

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

Requested Board Meeting Date: February 16, 2016

or Procurement Director Award ☐

Contractor/Vendor Name (DBA): Aztec Flooring, LLC (Headquarters: Tucson, AZ); Continental Flooring Company
Project Title/Description: (Headquarters: Scottsdale, AZ).

Job Order Master Agreement Flooring Services

Purpose:

Award of Contract: Contract No. MA-PO-16-236 to the highest qualified Contractors in an amount not to exceed \$1,500,000.00. The Contract term is for an initial period of one (1) year and may extend up to four (4) additional one-year terms. Administering Department: Facilities Management.

For projects less than \$30,000.00, the department may select a Contractor based on availability, specialty or such other basis or bases as the department may determine in its sole discretion. For projects of \$30,000.00 or more, all Contractors will compete on basis of cost or cost and schedule through a simplified quoting procedure. No individual Job Order may exceed \$100,000.00.

Procurement Method:

Solicitation for Qualifications No. 200914 was conducted pursuant to A.R.S. § 34-604 and Pima County Board of Supervisors Policy D 29.1(IV). Two (2) responsive statements of qualifications were received and evaluated by a three (3) member committee using a qualifications and experience based selection criteria. Based upon the evaluation of the respondents' representation of their qualifications and necessary due diligence, both Contractors were selected as Job Order Contractors.

The intent of this solicitation was to award up to three job order contracts for these services to allow the Facilities Management department sufficient coverage for anticipated flooring services needs. Since only two responses were received to this solicitation, a subsequent solicitation is anticipated to be conducted with the intent to award one additional job order contract for these services.

Attachment: Notice of Recommendation for Award.

Program Goals/Predicted Outcomes:

This Contract is to maintain a pool of Job Order licensed flooring contractors to respond quickly to County flooring repairs, replacements, and new flooring needs.

Public Benefit:

County facilities will continue to have safe and durable flooring appropriate to the building use, based on product criteria for durability and long-term warranties to meet County standards.

Metrics Available to Measure Performance:

Job Order Contractors must maintain certifications as licensed contractors and with manufacturers of County-selected products to guarantee quality in workmanship. Contractor response times and availability are monitored to ensure work has minimal impact on the County's operations within each facility.

Retroactive:

No

Original Information

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 16-236
Effective Date: 02/16/16 Termination Date: 02/15/17 Prior Contract Number (Synergen/CMS): _____
☒ Expense Amount: \$ 1,500,000.00 ☐ Revenue Amount: \$ _____
Funding Source(s): Various Funds

Cost to Pima County General Fund: \$0.00

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: _____

Contact: Ana Wilber

Department: Procurement

Department Director Signature/Date: _____

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: _____

(Required for Board Agenda/Addendum Items)

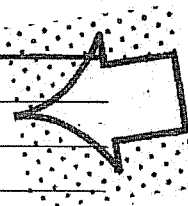
Telephone: (520) 724-8166

1-22-16

1/26/16

1-26-16

1/26/16



NOTICE OF RECOMMENDATION FOR AWARD

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

SFQ No. 200914: JOB ORDER MASTER AGREEMENT: FLOORING SERVICES

that the below listed firms will be recommended for award to be named to a Master Agreement for as-needed Flooring Services at various locations throughout Pima County in the amount of \$1,500,000.00. The award is anticipated to be on the Pima County Board of Supervisors agenda on February 16, 2016.

RECOMMENDED:

(Listed alphabetically)

Aztec Flooring, LLC
Continental Flooring Company

Contracts Officer: /s/ Ana Wilber
Ana Wilber

Date: 1/21/16

This notice is in compliance with Pima County Procurement Code: Sec. 11.12.010, 11.20.010.C. NOTE: Pursuant to A.R.S. §34-604(H), only the names of the firms on the final list may be disclosed. Disclosure of limited materials may be made after award of the contract; after contract execution, all materials are considered public documents in accordance with A.R.S. § 34-604(H). Complete debriefs may be scheduled after that time.

cc: Pima County SBE
Project Manager

PIMA COUNTY FACILITIES MANAGEMENT	
PROJECT:	JOB ORDER MASTER AGREEMENT FLOORING SERVICES
CONTRACTOR:	Aztec Flooring, LLC 1215 E Warehouse Ave Tucson, AZ 85719 Continental Flooring Company 9319 N 94 th Way, Suite 1000 Scottsdale, AZ 85258
AMOUNT:	1,500,000.00
FUNDING:	Various Funds

CONTRACT

NO. MA-PD-1600000000000000236

AMENDMENT NO. _____

This number must appear on all invoices, correspondence and documents pertaining to this contract.

JOB ORDER MASTER AGREEMENT

This Agreement is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY, and Aztec Flooring, LLC, and Continental Flooring Company, hereinafter called CONTRACTOR, collectively referred to as the Parties.

WITNESSETH

WHEREAS, COUNTY has a need to establish an Agreement with up to three (3) Job Order Contractors for Flooring Services; and

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

WHEREAS, COUNTY therefore conducted a competitive qualifications-based procurement for Job Order Contractors under Solicitation #200914; and

WHEREAS, COUNTY received two (2) responses to this solicitation and, based on an evaluation of the respondents' representations of their qualifications and necessary due diligence, COUNTY determined these two (2) highest qualified contractors as Job Order Contractors; and

WHEREAS, COUNTY intends to conduct a subsequent solicitation with the intent to add one (1) additional contractor to this Agreement; and

WHEREAS, the Job Order Contractors have agreed to be bound by and adhere to the requirements of this Agreement.

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

ARTICLE 1 – BASIC TERMS

This Master Agreement (Agreement), as approved by the Board of Supervisors commences on February 16, 2016 and shall terminate on February 15, 2017, unless sooner terminated or further extended pursuant to the provisions of this Agreement. This Agreement establishes the terms under which the Job Order Contractors will be assigned and perform tasks and projects under this Agreement. COUNTY, at its sole discretion, may extend up to four (4) additional one-year terms or add funding to this Agreement at any time with the approval or consent of the CONTRACTORS.

For projects less than \$30,000.00, the COUNTY may select a Contractor based on availability, specialty, or such other basis or bases as the COUNTY may determine in its sole discretion.
For projects of \$30,000.00-\$100,000.00, all Contractors will compete on the basis of price or price and schedule through a simplified quoting procedure. Price may be either fixed price or a guaranteed maximum price.

Regardless of dollar value, all federally funded Job Orders shall be competed among all Contractors.

No individual Job Order may exceed \$100,000.00.

Construction completion time for work to be performed under this Agreement will be as stated in individual Job Orders issued under this Agreement. COUNTY will assess Liquidated damages against CONTRACTOR based upon the construction completion time, if so specified in a Job Order.

Each CONTRACTOR shall select subcontractors in accordance with CONTRACTOR'S Subcontractor Selection Plan, incorporated herein by reference.

All warranty and indemnification obligations under this Agreement shall survive expiration or termination of the Agreement, unless expressly provided otherwise. The Parties agree that any indemnification provision inconsistent with A.R.S. § 34-226, as amended by Laws, 51st Legislature (2013), 1st Regular Session, Ch. 0238, shall, in all cases, not be void, but shall be interpreted and applied as if it were consistent with A.R.S. § 34-226.

ARTICLE 2 – SCOPE OF SERVICES

CONTRACTOR will provide for COUNTY all labor, materials and equipment necessary to complete the work identified in individual Job Orders awarded to CONTRACTOR under this Agreement. The scope of work under this Agreement is more fully set forth in **Exhibit "A" Scope of Work (4 Pages)** and **Exhibit "A-1" Product Specifications (51 Pages)**, incorporated into this Agreement. All work will be done per specifications called for in Job Orders, **General Conditions, Exhibit B (14 Pages)**, **Special Conditions – Multiple Award Job Order Master Agreement, Exhibit C (3 Pages)**, and other documents incorporated into this Agreement, all made a part hereof.

ARTICLE 3 – COMPENSATION AND PAYMENT

CONTRACTOR shall provide detailed documentation in support of requested payment. Any payments under this Article shall not prevent the COUNTY from objecting to charges after payment therefor in appropriate cases, or from seeking reimbursement for any such charges. Payment shall be made in accordance with ARS § 34-607.

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

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 Agreement or law

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

ARTICLE 4 – INSURANCE

The Insurance Requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. 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 Agreement. 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.

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 Agreement 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.

4.1.4 Builder's Risk Insurance ☐ does ☒ does not apply to this Agreement, but need not be provided unless required for a particular job order. If Builders Risk Insurance applies to a particular job order, then the CONTRACTOR shall be required to maintain throughout the course of construction Builder's Risk Insurance in a dollar amount equal to the full insurable value of the work under the job order, which shall include "All Risk" coverage. Pima County shall be named as a "Loss Payee". CONTRACTOR shall be responsible for equipment, materials, and supplies until completion of the project and acceptance by Pima County.

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 Agreement.

4.3 Notice of Cancellation:

For each insurance policy required by the insurance provisions of this Agreement, 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, 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 Agreement. 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 Agreement must be in effect at, or prior to, commencement of work under this Agreement. Failure to maintain the insurance coverage or policies as required by this Agreement, or to provide evidence of renewal, is a material breach of Agreement.

4.4.2 All certificates required by this Agreement will be sent directly to Pima County Procurement. 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 Agreement at any time.

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 Agreement, as deemed necessary. Such action will not require a formal Agreement amendment but may be made by administrative action.

ARTICLE 5 – INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR indemnifies and holds harmless COUNTY, its 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 Agreement. The obligations under this Article do not extend to the negligence of COUNTY, its agents, employees or indemnities.

All warranty and indemnification obligations under this Agreement survive expiration or termination of the Agreement, 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 Agreement. The laws and regulations of the State of Arizona govern the rights of the Parties, the performance of this Agreement, and any disputes hereunder. Any action relating to this Agreement must be brought and maintained in Superior Court in Pima County. Any changes in the governing laws, rules, and regulations during the term of this Agreement 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 Agreement 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 Agreement. Prior to changing any key personnel, especially those key Personnel COUNTY relied upon in making this Agreement, 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.

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 Agreement. 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 a 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 Agreement 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.

ARTICLE 9 – ASSIGNMENT

CONTRACTOR will not assign its rights to this Agreement 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 Agreement as if set forth in full herein **including flow down of all provisions and requirements to any SUBCONTRACTORS**. During the performance of this Agreement, CONTRACTOR will 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 will 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 will maintain accessibility to the program to the same extent and degree that would be required of 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 Agreement. If any court or administrative agency determines that COUNTY does not have authority to enter into this Agreement, COUNTY will not be liable to CONTRACTOR or any third party by reason of such determination or by reason of this Agreement.

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 Agreement 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 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 Agreement 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 Agreement within ten (10) days of receipt of notice from COUNTY of the default, COUNTY may, in its sole discretion, terminate this Agreement for default by written notice to CONTRACTOR. In this event, COUNTY may take over the work and complete it by Agreement 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 Agreement, 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 Agreement;
 - 7. Disregard of laws, ordinances, or the instructions of COUNTY or its representatives, or any otherwise substantial violation of any provision of the Agreement; 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.
- D. The Agreement 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 COUNTY in either its sovereign or contractual capacity,
 - (iii) Acts of another contractor in the performance of a Agreement with 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 Agreement.
- F. If, after termination of the Agreement 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 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 Agreement.

ARTICLE 16 – TERMINATION FOR CONVENIENCE OF COUNTY

COUNTY may terminate this Agreement 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 Agreement 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 Agreement, COUNTY may terminate this Agreement if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Agreement. 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 by CONTRACTORS under this Agreement will be in writing and will be served by delivery or by certified mail upon the other party as follows:

COUNTY:

Michael Kirk, Director
Facilities Management Department
Administration West Building
150 W Congress St., Floor 3
Tucson, AZ 85701
Tel: (520) 724-3104
Fax: (520) 724-3900

Any Notice required or permitted to be given by COUNTY may be served by personal delivery or certified mail to CONTRACTOR'S contact name in CONTRACTOR'S electronic vendor record.

ARTICLE 19 - NON-EXCLUSIVE CONTRACT

CONTRACTOR understands that this Agreement 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 - AGREEMENT DOCUMENTS

- A. INCORPORATION OF DOCUMENTS: CONTRACTOR and COUNTY in entering into this Agreement have relied upon information provided in SOLICITATION NO. 200914 – Job Order Master Agreement Flooring Services, EXHIBIT "A" SCOPE OF WORK, EXHIBIT "A-1" PRODUCT SPECIFICATIONS, BID SCHEDULE, BONDS (BID, PAYMENT, AND PERFORMANCE BONDS), EXHIBIT "B" - GENERAL CONDITIONS, EXHIBIT "C" SPECIAL CONDITIONS – MULTIPLE AWARD JOB ORDER MASTER AGREEMENT, SAMPLE JOB ORDER FORM, AND THE SUBCONTRACTOR SELECTION PLAN, ADDENDA, and on information provided in the CONTRACTOR'S response to this Solicitation, Job Orders and Modifications thereto, and all drawings and specifications referenced in this Agreement or included in such Job Orders as may be issued under this Agreement. These documents are hereby incorporated into and made a part of this Agreement 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 Agreement, the Agreement Documents take precedence in the following order:
- a) This Agreement
 - b) Special Conditions – Multiple Award Job Order Master Agreement
 - c) General Conditions
 - d) Job Orders
 - e) Technical Specifications
 - f) Contractor's Response to the Solicitation

The parties may, by written mutual agreement, deviate from this order of precedence in resolving inconsistencies between or among contract documents. Any such agreement altering the order of precedence must be incorporated into this Agreement 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 takes precedence.

In the event of a conflict between any Agreement or Job Order document on a Federally-funded job order, the federal requirement shall take precedence. The parties may, by written agreement, deviate from this order of

precedence in resolving inconsistencies between or among Agreement documents. Any such Agreement interpreting the Agreement shall be incorporated into the Agreement by Amendment.

ARTICLE 21 - BONDING REQUIREMENTS

CONTRACTOR will file payment and performance bonds with COUNTY, as required by A.R.S. § 34-610 and § 34-611, no later than the time of agreement on the price (or Guaranteed Maximum Price) for any construction under this Agreement. Bonds will be submitted on an annual basis for the full value of all construction reasonably anticipated during the Agreement year or may be provided on a job-order by job-order basis; in the latter case, CONTRACTOR will anticipate additional job orders and provide bonds in reasonable increments. At no time will the cumulative value of the bonds be less than the total value of the construction performed by CONTRACTOR under this Agreement, including job orders awarded to CONTRACTOR but not yet completed. If bonds are secured on a job-order by job-order basis, the Contracting Department will obtain the appropriate bonds from CONTRACTOR upon issuance of a Job Order and release of the Delivery Order.

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 Agreement vest in and become the property of COUNTY and will be delivered to COUNTY upon completion or termination of the services, but CONTRACTOR may retain record copies thereof.

In the event CONTRACTOR develops or generates a building information model (or equivalent) of the Project, CONTRACTOR will provide one electronic copy of the final model on permanent media to COUNTY. CONTRACTOR's delivery of the model to COUNTY shall constitute a grant to COUNTY of an irrevocable, paid-up, nonexclusive license to copy, use, display, disclose, or modify the model for any reasonable purpose exclusively for this Project. CONTRACTOR agrees that the rights granted to COUNTY include the ability to provide a copy of the model to any subsequent contractor retained to maintain, modify or expand the Project in any way. COUNTY agrees that, as between COUNTY and CONTRACTOR only, any modifications to the model by or for COUNTY after final completion and acceptance of this Project shall be at COUNTY's sole risk and responsibility unless such modifications are performed by CONTRACTOR.

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 Agreement 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 Agreement, 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 Agreement.

ARTICLE 25 - SEVERABILITY

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

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 Agreement 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 Agreement and CONTRACTOR'S counterpart official, such meeting to be held within one (1) 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 Agreement 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 Agreement, 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.

Any information submitted related to this Agreement 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 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 is not, under any circumstances, responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor is COUNTY 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 Agreement 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 Agreement 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 Agreement subjecting CONTRACTOR to penalties up to and including suspension or termination of this Agreement. 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 Agreement 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 Agreement subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this Agreement."

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.

ARTICLE 30 – FEDERAL FUNDING

COUNTY and CONTRACTOR understand that some Job Orders under this Agreement may be funded partially or entirely through a federal grant or other source of federal funding and that additional requirements may attach to the use of such funding. In such event, the additional requirements shall be attached to and be a part of the Job Order. CONTRACTOR agrees to be bound by all such requirements and to comply therewith, including the payment of prevailing wages, if required.

CONTRACTOR shall not subcontract on any federally-funded Job Order with any firm or person listed in the Federal Government's System for Award Management (SAM) system (<https://www.sam.gov/portal/public/SAM>) with an active exclusion.

ARTICLE 31 – COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. Facsimile or other electronically delivered copies of signature pages to this Agreement shall be treated as between the parties as original signatures for all purposes.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

ARTICLE 32 – ENTIRE AGREEMENT

This document, in all its parts, together with Attachments and documents incorporated by reference 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. Except as otherwise specifically provided in Article I, this Agreement may be modified, amended, altered or extended only by a written Amendment signed by the parties.

IN WITNESS WHEREOF, the CONTRACTORS have affixed their signatures to the attached Letters of Commitment and the COUNTY has affixed its signatures to this Agreement on the dates written below.

APPROVED:

Chair, Board of Supervisors

Date

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:



Deputy County Attorney
ANDREW FLAGG

Name (Please Print)

1/25/2016

Date

MASTER AGREEMENT COMMITMENT LETTER



**PIMA COUNTY
PROCUREMENT DEPARTMENT**
130 West Congress, 3rd Floor
Mail Stop DT-AB3-126
TUCSON, AZ 85701

January 22, 2016

Aztec Flooring, LLC.
1215 E. Warehouse Ave.
Tucson, AZ. 85719

Dear Mr. Mueller

Enclosed is your copy of Job Order Master Agreement No. MA-PO-1600000000000000236 for Flooring Services.

An officer or manager of your firm with authority to contractually bind the firm must acknowledge receipt of the Agreement and your commitment to abide by its terms by completing the below paragraph and returning this letter, with an original signature, to the Procurement Department within ten (10) working days of the date of this transmittal.

I, Russell W. Key, am the Owner, of Aztec Flooring and affirm that I am authorized to execute contracts on behalf of this firm. By my signature below, this firm agrees, without exception, to be bound by the terms and conditions of the above cited Job Order Master Agreement the same as if my signature were on that document.

Russell W. Key
Signed

1/28/16
Date

Your signature above constitutes execution of the Agreement. This letter will be incorporated into the Agreement and maintained in the Agreement file.

MASTER AGREEMENT COMMITMENT LETTER



**PIMA COUNTY
PROCUREMENT DEPARTMENT
130 West Congress, 3rd Floor
Mail Stop DT-AB3-126
TUCSON, AZ 85701**

January 22, 2016

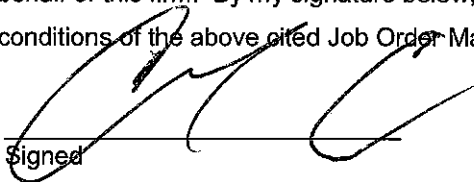
Continental Flooring Company
9319 N. 94th Way, Suite 1000
Scottsdale, AZ. 85258

Dear Mr. Coleman

Enclosed is your copy of Job Order Master Agreement No. MA-PO-1600000000000000236 for Flooring Services.

An officer or manager of your firm with authority to contractually bind the firm must acknowledge receipt of the Agreement and your commitment to abide by its terms by completing the below paragraph and returning this letter, with an original signature, to the Procurement Department within ten (10) working days of the date of this transmittal.

I, Christopher L. Coleman, am the President, of Continental Flooring Company and affirm that I am authorized to execute contracts on behalf of this firm. By my signature below, this firm agrees, without exception, to be bound by the terms and conditions of the above cited Job Order Master Agreement the same as if my signature were on that document.


Signed

January 26, 2016
Date

Your signature above constitutes execution of the Agreement. This letter will be incorporated into the Agreement and maintained in the Agreement file.