

City of Sierra Vista - STANDARD TERMS AND CONDITIONS

1. Familiarization of Scope of Work

Before submitting a bid proposal, each offeror shall familiarize itself with the Scope of Work, laws, regulations and other factors affecting contract performance. The Offeror shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of contract requirements. The submission of a proposal will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.

2. Taxes

The City of Sierra Vista is required to pay sales tax on applicable items. If out-of-state vendors are not required to submit sales tax in the State of Arizona, they are not required to list "Sales Tax" in their bid submission. In this case, the City will add the current Use Tax rate as established by AZ Department of Revenue. The applicable Use Tax will be added to the vendor's submittal for price comparison purposes, however the City will pay the Use Tax directly to AZ DOR.

The City of Sierra Vista is exempt from federal excise tax, including the federal transportation tax. Offers shall include any other applicable taxes with their cost proposals.

3. Exceptions to Contract Provisions

A response to any Solicitation is an offer to contract with the City based upon the contract provisions contained in the City's Solicitation, including but not limited to, the specifications, scope of work and any terms and conditions. Other than as defined in the Part B for functional specifications, Offerors who wish to propose modifications to the contract provisions must clearly identify the proposed deviations and any proposed substitute language. The provisions of the Solicitation cannot be modified without the express written approval of the Chief Procurement Officer or her designee. For every exception taken, the Offeror shall propose substitute language. If no exceptions are presented in the Offeror's proposal, the City will assume complete conformance of all terms/conditions and the successful Offeror will be required to perform accordingly.

If the Offeror takes exception to any requirement or requested information, that information must be recorded in a separately labeled List of Exceptions, to be included as an appendix for consideration. Each Exception (if any) must reference the original solicitation requirement or section from the solicitation.

If a proposal or offer is returned with modifications to the contract provisions that are not expressly approved in writing by the Chief Procurement Officer or her designee, the contract provisions contained in the City's Solicitation shall prevail.

4. Public Record

All proposals submitted in response to this Solicitation shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification.

5. Confidential Information

The City of Sierra Vista is obligated to abide by all public information laws. If an Offeror believes that any portion of a proposal, offer, specification, protest or correspondence contains information that should be withheld, a statement advising the Contract Officer of this fact should accompany the submission and the information shall be so identified wherever it appears. The City shall review all requests for confidentiality and may provide a written determination to designate specified documents confidential or the request may be denied. Price is not confidential and will not be withheld. If the confidential request is denied, such information shall be disclosed as public information, unless the offeror submits a formal written objection.

6. Certification

By signature on the Offer and Acceptance page, solicitation Amendment(s), and/or cover letter accompanying the submittal documents, Offeror certifies:

- A. The submission of the offer did not involve collusion or other anti-competitive practices.
- B. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal or State law.
- C. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer.
- D. The Offeror hereby certifies that the individual signing the submittal is an authorized agent for the Offeror and has the authority to bind the Offeror to the Contract.

7. Late Proposals

Late proposals will be rejected and returned to the Offeror unopened.

8. Offer and Acceptance Period

In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for ninety (90) days after the proposal due date and time.

9. Withdrawal of Proposal

At any time prior to the specified solicitation due date and time, an offeror may formally withdraw the proposal by a written letter, facsimile or electronic mail from the Offeror or a designated representative. Telephonic or oral withdrawals shall not be considered.

10. Discussions

The City reserves the right to conduct discussions with offerors for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal in order to clarify an offer and assure full understanding of, and responsiveness to, solicitation requirements.

11. Contract Negotiations

Exclusive or concurrent negotiations may be conducted with responsible offeror(s) for the purpose of altering or otherwise changing the conditions, terms and price of the proposed contract unless prohibited. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors. Exclusive or concurrent negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. In the event the City deems that negotiations are not progressing, the City may formally terminate these negotiations and may enter into subsequent concurrent or exclusive negotiations with the next most qualified firm(s).

12. Vendor Application

Prior to the award of a Contract, the successful offeror shall register with the City's Procurement Division. Registration can be completed at <https://mss.sierravistaaz.gov/MSS/Vendors/default.aspx> by clicking on Vendor Self Serve.

13. City of Sierra Vista Business License

Prior to the award of a Contract, the successful offeror must obtain a City of Sierra Vista Business License or a written determination that a business license is not required issued by the City's Business License Section. The business license must remain valid throughout the life of this contract. Bidder/consultant must provide a valid copy of the business license or a written determination that a business license is not required prior to award and at contract renewal. For questions contact the City's Business License Section at (520) 458-3315 or email at BusinessLicense@SierraVistaAZ.gov.

14. Upon Notice of Intent to Award

The apparent successful offeror shall sign and file with the City, within ten (10) days after Notice of Intent to Award, all documents necessary to the successful execution of the Contract.

15. Award of Contract

Notwithstanding any other provision of the Solicitation, the City reserves the right to:

- (1) Waive any immaterial defect or informality; or
- (2) Reject any or all proposals, or portions thereof; or
- (3) Reissue the Solicitation.

A response to this Solicitation is an offer to contract with the City based upon the terms, conditions and Scope of Work contained in the City's Solicitation. Proposals do not become contracts unless and until they are executed by the City's Chief Procurement Officer and the City Attorney. A contract has its inception in the award, eliminating a formal signing of a separate contract. All of the terms and conditions of the contract are contained in the Solicitation, unless any of the terms and conditions are modified by a Solicitation amendment, a Contract Amendment, or by mutually agreed terms and conditions in the Contract documents.

16. Proposal Results

The name(s) of the successful offeror(s) will be posted on the Procurement Department's Internet site at www.SierraVistaAZ.gov upon issuance of a Notice of Intent to Award or upon final contract execution.

17. Protests

A protest shall be issued in writing and shall be filed with the Chief Procurement Officer. A protest of a Solicitation shall be received at the Procurement Division not less than five (5) working days before the Solicitation due date. A protest of a proposed award or of an award shall be filed within fourteen (14) days after issuance of notification of award or issuance of a notice of intent to award, as applicable. A protest shall include:

- A. The name, address, and telephone number of the protestant;
- B. The signature of the protestant or its representative;
- C. Identification of the Solicitation or Contract number;
- D. A detailed statement of the legal and factual grounds of protest including copies of relevant documents.
- E. The form of relief requested.

18. Terms and Conditions

18.1 Special Terms and Conditions

18.1.1 Cooperative Purchasing

This Contract shall be for the use of the City of Sierra Vista. In addition, specific eligible political subdivisions and nonprofit educational or public health institutions may also participate, at their discretion and with the agreement of the awarded Proposer. In order to participate in this Contract, a political subdivision or nonprofit educational or public health institution must agree to the terms and conditions in the solicitation and the Proposer must be in agreement with the cooperative transaction. Any orders placed to the successful Proposer will be placed by the specific agencies participating in this purchase. Payment for purchases made under this Contract will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <https://spo.az.gov/other-purchasing-cooperatives> for a listing of participating agencies. The parties agree that these lists are subject to change.

18.2. Insurance

The Bidder/consultant agrees to:

- A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this Contract. All policies will contain an endorsement providing that written notice be given to the City at least ten (10) calendar days prior to termination, cancellation, or reduction in coverage in any policy.
- B. The Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance policies will include “the City of Sierra Vista, its officials, employees, and volunteers” as an additional insured with respect to liability arising out of the performance of this Contract. The Bidder/consultant agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.
- C. Provide and maintain minimum insurance limits as applicable.

1.1.1 <u>Coverage Afforded</u>	<u>Limits of Liability</u>
Worker's Compensation	Statutory
Employer Liability	\$2,000,000
Commercial General	\$2,000,000 Bodily Injury and Property
Liability Insurance Including:	Combined Single Limit
(1) Premises and Operations	
(2) Product and Completed Operations	
(3) Blanket Contractual	
(4) Broad Form Property Damage	
(5) Personal Injury	

(6) Commercial Automobile	\$2,000,000	Bodily Injury and Property (Combined Single Limit)
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Liability Insurance Including:

- (1) Owned
- (2) Non-Owned
- (3) Leased
- (4) Hired Vehicles

Professional Liability Insurance (Errors/Omissions) (Professional Services Only)	\$2,000,000 (minimum) (Combined Single Limit)
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Bidder/consultant will present to the City written evidence (Certifications of Insurance) of compliance with Items A., B., and C. above. Said evidence shall be to the City Chief Procurement Officer's satisfaction.

18.3. Ownership of Data

Offeror acknowledges that all data related to this application and/or project either as provided initially by the City; in subsequent data transmittals from the City, or its designated transfers; or as keyed, delivered or otherwise created in the system, is the sole and exclusive property of the City. The Offeror makes no claim on the data.

In the event that any City data is transmitted to the Offeror's systems or location, the Offeror agrees to securely maintain the data, in such manner as is defined within this agreement; to freely release all data at the end of the agreement for any reason; and to permanently remove all data from their systems once the City has issued a written receipt for the data's return. The bidder/consultant will make copies of all of the City's data within ten (10) days of receipt of the City's written request for such data. The data is to be delivered via electronic media, in a format mutually agreed upon by the City and the Bidder/consultant. Proof of receipt of a request is constituted by the delivery acknowledgment provided by third party package handlers or by the US Postal Service.

If the Bidder/consultant fails to deliver the data within ten (10) days of receipt of a request; or upon termination of the contract; or if the bidder/consultant fails to either securely maintain all data files while they are maintaining them or to completely erase all the data from their possession after the data has been returned to the City upon termination of this agreement; then the bidder/consultant shall be liable for all costs, fees and damages incurred by the City as a result of the bidder/consultant's actions.

18.4. Right of Termination for Change in Ownership or Material Restructure of the Bidder/consultant

In addition to Section, Termination of Contract, in the Standard Terms and Conditions section of this solicitation and resulting contract, the City reserves the right to cancel the whole or part of this contract with 30 days written notice, in the event of the completion of any material change of ownership in the bidder/consultant's company, including its sale, merger, separation, consolidation or dissolution.

18.5. Subcontractors/subconsultants

No subcontract shall be made by the bidder/consultant with any other party for furnishing any of the services herein contracted for without the advance written approval of the Procurement Division. All bidders/consultants shall comply with Federal and State laws and regulations that are applicable to the services covered by the bidder/consultant and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the bidder/consultant referred to herein. The prime bidder/consultant is responsible for contract performance whether or not subcontractors are used. Part B contains a provision for noting subcontractors.

19. Advertising

Bidder/consultant shall not advertise or publish information concerning this Contract without prior written consent of the City's Chief Procurement Officer.

20. Affirmative Action

The bidder/consultant will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, disability not related to job performance, national origin, sexual orientation, gender identity, familial status, and/or marital status. The bidder/consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, disability not related to job performance, national origin, sexual orientation, gender identity, familial status, and/or marital status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The bidder/consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

The bidder/consultant will, in all solicitations or advertisements for employees placed by or on behalf of the bidder/consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, ancestry, sex, age, disability not related to job performance, national origin, sexual orientation, gender identity, familial status, and/or marital status.

The bidder/consultant will furnish all information and reports required by the city and will permit access to books, records, and accounts by the city for purposes of investigation to ascertain compliance with this section.

In the event of the bidder/consultant's noncompliance with the nondiscrimination clauses of his contract, the contract may be cancelled, terminated or suspended in whole or in part and the bidder/consultant may be debarred

21. Americans with Disabilities Act

The Bidder/consultant shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101, et seq.) and applicable Federal regulations under the Act.

22. Applicable Law

This Contract shall be governed by the Sierra Vista Procurement Code and the law of the State of Arizona. The City and the bidder/consultant shall have all remedies afforded to each. State law claims shall be brought only in Cochise County Superior Court.

23. Assignment-Delegation

No right or interest in this Contract shall be assigned by the Bidder/consultant without prior written permission of the City, and no delegation of any duty of the Bidder/consultant shall be made without prior written permission of the City's Chief Procurement Officer. The City shall not unreasonably withhold approval and shall notify the Bidder/consultant of the City's position by written notice.

24. Certification of Compliance with A.R.S. §35-393 et seq

By signing this contract, the bidder/consultant certifies that it does not have scrutinized business operations in Iran as required by A.R.S §35-393 et seq. If the City determines that the bidder/consultant has submitted a false certification, the City may impose remedies as provided in the Sierra Vista Procurement Code up to and including termination of this contract.

25. Child/Sweat Free Policy

The bidder/consultant shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.

26. Clean Up

The Bidder/consultant shall at all times keep the contract area, including storage areas used by the Bidder/consultant, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of the City. Upon completion of the repair, the Bidder/consultant shall leave the work and premises in clean, neat and workmanlike condition.

27. Commencement of Work

The Bidder/consultant is cautioned not to commence any billable work or provide any material or service under this Contract until Bidder/consultant receives purchase order, Notice To Proceed or is otherwise directed to do so, in writing, by the City.

28. Compliance with the Law

The successful Offeror shall, at all times, observe and comply with Federal and State laws, local laws, ordinances, orders, and regulations existing at the time of, or enacted subsequent to, the execution of this contract which in any manner affect the completion of the work.

29 Confidentiality of Records

The Bidder/consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Information pertaining to individual persons shall not be divulged other than to employees or officers of bidder/consultant as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.

30. Contract Amendments

The Procurement Division has the sole authority to:

- Amend the contract or enter into supplemental verbal or written agreements;
- Grant time extensions or contract renewals;
- Otherwise modify the scope or terms and provisions of the contract.

This Contract shall only be modified with the approval of the Procurement Division. Except in the case of a documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Procurement Division through a written contract amendment or change order is performed at the sole risk of the Bidder/consultant and may not be eligible for payment by the City.

Requests for price adjustments after a PO/contract has been signed must be based on a price index adjustment that can be documented and provided to the City. The price adjustment must be itemized where applicable. The Procurement Division may approve the price adjustment or request modifications. Approval of the price adjustment shall only be demonstrated through a written contract amendment or change order signed by the Procurement Division.

31. Contract

The Contract shall be based upon the solicitation issued by the City and the Offer submitted by the Bidder/consultant in response to the solicitation, plus any further negotiated items. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the solicitation. The City reserves the right to clarify any contractual terms with the concurrence of the bidder/consultant; however, any substantial non-conformity in the offer, as determined by the City's Chief Procurement Officer, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Sierra Vista and the bidder/consultant relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.

32. Default in One Installment to Constitute Total Breach

Bidder/consultant shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.

33. Exclusive Possession

All services, information, computer program elements, reports and other deliverables created under this Contract are the sole property of the City of Sierra Vista and shall not be used or released by the bidder/consultant or any other person except with prior written permission by the City of Sierra Vista.

34. Force Majeure

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

Force Majeure does not apply to responsibilities for provision of service(s) specified in this Contract by the bidder/consultant subsequent to the original software installation, such as but not limited to for hosting, outsourced services, or application support.

35. Gratuities

The City may, by written notice to the bidder/consultant, terminate this Contract if it is found that gratuities in the form of entertainment, gifts, meals or otherwise, were offered or given by the bidder/consultant or any agent or representative of the bidder/consultant, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the bidder/consultant the amount of the gratuity.

36. Human Relations

Bidder/consultant shall abide by the provisions of the Sierra Vista City Code of Ordinances.

37. Indemnification

To the fullest extent permitted by law, the Bidder/consultant shall indemnify, defend, and hold harmless the City from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any reasonable attorney's fees and/or litigation expenses, which may be brought or made against any person, caused by,

arising out of, or contributed to , in part, by reasons of tortuous or negligent acts, omissions, professional errors, fault or mistake of the bidder/consultant, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incidental to the performance of this agreement, or arising out of Worker's Compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of the bidder/consultant and/or its subcontractors or claims under similar such laws or obligations. The bidder/consultant's obligation under this section shall not extend to any liability caused by the sole negligence of the City or its employees. For any liability caused jointly by the bidder/consultant and the City of Sierra Vista, the bidder/consultant shall be held liable only for the bidder/consultant's negligent acts, errors, or omissions.

38. Independent Contractor

Both City and bidder/consultant understand and agree that the bidder/consultant is not and has not been an agent or employee of the City in providing said services, but bidder/consultant is, by this Contract, an independent contractor and is solely and exclusively responsible for all employees, debts, and obligations in providing said services, and that no employee of the City or bidder/consultant has a conflict of interest of benefit inuring other than those that would inure to the public at large. Any breach or violation of this warranty shall vest the City with the right to annul this Contract without liability.

The bidder/consultant shall not be entitled to compensation in the form of salaries, paid vacation or sick days by the City.

The City of Sierra Vista will not provide any insurance coverage to the bidder/consultant, including Worker's Compensation coverage. The bidder/consultant is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that bidder/consultant should make arrangements to directly pay such expenses.

39. Inspection and Acceptance

All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at the bidder/consultant's risk and may be returned to the bidder/consultant. If returned, all costs are the responsibility of the bidder/consultant. Noncompliance may be deemed a cause for possible Contract termination.

40. Interruption-Parole Evidence

This Contract is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or consent in the

course of performance under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.

41. Licenses

Bidder/consultant shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the bidder/consultant as applicable to this Contract.

42. Liens

All materials, services, and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest. Security interest shall extinguish upon full payment made by the City. Upon the City's request, the bidder/consultant shall provide a formal release of all liens.

43. No Replacement of Defective Tender

Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully comply, this shall conform to the termination clause set forth within this document.

44. Non-Exclusive Contract

Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Sierra Vista. The City reserves the right to obtain like goods or services from another source when necessary.

45. Overcharges by Antitrust Violations

The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the bidder/consultant hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.

46. Method of Payment

All payments made by the City of Sierra Vista for goods or services will be made to the bidder/consultant named on the Offer and Acceptance form. The payment address will be confirmed at time of contract signing.

Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice.

The City shall make every effort to process payment for the purchase of materials or services within thirty (30) calendar days after receipt of materials or services and a correct invoice.

47. Protection of Government Property

The bidder/consultant shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the bidder/consultant fails to do so and damages such property, the bidder/consultant shall replace or repair the damage at no expense to the City, as determined and approved by the City's Chief Procurement Officer. If the Bidder/consultant fails or refuses to make such repair or replacement, the City will determine a cost and the bidder/consultant shall be liable for the cost thereof, which may be deducted from the Contract price.

48. Provisions Required by Law

Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.

49. Records

Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of the bidder/consultant and/or any subcontractors. Said audit shall be limited to this Contract.

All SUBRECIPIENTS and/or their contractors and the parties shall retain all data, books, and other records relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the STATE at reasonable times as set forth in A.R.S. 35-214, and 2 CFR 200 et seq.

50. Right to Assurance

Whenever one party to this Contract has reason to question, in good faith, the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as the other party's intent not to perform and as a cause for possible Contract termination.

51. Right to Inspect

The City may, at reasonable times, and at the City's expense, inspect the place of business of a bidder/consultant or subcontractor which is related to the performance of any Contract as awarded or to be awarded.

52. Rights and Remedies

No provision in this document or in the bidder/consultant's proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

53. Severability

The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the valid provision or application.

54. Shipment Under Reservation Prohibited

No tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the termination clause set forth within this document.

55. Subcontracts

No subcontract shall be entered into by the bidder/consultant with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Chief Procurement Officer. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the prime bidder/consultant referred to herein. The bidder/consultant is responsible for contract performance whether or not subcontractors are used.

56. Subsequent Employment

The City may terminate this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City, is or becomes, at any

time while the Contract or any extension of the Contract is in effect, an employee of, or a bidder/consultant to, any other party to this Contract with respect to the subject matter of the Contract. Termination shall be effective when written notice from the City's Chief Procurement Officer is received by the parties to this Contract, unless the notice specifies a later time.

57. Termination of Contract

This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. The City, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.

The City reserves the right to terminate the whole or any part of this Contract due to the failure of the bidder/consultant to carry out any term or condition of the Contract. The City will issue a written ten (10) day notice of default to the bidder/consultant for acting or failing to act as specified in any of the following:

- In the opinion of the City, the bidder/consultant provides personnel that do not meet the requirements of the Contract.
- In the opinion of the City, the bidder/consultant fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;
- In the opinion of the City, the bidder/consultant attempts to impose personnel, materials, products or workmanship of an unacceptable quality;
- The bidder/consultant fails to furnish the required service and/or product within the time stipulated in the Contract;
- The bidder/consultant is acquired or undergoes a material change of ownership structure;
- In the opinion of the City, the bidder/consultant fails to make progress in the performance of the requirements of the Contract;
- The bidder/consultant gives the City a positive indication that the bidder/consultant will not or cannot perform to the requirements of the Contract.

Each payment obligation of the City created by this Contract is conditioned upon the availability of City, State and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will endeavor to notify the bidder/consultant in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

58. Title and Risk of Loss

The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

59. Warranties

Bidder/consultant warrants that all material or service delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the bidder/consultant or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.

60. Property and Equipment, Use, Inventory, and Disposal:

Title to real property under a grant will vest under acquisition in the SUBRECIPIENT or their BIDDER/CONSULTANT as applicable. The procurement, use, and disposition of real property and equipment shall be consistent with the program-approved use and in accordance with the requirements of 2 CFR 1201.313, 2 CFR 200.313, and Federal Property Management Standards which is herein incorporated by reference and made a part of this Agreement. The SUBRECIPIENT agrees to inventory, to maintain records of, and to insure the proper use, control, and disposal of all property, equipment, computer hardware, and furniture, acquired pursuant to funding under this Agreement. Except as otherwise provided by statute, property and equipment shall be used for the originally authorized purposes if needed for that purpose.

61. Incorporation of Federal Terms (when indicated in the solicitation documents):

All bidders/consultants and subcontractors will comply with the procurement standards in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart D – Post Federal Award Requirements.

Any reports, studies, or printed materials for public distribution will carry the following disclaimer: "This report was prepared under contract with the City of Sierra Vista, with financial support from the Bureau of Reclamation. The contents reflect the views of the City of Sierra Vista and does not necessarily reflect the views of the Bureau of Reclamation."

62. Suspension and Debarment (when indicated in the solicitation documents:

The bidder/consultant shall comply with the Suspension and Debarment Clause as it pertains to 2 CFR 200.212. Non-federal entities and bidder/consultants are subject to the non-procurement debarment and suspension regulations implementing Executive

Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.