

REQUEST FOR PROPOSALS
MARICOPA ASSOCIATION OF GOVERNMENTS (MAG)
FY 2017 REGIONAL COMMUTER RAIL SYSTEM STUDY UPDATE



July 20, 2016

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PUBLIC NOTICE

REQUEST FOR PROPOSALS

FY 2017 REGIONAL COMMUTER RAIL SYSTEM STUDY UPDATE

The Maricopa Association of Governments (MAG) is requesting proposals from qualified consultants for the FY 2017 Regional Commuter Rail System Study Update. The purpose of the project is to revise the data included in the original 2010 Commuter Rail System Study. The project will be completed in a maximum of 12 months from the date of the notice to proceed at a cost not to exceed \$150,000.

Detailed proposal requirements may be obtained by contacting the MAG Office at the address indicated below or may be downloaded from <http://www.azmag.gov>, then "RFPs and RFQs." For further information, please submit questions in writing by email to mpearsall@azmag.gov not later than ten (10) working days prior to the closing date of August 22, 2016. Any addenda responding to questions will be posted on MAG's website at <http://www.azmag.gov> under "RFPs and RFQs" not later than six (6) working days prior to the closing date of August 22, 2016.

Proposals will be accepted until 1:30 p.m. MST (Mountain Standard Time) on August 22, 2016, at MAG, 302 North First Avenue, Suite 200, Phoenix, AZ 85003.

FY 2017 Regional Commuter Rail System Study Update RFP
SCOPE OF SERVICES

Introduction

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified consultants for the MAG Regional Commuter Rail System Study Update. The purpose of the study is to revise the data included in the original MAG 2010 Commuter Rail System Study.

Background

The Maricopa Association of Governments (MAG) is a Council of Governments (COG) that serves as the regional agency for the metropolitan Phoenix area. When MAG was formed in 1967, the elected officials recognized the need for long-range planning and policy development on a regional scale. They realized that many issues such as transportation and air quality affected residents beyond the borders of their individual jurisdictions.

MAG was founded in the spirit of cooperation. MAG members believe that by uniting, they can solve common problems, take an active role in long-range regional issues and address concerns that affect all of the communities.

MAG is the designated Metropolitan Planning Organization (MPO) for transportation for all jurisdictions in Maricopa County, including the Phoenix urbanized area and the contiguous urbanized area in Pinal County, including the Town of Florence and City of Maricopa. MAG has also been designated by the Governor to serve as the principal planning agency for the region in a number of other areas, including air quality, water quality management and solid waste management. In addition, through an Executive Order from the Governor, MAG develops population estimates and projections for the region.

Commuter passenger rail systems are generally used in urban areas to improve travel time, mitigate congestion, add convenience, and provide an alternative means of travel. Commuter rail trains typically provide service over longer distances between suburbs to urban centers for the purpose of reaching activity centers, such as employment, special events, and intermodal connections. Commuter rail transit (CRT) systems may also connect suburb to suburb. Designed to primarily meet the needs of regional commuters in peak travel times (morning/a.m. and evening/p.m.), CRT may also operate with all day and bi-directional services, similar to inter-urban modes. Commuter rail service typically occurs at lower frequency than light rail transit but at higher average and top speeds (43mph/79mph). The distance of most commuter rail corridors is traditionally longer than that of light rail transit, ranging from 30 to 40 miles, with passenger stations generally spaced between three to ten miles apart.

The original Regional Commuter Rail System Study was accepted in June 2010 by MAG Regional Council, but new regional socioeconomic forecasts, revised ridership, cost estimates, corridor rankings, and information from other relevant passenger rail studies necessitate an update to technical content. Both BNSF Railway (BNSF) and Union Pacific Railroad (UPRR) have indicated that governance and indemnity/liability issues related to passenger rail must be addressed prior to any agreement between the owner railroads and the commuter rail governing/operating agency. These tasks were reviewed in the original 2010 study and will be thoroughly explored within this study update.

The original study also defined an optimized network of four commuter rail corridors and the elements needed to implement an approximately 110-mile regional commuter rail system using BNSF and UPRR corridors. The system conceived would radiate from downtown Phoenix and would share existing freight track/corridors. The 2010 study provided a detailed evaluation of potential commuter rail links to the East Valley (including Tempe and Southeast corridors) and links to the West Valley by incorporating the findings of the Grand Avenue (Grand) and Yuma West (Yuma) Corridor Development Plans, both of

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which were produced in conjunction with the 2010 study. Coordination with BNSF, UPRR, Valley Metro, ADOT and other stakeholders and agencies will be a component of this study update.

This effort is intended to rely heavily on work completed within the past five years, building from the 2010 Regional Commuter Rail System Study and utilizing the results of more recent studies completed by MAG and partners such as Valley Metro and ADOT. The focus of this effort will be on a technical update of the 2010 study along with a thorough analysis of the legal and institutional aspects of implementing commuter rail in Arizona. Interested proposers should consider that MAG's project manager will establish a protocol for coordinating with freight railroads and other affected railroads (if any) in the region and will assume responsibility for coordination efforts between officials from BNSF and UPRR and related entities.

The findings of this study will be used to inform MAG's Regional Transit Framework Study Update occurring concurrently.

PROPOSED TASKS

The Proposer is encouraged to be creative in developing a sound analytical approach which achieves the goals for this project. The Proposer is urged to be as specific as possible when describing the activities that will be performed to support each task. The Proposer is also urged to make maximum use of matrices, tables and drawings in working papers produced for the project to ensure conciseness and clarity and to minimize the amount of text required. In preparing a proposal for consideration by MAG, the Proposer will not be required to adhere strictly to the proposed tasks specified below. Additional tasks may be warranted.

Task 1. Project Initiation

The CONSULTANT will prepare a detailed Scope of Work that identifies the specific tasks, deliverables, and schedule. In addition, the CONSULTANT will develop a Project Management Plan (PMP) that will: a) outline a process for governing project delivery (e.g., workflow relationships, staff resource plan, data management, intermediate task scheduling, quality control/quality assurance, inter-agency coordination); b) outline the decision-making process, including how and when concurrence and consensus will occur within the process (e.g., roles and responsibilities of project management group and technical team(s)); c) engagement plan articulating the stakeholder engagement, public involvement, and communication strategy.

Task 2. Commuter Rail System Study Planning Framework

The CONSULTANT will review, consider and summarize the findings of studies and plans completed since the 2010 Regional Commuter Rail System Study, including a review of changes in the commuter rail and related transportation planning landscape since the 2010 Regional Commuter Rail System Study. Relevant studies and planning efforts that should be included in this effort include, but may not be limited to:

- MAG Commuter Rail System Study
- MAG Grand Avenue Corridor Development Plan
- MAG Yuma West Corridor Development Plan
- MAG Draft Regional Transportation Plan 2038
- ADOT Passenger Rail Corridor Study (Tucson to Phoenix)
- MAG Draft Regional Transit Framework Study Update
- MAG Sustainable Transportation Land Use Study (STLUIS)
- Valley Metro Short Range Transit Plan and Transit Life Cycle Program
- MAG US 60/Grand Avenue COMPASS Study
- MAG I-10/I-17 SPINE Study

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The CONSULTANT should also review as part of this effort:

- General plans and transportation plans from MAG agencies
- Current railroad facilities and operations
- Current highway facilities and operations
- Adjacent land uses and access requirements
- Current industry standard commuter rail design and operating requirements

Coordination with the concurrent update of MAG's Regional Transit Framework Study (RTFS) should occur.

BNSF and UPRR are essential partners for the potential commuter rail system. However, economic, operational and industry changes may have altered the original assumptions within the 2010 Regional Commuter Rail System study, therefore, it is imperative this effort document the current objectives of the railroads and to jointly identify and develop potential improvements that may benefit both the railroad and regional transportation interests. As part of this effort, the CONSULTANT will review and document the operational characteristics within the commuter rail corridors, including:

- Revising the inventory of the BNSF and UPRR corridors. This will verify available track charts and document the existing conditions of the lines and will note any discrepancies or potentially significant issues. The inventory will include track, turnout, yard and maintenance facilities, clearances, intermodal and automobile facilities, trans-load facilities, crossings, bridges, culverts, industrial customers, existing stations, and right of way.
- Updating current and projected freight traffic (including hazmat traffic) and train operation characteristics including train speeds, dispatching and signaling, interchange locations, siding capacity, clearances, weight restrictions, and any other applicable operating characteristics such as grades and speed. FRA (Federal Railroad Administration) mandated Positive Train Control (PTC) and compliant Quiet Zones (QZ) and their related costs will be assumed for the entire 110-mile network.
- Collecting current and future operations and plan data including track reconstruction, yard projects, grade crossings, grade-separation candidate crossings, trackway-trenching where feasible, improvement projects, and other activities.
- Updating current/projected freight traffic volumes to assess the potential impact of commuter rail on future traffic volumes, level of service, and the number of accidents and injuries. BNSF Railway has committed to make available their Service Modeling and Operations Scheduling program, and UPRR has provided their Commuter Rail Standards guidelines for compliance. ADOT's Passenger Rail Corridor Study (Tucson to Phoenix) will provide updated FRA and UPRR data, requirements and perimeters that will assist in analysis of the three UPRR corridors in the system plan.
- Detailing intermodal transit and multimodal connectivity opportunities and/or constraints (e.g., potential allocation for adjacent or parallel shared-use pathway where right of way and safety deem permissible).
- The CONSULTANT will document an array of elements that commuter rail may provide to the region. Considerations could include:
 - Regional mobility improvement,
 - Access to jobs,
 - Access to an array of housing alternatives,
 - Connectivity of downtowns, airports and entertainment centers,
 - Increased travel and tourism options,
 - Traffic mitigation and relief in a vast region featuring distributed growth,
 - Resilient corridors for emergency transportation needs.

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The CONSULTANT will assist in developing model definitions and assumptions and be responsible for analyzing the results of base year and 2040 travel demand patterns. The use of the MAG Activity Based Model, MAG 4-Step Model and the FRA STOPS Model will be utilized. This effort may include a proposed I-10/I-17 SPINE construction mitigation commuter rail service on the Downtown Phoenix-Kyrene Line. Further, identifying scenarios beyond 2040 that may not have been reflected previously and could be illustrative, future, candidate corridors (e.g., UPRR West Chandler to Wild Horse Pass, BNSF Wittman to Wickenburg, Pinal County's UPRR-Copper Basin Railway from Queen Creek to San Tan Valley and Florence, and an illustrative extension from GRIC to City of Maricopa) shall be examined.

The CONSULTANT will document the results of the commuter rail study review and analysis, railway operational characterizes and future conditions, and commuter rail planning system corridors in Working Paper #1: Commuter Rail System Study Planning Framework.

Task 3. Modeling Assessment

The CONSULTANT will, using MAG data, generate a list and GIS database for forecast conditions (for 2030 and horizon year 2040) to be investigated during this project. The CONSULTANT will replicate the previous Regional Commuter Rail System Study and High Capacity Transit Plan work using the latest MAG model transit assumptions for 2030 and 2040. The use of the MAG Activity Based Model, MAG 4-Step Model and the FRA STOPS Model will be utilized. BNSF Railway will also make available their Service Modeling and Operations Scheduling program. This information will shape development of the revised service options and networks for coding in the MAG model and results documented in Working Paper #2: Modeling Assessment. The established commuter rail station area planning list from 2010-2016 will be utilized and coordination with city agency stakeholders will occur to ensure concurrence with their local transit vision and general plans.

Task 4. Indemnity and Liability Analysis

The CONSULTANT will research and prepare a summary of any liability and indemnification statutes that would affect the development and operations of commuter rail in the MAG region. This has been requested by BNSF Railway and Union Pacific Railroad as it is a standard within all municipalities in order to facilitate a more effective coordination with railroads for the legal operation of services. Depending on what is discovered through research, this may require the passage of enabling legislation relative to liability and indemnification within Arizona. Careful review of Arizona state law and statutes (ARS) must be conducted to determine if legislation is required to facilitate passenger rail operations in freight rail corridors. Similar legislation was required and passed in peer regions including Colorado, New Mexico Minnesota, and Virginia. Results of this effort, particularly as it would affect the development and operations of commuter rail in the region, will be documented in Working Paper #3: Indemnity and Liability Analysis.

Task 5. Governance Analysis

The CONSULTANT will research and prepare a summary of governance options related to the potential implementation of commuter rail within the region. This effort will update the white paper produced as part of the 2010 Regional Commuter Rail System Study that described and evaluated potential governance strategies, thoroughly presenting governance options and strategies for implementing a commuter rail system within a region that crosses multiple jurisdictions (local, county, etc.) This work would also include revision/development of and a summary outlining a conceptual framework for a memorandum of understanding (MOU) between MAG and each railroad that would outline the parameters of an operating agreement to integrate freight and passenger rail service in the corridors (e.g., capacity rights; trackage rights/lease/sale agreements). Tentative operating and capital cost commitments should be fully explored with both BNSF and UPRR. The results of this effort will be summarized in Working Paper #4: Governance Analysis.

Task 6. Conceptual Development Plan

The CONSULTANT will update and revise conceptual operating, capital and financial requirements for implementing commuter rail service for years 2030 and 2040. This task will include updating the alignment plans and profile of concepts for the four railroad corridors established in the 2010 Regional Commuter Rail System Study and any additional, long-term illustrative corridors identified as part of this study. The focus of this task will be to define the most economic and acceptable (to the region, host railroads, FTA (Federal Transit Administration) and industry standards) combinations of infrastructure improvements (e.g., track upgrading, track removal, installation of signaling), and capital investments (e.g., rail train equipment, station area development; light rail system coordination and interface) needed to implement commuter rail service in the corridors and the associated operating plan (e.g., hours/days of operation, headways, service and maintenance, etc.). Revised concept-level cost estimates will be prepared for both capital and operating requirements and detail current trends in funding options, opportunities, and strategies to assist in implementation will be included. The four corridors will be ranked for phased implementation and inclusion within the findings of the Regional Transit Framework Study Update. The alternatives ranking and phasing shall be based upon current FTA criteria, but the ranking and start-up scenarios will also be evaluated in concurrence with methodology from the original 2010 Study. This effort will be summarized in Working Paper #5: Conceptual Development Plan.

Task 7. Regional Commuter Rail System Plan Update

The CONSULTANT will comprise the collective work in tasks 2 through 6 into a comprehensive report to be used for reference and program implementation. This effort will evaluate a phased implementation plan (2030 and 2040) including system service levels and corridor length, as well as identification of opportunities for any nearer-term (before 2030) and longer-term (post-2040) development considerations. In addition to development of a draft Regional Commuter Rail System Study Update for consideration by MAG Regional Council, the CONSULTANT should develop summary media for distribution and presentation suitable for a general audience, focusing on the essential features of the study.

Task 8. Study Record

The CONSULTANT will assemble and provide to MAG a complete study record with all final products from each study task in both hard copy and electronic format.

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Deliverable Products:

Required products of this project are listed below; a final list of deliverables will be determined upon contract negotiation and based on the successful proposer's Scope of Work. An administrative draft of each deliverable will be submitted in electronic form and, when requested, hard copy format, to the MAG project manager for review. Comments from the MAG project manager will be incorporated into the deliverable by the CONSULTANT, before it is distributed for external review. Comments received during the external review process will be incorporated into the final drafts.

Task 1

1. Scope of Work. Detailed program that identifies the specific tasks, deliverables, and schedule.
2. Project Management Plan (PMP). A program that outlines a process for governing project delivery, the decision-making process, and the engagement plan.

Task 2

3. Working Paper 1: Commuter Rail System Study Planning Framework

Task 3

4. Working Paper 2: Modeling Assessment

Task 4

5. Working Paper 3: Indemnity and Liability Analysis

Task 5

6. Working Paper 4: Governance Analysis

Task 6

7. Working Paper 5: Conceptual Development Plan

Task 7

8. Draft FY 2017 Regional Commuter Rail System Plan Update
9. Final FY 2017 Regional Commuter Rail System Plan Update
10. Regional Transit Framework Study Update summary media. Collateral summary material for distribution/presentation suitable for a general audience.

Task 8

11. Study record. A product that documents the study process, findings, recommendations, and implementation strategy.

The study's administrative activities, including meeting summaries and related documentation, are not defined but assumed as part of delivered products.

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PROPOSAL REQUIREMENTS AND CONTENT

Project Schedule and Cost

The estimated time frame for this project is 12 months from the date of the notice to proceed, with intermediate deliverables due in accordance with the schedule as agreed between MAG and the Proposer(s) at a cost not to exceed \$150,000. The date of the notice to proceed is anticipated to be mid November 2016.

Proposal Content

It is required that the proposal include the following items in the same order as they are listed below. Failure to provide the requested information may result in rejection of the proposal. Brief and concise submittals are encouraged. The total number of pages must not exceed 25, entirely on letter size (8.5 x 11 inches) or judicious use of 11x17 inch pages for purposes of illustrating maps and other graphic aspects as appropriate; excluding the resumes, the cover letter, table of contents, tabs, appendices, and forms. Blank pages are not included in the total page count. The outside packaging of the submittal must be clearly marked with the Project Title, the RFP Due Date, and the Proposer's name. Proposers should specify how the work of the 2010 Regional Commuter Rail System Study and efforts subsequent will be utilized to inform this technical update. Proposers should specifically delineate assumptions relative to the use of MAG Project Manager or technical staff to complete this study and how the CONSULTANT anticipates a division of labor relative to this study update (see item 6, below).

1. **Identification.** A cover letter or equivalent which includes:
 - a. The title of this solicitation.
 - b. Proposer's name and business address.
 - c. The name, title, mailing address, and telephone number and email address of the principal contact.
 - d. Signature from a representative or officer authorized to bind the CONSULTANT.
2. **Table of Contents.**
3. **Organization and Approach.** A brief statement describing the Proposer's organization and outlining its approach to completing the work required by this solicitation. This statement shall briefly illustrate the Proposer's overall understanding of the project.
4. **Work Plan.** A concise explanation of how the Proposer will carry out the objectives of the project. In the work plan, the Proposer shall describe each project task and proposed approach to the task as clearly and thoroughly as possible.
5. **Preliminary Schedule.** A project schedule in bar-chart format will indicate all work plan tasks and their durations. The schedule shall clearly identify project deliverable dates.
6. **Staffing Plan.** The plan shall include the following in table format:
 - a. A project organization chart, identifying the project manager.
 - b. Names of key project team members and/or Subconsultants. Only those personnel who will be working directly on the project should be cited.
 - c. The role and responsibility of each team member.
 - d. Percent effort (time) of each team member for the contract period.

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- e. The role and level of MAG technical staff support, if any.
- 7. **Résumés.** Include résumés for major staff members assigned to the project. These résumés should focus on their experience in this type of project.
- 8. **Budget.** A completed labor cost allocation budget formatted as noted in Appendix A.
- 9. **Recent Examples.** Proposer's recent experience in performing work similar to that anticipated herein. This description shall include the following:
 - a. Date of the project.
 - b. Name and address of client organization.
 - c. Name and telephone number of the individual in the client organization that had management responsibility for the project.
 - d. Brief description of the project.
 - e. Proposer team members involved and their roles.
- 10. **Additional Information.** Any additional information that the Proposer believes would be useful to MAG in evaluating the proposal.

----- Forms and Appendices -----

- 11. **Rules of Professional Conduct Certification Statement.** A signed statement, located on the last page of Appendix B, certifying that CONSULTANT will comply with, in all respects, the rules of professional conduct set forth in A.A.C. R4-30-301 (Appendix B), which is the official compilation of Administrative Rules and Regulations for the State of Arizona.
- 12. **Information Form.** A completed Proposer's Information Form (Appendix C). If applicable, completed Proposer's Information Form for each Subconsultant proposed for this project.

By signature on the Proposers Information Form, the consultant certifies that:

- a. The submission of the offer did not involve collusion or other anti-competitive practices.
 - b. The Proposer will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.
 - c. The Proposer has not given or offered to give and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer.
 - d. Failure to sign the offer, or the falsity of a statement in a signed offer, shall void the submitted offer or any resulting contracts, and the Proposer may be debarred.
- 13. **Debarment and Suspension Certification.** As required by 49 CFR 29 (Debarment and Suspension), certification of Consultant's eligibility to receive Federal funds and a copy of such certification for which may be furnished to ADOT or other government entities. A certification to this effect is included in this RFP as Appendix D and must be submitted by Proposer in order for Proposer to be considered responsible and their proposal to be considered responsive.
 - 14. **Conflict of Interests.** Each Proposer shall document within its proposal any potential conflicts of interests. A conflict of interest shall be cause for disqualifying a Proposer from consideration. A potential conflict of interest includes, but is not limited to:

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- a. Accepting an assignment where duty to the client would conflict with the Proposer's personal interest, or interest of another client.
- b. Performing work for a client or having an interest which conflicts with this contract.
- c. Employing personnel who worked for MAG or one of its member agencies within the past three years.
- d. All relationships with MAG and/or any employees of MAG.

MAG shall be the final determining body as to whether a conflict of interest exists.

15. **Confidential Portions Identification.** In accordance with Arizona Administrative Code R2-7-103, CONSULTANT may designate as confidential portions of a Proposal. A summary index of any such designation must be included in the Table of Contents or cover letter in the Proposal documents. If MAG determines to disclose the information provided, MAG shall inform the CONSULTANT in writing of such determination.
16. **Anti-Lobbying:** MAG complies with the provisions of Section 1352 of Title 31, U.S. Code (Public law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11 and 23 CFR 630.112(c)(5). That legislation prohibits Federal funds from being expended by a recipient or any lower tier sub-recipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the award of any Federal contract, the making of any Federal grant or loan, or entering into any cooperative agreement, including the extension, continuation, renewal, amendments or modification of any Federal contract, grant, loan or cooperative agreement.

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PROPOSER'S CHECKLIST

Before submitting a proposal, please make sure all required information as specified in "Proposal Requirement" have been included.

1. Seven (7) hard copies of the proposal with a maximum of 25 pages in each.
2. Cover letter signed by a party authorized to bind the entity submitting the proposal.
3. Description of Proposer's organization and approach to work required by the solicitation.
4. Work plan including preliminary schedule, staffing plan, résumés, and similar experience.
5. Labor cost allocation budget.
6. Signed certification of Proposer's compliance with the rules of professional conduct set forth in A.A.C. R4-30-301.
7. Signed Proposer's Information Form for Prime consultant and for any proposed Subconsultants. Must be signed by a party authorized to bind the entity submitting the proposal.
8. Documentation of any potential conflicts of interest.
9. Debarment and Suspension Certification form.
10. Proposal submitted not later than 1:30 p.m. MST (Mountain Standard Time) on August 22, 2016.

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PROPOSAL DELIVERY AND OPENING

1. Seven (7) hard copies of the proposal must be submitted by 1:30 p.m. MST (Mountain Standard Time) on August 22, 2016 to the following address:

Maricopa Association of Governments
Attention: Marc Pearsall
302 North First Avenue, Suite 200
Phoenix, AZ 85003

Timely receipt of proposals shall be determined by the date and time the proposal is received at the above address. No late submissions, facsimile, or electronic submissions shall be accepted after the time indicated. Hand delivery is therefore encouraged to assure timely receipt. Proposals received after the deadline shall be stamped for time and date and returned unopened to the Proposer.

Proposals will be opened publicly and the name of each entity submitting a proposal will be read at 1:35 p.m. MST on August 22, 2016 at the MAG Offices, Chaparral Room, 302 North First Avenue, Suite 200, Phoenix, AZ 85003.

All material submitted in response to this solicitation becomes the property of MAG and shall not be returned. After contract award, the proposals shall be open for public inspection except to the extent that the withholding of information is permitted or required by law. If the Proposer designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with Arizona Administrative Code R2-7-103 and shall be included in the proposal. Upon receipt of written notification, MAG will review any portions of the proposal that the Proposer considers to be confidential and will then make a determination on what should be released. MAG will also notify the Proposer in writing of the determination and provide an opportunity for the Proposer to respond to the decision prior to releasing the proposal.

2. Any questions regarding this Request for Proposals should be submitted in writing to Marc Pearsall, Transit Planner III-Rail by email at mpearsall@azmag.gov not later than ten (10) working days prior to the closing date of August 22, 2016. Responses to questions submitted will be posted on the MAG Web site at <http://www.azmag.gov> under "RFPs and RFQs" not later than six (6) working days prior to the closing date of August 22, 2016. Additional information regarding MAG activities, including Committee meeting schedules, may be found on the MAG Web site <http://www.azmag.gov>.
3. A Proposer's conference for the project has been scheduled for 10:00 a.m. MST, on Friday August 5, 2016 the MAG Office, Chaparral Room, Suite 200, 302 North First Avenue, Phoenix, AZ. If you wish to receive notes from the Proposer's conference and a list of attendees, please contact the MAG project manager by email at mpearsall@azmag.gov.

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PROPOSAL EVALUATION AND SELECTION PROCESS

1. **Evaluation Criteria.** All proposals will be evaluated by a group consisting of MAG staff and member agencies. Evaluation criteria include, but are not limited to, the following:
 - a. Demonstrated understanding of the project through a well-defined work plan consistent with program objectives.
 - b. Clarity of proposal, realistic approach, technical soundness, and enhancements to elements outlined in this RFP.
 - c. Education and relevant experience of personnel in providing similar services. Only those personnel assigned to work directly on each area should be cited.
 - d. Proven track record in this area of study. Proposer should clearly identify the principal people who worked on past projects and the amount of time they devoted to the work effort.
 - e. Availability of key personnel throughout the project effort.
 - f. Price, except for the procurement of architectural or engineering (A&E) services.
 - g. Ability and commitment to deliver required products and services, meet all deadlines for submitting associated work products, and ensure quality control.
 - h. Recognition of work priorities and flexibility to deal with change and contingencies.
2. **Interviews.** On the basis of the above evaluation criteria, selected firms submitting proposals may be interviewed prior to the selection of a consultant. In-person interviews may be scheduled for the week of September 12, 2016. It is anticipated that firms selected for interviews will be contacted approximately one (1) week prior to the in-person interview date. MAG strongly suggests that the project manager and key members of the consultant team be present at the in-person interview.
3. MAG may conduct discussions with Proposers who submit proposals determined likely to be selected for the award.
4. MAG reserves the right to:
 - a. Cancel this solicitation.
 - b. Reject any and all proposals and re-advertise.
 - c. Select the proposal(s) that will, in its judgment, best meet MAG's needs, despite any differences in estimated project costs between the proposer and all others.
 - d. Negotiate a contract that covers selected parts of a proposal, or a contract that will be interrupted for a period, or canceled, for lack of funds.
 - e. Conform to the State of Arizona Public Records law(s).
5. **Contact with MAG or MAG Member Agency Employees.** All firms interested in this RFQ/RFP (including the firm's employees, representatives, agents, lobbyists, attorneys, and sub consultants) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process. This policy is intended to create a level playing field for

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all potential firms, and to protect the integrity of the selection process. All questions on this selection process should be addressed to the authorized representative at MAG.

6. **MAG Approval.** A recommendation for approval of the consultant selection shall be made by the MAG Executive Director to the MAG Regional Council. The decision of the Regional Council is final.

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ADMINISTRATIVE REQUIREMENTS

1. This Request for Proposals is for a cost-reimbursement plus fixed fee contract.
2. During the course of the project, a monthly progress report is required to be submitted within ten (10) working days after the end of each month until the final report is submitted. Each report shall include a comprehensive narrative of the activities performed during the month, an estimated percent complete for each project task, monthly and cumulative costs by task, activities of any Subconsultants, payments to any Subconsultants, a discussion of any notable issues or problems being addressed, and a discussion of anticipated activities for the next month (See Appendix E for sample format).
3. MAG shall retain ten percent (10%) of the contract amount, withheld from each invoice, as final payment until completion of the project to the satisfaction and acceptance of the work. Final payment shall be made after acceptance of the final product and invoice.
4. An audit examination of the CONSULTANT's records may be required.
5. The firm selected will be required to comply with MAG insurance requirements, which may include: Workers' Compensation, Architects and Engineers Professional Liability insurance, Commercial General Liability insurance, Business Automobile Liability insurance, and Valuable Papers insurance.
6. The firm selected is required to document any potential conflicts of interest during the contract period. A conflict of interest shall be cause for terminating a contract. A potential conflict of interest includes, but is not limited to:
 - a. Accepting an assignment where duty to the client would conflict with the CONSULTANT's personal interest or the interest of another client.
 - b. Performing work for a client or having an interest which conflicts with this contract.
 - c. Employing personnel who worked for MAG or one of its member agencies within the past three (3) years.

MAG shall be the final determining body as to whether a conflict of interest exists.

7. Non-Discrimination
 - a. During the performance of this procurement, MAG, its Consultants, Subconsultants, assignees and successors shall:
 - i. Not discriminate on the basis of race, color, national origin, or sex and shall carry out applicable requirements of 49 CFR Part 26 in the performance of this Contract. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract, disqualification from proposing on other Contracts or other remedy as the State deems appropriate.
 - ii. Comply with Executive Order 2009-09, "Prohibition of Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.
 - iii. Comply with the provisions of Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.
 - iv. Post in conspicuous places available to employees and applicants for employment, the following notice:

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“It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying-off or termination; rates of pay or other compensation; and selection for training, and on-the-job training. Also, it is the policy to ensure and maintain a working environment free of harassment, intimidation and coercion.”

- v. Comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter USDOT), 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
 - vi. Not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.
 - vii. In all solicitations either by competitive bidding or negotiations made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, notify each potential Subconsultant or supplier of the Consultant’s obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.
 - viii. Provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State as appropriate, and shall set forth what efforts it has made to obtain the information.
- b. In the event of the Consultant’s noncompliance with the NONDISCRIMINATION provision of this solicitation, the State shall impose such Contract sanctions as the State or FHWA may determine to be appropriate, including but not limited to:
- i. Withholding of payments to the Consultant under the Contract until the Consultant complies, and/or;
 - ii. Cancellation, termination, or suspension of the Contract, in whole or in part.
- c. The Consultant shall include the provisions of paragraph a.i through a.viii in every subcontract with Subconsultants, DBEs and Non-DBEs, including procurement of materials and equipment leases, unless exempt by the Regulations or directives issued pursuant thereto.
- d. The Consultant shall take such action with respect to any Subconsultants or procurement as the State or the Federal Aviation Administration (FAA), FHWA and the Federal Transit Administration (FTA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in or is threatened with litigation with a Subconsultant or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State, and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

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8. Affirmative Action

The Consultant shall take the following affirmative action steps with respect to securing supplies, equipment or services under the terms of this Contract.

- a. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.
- b. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.
- c. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.
- d. Where the requirement permits, establish delivery schedules which shall encourage participation by firms owned by socially and economically disadvantaged individuals.
- e. Use the services and assistance of ADOT DBE Supportive Services Program, the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as needed.

9. Participation By Disadvantaged Business Enterprises – Commitment, Compliance And Reporting

- A. The Department (ADOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. ADOT has received federal financial assistance from the USDOT and as a condition of receiving this assistance, ADOT has signed an assurance that it shall comply with 49 CFR Part 26.

It is ADOT's policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally-funded contracts. It is also ADOT's policy to:

1. Ensure nondiscrimination in the award and administration of federally funded contracts;
2. Create a level playing field on which DBEs can compete fairly for federally-funded contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility requirements are counted as DBEs;
5. Help remove barriers to the participation of DBEs in federally-funded contracts;
6. Assist in the development of firms that can compete successfully in the marketplace; and
7. Facilitate and encourage participation by Small Business Concerns (SBCs) in ADOT contracts. ADOT encourages Consultants to take reasonable steps to eliminate obstacles to SBC's participation and to utilize SBCs in performing contracts.

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The Federal regulations require a recipient of federal highway funding to implement an approved DBE Program that consists of establishing a statewide DBE utilization goal that uses race-neutral means to the maximum feasible extent to achieve the goal. Where race-neutral measures prove inadequate to achieve the goal, the State is required to use race-conscious measures, such as a DBE participation goal for individual contracts.

The Department has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends to meet the goal with a combination of race-conscious efforts and race-neutral efforts. Race-conscious participation occurs where the Consultant uses a percentage of DBEs to meet a contract specified goal. Race-neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses.

ADOT is required to collect data on all DBE participation and report to FHWA, whether or not there is a stated DBE goal on the contract. Prime Consultants should refer to the Participation by Disadvantaged Business Enterprises section of this RFP for information on DBE reporting requirements. Accurate reporting is needed to track DBE participation.

The Consultant is required to adhere to the commitment made to utilize certified Disadvantaged Business Enterprises (DBE) as indicated in the firm's proposal or subsequently agreed to by the State during negotiations. The State, at its discretion on a case-by-case basis, may waive the above limitations.

B. DBE GOAL/COMMITMENT AND DOCUMENTATION

No DBE goal has been set on this Contract. The Consultant IS ENCOURAGED to voluntarily obtain DBE participation on this Contract to help ADOT meet its overall DBE goal.

C. COMPLIANCE

This Contract is subject to DBE compliance tracking for the Consultant and its Subconsultants. Lower-tier Subconsultants and Vendors are required to provide any requested DBE Contract compliance-related data in hard copy or electronically as determined by the State, including written agreements between the Consultant and Subconsultant DBEs. The Consultant shall report the amount earned by and paid to each DBE and non-DBE Subconsultants working on the project for the preceding month on each monthly Progress Payment Report. The Consultant is responsible for ensuring that the Consultant and all its Subconsultants and lower-tier Subconsultants have completed all requested items and that their contact information is accurate and up-to-date.

D. REPORTING AND SANCTIONS

1. ADOT is required to collect DBE participation data on all Federal-aid projects, whether or not there is a stated DBE goal/commitment on this Contract. Therefore, the Consultant shall report the monthly payments made to all DBE, non-DBE Subconsultants and Direct Expense Vendors, including all lower-tier Subconsultants, for labor, equipment, and materials. If the Consultant and its Subconsultants do not provide all required DBE usage and payment information with the monthly Progress Payment Reports (PPRs) submittals for the preceding month, and complete its monthly audit and reporting of payments to DBEs and non-DBEs in the DBE System, the State shall deduct \$1,000 for each delinquent report, whether from the Consultant or any of its Subconsultants, from the progress payment for the current month, not as a penalty but as liquidated damages. If by the following month, the required DBE payment information for the previous month has still not been provided, the State shall deduct an additional \$1,000 for each delinquent report. Such deductions shall continue for

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each subsequent month that the Consultant or its Subconsultants fail to provide the required payment information.

2. The Consultant, Subconsultants, lower-tiered Subconsultants and Vendors shall confirm the payments received from ADOT and/or the Consultant through ADOT DBE Contract & Labor Compliance Management System (DBE System) found at the following link:

<https://adot.dbesystem.com>

3. After execution of this Contract and before the first Payment Report/Invoice is submitted to the Maricopa Association of Governments, the Consultant is required to log into the DBE System and enter the name, contact information, and subcontract amounts for all Subconsultants, lower-tier Subconsultants and Direct Expense vendors performing any work on the project to help ADOT track and monitor payments to DBE and non-DBE Subconsultants on the project and to confirm that the scope of services and commitments made via the DBE Intended Participation Affidavits are being met.
4. All DBE and non-DBE subcontracting activities and payments shall be reported by the Consultant. All DBE subcontracting activities will be counted toward DBE participation. This includes lower-tier subcontracting activities regardless of whether or not the DBE is under contract with another DBE.

E. COUNTING DBE PARTICIPATION

In counting the DBE participation, the Department shall apply the rules in 49 CFR §26.55. The firm shall count only the value of the work actually performed by the DBE toward DBE goals. No credit shall be allowed for shipping, manufacturing or supply.

1. Contracts created to artificially create DBE participation are not acceptable; the arrangement shall be within normal industry practices. The DBE shall perform a commercially useful function.
2. Count the entire amount of that portion of a Contract (or other Contract not covered by paragraph (2) of this section) that is performed by the DBE's own forces. Firms shall include the cost of supplies and materials obtained by the DBE for the work on the Contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE Subconsultant purchases or leases from the Consultant or its affiliate).
3. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specially required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with the fees customarily allowed for similar services.
4. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the lower-tier Subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE does not count toward DBE goals.
5. It is presumed that the DBE is not performing a commercially useful function if:
(a) a DBE does not perform or exercise responsibility for at least 30 percent (30%) of the total cost of its Contract with its own work force; or
(b) the DBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice for the type of work involved.

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F. PARTICIPATION BY SMALL BUSINESS CONCERNS (SBCS)

It is ADOT's policy to facilitate and encourage participation by Small Business Concerns (SBCs) in ADOT contracts. ADOT encourages Consultants to take reasonable steps to eliminate obstacles to SBC's participation and to utilize SBCs in performing contracts.

Consultant shall take all reasonable steps to remove obstacles to SBC participation in the contract. ADOT encourages the Consultant to utilize SBCs. SBCs are registered in the Arizona Unified Transportation Registration and Certification System (AZ UTRACS), accessed through the following link:

<https://adot.dbesystem.com>

10. Certification of Payments to DBE Firms (if applicable): The CONSULTANT shall submit at the completion of the project the "Certification of Payments to DBE Firms" affidavit for each DBE firm working on the project (Certification of Final DBE Payments Form 3210PS). The form can be found at the following link:

<http://azdot.gov/docs/default-source/beco-library/3210ps-dbe-certification-of-final-payment-pd---lpa-fillable.pdf>

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APPENDIX A – LABOR COST ALLOCATION BUDGET

CONTRACT BUDGET BY TASK ORDER												Budget Page 1 of 1	
PROJECT NAME: <u>ADD PROJECT NAME/DESCRIPTION</u>													
CONTRACT NUMBER: <u>ADD CONTRACT NUMBER</u>													
CONTRACT PERIOD: FROM <u>[MM/DD/YY]</u> TO <u>[MM/DD/YY]</u>													
MAG PROJECT MANAGER: <u>ADD PROJECT MANAGER NAME</u>													
CONSULTANT REMIT TO ADDRESS:													
<u>ADD CONSULTANT NAME</u>													
<u>STREET ADDRESS</u>													
<u>CITY, STATE, ZIP CODE</u>													
TAXPAYER ID NUMBER: <u>ADD TAX ID NUMBER</u>													
<p>* Only type in the BLUE or GREEN areas and be sure to enter entire budget</p> <p>** Input Raw Hourly Rates TWO DECIMAL PLACES ONLY and use most current information</p> <p>*** Invoices should reflect ACTUAL RATES for Prime Consultant Personnel</p>													
PRIME CONSULTANT												BUDGET OF PERSONNEL BY TASK NUMBER	
Original Costs and Rates	Raw Direct	Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8	Task 9	Task 10	Total Hours	Total Cost
	Direct Hourly Rate	(Task Description)											
Personnel 1	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 2	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 3	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 4	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 5	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 6	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 7	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 8	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 9	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 10	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 11	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 12	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 13	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 14	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 15	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 16	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 17	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 18	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 19	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Personnel 20	\$0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Total Task Hours	0.00	-											
Total Task Cost		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Overhead and/or Fringe Audited Rate	1.20	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Labor with Overhead		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Fee (10% max rate)	0.10	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Labor Budget With Overhead & Fees	\$ -	\$ -											
PRIME CONSULTANT												BUDGET OF DIRECTLY REIMBURSABLE EXPENSES	
Reimbursable Expenses	Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8	Task 9	Task 10	Total Cost		
	(Task Description)												
Miscellaneous Expenses (Example)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Local Travel and Parking (Example)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Statewide Travel (Example)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Airfare (Example)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Lodging and Subsistence (Example)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Local Travel (Example)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Meeting Expenses (Example)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Video Conference Expenses (Example)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Delivery and Postage (Example)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Miscellaneous Expenses (Example)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Statewide Travel (Example)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Other (Description)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Other (Description)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Other (Description)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Other (Description)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Other (Description)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Other (Description)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Other (Description)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Other (Description)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Other (Description)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Total Prime Reimbursable Expenses	\$ -												
TOTAL BUDGET													
TOTAL COST SUMMARY	Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8	Task 9	Task 10	Total Cost		
(Task Description)	(Task Description)	(Task Description)	(Task Description)	(Task Description)	(Task Description)	(Task Description)	(Task Description)	(Task Description)	(Task Description)	(Task Description)			
Total Labor With Overhead and Fee	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Total Prime Reimbursable Expenses	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Total Subconsultant Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Adjustments	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
GRAND TOTAL	\$ -	\$0.00											

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APPENDIX B – ARIZONA ADMINISTRATIVE CODE R4-30-301

CH. 30

BOARD OF TECHNICAL REGISTRATION

R4-30-301

ARTICLE 3. REGULATORY PROVISION
R4-30-301. Rules of Professional Conduct

All registrants shall comply with the following rules of professional conduct:

1. A registrant shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration or certification, or in response to a subpoena.
2. A registrant shall not engage in fraud, deceit, misrepresentation or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
3. A registrant shall not commit bribery of a public servant as proscribed in A.R.S. § 13-2602, commit commercial bribery as proscribed in A.R.S. § 13-2605, or violate any Federal statute concerning bribery.
4. A registrant shall comply with State, municipal, and county laws, codes, ordinances, and regulations pertaining to the registrant's area of practice.
5. A registrant shall not violate any State or Federal criminal statute involving dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, bribery, or breach of fiduciary duty, if the violation is reasonably related to the registrant's area of practice.
6. A registrant shall apply the technical knowledge and skill that would be applied by other qualified registrants who practice the same profession in the same area and at the same time.
7. A registrant shall not accept an engagement if the duty to a client or the public would conflict with the registrant's personal interest or the interest of another client without making a full written disclosure of all material facts of the conflict to each person who might be related to or affected by the engagement.
8. A registrant shall not accept compensation for services related to the same engagement from more than one party without making a full written disclosure of all material facts to all parties and obtaining the express written consent of all parties involved.
9. A registrant shall make full disclosure to all parties concerning:
 - a. Any transaction involving payments to any person for the purpose of securing a contract, assignment, or engagement, except payments for actual and substantial technical assistance in preparing the proposal; or
 - b. Any monetary, financial, or beneficial interest the registrant holds in a contracting firm or other entity providing goods or services, other than the registrant's professional services, to a project or engagement.
10. A registrant shall not solicit, receive, or accept compensation from material, equipment, or other product or services suppliers for specifying or endorsing their products, goods or services to any client or other person without full written disclosure to all parties.

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11. If a registrant's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare may result, the registrant shall immediately notify the responsible party, appropriate building official, or agency, and the Board of the specific nature of the public threat.
12. If called upon or employed as an arbitrator to interpret contracts, to judge contract performance, or to perform any other arbitration duties, the registrant shall render decisions impartially and without bias to any party.
13. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Lands Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, as adopted by the Board on June 15, 2001, the provisions of which are incorporated in this subsection by reference and on file with the Office of the Secretary of State. This incorporation by reference does not include any later amendments or editions and is available at the Board's office and APLS at <http://www.aia.org>.
14. A registrant shall comply with any subpoena issued by the Board or its designated administrative law judge.
15. A registrant shall update the registrant's address and telephone number of record with the Board within 30 days of the date of any change.
16. A registrant shall not sign, stamp, or seal any professional documents not prepared by the registrant or a bona fide employee of the registrant.
17. Except as provided in subsections (18) and (19), a registrant shall not accept any professional engagement or assignment outside the registrant's professional registration category unless:
 - a. The registrant is qualified by education, technical knowledge, or experience to perform the work; and
 - b. The work is exempt under A.R.S. § 32-143.
18. A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge, or experience to perform such engagements or assignments.
19. Except as otherwise provided by law, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services for which the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.
20. A registrant who is designated as a responsible registrant shall be responsible for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of Board statutes or rules that is committed by a non-registrant employee, firm, or corporation.
21. A registrant shall not enter into a contract for expert witness services on a contingency fee basis or any other arrangement in a disputed matter where the registrant's fee is directly related to the outcome of the dispute.

Amended by final rulemaking at 12 A.A.R. 1609, effective July 1, 2006 (Supp. 06-2).

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COMPLIANCE WITH RULES OF PROFESSIONAL CONDUCT CERTIFICATION

I hereby certify to the best of my knowledge and belief that _____
(Name of Consulting Firm)

and I _____ as the _____ shall comply with, in all
(Name) (Title)
respects, the rules of professional conduct set forth in A.A.C. R4-30-301.

(Signature)

(Print Name)

(Date)

APPENDIX C – PROPOSER’S INFORMATION FORM

Consultants proposing as prime Consultants or Subconsultants on Maricopa Association of Governments’ (MAG) projects are required to complete this form and return it with your proposal.

If you have any questions about this information form, please call the MAG Fiscal Services Manager, (602) 254-6300.

1. GENERAL INFORMATION:

Name of Firm: _____
 Street Address: _____
 City, State, Zip: _____
 Telephone Number: _____ Fax Number: _____
 Email Address: _____
 Web address: _____ Year firm was established: _____
 Is this firm a prime consultant? Yes _____ No _____
 Is this firm a subconsultant? Yes _____ No _____
 If so identify specialty: _____
 Is this firm a certified DBE? Yes _____ No _____
 If so, by whom? _____
 Is this firm currently debarred? Yes _____ No _____
 Is this firm currently the subject of debarment proceeding? Yes _____ No _____

2. FINANCIAL INFORMATION

Firm’s annual gross receipts (average of last three years)

_____ <\$300,000
 _____ \$300,000 - \$599,999
 _____ \$600,000 - \$999,999
 _____ \$1,000,000 - \$4,999,999
 _____ >\$5,000,000

Information will be maintained as confidential to the extent allowed by Federal and State law. The undersigned swears that the above information is correct. Any material misrepresentation may be grounds for terminating any contract which may be awarded and initiating action under Federal and State laws concerning false statements.

 [NAME, TITLE] Date

APPENDIX D – DEBARMENT/SUSPENSION CERTIFICATION

STATE OF)

SS.)

COUNTY OF)

I, _____ of the City of _____, in the County of

_____ and the State of _____, of full age, being duly sworn according to the law of my oath depose and say that:

In accordance with the terms of U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180:

1. Proposer certifies to the best of its knowledge and belief, that it and its principals, including its first tier Subconsultants: (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from covered transactions by any Federal department or agency; (b) Have not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of 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 any Federal or State antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property; (c) 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 listed in subparagraph (1)(b) of this certification; (d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Proposer certifies that it and its principals, including its first tier Subconsultants will treat each lower tier contract or lower tier subcontract under the Project that (a) equals or exceeds \$25,000, (b) is for audit services, or (c) requires the consent of a Federal official, as a covered contract for purposes of 2 CFR Part 1200 and 2 CFR Part 180, and will otherwise comply with the Federal requirements of 2 CFR Part 1200 and 2 CFR Part 180, and will assure that each lower tier participant involved in the Project is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from participation in this transaction by any Federal department or agency;
3. Proposer certifies that if, later, it or its principals, including any of its first tier Subconsultants, become aware of any information contradicting the statements of subparagraphs (1)(a) through (d) above, it will promptly provide any necessary information to MAG;
4. If Proposer or any of its principals, including any of its first tier Subconsultants or lower tier participants, is unable to certify to the statements within paragraphs 1, 2, and 3 above, the Proposer shall indicate so on its Signature Page.
5. The Proposer further certifies that their firm is not currently debarred, suspended, or proposed for debarment or suspension by the State of Arizona, or any subdivision thereof.
6. Proposer agrees to notify MAG of any change in the status or facts certified above, should one occur, until such time as the Contract is actually executed by MAG, and thereafter during performance of the Contract.

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Dated: _____

Signature of Proposer

Printed/Typed Name of Proposer

Corporate seal (if applicable)

Sworn to before me this ___ day of _____, 201___, in the County of _____,

State of _____

Notary Public

APPENDIX E – TITLE VI AGREEMENT/CONTRACT REQUIREMENTS

The Maricopa Association of Governments, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The contractor shall comply with the following non-discrimination acts:

State Executive Order No. 99-4 Amending 75-5 which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities.

Section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration or the Arizona Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient, the Federal Highway Administration or Arizona Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient, the Federal Highway Administration, or Arizona Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration or Arizona Department of Transportation, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient, the Federal Highway Administration, or Arizona Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the

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Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 *et seq.*).

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APPENDIX F – PROGRESS REPORT FORMAT SAMPLE

[Consultant Letterhead]
[Date]

[MAG Project Manager]
Maricopa Association of Governments
302 North First Avenue, Suite 200
Phoenix, Arizona 85003

Re: Progress Report No. [#] and Invoice for the Period of [Month] 20[Year]

[For Each Task, the CONSULTANT is to provide the percent of work completed to date, a narrative describing the work accomplished, data obtained, problems encountered, meetings held and reports and/or data produced. It is the responsibility of the CONSULTANT to document that the work accomplished for each task during the reporting period is commensurate with the amount of money billed for the task in the invoice].

[The narrative describing the work accomplished should be of sufficient detail to enable the Project manager to clearly understand the progress on the task during the reporting period. Wherever possible, the CONSULTANT should submit along with the progress report appropriate documentation of work accomplished, such as partial or complete draft technical reports or working papers, etc].

TASK 1 - DATA COLLECTION

Percent of Work Completed: 100 percent.

Work Accomplished: A database in both hard copy and electronic format was developed and a methodology for keeping the database current was established.

Data Obtained: Information on the transportation facilities was secured for each of the facilities in the study area. The data included, but was not limited to: name, location, and current and historical traffic levels.

Meetings Held: The following meetings were held in connection with the data collection effort:

[Month, Day, Year], with the MAG project manager to review data collected for the facilities.

[Month, Day, Year], with the Advisory Committee to obtain input on the data collection process.

[Month, Day, Year], with MAG staff to review comments on preliminary database.

[Month, Day, Year], with the public and special interest groups to obtain input on the distribution of the database.

Reports or Data Produced: A database in electronic format was produced and provided to MAG staff on [Month, Day, Year].

TASK 2 - INVENTORY

Percent of Work Completed: 100 percent.

Work Accomplished: A facilities inventory was completed, and the data obtained in Task 1 were compiled into a Draft Inventory Technical Report for distribution to the Advisory Committee.

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Data Obtained: See Task 1.

Meetings Held: The following meetings were held:

[Month, Day, Year], met with MAG staff to finalize the outline for the Inventory Technical Report.

[Month, Day, Year], met with the MAG project manager to obtain suggestions on methods for comparing facility information.

Reports or Data Produced: A draft Inventory Technical Report was produced and distributed to members of the Advisory Committee for review and comment.

TASK 3 - FORECASTS

Percent of Work Completed: 100 percent.

Work Accomplished: Forecasts of travel demand on inventoried facilities were prepared for 2000, 2010 and 2020. The forecasts were consistent with County control totals reviewed by the Advisory Committee last month. The forecasts included a breakdown by facility type.

Data Obtained: See Task 1.

Meetings Held: The following meetings were held:

[Month, Day, Year], met with MAG staff to discuss comments on preliminary forecast results.

Reports or Data Produced: A draft forecasts report was produced and distributed to members of the Advisory Committee for review and comment.

TASK 4 - DEMAND/CAPACITY ANALYSIS AND FACILITY REQUIREMENTS

Percent of Work: Completed: 60 percent.

Work Accomplished: An hourly capacity was computed for each of the inventoried facilities using the federal guidance provided by MAG staff.

Data Obtained: See Task 1.

Meetings Held: The following meeting was held:

A meeting was held on [Month, Day, Year] to discuss the differences between the capacity calculations for this study versus previous studies.

Reports or Data Produced: None. However, a draft set of capacity estimates is enclosed documenting the assumptions and data input used to prepare the estimates.

TASK 5 - ALTERNATIVES

Percent of Work Completed: 25 percent.

Work Accomplished: Other regional plans were examined to determine the type of alternatives that were used to meet future demand.

Data Obtained: Regional plans from San Diego, Los Angeles, Denver, Seattle Tucson and Chicago were collected.

Meetings Held: The following meeting was held:

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A meeting was held on [Month, Day, Year] to discuss the differences between the capacity calculations for this study versus previous studies.

Reports or Data Produced: None.

TASK 6 - EVALUATION OF ALTERNATIVES

Work on this task has not begun.

TASK 7 - RECOMMENDATIONS

Work on this task has not begun.

TASK 8 - IMPLEMENTATION

Work on this task has not begun.

Problems Encountered

Some of the capacity calculations prepared for the study were different from the capacity calculations used in previous studies. These differences were discussed and resolved at a meeting held with MAG staff on [Month, Day, Year].

Invoice:

The enclosed invoice is for the third progress payment of \$[Enter Dollar Amount]. The total amount billed to date is \$[Enter Dollar Amount].

Sincerely,

[Project Manager Name]
[Project Manager Title]

Enclosure

APPENDIX G – TITLE 49 - TRANSPORTATION

Subtitle A – Office of the Secretary of Transportation

PART 26 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

[Code of Federal Regulations]; [Title 49, Volume 1]; [Revised as of October 1, 2008]
From the U.S. Government Printing Office via GPO Access; [CITE: 49CFR26.55]; [Page 300-302]

Subpart C Goals, Good Faith Efforts, and Counting

§26.55 - How is DBE participation counted toward goals?

- (a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.
 - (1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a) (2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - (2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- (b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you shall examine similar transactions, particularly those in which DBEs do not participate.
 - (3) If a DBE does not perform or exercise responsibility for **at least 30 percent** of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

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- (4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c) (3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - (5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.
- (d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- (1) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - (2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - (5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it shall obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d) (5): DBE Firm X uses two (2) of its own trucks on a contract. It leases two (2) trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four (4) of the six (6) trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight (8) trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

- (6) For purposes of this paragraph (d), a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.
- (e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- (1)
 - (i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.
 - (ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - (2)
 - (i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
 - (ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - (A) To be a regular dealer, the firm shall be an established, regular business that engages, as its principal business and under its own name, in the purchase and

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- sale or lease of the products in question.
- (B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - (C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).
- (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
- (f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in Sec. 26.87(i).
 - (g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.
 - (h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

APPENDIX H – GUIDANCE CONCERNING GOOD FAITH EFFORTS

(APPENDIX A TO 49 CFR PART 26)

NOTE: In the following section of the Federal requirements the “you” means the agency (ADOT).

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors

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and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
 - F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Note: Contacting the Business Engagement and Compliance Office for assistance in identifying certified DBEs that can perform work on a contract or task order is also considered a strong factor in making good faith efforts.