurement will be available with the exception of: Proprietary/confidential portion(s) of the successful proposal(s), until the Applicant has an adequate opportunity to seek a court order preventing disclosure. The City will consider a Applicant's request for exemption from disclosure; however, the City will make a decision predicated upon RCW 42.56.

**G. Delegation of Professional Services:** The services provided for herein shall be performed by the Contractor, and no person other than regular associates or employees of the Contractor shall be engaged upon such work or services except upon written approval of the SC and/or City.

**H. Relationship between City and Contractor:** The Contractor and any authorized subcontractors shall at all times be an independent Contractor and not an agent or representative of the City with regard to performance of the Services. The Contractor shall not represent that it is, or hold itself out as, an agent or representative of the City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of the City.

**I. Property Rights:** All records or papers of any sort relating to the City and to the project will at all times be the property of the City and shall be surrendered to the City upon demand. All information concerning the City and said project, which is not otherwise a matter of public record or required by law to be made public, is confidential, and the Contractor will not, in whole or part, now or at any time disclose that information without the express written consent of the City.

**J. Work Made for Hire:** All work the Contractor performs under this agreement shall be considered work made for hire, and shall be the property of the City. The City shall own any and all data, documents, plans, copyrights, specifications, working papers, reports, and any other materials the Contractor produces in connection with this agreement. On completion or termination of the agreement, the Contractor shall deliver these materials to the City project manager.

**K. Hold Harmless:** The Contractor shall, and hereby agrees to, release, save, otherwise hold harmless and indemnify the City of Yakima from claims, demands, damages, actions, causes of actions or other liability, injury, or harm caused by act or omissions, foreseen or unforeseen, negligent or otherwise, that would otherwise befall said City arising out of the Contractor's implementation of the terms of this contract.

**L. Non-Discrimination:** During the performance of this Agreement, Contractor shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of race, color, sex, religion, national origin, creed, age, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, political affiliation, or the presence of any sensory, mental or physical handicap, and any other classification protected under federal, state, or local law. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement.

**M. The Americans With Disabilities Act:** With regard to the services to be performed pursuant to this Agreement, Contractor agrees to comply with the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (ADA) and its implementing regulations, and Washington State's antidiscrimination law as contained in RCW Chapter 49.60 and its implementing regulations. The ADA provides comprehensive civil rights to individuals with disabilities in the area of employment, public accommodations, state and local government services, and telecommunications.

**N. Term and Renegotiation:** The term shall commence on the date of last signature and terminate twelve (12) months thereafter, unless extended or sooner terminated per the terms and conditions of the resulting negotiated contract. The period of performance may also be extended by mutual written agreement of the parties. The City may, at its option, extend the contract on a year to year basis as budget allows and subject to a successful price agreement.

**O. Venue:** In the event that any litigation should arise concerning the construction or interpretation of any of the terms of the Agreement, the venue of such action of litigation shall be in the Courts of the State of Washington in and for the City of Yakima. This Agreement shall be governed by the laws of the State of Washington.

**P. Insurance and Performance Bond:** Professional Liability Insurance, Automobile Insurance, Worker's Compensation Insurance, and/or a Performance Bond may be required of the Contractor and may be part of the resulting negotiated contract.

**Q. Licenses:** If applicable, successful Contractor shall have a valid and current business license per Chapter 5.02 Section 5.02.010 of the Yakima Municipal Code covering this type of business and shall satisfy all applicable City Code provisions. Said license shall be obtained prior to the award of any contract. Inquiries as to fees, etc., should be made to the Office of Code Administration, telephone (509) 575-6121.

**R. Protest Procedure:** Any protest must be made in writing, signed by the protestor, and state that the Applicant is submitting a formal protest. The protest shall be filed with the City of Yakima's Purchasing Manager at 129 No. 2nd St., Yakima, WA 98901, faxed to 509-576-6394 or emailed to [sownby@ci.yakima.wa.us](mailto:sownby@ci.yakima.wa.us). The protest shall clearly state the specific factual and legal ground(s) for the protest, and a description of the relief or corrective action being requested. Protests before award shall be filed five (5) days before the solicitation due date, and protests after the award shall be filed five (5) days after Award Announcement (see below for details). The following steps shall be taken in an attempt to resolve the protest with the Applicant:

Step I: Purchasing Manager and Division Manager of solicitation try resolving matter with protester. All available facts will be considered and the City Purchasing Manager shall issue a decision. This decision shall be delivered in writing to the protesting Applicant.

Step II: If unresolved, within three (3) business days after receipt, the protest may be appealed to the Department Head by the Purchasing Manager.

Step III: If still unresolved, within three (3) business days after receipt, the protest may be appealed to the City Manager (or his designee). The City Manager shall make a determination in writing to the Applicant.

#### Grounds for Protest

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

A matter of bias, discrimination, conflict of interest;

Solicitation unduly constrains competition or contains inadequate or improper criteria;

Errors in computing score;

Non-compliance with procedures described in the solicitation or City Policy.

#### Protest Determination

Each review and determination of the protest shall issue a decision that either:

Finds the protest lacking in merit and upholds the award; or

Finds only technical or harmless errors in the acquisition process and determines the City to be in substantial compliance and therefore reject the protest; or

Finds merit in the protest and provides options for correction, including, but not limited to, correcting the errors and re-evaluating the bids, reissuing the bid to begin a new process, or entering in to a contract that remedies the protest finding; or

Makes other findings and determines other courses of action as appropriate.

#### Timeframe

Only protests and complaints received within the required timeframe for protest action are accepted for consideration.

#### Award Announcement

Purchasing shall announce the successful bidder via City Website, e-mail, fax, regular mail, or by any other appropriate means. Once the announcement is released by Purchasing, the protest time frame

begins. The timeframe is not based upon when the Applicant received the information, but rather when the announcement is issued by Purchasing. Though every effort will be made by Purchasing to distribute the announcement to the interested Applicants, Purchasing is not responsible to assure that Applicants receive the announcement. It is the responsibility of the Applicants to obtain the announcement from Purchasing.

#### Award Regardless of Protest

When a written protest against making an award is received, the award shall not be made until the matter is resolved, unless the City determines that one of the following applies:

The supplies or services to be contracted for are urgently required;

Delivery or performance will be unduly delayed by failure to make award promptly;

A prompt award will otherwise be advantageous to the City.

If the award is made, the file must be documented to explain the basis for the award. Written notice of the decision to proceed shall be sent to the protester and others who may be concerned.

The City retains the right to enter into any contract and nothing herein shall be construed to limit that authority in any manner.

**E-VERIFY**

The City of Yakima supports the Federal Immigration, Reform and Control Act of 1986, as amended. The City requires that all contractors or business entities that contract with the City for the award of any City contract for public works in excess of Five Thousand Dollars (\$5,000), or any other city contract in excess of Two Thousand Five Hundred Dollars (\$2,500), enroll in the E-Verify program or its successor, and thereafter to verify its employees' proof of citizenship and authorization to work in the United States.

E-Verify will be used for newly hired employees during the term of the contract ONLY: it is NOT to be used for existing employees.

The Contractor must remain enrolled in the program for the duration of the contract and be responsible for verification of every applicable subcontractor. The contractor shall sign and return with their bid response the E-Verify Declaration below. Failure to do so may be cause for rejection of bid.

**E-VERIFY COMPLIANCE DECLARATION**

The undersigned declares, under penalty of perjury under the laws of Washington State that:

1. By submitting this Declaration, I certify that I do not and will not, during the performance of this contract, employ illegal alien workers, or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.
2. I agree to enroll in E-Verify prior to the start date of any contract issued by the City of Yakima to ensure that my workforce is legal to work in the United States of America. I agree to use E-Verify for all newly hired employees during the length of the contract.
3. I certify that I am duly authorized to sign this declaration on behalf of my company.
4. I acknowledge that the City of Yakima reserves the right to require evidence of enrollment of the E-Verify program at any time and that non-compliance could lead to suspension of this contract.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email Address: \_\_\_\_\_

## Personnel Inventory Form

### \* To Accompany Bid Proposal \*

Firm Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Type of Service Provided: \_\_\_\_\_

Are you a certified DBE or WMBE?: YES\_\_\_ NO\_\_\_. If yes, what is your certification number?

# \_\_\_\_\_

**Contractor's Entire Work Force - if you need additional space,  
photocopy this section and attach it to this form.**

Occupation	Total Employed		Total Minorities		African American		Asian or Pacific Islander		Native American		Hispanic or Latino		Apprentice Trainee	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Officers														
Foremen														
Clerical														
<b>Totals:</b>														

Goals for minorities and women employees in the contractor's and subcontractor's workforce are 10% combined. Contractors and subcontractors do not have to fire or lay off employees to meet these goals, however, if new employees are hired, it shall be an obligation to make a good faith effort to hire qualified minorities and women.

## GENERAL FEDERAL TERMS THAT WILL BE ADDED TO CONTRACT

### **10. LOBBYING**

**31 U.S.C. 1352**

**49 CFR Part 19**

**49 CFR Part 20**

#### **Applicability to Contracts**

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

#### **Flow Down**

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

#### **Mandatory Clause/Language**

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)
- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

\_\_\_\_\_ Signature of Contractor's Authorized Official

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

\_\_\_\_\_ Date

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## **11. ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325**

**18 CFR 18.36 (i)**

**49 CFR 633.17**

### **Applicability to Contracts**

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

### **Flow Down**

FED does not require the inclusion of these requirements in subcontracts.

### **Model Clause/Language**

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

**Access to Records** - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FED Recipient or a subgrantee of the FED Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FED Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FED Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FED Recipient or a subgrantee of the FED Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FED Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FED Recipient or a subgrantee of the FED Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FED Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FED Recipient or a subgrantee of the FED Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the

Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FED Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FED does not require the inclusion of these requirements in subcontracts.

## **12. FEDERAL CHANGES** **49 CFR Part 18**

### **Applicability to Contracts**

The Federal Changes requirement applies to all contracts.

### **Flow Down**

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

### **Model Clause/Language**

No specific language is mandated. The following language has been developed by FED.

**Federal Changes** - Contractor shall at all times comply with all applicable FED regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FED, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **21. TERMINATION** **49 U.S.C. Part 18** **FED Circular 4220.1E**

### **Applicability to Contracts**

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

### **Flow Down**

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

### **Model Clause/Language**

FED does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

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

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

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

**c. Opportunity to Cure (General Provision)** The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

**d. Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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

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

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

**g. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

**i. Termination for Convenience or Default (Architect and Engineering)** The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

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

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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

**j. Termination for Convenience or Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

## **22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

### **Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

### **Suspension and Debarment**

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

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

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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

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## **23. PRIVACY ACT** **5 U.S.C. 552**

### **Applicability to Contracts**

When a grantee maintains files on drug and alcohol enforcement activities for Federal Funding, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

### **Flow Down**

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

### **Model Clause/Language**

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FED.

**Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FED.

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## **24. CIVIL RIGHTS REQUIREMENTS**

**29 U.S.C. § 623, 42 U.S.C. § 2000**

**42 U.S.C. § 6102, 42 U.S.C. § 12112**

**42 U.S.C. § 12132, 49 U.S.C. § 5332**

**29 CFR Part 1630, 41 CFR Parts 60 et seq.**

### **Applicability to Contracts**

The Civil Rights Requirements apply to all contracts.

### **Flow Down**

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

### **Model Clause/Language**

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FED has shortened the lengthy text.

**Civil Rights** - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FED may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, 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. In addition, the Contractor agrees to comply with any implementing requirements FED may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FED may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FED may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FED, modified only if necessary to identify the affected parties.

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## **25. BREACHES AND DISPUTE RESOLUTION**

### **49 CFR Part 18**

### **FED Circular 4220.1E**

#### **Applicability to Contracts**

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

#### **Flow Down**

The Breaches and Dispute Resolutions requirements flow down to all tiers.

#### **Model Clauses/Language**

FED does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FED third party contracts.

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

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

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

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

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

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## **28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)** **49 CFR Part 26**

### **Background and Applicability**

The newest version on the Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (*see* section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

### **Disadvantaged Business Enterprises**

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is \_\_ %. A separate contract goal [**of \_\_ % DBE participation has**] [**has not**] been established for this procurement.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part

26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. *{If a separate contract goal has been established, use the following}* Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

**[Bidders][Offerors]** must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (*see* 49 CFR 26.53(3)).

*{If no separate contract goal has been established, use the following}* The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify **{insert agency name}**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

## **29. STATE AND LOCAL LAW DISCLAIMER**

### **Applicability to Contract**

This disclaimer applies to all contracts.

### **Flow Down**

The Disclaimer has unlimited flow down.

### **Clause/Language**

**State and Local Law Disclaimer** – The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.