



**BOARD OF SUPERVISORS AGENDA ITEM REPORT**  
**CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: October 6, 2015

or Procurement Director Award ☐

**Contractor/Vendor Name (DBA):** K E & G Construction, Inc

**Project Title/Description:**

Sabino High School - Harrison Road Bicycle Lane Transportation Enhancement Project (4TEHBL)

**Purpose:**

The purpose of this project is to construct an Americans with Disabilities Act-compliant asphalt paved shoulder along both sides of Harrison Road and Bowes Road. This project will also include five-foot asphalt paved and striped shoulders through Woodland Wash and continuing north of Synder Road.

**Procurement Method:**

Arizona Revised Statutes Title 34 - (IFB) Competitive Invitation for Bid

**Program Goals/Predicted Outcomes:**

To provide pedestrians and bicyclists a 5' wide path route to Sabino High School.

**Public Benefit:**

Providing this pathway will give pedestrians and bicyclists a safe route of travel to and from Sabino High School.

**Metrics Available to Measure Performance:**

The project is finished on time, within budget, and according to the County's plans and specifications.

**Retroactive:**

No

Procure Dept 09/09/15 PM03:05

**Original Information**

Document Type: CT Department Code: TR Contract Number (i.e., 15-123): 16-041

Effective Date: 10/6/15 Termination Date: 4/29/16 Prior Contract Number (Synergen/CMS): \_\_\_\_\_

☒ Expense Amount: \$ 699,621.00

☐ Revenue Amount: \$ \_\_\_\_\_

Funding Source(s):

Federal Funds 65%, County DOT-57 21%, RTA Funds 14%

Cost to Pima County General Fund: 00.00

Contract is fully or partially funded with Federal Funds? ☒ Yes ☐ No ☐ Not Applicable to Grant Awards

Were insurance or indemnity clauses modified? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

Vendor is using a Social Security Number? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

**Amendment Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_

Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease

Amount This Amendment: \$ \_\_\_\_\_

Funding Source(s):

Cost to Pima County General Fund: \_\_\_\_\_

To: COB - 9.23.15 (1)

Ver. 1

pgs 29

MS  
Contact: Anthony V. Schiavone

Department: Procurement

Telephone: 724-3245

Department Director Signature/Date:

Deputy County Administrator Signature/Date:

County Administrator Signature/Date:  
(Required for Board Agenda/Addendum Items)

*A. V. Schiavone*  
*L. A. Widigais 8/25/15*

*Jon Bula 8-27-15*

*Steve M. Ford 8/27/15*

*D. Schiavone 8/27/15*

## NOTICE OF RECOMMENDATION FOR AWARD

The Pima County Procurement Department - Design & Construction Division hereby issues formal notice to participating respondents for:

### **SOLICITATION NO. 185831: SABINO HIGH SCHOOL – HARRISON ROAD BICYCLE LANE TRANSPORTATION ENHANCEMENT PROJECT**

that the below listed firm will be recommended for award of a contract in an amount of \$699,621.00. The award is anticipated to be heard on the Pima County Board of Supervisors meeting scheduled for October 6, 2015.

#### **RECOMMENDED:**

K E & G Construction, Inc.

#### **AMOUNT**

\$ 699,621.00

#### **OTHER BIDS (ascending order):**

##### **Respondents**

##### **Total Bid**

Southern Arizona Paving & Construction

\$ 753,930.70

West Point Contractors

\$ 771,670.01

Falcone

\$ 772,000.00

Granite Construction

\$ 823,051.00

ENGINEER'S ESTIMATE

\$ 690,611.97

Contracts Officer: /s/ Anthony V. Schiavone  
Anthony V. Schiavone

Date: 8/24/15

This notice is in compliance with Pima County Procurement Code: Sec. 11.12.010, 11.12.020, 11.20.010.C, Procedure dated 10/25/02.

<b>PIMA COUNTY DEPARTMENT OF TRANSPORTATION</b>		<table border="1"> <tr> <td><b>CONTRACT</b></td> </tr> <tr> <td>NO. <u>CT-TR-1400000000000000041</u></td> </tr> <tr> <td>AMENDMENT NO. _____</td> </tr> <tr> <td>This number must appear on all invoices, correspondence and documents pertaining to this contract.</td> </tr> </table>	<b>CONTRACT</b>	NO. <u>CT-TR-1400000000000000041</u>	AMENDMENT NO. _____	This number must appear on all invoices, correspondence and documents pertaining to this contract.
<b>CONTRACT</b>						
NO. <u>CT-TR-1400000000000000041</u>						
AMENDMENT NO. _____						
This number must appear on all invoices, correspondence and documents pertaining to this contract.						
<b>PROJECT:</b>	SABINO HIGH SCHOOL – HARRISON ROAD BICYCLE LANE TRANSPORTATION ENHANCEMENT (4TEHBL)					
<b>CONTRACTOR:</b>	<b>K E &amp; G Construction, Inc</b> <b>5100 S. Alvernon Way</b> <b>Tucson, Az. 85706</b>					
<b>AMOUNT:</b>	\$699,621.00					
<b>FUNDING:</b>	<b>Federal Funds 65%, County DOT-57 21%, RTA Funds 14%</b>					

THIS Contract is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY, and K E & G Construction, Inc., hereinafter called CONTRACTOR, collectively referred to as the Parties.

#### WITNESSETH

**WHEREAS**, COUNTY requires, consistent with the provisions of A.R.S. Title 34, the services of a CONTRACTOR to provide all equipment, labor, and material required to construct the SABINO HIGH SCHOOL – HARRISON ROAD BICYCLE LANE TRANSPORTATION ENHANCEMENT PROJECT ("Project"); and,

**WHEREAS**, CONTRACTOR is qualified and willing to provide such services; and

**WHEREAS**, CONTRACTOR submitted the low responsive, responsible bid in response to Solicitation No. 185831 for the COUNTY for said work; and

**NOW, THEREFORE**, in consideration of the foregoing recitals and other valuable and good consideration the Parties hereto agree as follows:

#### **ARTICLE 1 – TERM AND EXTENSION/RENEWAL/CHANGES**

This Contract as approved by the Board of Supervisors commences on October 6, 2015, and terminates on April 29, 2016, unless sooner terminated or further extended pursuant to the provisions of this Contract.

Construction completion time for the work to be performed under this Contract will be **70 working days** after the date of Notice to Proceed. Liquidated damages will be assessed based upon the construction completion time. COUNTY has the option to extend the Contract termination date for project completion. Any modification or extension of the Contract termination date will be by formal written amendment executed by the Parties. The Procurement Director or the COUNTY Board of Supervisors, as required by the Pima County Procurement Code must approve change orders to the Contract or the Scope of Services before CONTRACTOR performs the work authorized by the change order.

Furthermore, this Contract is funded wholly or partially by the Regional Transportation Authority (RTA). Any changes to the Project which result in the final project cost deviating by ten (10) or more percent from the RTA's budget amount for the project must be approved by the RTA in advance of those changes being made, regardless of the fact that the RTA will not be paying for them. For the purposes of this paragraph only, the term "Project" refers specifically and exclusively to the project as defined and funded by Agreement No. 143172 between the County and RTA.

## **ARTICLE 2 – SCOPE OF SERVICES**

CONTRACTOR will provide for the COUNTY all labor, materials and equipment necessary to complete the SABINO HIGH SCHOOL – HARRISON ROAD BICYCLE LANE TRANSPORTATION ENHANCEMENT PROJECT. All work shall be as called for by Pima County Solicitation No. 185831 Bid Documents, any issued Addenda, the Standard Specifications & Details for Public Improvements 2003 Edition, and other documents incorporated into this contract, all made a part hereof.

## **ARTICLE 3 – COMPENSATION AND PAYMENT**

In consideration of the services specified in this Contract, the COUNTY agrees to pay CONTRACTOR in the manner hereinafter specified.

CONTRACTOR will provide detailed documentation in support of requested payment. The CONTRACTOR must cite the Contract number on all invoices. Payments will be made in accordance with A.R.S. § 34-221.

Payment for this Contract will be made based on **EXHIBIT A: Bid Schedule** (3 pages) submitted by Contractor in response to Solicitation No. 185831, attached hereto and made part of this Contract. Line items for which the "Unit" is defined as L.S. will be paid as "Lump Sum". Other line items for which the "unit" is defined as a unit of measure (i.e., "each", "L.F.", etc.) and for which there is a Unit Price, will be measured and paid at the unit price for the actual quantity of work performed in accordance with the Standard Specifications. The quantities of unit-priced items stated in the bid schedule are estimates only and the actual quantities may be either less or more than stated in the Bid Schedule.

For the period of record retention required under Article 23, COUNTY reserves the right to question any payment made under this article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the Contract or law

CONTRACTOR will not perform work in excess of the Contract Amount without prior authorization by an amendment executed by COUNTY. Work performed in excess of the Contract Amount without prior authorization by amendment is at CONTRACTOR'S own risk.

### **A. General**

1. In consideration of the services specified in this Contract, the COUNTY agrees to pay CONTRACTOR in the manner hereinafter specified. For this Article, "SUBCONTRACTOR" includes SUPPLIER. Payment will be made based on **EXHIBIT A: Bid Schedule** (3 pages) submitted by Contractor in response to Solicitation No. 185831, and attached hereto and made part of this Contract.
2. Line items for which the "Unit" is defined as L.S. shall be paid as "Lump Sum". Other line items for which the "Unit" is defined as a unit of measure (i.e., "each", "L.F.", etc.) and for which there is a Unit Price, will be measured and paid at the unit price for the actual quantity of work performed in accordance with the Standard Specifications. The quantities of unit-priced items stated in the bid schedule are estimates only and the actual quantities may be either less or more than stated in the Bid Schedule.
3. Total Payment for this Contract shall not exceed Six Hundred Ninety-nine Thousand, Six Hundred Twenty-one Dollars, and Zero Cents (\$699,621.00).
4. CONTRACTOR must cite the CT (Contract) number on all invoices. CONTRACTOR will provide detailed documentation in support of requested payment. Invoices and payments must comply with A.R.S. § 34-221.

### **B. Progress Payments to Subcontractors**

1. Each line item for which payment is claimed based on the work of a SUBCONTRACTOR must identify the SUBCONTRACTOR by name. CONTRACTOR will pay each SUBCONTRACTOR and supplier for which CONTRACTOR receives payment on an invoice within seven (7) days of receipt of the progress payment for that invoice. Such payments will be in the amount allowed by COUNTY for each SUBCONTRACTOR or SUPPLIER, to the extent of their interest therein.

Retention by CONTRACTOR will not exceed the actual percentage retained by COUNTY from the progress payment. COUNTY, at any time, in its sole discretion, may require that invoices be supported by evidence of payment to SUBCONTRACTOR and SUPPLIER'S.

2. CONTRACTOR will withhold from an invoice the application and certification for payment of a SUBCONTRACTOR or SUPPLIER to which payment will not be made in accordance with the preceding paragraph (B)(1) as a result of unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a SUBCONTRACTOR to make timely payments for labor, equipment and materials, damage to the CONTRACTOR or another SUBCONTRACTOR, or other legitimate dispute or disagreement justifying nonpayment. On separate page(s) accompanying the invoice CONTRACTOR shall identify excluded SUBCONTRACTOR/SUPPLIERS and provide a brief justification for their nonpayment on the current invoice.

3. Failure to pay a SUBCONTRACTOR for which payment was made by COUNTY will be deemed an unjustified failure to pay for which COUNTY may withhold from CONTRACTOR the sum of Two Thousand Dollars (\$2,000.00) plus the amount of the payment made by COUNTY. Such sum(s) shall be retained by COUNTY until the nonpayment issue is resolved, unless CONTRACTOR provides evidence convincing to the COUNTY, in its sole discretion, that the failure to pay was justified. Each succeeding month of unjustified nonpayment shall be deemed a new failure for which an additional Two Thousand Dollars (\$2,000.00) may be withheld. At the sole discretion of COUNTY, repeated instances of unjustified nonpayment(s) may result in withholding of progress payments until the SUBCONTRACTOR/SUPPLIER payment issues are resolved.

C. Subcontractor Final Payments

CONTRACTOR will make prompt final payment to each of its SUBCONTRACTORS of all monies due the SUBCONTRACTOR, including retention, if any, after the SUBCONTRACTOR has satisfactorily completed all of its work, there are no outstanding issues arising from the work, and COUNTY has incrementally accepted SUBCONTRACTOR'S work in accordance with Section 105-17 of the Standard Specifications. If the final payment, including retention, if any, is not made within seven (7) days of COUNTY payment to CONTRACTOR for SUBCONTRACTOR'S work, COUNTY, in its sole discretion, may withhold Two Thousand Dollars (\$2,000.00) from CONTRACTOR'S progress payment(s) in accordance with paragraph (B)(3) above. Notwithstanding Incremental acceptance of SUBCONTRACTOR'S work, the warranty thereon shall begin upon acceptance of the entire project.

D. Reservation of Audit Right

For the period of record retention required under Article 22, COUNTY reserves the right to question any payment made under this Article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the Contract or law.

#### **ARTICLE 4 - INSURANCE**

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. COUNTY in no way warrants that the minimum limits contained herein are sufficient to protect the CONTRACTOR from liabilities that arise out of the performance of the work under this Contract. The CONTRACTOR is free to purchase additional insurance.

CONTRACTOR'S insurance will be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers will have an "A.M. Best" rating of not less than A- VII. COUNTY in no way warrants that the above-required minimum insurer rating is sufficient to protect the CONTRACTOR from potential insurer insolvency.

4.1 Minimum Scope and Limits of Insurance:

CONTRACTOR will procure and maintain, until all of their obligations have been discharged, coverage with limits of liability not less than those stated below.

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- 4.1.1 Commercial General Liability (CGL) – Occurrence Form with limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form contractual liability coverage, and products – completed operations.
- 4.1.2 Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000.
- 4.1.3 Workers' Compensation and Employers' Liability - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$500,000.

Note: The Workers' Compensation requirement will not apply to a CONTRACTOR that is exempt under A.R.S. § 23-901, and when such CONTRACTOR executes the appropriate COUNTY Sole Proprietor or Independent CONTRACTOR waiver form.

#### 4.2 Additional Insurance Requirements:

The policies will include, or be endorsed to include, as required by this written agreement, the following provisions:

- 4.2.1 Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies will each be endorsed to include COUNTY, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insured with respect to liability arising out of the activities performed by or on behalf of the CONTRACTOR.
- 4.2.2 Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies will each contain a waiver of subrogation endorsement in favor of COUNTY, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONTRACTOR.
- 4.2.3 Primary Insurance Endorsement: The CONTRACTOR'S policies will stipulate that the insurance afforded the CONTRACTOR will be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 4.2.4 Insurance provided by the CONTRACTOR will not limit the CONTRACTOR'S liability assumed under the indemnification provisions of this Contract.

#### 4.3 Notice of Cancellation:

For each insurance policy required by the insurance provisions of this Contract, the CONTRACTOR must provide to COUNTY, within two (2) business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice will be mailed, emailed, hand-delivered or sent by facsimile transmission to Pima County Procurement at 130 W Congress St, 3<sup>RD</sup> Floor, Tucson, AZ 85701, Fax: 520-724-4434.

#### 4.4 Verification of Coverage:

CONTRACTOR will furnish COUNTY with certificates of insurance (valid ACORD form or equivalent approved by COUNTY) as required by this Contract. An authorized representative of the insurer will sign the certificates.

- 4.4.1 All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverage or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
  - 4.4.2 All certificates required by this Contract will be sent directly to Pima County Procurement at 130 W Congress St, 3<sup>RD</sup> Floor, Tucson, AZ 85701. COUNTY project or contract number and project description will be noted on the certificate of insurance. COUNTY reserves the right to require complete copies of all insurance policies required by this Contract at any time.
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4.5 Approval and Modifications:

COUNTY Risk Management reserves the right to review or make modifications to the insurance limits, required coverage, or endorsements throughout the life of this Contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

**ARTICLE 5 – INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR indemnifies and holds harmless COUNTY and the RTA, their officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, including reasonable attorney's fees and court costs, to the extent caused by any negligent, reckless or intentionally wrongful act or omission of CONTRACTOR, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract. The obligations under this Article do not extend to the negligence of COUNTY or the RTA, their agents, employees or indemnities.

All warranty and indemnification obligations under this Contract survive expiration or termination of the Contract, unless expressly provided otherwise. Any indemnification provision inconsistent with A.R.S. § 34-226 is, in all cases, not void, but will be interpreted and applied as if it were consistent with A.R.S. § 34-226.

Upon request, CONTRACTOR may fully indemnify and hold harmless any private property owner granting a right of entry to CONTRACTOR for the purpose of completing the project.

**ARTICLE 6 – COMPLIANCE WITH LAWS**

CONTRACTOR will comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona govern the rights of the Parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract will be brought and maintained in Superior Court in Pima County. Any changes in the governing laws, rules, and regulations during the term of this Contract apply, but do not require an amendment.

**ARTICLE 7 – INDEPENDENT CONTRACTOR STATUS**

The status of CONTRACTOR is that of an independent contractor and CONTRACTOR is not considered an employee of Pima County and is not entitled to receive any of the fringe benefits associated with regular employment, and will not be subject to the provisions of the merit system. CONTRACTOR will be responsible for payment of all Federal, State and Local taxes associated with the compensation received by CONTRACTOR from COUNTY. CONTRACTOR will be responsible for program development and operation without supervision by COUNTY.

**ARTICLE 8 – CONTRACTOR/SUBCONTRACTOR PERFORMANCE**

CONTRACTOR will perform the work in accordance with the terms of the Contract and with the degree of care and skill which a licensed contractor in Arizona would exercise under similar conditions. CONTRACTOR will employ suitably trained and skilled personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel COUNTY relied upon in making this Contract, CONTRACTOR will obtain the approval of COUNTY.

CONTRACTOR is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all its effort and other services furnished by CONTRACTOR under this Agreement. Without additional compensation, CONTRACTOR will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided. This includes resolving any deficiencies arising out of the acts or omissions of CONTRACTOR found during or after the course of the services performed by or for CONTRACTOR under this Agreement, regardless of COUNTY having knowledge of or condoning or accepting the products or the services. Correction of such deficiencies will be at no cost to COUNTY.

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CONTRACTOR will ensure that all SUBCONTRACTORS have the appropriate and current license issued by the Arizona Registrar of Contractors for work they perform under this contract. CONTRACTOR will not permit any SUBCONTRACTOR to perform work that does not fall within the scope of the SUBCONTRACTOR'S license, except as may be permitted under the rules of the Registrar of Contractors.

CONTRACTOR will be fully responsible for all acts and omissions of its SUBCONTRACTOR(S) and of persons directly or indirectly employed by SUBCONTRACTOR and of persons for whose acts any of them may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract creates any obligation on the part of COUNTY to pay or see to the payment of any money due any SUBCONTRACTOR, except as may be required by law.

CONTRACTOR must use the SUBCONTRACTORS named on Contractor's Subcontractor List submitted with the bid. No SUBCONTRACTOR may be added or changed without the prior written approval of the COUNTY subsequent to review and approval by the Administering Department Director and Procurement Director. Substitution of non-SBE SUBCONTRACTORS may be approved at the discretion of the COUNTY for reasons including but not limited to, availability, insolvency or any other reason deemed to be in the best interest of the COUNTY. Approval for substitution of SBE SUBCONTRACTORS that are listed on the Bidders Statement of Proposed SBE Utilization submitted with the bid will only be granted if the provisions of Title 20.28.050 of the Pima County Code have been met.

#### **ARTICLE 9 – ASSIGNMENT**

CONTRACTOR will not assign its rights to this Contract in whole or in part, without prior written approval of COUNTY. COUNTY may withhold assignment at its sole discretion, provided that COUNTY will not unreasonably withhold such approval.

#### **ARTICLE 10 – NON-DISCRIMINATION**

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Contract as if set forth in full herein **including flow down of all provisions and requirements to any SUBCONTRACTORS**. During the performance of this Contract, CONTRACTOR shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

#### **ARTICLE 11 – AMERICANS WITH DISABILITIES ACT**

CONTRACTOR shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If CONTRACTOR is carrying out government programs or services on behalf of COUNTY, then CONTRACTOR shall maintain accessibility to the program to the same extent and degree that would be required of the COUNTY under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Agreement.

#### **ARTICLE 12 - AUTHORITY TO CONTRACT**

CONTRACTOR warrants its right and power to enter into this Contract. If any court or administrative agency determines that COUNTY does not have authority to enter into this Contract, COUNTY will not be liable to CONTRACTOR or any third party by reason of such determination or by reason of this Contract.

#### **ARTICLE 13 – NON-WAIVER**

The failure of COUNTY to insist in any one or more instances upon full and complete compliance with any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or

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condition either in the past or in the future. The acceptance by either Party of sums less than may be due and owing it at any time is not an accord and satisfaction.

#### **ARTICLE 14 – CANCELLATION FOR CONFLICT OF INTEREST**

This Contract is subject to the provisions of A.R.S. §38-511 which provides in pertinent part:

"The state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract."

#### **ARTICLE 15 – TERMINATION OF CONTRACT FOR DEFAULT**

- A. Upon a failure by CONTRACTOR to cure a default under this Contract within ten (10) days of receipt of notice from COUNTY of the default, COUNTY may, in its sole discretion, terminate this Contract for default by written notice to CONTRACTOR. In this event, COUNTY may take over the work and complete it by Contract or otherwise. CONTRACTOR and its sureties, if any, will be liable for any damage to COUNTY resulting from CONTRACTOR'S default, including any increased costs incurred by COUNTY in completing the work.
  - B. The occurrence of any of the following constitutes an event of default:
    - 1. Abandonment of or refusal or failure to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this Contract, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
    - 2. Persistent or repeated refusal or failure to supply enough properly skilled workers or materials to perform the work on schedule;
    - 3. Failure to provide competent supervision at the site;
    - 4. Failure to take down, rebuild, repair, alter or amend any defective or deficient work, or to remove any defective or deficient material;
    - 5. Failure to make prompt payment to SUBCONTRACTORS or suppliers for material or labor;
    - 6. Loss of CONTRACTOR'S business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude CONTRACTOR'S performance of this Contract;
    - 7. Disregard of laws, ordinances, or the instructions of COUNTY or its representatives, or any otherwise substantial violation of any provision of the Contract; or
    - 8. If a voluntary or involuntary action for bankruptcy is commenced with respect to CONTRACTOR, or CONTRACTOR becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.
  - C. In the event of a termination for default:
    - 1. All finished and unfinished as-builts, shop drawings, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by CONTRACTOR for this project become COUNTY'S property and will be delivered to COUNTY not later than five (5) business days after the effective date of the termination;
    - 2. COUNTY may withhold payments to CONTRACTOR arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due COUNTY from CONTRACTOR is determined; and
    - 3. Subject to the immediately preceding subparagraph (2), COUNTY'S liability to CONTRACTOR will not exceed the reasonable value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.
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D. The Contract will not be terminated for default nor CONTRACTOR charged with damages under this Article, if—

1. Excepting item (8) in paragraph B above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR.

Examples of such causes include—

- (i) Acts of God or of the public enemy,
- (ii) Acts of the COUNTY in either its sovereign or contractual capacity,
- (iii) Acts of another contractor in the performance of a Contract with the COUNTY,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (xi) Delays of SUBCONTRACTORS or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both CONTRACTOR and the SUBCONTRACTORS or suppliers; and

2. CONTRACTOR, within three (3) days from the beginning of any event of default or delay (unless extended by COUNTY), notifies COUNTY in writing of the cause(s) therefor. In this circumstance, COUNTY will ascertain the facts and the extent of the resulting delay. If, in the judgment of COUNTY, the findings warrant such action, the time for completing the work may be extended.

E. For the purposes of paragraph A above, "receipt of notice" includes receipt by hand by CONTRACTOR'S onsite project manager, facsimile transmission, or under the Notices clause of this Contract.

F. If, after termination of the Contract for default, 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 COUNTY.

G. The rights and remedies of COUNTY in this Article are cumulative and in addition to any other rights and remedies provided by law or under this Contract.

#### **ARTICLE 16 – TERMINATION FOR CONVENIENCE OF COUNTY**

COUNTY may terminate this Contract at any time by giving written notice to CONTRACTOR of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials will, at the option of COUNTY, become its property. If COUNTY terminates the Contract as provided herein, COUNTY will pay CONTRACTOR an amount based on the time and expenses incurred by CONTRACTOR prior to the termination date. However, COUNTY will make no payment for anticipated profit on unperformed services.

#### **ARTICLE 17 – NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision in this Contract, COUNTY may terminate this Contract if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, COUNTY has no further obligation to CONTRACTOR, other than payment for services rendered prior to termination.

#### **ARTICLE 18 – NOTICES**

Any notice required or permitted to be given under this Contract will be in writing and will be served by delivery or by certified mail upon the other Party as follows:

**COUNTY:**

Priscilla S. Cornelio, P.E. – Director  
Pima County Department of Transportation  
201 North Stone Avenue – 4<sup>TH</sup> Floor  
Tucson, AZ 85701  
Phone: 520-740-6340  
Fax: 520-838-7347

**CONTRACTOR:**

Chris Albright, President  
KE&G CONSTRUCTION, INC.  
5100 S ALVERNON WAY  
Tucson, AZ 85706  
Phone: 520-748-0188  
Fax: 520-748-8975

**ARTICLE 19 - NON-EXCLUSIVE CONTRACT**

CONTRACTOR understands that this Contract is Non-Exclusive and is for the sole convenience of COUNTY. COUNTY reserves the right to obtain like services from other sources for any reason.

**ARTICLE 20 - CONTRACT DOCUMENTS**

- A. INCORPORATION OF DOCUMENTS: CONTRACTOR and COUNTY in entering into this Contract have relied upon information provided in SOLICITATION NO. 185831 - SABINO HIGH SCHOOL - HARRISON ROAD BICYCLE LANE TRANSPORTATION ENHANCEMENT PROJECT, EXHIBIT "A" - BID SCHEDULE, BONDS (BID, PAYMENT, AND PERFORMANCE BONDS), EXHIBIT "B" - SPECIAL CONDITIONS, EXHIBIT "C" - GENERAL CONDITIONS, SPECIAL PROVISIONS, PLANS, CONSTRUCTION DOCUMENTS, DRAWINGS AND SPECIFICATIONS, ADDENDA, and on information provided in the CONTRACTOR response to this Solicitation. These documents are hereby incorporated into and made a part of this Contract by reference as if set forth in full herein.
- B. ORDER OF PRECEDENCE: In the event of a conflict or inconsistency between or among the Documents incorporated into this Contract, the Contract Documents shall take precedence in the following order:
- a) This Contract
  - b) EXHIBIT "B" - Special Conditions
  - c) Special Provisions, Technical Specifications, and Plans
  - d) EXHIBIT "C" - General Conditions
  - e) Contractor Response to the Solicitation
  - f) Instructions to Bidders
  - g) Invitation to Bid

The Parties may, by written mutual agreement, deviate from this order of precedence in resolving inconsistencies between or among Contract Documents. Any such Agreement interpreting the Contract shall be incorporated into the Contract by Amendment.

In the event of any conflict between any provision in the Special Conditions, if any, and any provision of the General Conditions, or any other incorporated document, the provision in the Special Conditions shall take precedence.

**ARTICLE 21 - BONDING REQUIREMENTS**

In accordance with A.R.S. §34-221, *et. seq.*, the CONTRACTOR will provide Payment and Performance bonds for not less than one hundred percent (100%) of the contract amount. Copies of said bonds will be attached to and become part of this Contract.

**ARTICLE 22 - OWNERSHIP OF DOCUMENTS**

All original drawings, boring logs, field data, estimates, field notes, plans, specifications, documents, reports, calculations, maps and models, and other information developed by CONTRACTOR under this Contract vest in and become the property of the COUNTY and will be delivered to COUNTY upon completion or termination of

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the services, but CONTRACTOR may retain record copies thereof. The Granting Agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) the copyright in any work developed under this Contract or any Subcontract; and (b) Any rights of copyright to which CONTRACTOR or COUNTY acquires ownership under this Contract.

#### **ARTICLE 23 – BOOKS AND RECORDS**

CONTRACTOR will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY.

CONTRACTOR will retain all records relating to this Contract at least five (5) years after its termination or cancellation or until any related pending proceeding or litigation has been closed, if later. Alternatively, CONTRACTOR may, at its option, deliver such records to COUNTY for retention.

#### **ARTICLE 24 – REMEDIES**

Either Party may pursue any remedies provided by law for the breach of this Contract, provided, however, that the procedures in ARTICLE 27 are first exhausted. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

#### **ARTICLE 25 – SEVERABILITY**

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law is ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

#### **ARTICLE 26 – DELAYS**

Neither Party hereto is in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such Party.

#### **ARTICLE 27 – DISPUTES**

In the event of a dispute between COUNTY and CONTRACTOR regarding any part of this Contract or the Parties' obligations or performance hereunder, either Party may request a special meeting between their respective representatives to resolve the dispute. If the dispute remains unresolved, then either Party may request escalation of the issue to a meeting between the Director of the Pima County Department administering this Contract and CONTRACTOR'S counterpart official, such meeting to be held within one week of the request, unless otherwise agreed. If the dispute is still not resolved after that meeting, then either Party may pursue such remedy or remedies as may be available to them under the laws of the State of Arizona.

The Parties will continue performance of their respective obligations under this Contract notwithstanding the existence of any dispute.

#### **ARTICLE 28 – PUBLIC INFORMATION**

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. §§ 34-603(H), 604(H), in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted by CONTRACTOR in any way related to this Contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

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Any information submitted related to this Contract that CONTRACTOR believes constitutes proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL prior to submittal to COUNTY and be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a public record and should not include any information considered confidential.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., COUNTY will release records marked CONFIDENTIAL ten (10) business days after the date of notice to the CONTRACTOR of the request for release, unless CONTRACTOR has, within the ten (10) day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release is not counted in the time calculation. CONTRACTOR will be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

COUNTY shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor shall COUNTY be in any way financially responsible for any costs associated with securing such an order.

#### **ARTICLE 29 – LEGAL ARIZONA WORKERS ACT COMPLIANCE**

CONTRACTOR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CONTRACTOR'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONTRACTOR will further ensure that each SUBCONTRACTOR who performs any work for CONTRACTOR under this Contract likewise complies with the State and Federal Immigration Laws.

COUNTY has the right at any time to inspect the books and records of CONTRACTOR and any SUBCONTRACTOR in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of CONTRACTOR'S or any SUBCONTRACTOR'S warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting CONTRACTOR to penalties up to and including suspension or termination of this Contract. If the breach is by a SUBCONTRACTOR, and the subcontract is suspended or terminated as a result, CONTRACTOR will take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or to retain a replacement SUBCONTRACTOR (subject to COUNTY approval if SBE or DBE preferences apply), as soon as possible so as not to delay project completion.

CONTRACTOR will advise each SUBCONTRACTOR of COUNTY'S rights, and the SUBCONTRACTOR'S obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to SUBCONTRACTOR'S employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that COUNTY may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR is a material breach of this Contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this Contract."

Any additional costs attributable directly or indirectly to remedial action under this Article are the responsibility of CONTRACTOR. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONTRACTOR'S approved construction or critical milestones schedule, such period of delay will be excusable delay for which CONTRACTOR is entitled to an extension of time, but not costs.

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**ARTICLE 30 – ENTIRE AGREEMENT**

This document constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written Amendment signed by the Parties.

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Contract on the dates written below.

APPROVED:

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Date

CONTRACTOR:



\_\_\_\_\_  
Signature

**Ed Anderson, Vice President**

\_\_\_\_\_  
Name and Title (Please Print)

8-28-15  
\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy County Attorney

**ANDREW FLAGG**  
\_\_\_\_\_  
Name (Please Print)

# **EXHIBIT "A"**

## **BID SCHEDULE**

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## EXHIBIT "A" - BID SCHEDULE

### SOLICITATION NO. 185831: SABINO HIGH SCHOOL - HARRISON ROAD BICYCLE LANE TRANSPORTATION ENHANCEMENT PROJECT (4TEHBL)

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT
2010001	CLEARING AND GRUBBING	LS	1	6,500. <sup>00</sup>	6,500. <sup>00</sup>
2010010	CLEARING AND GRUBBING (Noxious and Invasive Species Control Allowance)	USD	5000	\$1.00	\$5,000.00
2010004	PRESERVATION FENCING	LF	3,098	2.95	9,139.10
2020001	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	6,150. <sup>00</sup>	6,150. <sup>00</sup>
2020029	REMOVAL OF ASPHALTIC CONCRETE	SY	3,093	4.50	13,918.50
2020051	RELOCATE MAILBOX	EA	4	310. <sup>00</sup>	1,240. <sup>00</sup>
2030300	ROADWAY EXCAVATION	CY	2,242	18. <sup>00</sup>	40,356. <sup>00</sup>
3030003	AGGREGATE BASE	CY	1,108	58. <sup>00</sup>	64,264. <sup>00</sup>
4040111	TACK COAT	TON	1	3,050. <sup>00</sup>	3,050. <sup>00</sup>
4040125	FOG COAT	TON	5	830. <sup>00</sup>	4,150. <sup>00</sup>
4060002	ASPHALTIC CONCRETE (NO. 3)	TON	1,500	105. <sup>00</sup>	157,500. <sup>00</sup>
5103101	POTABLE WATER, ADJUST EXISTING VALVE BOX AND COVER	EA	4	385. <sup>00</sup>	1,540. <sup>00</sup>
5150005	UTILITY POTHOLING, DEPTH LESS THAN 12'	EA	10	155. <sup>00</sup>	1,550. <sup>00</sup>
5160101	UTILITY IMPACTS ALLOWANCE	USD	5,000	\$1.00	\$5,000.00
5150103	MISCELLANEOUS UTILITY RELOCATION ALLOWANCE (TUCSON WATER)	USD	5,000	\$1.00	\$5,000.00
6070010	SIGN POST (PERFORATED) (SINGLE)	LF	78	6.90	538.20
6070110	FOUNDATION FOR SIGN POST (PERFORATED)	EA	8	55.50	444.00
6080016	SIGN PANEL (TRAFFIC CONTROL) (PERMANANT) (TYPE IV)	SF	43	20.50	881.50
7010005	TRAFFIC CONTROL	LS	1	49,500. <sup>00</sup>	49,500. <sup>00</sup>
7010025	FLASHING ARROW PANELS	EA/DAY	70	20.50	1,435. <sup>00</sup>
7010027	CHANGEABLE MESSAGE BOARD	EA/DAY	70	90. <sup>00</sup>	6,300. <sup>00</sup>
7010075	FLAGGING SERVICES (CIVILIAN)	HOUR	1,000	30.20	30,200. <sup>00</sup>
7010077	FLAGGING SERVICES (UNIFORMED OFFICER) (OFF DUTY)	HOUR	80	74.50	5,960. <sup>00</sup>
7010079	OFFICIAL POLICE VEHICLE (OFF DUTY)	HOUR	80	8.30	664. <sup>00</sup>
7040010	PAVEMENT MARKING (WHITE HOT SPRAYED THERMOPLASTIC) (0.060")	LF	35816	.35	12,535.25
7040020	PAVEMENT MARKING (YELLOW HOT SPRAYED THERMOPLASTIC) (0.060")	LF	4471	.35	1,564.85



## EXHIBIT "A" - BID SCHEDULE, cont.

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT
7040030	PAVEMENT LEGEND (PREFORMED, TYPE 1, SINGLE ARROW)	EACH	11	240. <sup>00</sup>	2,640. <sup>00</sup>
7040110	PAVEMENT MARKING (WHITE HOT-SPRAYED THERMOPLASTIC) (TRANSVERSE) (0.090")	LF	1135	.76	862.60
7050080	PAVEMENT LEGEND (PREFORMED, TYPE 1, LEGEND ONLY)	EACH	4	275. <sup>00</sup>	1,100. <sup>00</sup>
7050080	PAVEMENT LEGEND (PREFORMED, TYPE 1, BIKE LANE LEGEND AND SYMBOL)	EACH	18	290. <sup>00</sup>	5,220. <sup>00</sup>
7060025	PAVEMENT MARKER, REFLECTIVE, (TYPE D, YELLOW, TWO WAY)	EACH	176	4.15	730.40
7060030	PAVEMENT MARKER, REFLECTIVE, (TYPE G, CLEAR, ONE WAY)	EACH	13	4.15	53.95
7080001	PAVEMENT MARKING PAINTED	LF	41421	.11	4,556.31
7080010	PAINTED PAVEMENT SYMBOL OR LEGEND	EACH	15	62. <sup>00</sup>	930. <sup>00</sup>
8030028	ROCK MULCH (SPECIAL)	SY	6712	2.35	15,773.20
8050003	SEEDING (CLASS II)	SY	6712	.66	4,429.92
8050010	SEEDING (CLASS II) (2nd APPLICATION)	SY	6712	.61	4,094.32
8061700	LANDSCAPE PRUNING	HR	50	108. <sup>00</sup>	5,400. <sup>00</sup>
8100001	AZPDES/NPDES (ORIGINAL)	LS	1	17,800. <sup>00</sup>	17,800. <sup>00</sup>
8100005	SEDIMENT LOG (DISCRETIONARY)	LF	600	4.45	2,670. <sup>00</sup>
8100006	SEDIMENT WATTLE (DISCRETIONARY)	LF	1,200	2.20	2,640. <sup>00</sup>
8100012	AZPDES/NPDES ALLOWANCE (MODIFIED)	USD	5,000	\$1.00	\$5,000.00
9010001	MOBILIZATION	LS	1	12,101. <sup>40</sup>	12,101.40 EA
9080131	CONCRETE VALLEY GUTTER (PC/COT STD. DTL. 208)	SF	163	17.50	2,852.50
9080402	CONCRETE HEADER (PC/COT STD DTL 213)	LF	2,150	20. <sup>00</sup>	43,000. <sup>00</sup>
9080502	CONCRETE FORD WALL (1' x 2')	LF	234	34. <sup>00</sup>	7,956. <sup>00</sup>
9080504	CONCRETE FORD WALL (1' x 4')	LF	40	58. <sup>00</sup>	2,320. <sup>00</sup>
9130001	RIPRAP (DUMPED)	CY	3	155. <sup>00</sup>	465. <sup>00</sup>
9130008	RIPRAP (HAND PLACED)	CY	5	84. <sup>00</sup>	420. <sup>00</sup>
9130009	RIPRAP (HAND PLACED) (GROUTED)	SY	1,070	67.50	72,225. <sup>00</sup>
9300100	INCIDENTAL ITEMS ALLOWANCE	USD	50,000	\$1.00	\$50,000.00
				BID TOTAL:	699,621. <sup>00</sup>

SIGNATURE:

DATE: 8/3/2015

PRINTED NAME &amp; TITLE: Ed Anderson, Vice President

FIRM NAME: KE&amp;G Construction, Inc



# EXHIBIT "B"

## SPECIAL CONDITIONS



## **EXHIBIT "B" - SPECIAL CONDITIONS**

### **Article SC-1   References**

- (1) References to ADOT are to the Arizona Department of Transportation.
- (2) "Engineer" shall mean COUNTY.

### **Article SC-2   Purpose**

These Special Conditions incorporate into the contract articles and clauses required by ADOT or FHWA, the FHWA-1273, and additional clauses and articles required by the United States Department of Transportation's implementation of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 C.F.R. part 18.

Where two clauses address the same or similar subject matter and require or provide for differing obligations or remedies, the obligations and remedies shall be cumulative and both shall apply, unless otherwise agreed in writing by the parties.

### **Article SC-3   Related Documents**

The FHWA-1273 — May 1, 2012, appended hereto as Attachment 1 to these Special Conditions, is incorporated herein the same as if set forth and shall be fully binding on CONTRACTOR. CONTRACTOR shall include this requirement in all subcontracts and shall require that all Subcontractors likewise include this requirement in all lower tier agreements or contracts.

Wage Determination number AZ150008 (Dated 06/12/2015) is appended hereto as Attachment 2 to these Special Conditions. CONTRACTOR shall pay mechanics and laborers used on this project the prevailing wages described therein in accordance with Article IV of the FHWA-1273 and report thereon in accordance with Article V of the FHWA – 1273. CONTRACTOR shall include this requirement in all subcontracts and shall require that all Subcontractors likewise include this requirement in all lower tier agreements or contracts.

The attached "Disadvantaged Business Enterprises, (EPRISE, 3/15/11)", Attachment 3 to these Special Conditions, is incorporated herein the same as if set forth and shall be binding on CONTRACTOR.

### **Article SC-4   Signs, Notices, and/or Posters**

CONTRACTOR must identify, acquire or construct, and display all required signs, notices and/or posters.

### **Article SC-5   Differing Site Conditions**

- (1) Differing site conditions.
  - (a) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
  - (b) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the Contractor of the determination whether or not an adjustment of the contract is warranted.

- (c) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
- (d) No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the STD's at their option.)
- (2) Suspensions of work ordered by the engineer.
  - (a) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
  - (b) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.
  - (c) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.
  - (d) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.
- (3) Significant changes in the character of work.
  - (a) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
  - (b) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
  - (c) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
  - (d) The term "significant change" shall be construed to apply only to the following circumstances:
    - (i) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
    - (ii) When a major item of work, as defined elsewhere in the contract, is increased in excess



of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

(4) Precedence:

This "Differing Site Conditions" Article takes precedence over any other language, whether as an Article or otherwise in this Contract or in the specifications, that purports to govern the same subject matter.

**Article SC-6 – Buy America**

This project is subject to FHWA Buy America requirements in 23 C.F.R. 635.410. Only steel and iron on which all manufacturing processes have taken place domestically may be permanently incorporated into this project, unless waived by the Granting Agency.

## **ATTACHMENT '1' TO SPECIAL CONDITIONS**

### **FHWA- 1273 Revised May 1, 2012**

References in the FHWA-1273 to EPLS shall be deemed to be references to the System for Award Management at <https://www.sam.gov/portal/public/SAM>.

FHWA-1273 Revised May 1, 2012

#### **REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

#### **ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

#### **I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

#### **II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed

**Pima County Procurement Department**

**Solicitation No. 185831**

**SABINO H. S. - HARRISON RD BICYCLE LANE TRANSPORTATION ENHANCEMENT (4TEHBL)**



herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be



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aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under.

Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor 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 DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for

each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall

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pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social

security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore,

failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and trainees**

##### **a. Apprentices (programs of the USDOL).**

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her 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 by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### **b. Trainees (programs of the USDOL):**

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval,

evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

##### **d. Apprentices and Trainees (programs of the U.S. DOT).**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or

upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

**VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

#### VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

#### VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION



**Pima County Procurement Department**

**Solicitation No. 185831**

**SABINO H. S. – HARRISON RD BICYCLE LANE TRANSPORTATION ENHANCEMENT (4TEHBL)**



This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

**1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered

transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction; in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**2. Instructions for Certification - Lower Tier Participants:**

**Pima County Procurement Department  
Solicitation No. 185831**

**SABINO H. S. - HARRISON RD BICYCLE LANE TRANSPORTATION ENHANCEMENT (4TEHBL)**



(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\*\*\*\*\*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency. 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. 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 any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal 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.

2. 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. 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.



**Pima County Procurement Department**

**Solicitation No. 185831**

**SABINO H. S. – HARRISON RD BICYCLE LANE TRANSPORTATION ENHANCEMENT (4TEHBL)**



3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL  
ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1

## ATTACHMENT 2 TO SPECIAL CONDITIONS

General Decision Number: AZ150008 06/12/2015 AZ8

Superseded General Decision Number: AZ20140008

State: Arizona

Construction Type: Highway

Counties: Coconino, Maricopa, Mohave, Pima, Pinal, Yavapai  
and Yuma Counties in Arizona.

### HIGHWAY CONSTRUCTION PROJECTS

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/02/2015
1	06/12/2015

CARP0408-005 07/01/2013

	Rates	Fringes
CARPENTER (Including Cement Form Work) .....	\$ 24.03	9.99

\* ENGI0428-001 06/01/2015

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Group 1 .....	\$ 22.09	9.55
Group 2 .....	\$ 25.36	9.55
Group 3 .....	\$ 26.44	9.55
Group 4 .....	\$ 27.47	9.55

POWER EQUIPMENT OPERATORS CLASSIFICATIONS:

GROUP 1: A-frame boom truck, air compressor, Beltcrete, boring bridge and texture, brakeman, concrete mixer (skip type), conductor, conveyor, cross timing and pipe float, curing machine, dinky (under 20 tons), elevator hoist (Husky and similar), firemen, forklift, generator (all), handler, highline cableway signalman, hydrographic mulcher, joint inserter, jumbo finishing machine, Kolman belt loader, machine conveyor, multiple power concrete saw, pavement breaker, power grizzly, pressure grout machine, pump, self-propelled chip spreading machine, slurry seal machine (Moto paver driver), small self-propelled compactor (with blade-backfill, ditch operation), straw blower, tractor (wheel type), tripper, tugger (single drum), welding machine, winch truck

GROUP 2:

ALL COUNTIES INCLUDING MARICOPA: Aggregate Plant, Asphalt plant Mixer, Bee Gee, Boring Machine, Concrete Pump, Concrete Mechanical Tamping-Spreading Finishing Machine, Concrete Batch Plant, Concrete Mixer (paving & mobile), Elevating Grader (except as otherwise classified), Field Equipment Serviceman, Locomotive Engineer (including Dinky 20 tons & over), Moto-Paver, Oiler-Driver, Operating Engineer Rigger, Power Jumbo Form Setter, Road Oil Mixing Machine, Self-Propelled Compactor (with blade-grade operation), Slip Form (power driven lifting device for concrete forms), Soil Cement Road Mixing Machine, Pipe-Wrapping & Cleaning Machine (stationary or traveling), Surface Heater & Planer, Trenching Machine, Tugger (2 or more drums).

MARICOPA COUNTY ONLY: Backhoe < 1 cu yd, Motor Grader (rough), Scraper (pneumatic tired), Roller (all types asphalt), Screed, Skip Loader (all types 3<6 cu yd), Tractor (dozer, pusher-all).

GROUP 3:

ALL COUNTIES INCLUDING MARICOPA: Auto Grade Machine, Barge, Boring Machine (including Mole, Badger & similar type directional/horizontal), Crane (crawler & pneumatic 15>100 tons), Crawler type Tractor with boom attachment & slope bar, Derrick, Gradall, Heavy Duty Mechanic-Welder, Helicopter Hoist or Pilot, Highline Cableway, Mechanical Hoist, Mucking Machine, Overhead Crane, Pile Driver Engineer (portable, stationary or skid), Power Driven Ditch Lining or Ditch Trimming Machine, Remote Control Earth Moving Machine, Slip Form Paving Machine (including Gunnert, Zimmerman & similar types), Tower Crane or similar type.

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MARICOPA COUNTY ONLY: Backhoe < 10 cu yd, Clamshell < 10 cu yd, Concrete Pump (truck mounted with boom only), Dragline < 10 cu yd, Grade Checker, Motor Grader (finish-any type power blade), Shovel < 10 cu yd.

GROUP 4: Backhoe 10 cu yd and over, Clamshell 10 cu yd and over, Crane (pneumatic or crawler 100 tons & over), Dragline 10 cu yd and over, Shovel 10 cu yd and over.

All Operators, Oilers, and Motor Crane Drivers on equipment with Booms, except concrete pumping truck booms, including Jibs, shall receive \$0.01 per hour per foot over 80 ft in addition to regular rate of pay

Premium pay for performing hazardous waste removal \$0.50 per hour over base rate.

IRON0075-004 01/01/2014

COCONINO, MARICOPA, MOHAVE, YAVAPAI & YUMA COUNTIES

	Rates	Fringes
Ironworker, Rebar.....	\$ 26.52	21.02
Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson		
Zone 2: 050 to 100 miles - Add \$4.00		
Zone 3: 100 to 150 miles - Add \$5.00		
Zone 4: 150 miles & over - Add \$6.50		

LABO0383-002 11/01/2013

	Rates	Fringes
Laborers:		
Group 1.....	\$ 17.61	4.35
Group 2.....	\$ 18.63	4.35
Group 3.....	\$ 19.42	4.35
Group 4.....	\$ 20.51	4.35
Group 5.....	\$ 21.49	4.35

LABORERS CLASSIFICATIONS:

GROUP 1: All Counties: Chipper, Rip Rap Stoneman. Pinal County Only: General/Cleanup Laborer. Maricopa County Only: Flagger.

GROUP 2: Asphalt Laborer (Shoveling-excluding Asphalt Raker or Ironer), Bander, Cement Mason Tender, Concrete Mucker, Cutting Torch Operator, Fine Grader, Guinea Chaser, Power Type Concrete Buggy

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GROUP 3: Chain Saw, Concrete Small Tools, Concrete Vibrating Machine, Cribber & Shorer (except tunnel), Hydraulic Jacks and similar tools, Operator and Tender of Pneumatic and Electric Tools (not herein separately classified), Pipe Caulker and Back-Up Man-Pipeline, Pipe Wrapper, Pneumatic Gopher, Pre-Cast Manhole Erector, Rigger and Signal Man-Pipeline

GROUP 4: Air and Water Washout Nozzleman; Bio-Filter, Pressman, Installer, Operator; Scaffold Laborer; Chuck Tender; Concrete Cutting Torch; Gunite; Hand-Guided Trencher; Jackhammer and/or Pavement Breaker; Scaler (using boson's chair or safety belt); Tamper (mechanical all types).

GROUP 5: AC Dumpman, Asbestos Abatement, Asphalt Raker II, Drill Doctor/Air Tool Repairman, Hazardous Waste Removal, Lead Abatement, Lead Pipeman, Process Piping Installer, Scaler (Driller), Pest Technician/Weed Control, Scissor Lift, Hydro Mobile Scaffold Builder.

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PAIN0086-001 04/01/2013

	Rates	Fringes
PAINTER		
PAINTER (Yavapai County only), SAND BLASTER/WATER BLASTER (all Counties).....	\$ 19.35	4.75

ZONE PAY: More than 100 miles from Old Phoenix Courthouse  
\$3.50 additional per hour.

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SUAZ2009-001 04/20/2009

	Rates	Fringes
CEMENT MASON.....	\$ 19.28	3.99
ELECTRICIAN.....	\$ 22.84	6.48
IRONWORKER (Rebar)		
Pima County.....	\$ 23.17	14.83
Pinal County.....	\$ 20.27	8.35
LABORER		
Asphalt Raker.....	\$ 15.49	3.49
Compaction Tool Operator....	\$ 14.59	2.91
Concrete Worker.....	\$ 13.55	3.20
Concrete/Asphalt Saw.....	\$ 13.95	2.58
Driller-Core, diamond, wagon, air track.....	\$ 16.94	3.12
Dumpman Spotter.....	\$ 14.99	3.16

ATTACHMENT 2 TO SPECIAL CONDITIONS

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PIMA COUNTY

Fence Builder.....	\$ 13.28	2.99
Flagger		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 12.35	1.59
Formsetter.....	\$ 16.09	3.97
General/Cleanup Laborer		
Coconino, Maricopa,		
Mohave, Pima, Yavapai &		
Yuma.....	\$ 14.54	3.49
Grade Setter (Pipeline).....	\$ 17.83	5.45
Guard Rail Installer.....	\$ 13.28	2.99
Landscape Laborer.....	\$ 11.39	
Landscape Sprinkler		
Installer.....	\$ 15.27	
Pipelayer.....	\$ 14.81	2.96
Powderman, Hydrasonic.....	\$ 16.39	2.58

OPERATOR: Power Equipment

Asphalt Laydown Machine.....	\$ 21.19	6.05
Backhoe < 1 cu yd		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 17.37	3.85
Backhoe < 10 cu yd		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Clamshell < 10 cu yd		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Concrete Pump (Truck		
Mounted with boom only)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 19.92	7.10
Crane (under 15 tons).....	\$ 21.35	7.36
Dragline (up to 10 cu yd)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Drilling Machine		
(including Water Wells).....	\$ 20.58	5.65
Grade Checker		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 16.04	3.68
Hydrographic Seeder.....	\$ 15.88	7.67
Mass Excavator.....	\$ 20.97	4.28
Milling Machine/Rotomill.....	\$ 21.42	7.45
Motor Grader (Finish-any		
type power blade)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 21.92	4.66
Motor Grader (Rough)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma.....	\$ 20.07	4.13
Oiler.....	\$ 18.15	8.24
Power Sweeper.....	\$ 16.76	4.44
Roller (all types Asphalt)		
Coconino, Mohave, Pima,		

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PIMA COUNTY

Pinal, Yavapai & Yuma.....\$ 18.27	3.99
Roller (excluding asphalt)..\$ 15.65	3.32
Scraper (pneumatic tired)	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 17.69	3.45
Screed	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 17.54	3.72
Shovel < 10 cu yd	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 18.72	3.59
Skip Loader (all types <3	
cu yd).....\$ 18.28	5.30
Skip Loader (all types 3 <	
6 cu yd)	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 18.64	4.86
Skip Loader (all types 6 <	
10 cu yd).....\$ 20.15	4.52
Tractor (dozer, pusher -	
all)	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 17.26	2.65

PAINTER

Coconino, Maricopa,	
Mohave, Pima, Pinal & Yuma..\$ 15.57	3.92

TRUCK DRIVER

2 or 3 Axle Dump or	
Flatrack.....\$ 16.27	3.30
5 Axle Dump or Flatrack.....\$ 13.97	2.89
6 Axle Dump or Flatrack (<	
16 cu yd).....\$ 17.79	6.42
Belly Dump.....\$ 14.67	
Oil Tanker Bootman.....\$ 22.03	
Self-Propelled Street	
Sweeper.....\$ 13.11	5.48
Water Truck 2500 < 3900	
gallons.....\$ 18.14	4.55
Water Truck 3900 gallons	
and over.....\$ 15.92	3.33
Water Truck under 2500	
gallons.....\$ 15.94	4.16

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).



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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

**Pima County Procurement Department**

**Solicitation No. 185831**

**SABINO H. S. - HARRISON RD BICYCLE LANE TRANSPORTATION ENHANCEMENT (4TEHBL)**



Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION