January 16, 2020

TO:           ALL INTERESTED PROPOSERS

REQUEST FOR PROPOSAL: Tampa Bay Innovation Center Incubator – Professional Architectural Services

PROPOSAL NUMBER: 190-0140-NC (SS)

PROPOSAL SUBMITTAL IS DUE: February 4, 2020 @ 3:00 P.M.

ADDENDUM NO. 1

Following is additional information, clarifications, questions and responses relative to referenced Request for Proposal (RFP):

QUESTION(S)/RESPONSE(S):

1. Question: I had a question about the required disciplines referenced on pg 22 of 26 of the RFP. Discipline #5 is “Engineering Services”. Civil, Structural, MEP & F are already listed in disciplines 2-4. Can you elaborate on “Engineering Services”? Are you anticipating the need for Geotechnical, Soil Testing, Environmental and Construction Testing?
   Response: Since this is a new building, we are relying on the Architect and its consulting engineers to identify and provide any services necessary to complete the design. This may include Geotechnical, Soil Testing, etc. as required for a new building on an open site.

2. Question: Section 7 Compensation to the Consultant, paragraph 7.1 lists seven (7) tasks as defined in Section 3 however Section 3 only addresses Bidding, Construction, utilities and permit coordination tasks. Where are the seven specific tasks listed in this document? I would assume that these would be broken down i.e. Task 1- Programming, Task 2- Schematic Design, Task 3-Design Development, Task 4-Construction Document preparation, Task 5-Bidding and Negotiation, Task 6-Construction Administration. If so, what is task 7? Again, are these tasks listed somewhere in the document?
   Response: Section 7 of the agreement, including tasks, which will be negotiated with the awarded firm prior to award. As such these tasks are blank now, and will be determined through negotiations.

3. Question: Will this project require LEED certification or just compliance with Energy Policy & Conservation Act as stated in the EDA contract provisions, item 25?
   Response: This building will not need LEED certification. Compliance with all applicable Florida Building Codes and the Energy Policy and Conservation Act are the only requirements in this regard.
4. Question: Will deliverables be required to be in 3-D Revit (BIM) or is 2-D AutoCad preferred (as stated in paragraph 2.4.2).
   Response: Will be determined with the awarded firm during negotiations.

5. Question: Will the Architect be responsible for ALL record keeping, financial reporting as required by EDA (i.e. will architect also be responsible for the GC’s records too?), or is this section of the RFQ more directed at the GC and their subcontractors who will be doing the actual construction?
   Response: The GC will ultimately be responsible for the construction records. This section of the RFQ is included so as to guide the Architect in the writing of specifications and also to inform the Architect as to the EDA requirements in order to allow the architect to assist in records verification.

6. Question: If awarded the project, will the final contract form used be an AIA B101-2017 Agreement Between Owner & Architect?
   Response: No, the County’s agreement is attached to the Request for Proposal (RFP) and will be the agreement executed for award of this project.

All other specifications, terms and conditions remain the same.

Please remember to acknowledge receipt of this Addendum in Section G, Page 25 under Addendum No.1 and return with completed proposal package.

Sincerely,

Merry Celeste,
CPPB
Director of Purchasing
January 22, 2020

TO: ALL INTERESTED PROPOSERS

REQUEST FOR PROPOSAL: Tampa Bay Innovation Center Incubator – Professional Architectural Services

PROPOSAL NUMBER: 190-0140-NC (SS)

PROPOSAL SUBMITTAL IS DUE: February 4, 2020 @ 3:00 P.M.

ADDENDUM NO. 2

Following is additional information, clarifications, questions and responses relative to referenced Request for Proposal (RFP):

QUESTION(S)/RESPONSE(S):

1. Question: There is a discrepancy in the total possible points listed (25) for that section and the percentage (5%) of the total evaluation that these points represent. It would either be 25 points and 2.5% or 50 points and 5%. Please confirm total points and percentage of total this section represents for the written proposal.

   Response: See corrected Minority Business Status points:

   Minority Business Status
   Provides points pre-populated by the Purchasing Department for minority business status as designated by the State of Florida. If the firm, or its sub-consultant, is designated as a minority business by the Florida State Office of Supplier Diversity, Department of Management Services, two and one half (2.5%) percent of the total evaluation points are awarded. If the firm does not have minority business status as per the Florida State Office of Supplier Diversity, Department of Management Services, zero (0%) percent of the points available are awarded.

2. Question: This section states, “If the firm, or its sub-consultant, is designated as minority business by the Florida State Office of Supplier Diversity, Department of Management Services, five (5%) percent of the total evaluation points are awarded.” My interpretation of this is that this section is all or nothing. But, if you have at least one sub-consultant on your team that is a minority business, you will be awarded the maximum points for the section. Am I interpreting this correctly?

   Response: This is correct for Minority Business Status.
3. Question: Do we need to provide all, part of, or none of the SF 330 Part I & II for all consultants on our team?
   Response: Each proposer shall use their best judgement to complete their submittal.

4. Question: Do we need to include insurance certificates for our consultants in the proposal or only for the prime/contracted entity?
   Response: Reference page 17 of 26, Clause 3 – Insurance, of the RFP.

5. Question: Can a team from out of state submit qualifications? If the lead of the team is NCARB-registered and has FL registration (or could obtain FL registration via reciprocity), can the team submit?
   Response: Yes, the County will accept qualification submittals from out-of-state firms, page 14 of 26, clause 7 C.

6. Question: Section E, F. Budget Estimate states additional funding will be sought for equipping the facility. Please clarify what that includes (ex. Furniture, equipment, audio-visual, IT, etc.).
   Response: This would include all furniture, fixtures, and equipment (FFE). Any public spaces would be designed by the Architect, but funding for the acquisition of the FFE would be sought out separately from the EDA grant project.

7. Question: Section E, D. Disciplines. Please clarify the scope intended for Engineering Services (ex. Transportation, parking, FFA, other evaluation services).
   Response: Since this is a new building, the County is relying on the Architect and its consulting engineers to identify and provide any services necessary to complete the design. The County is not expecting any “out of the ordinary” engineering requirements on this project.

All other specifications, terms and conditions remain the same.

Please remember to acknowledge receipt of this Addendum in Section G, Page 25 under Addendum No.2 and return with completed proposal package.

Sincerely,

Merry Celeste
Merry Celeste, CPPB
Director of Purchasing
Cut along the outer border and affix this label to your sealed proposal envelope to identify it as a “Sealed Proposal”. Be sure to include the name of the company submitting the proposal where requested.

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**SEALED PROPOSAL • DO NOT OPEN**

**SEALED PROPOSAL NO.: 190-0140-NC (SS)**

**RFP TITLE:** Tampa Bay Innovation Center Incubator – Professional Architectural Services

**DUE DATE/TIME:** February 4, 2020 @ 3:00 p.m.

**SUBMITTED BY:** ______________________
(Name of Company)

**DELIVER TO:** PURCHASING DEPARTMENT
Board of County Commissioners
Annex Building –6th Floor
400 South Fort Harrison Avenue
Clearwater, FL 33756

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**Please Note:**

From time to time, addenda may be issued to this proposal. Any such addenda will be posted on the same Web site, [http://www.pinellascounty.org/purchase/CCNA.htm](http://www.pinellascounty.org/purchase/CCNA.htm), from which you obtained this proposal. Before submitting your proposal you should check our Web site to download any addenda that may have been issued. Please remember to sign and return Addenda Acknowledgement Form with completed proposal package if applicable.
REQUEST FOR QUALIFICATIONS
PROPOSAL
PROFESSIONAL SERVICES - NON-CONTINUING

AS GOVERNED BY FLORIDA STATUTE 287.055

SUBMIT TO:
PINELLAS COUNTY BOARD OF
COUNTY COMMISSIONERS
400 S. FT. HARRISON AVENUE
ANNEX BUILDING – 6TH FLOOR
CLEARWATER, FL 33756

ISSUE DATE:
January 3, 2020

PROPOSAL SUBMITTALS RECEIVED AFTER SUBMITTAL DATE & TIME WILL NOT BE CONSIDERED

TITLE: Tampa Bay Innovation Center Incubator – Professional Architectural Services

SUBMITTAL DUE: February 4, 2020 @ 3:00 P.M.
AND MAY NOT BE WITHDRAWN FOR 120 DAYS FROM DATE LISTED ABOVE.

DEADLINE FOR WRITTEN QUESTIONS: January 21, 2020 BY 3:00 P.M.
SUBMIT QUESTIONS TO: SUE STEELE, CPPB AT ssteele@pinellascounty.org
Phone: 727-464-4776 Fax: 727/464-3925

THE MISSION OF PINELLAS COUNTY
Pinellas County Government is committed to progressive public policy, superior public service, courteous public contact, judicious exercise of authority and sound management of public resources to meet the needs and concerns of our citizens today and tomorrow.

MERRY CELESTE, CPPB
Division Director of Purchasing
and Risk Management

PROPOSER MUST COMPLETE THE FOLLOWING

NO CHANGES REQUESTED BY A PROPOSER WILL BE CONSIDERED AFTER THE RFP OPENING DATE AS ADVERTISED. BY SIGNING THIS PROPOSAL FORM YOU ARE AGREING TO ALL PROPOSAL TERMS AND CONDITIONS, INCLUDING ALL INSURANCE REQUIREMENTS.

PROPOSER (COMPANY NAME):

D/B/A

Mailing Address

City, State Zip

Company Email Address

Phone

Fax

Remit To Name (as Shown on Company Invoice)

Printed Contact Representative/Title/Email

Proper Corporate Identity is needed when you submit your proposal, especially how your firm is registered with the Florida Division of Corporations. Please visit www.sunbiz.org for this information.

I HEREBY AGREE TO ABIDE BY ALL TERMS AND CONDITIONS OF THIS RFP & CERTIFY I AM AUTHORIZED TO SIGN THIS RFP FOR

AUTHORIZED SIGNATURE

PRINT NAME & TITLE

RETURN THIS FORM WITH YOUR PROPOSAL
SECTION A – GENERAL CONDITIONS

1. SUBMISSION OF PROPOSAL:

(a) Proposals will be opened immediately after the proposal submittal date and time (3:00 PM) by the Pinellas County Purchasing Department, 400 South Fort Harrison Avenue, Annex Building, 6th Floor, Clearwater, FL 33756. The public may attend the proposal opening, but may not immediately review any proposals submitted. The names of respondents only will be read aloud at the time of opening. Pursuant to Florida Statute, Section 119.071(1)(b)2, all proposals submitted shall be subject to review as public records 30 days from opening, or earlier if an intended decision is reached before the 30-day period expires. Late proposals will not be accepted.

(b) Proposals and changes thereto shall be enclosed in sealed envelopes or packages, addressed to the Purchasing Department, Pinellas County. The name and address of the firms, the date and hour of the proposal submittal, and the title shall be placed on the outside of the envelope.

(c) Proposals must follow the format of the RFP and structure their responses to follow the sequence of the RFP when submitting a proposal. County staff will evaluate the proposals received, based on responsiveness to the evaluation criteria and based on the information being provided in the required sequence.

(d) Proposers must have experience in work of the same or similar nature, and must provide references that will satisfy the County. Proposer must furnish a reference list of at least four (4) customers for whom they have performed similar services and must provide information as specified in Section D.

(e) Proposer is advised that exceptions to any of the terms contained in this RFP or the attached service agreement must be identified in its response to the RFP. Failure to do so may lead County to declare any such term non-negotiable. Proposer’s desire to take exception to a non-negotiable term will not disqualify it from consideration for award.

2. WRITTEN REQUESTS FOR INTERPRETATIONS/CLARIFICATIONS:

No oral interpretations will be made to any firms as to the meaning of specifications or any other contract documents. All questions pertaining to the terms and conditions or scope of work of this proposal must be sent in writing (mail or fax) to the Purchasing Department and received no later than the deadline specified in RFP. Responses to questions may be handled as an addendum if the response would provide clarification to requirements of the proposal. All such addenda shall become part of the contract documents. The County will not be responsible for any other explanation or interpretation of the proposed RFP made or given prior to the award of the contract. The Purchasing Department will be unable to respond to questions received after the specified deadline.

3. RIGHTS OF PINELLAS COUNTY IN REQUEST FOR PROPOSAL PROCESS:

In addition to all other rights of the County under Florida law, the County specifically reserves the following:

a) Pinellas County reserves the right to rank firms and negotiate with the highest-ranking firm. Negotiation with an individual proposer does not require negotiation with others.

b) Pinellas County reserves the right to select the proposal that it believes will serve the best interest of Pinellas County.

c) Pinellas County reserves the right to reject any or all Requests for Proposals. The respective constitutional officer, county administrator on behalf of the board of county commissioners or within his/her delegated financial approval authority, or director of purchasing, within his/her delegated financial approval authority shall have the authority when the public interest will be served thereby to reject all proposals or parts of proposals at any stage of the procurement process through the award of the contract.

d) Pinellas County reserves the right to cancel the entire Request for Proposal.

e) Pinellas County reserves the right to remedy or waive minor informalities or irregularities, or immaterial errors in the Request for Proposal or in proposals submitted.

f) Pinellas County reserves the right to request any necessary clarifications or proposal data without changing the terms of the proposal.
4. **COSTS INCURRED BY PROPOSERS:**
All expenses involved with the preparation and submission of proposals to the County, or any work performed in connection therewith, shall be borne solely by the Proposer(s). No payment will be made for any responses received, or for any other effort required of, or made by, the Proposer(s) prior to contract commencement.

5. **ORAL PRESENTATION:**
An oral presentation may be requested at the evaluation committee’s discretion. If an oral presentation is requested, it will be based on the evaluation of the written proposal’s submitted, a minimum of three (3) highest ranked firms, (if at least three firms submitted and are deemed qualified to proceed) shall be shortlisted and may be invited to an oral presentation. The average scores from the written evaluation phase will be carried forward (for shortlisted firms) and combined with average scores from the oral presentation process for one total average score potential of 2,000 points. (1,000 points from the written and 1,000 points from the oral).

6. **CONFLICT OF INTEREST:**
   a) The Proposer represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder. The Proposer further represents that no person having any such interest shall be employed by him/her during the agreement term and any extensions. In addition, the Proposer shall not offer gifts or gratuities to County Employees as County Employees are not permitted to accept gifts or gratuities. By signing this proposal document, the Proposer acknowledges that no gifts or gratuities have been offered to County Employees or anyone else involved in this competitive proposal process.

   b) The Proposer shall promptly notify the County’s representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest, or other circumstance, which may influence or appear to influence the Contractor’s judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Proposer may undertake and request an opinion of the County as to whether the association, interest or circumstance would, in the opinion of the County, constitute a conflict of interest if entered into by the Proposer. The County agrees to notify the Proposer of its opinion, by certified mail, within thirty days of receipt of notification by the Proposer.

   c) It is essential to government procurement that the process be open, equitable and ethical. To this end, if potential unethical practices including but not limited to collusion, receipt or solicitation of gifts and conflicts of interest (direct/indirect) etc. are observed or perceived, please report such activity to:

      Pinellas County Clerk of Circuit Court – Division of Inspector General

      (727) 45FRAUD (453-7283)
      Fax – 727-464-8386

7. **WITHDRAWAL OF PROPOSAL:**
A proposal may be withdrawn prior to the time set for the proposal submittal, based on a written request from an authorized representative of the firm; however, a proposal may not be withdrawn after the time set for the proposal submittal for a period of time as specified.

8. **LATE PROPOSAL OR MODIFICATIONS:**
Proposal and modifications received after the time set for the proposal submittal will not be considered; however, modifications in writing received prior to the time set for the proposal submittal will be accepted. In addition, late proposals will not be accepted, will be rejected and will be returned for any reason. The time clock stamp located in Pinellas County Purchasing Department shall be the official time stamp. This upholds the integrity of the proposal process.

9. **LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS:**
The laws of the State of Florida apply to any purchase made under this Request for Proposal. Proposers shall comply with all local, state, and federal directives, orders and laws as applicable to this proposal and subsequent contract(s) including but not limited to Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Equal Employment Opportunity (EEO), Minority Business Enterprise (MBE), and OSHA as applicable to this contract.
10. **RIGHT TO AUDIT:**
Pinellas County reserves the privilege of auditing a vendor’s records as such records relate to purchases between Pinellas County and said vendor. Such audit privilege is provided for within the text of the Pinellas County Code §2-156 through §2-176(j). Records should be maintained for five (5) years from the date of final payment.

11. **SCRUTINIZED COMPANIES AND PUBLIC ENTITIES CRIME ACT:**
Contractor is directed to the Florida Public Entity Crime Act, Fla. Stat. 287.133, and Fla. Stat. 287.135 regarding Scrutinized Companies, and Contractor agrees that its bid and, if awarded, its performance of the agreement will comply with all applicable laws including those referenced herein. Contractor represents and certifies that Contractor is and will at all times remain eligible to bid for and perform the services subject to the requirements of these, and other applicable, laws. Contractor agrees that any contract awarded to Contractor will be subject to termination by the County if Contractor fails to comply or to maintain such compliance.

12. **COUNTY INDEMNIFICATION:**
If the CONSULTANT is an individual or entity licensed by the state of Florida who holds a current certificate of registration under Chapter 481, Florida Statutes, to practice architecture or landscape architecture, under Chapter 472, Florida Statutes, to practice land surveying and mapping, or under Chapter 471, Florida Statutes, to practice engineering, and who enters into a written agreement with the COUNTY relating to the planning, design, construction, administration, study, evaluation, consulting, or other professional and technical support services furnished in connection with any actual or proposed construction, improvement, alteration, repair, maintenance, operation, management, relocation, demolition, excavation, or other facility, land, air, water, or utility development or improvement, the CONSULTANT will indemnify and hold harmless the COUNTY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Agreement.

13. **TERMINATION:**
   a) Pinellas County reserves the right to terminate this contract without cause by giving thirty (30) days prior notice to the contractor in writing of the intention to terminate or with cause if at any time the contractor fails to fulfill or abide by any of the terms or conditions specified.
   b) Failure of the contractor to comply with any of the provisions of this Agreement shall be considered a material breach of Agreement and shall be cause for immediate termination of the Agreement at the discretion of Pinellas County.
   c) In the event sufficient budgeted funds are not available for a new fiscal period, the County shall notify the Proposer of such occurrence and Agreement shall terminate on the last day of current fiscal period without penalty or expense to the County.
   d) In addition to all other legal remedies available to Pinellas County, Pinellas County reserves the right to terminate and obtain from another source, any items which have not been delivered within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time from the date of order as determined by Pinellas County.

14. **ASSIGNMENT/SUBCONTRACTING/CORPORATE ACQUISITIONS AND/OR MERGERS:**
The Contractor shall perform this contract. No assignment or subcontracting shall be allowed without prior written consent of the County. If a proposer intends to subcontract a portion of this work, the proposer must disclose that intent in the proposal. In the event of a corporate acquisition and/or merger, the Contractor shall provide written notice to the County within thirty (30) business days of Contractor’s notice of such action or upon the occurrence of said action, whichever occurs first. The right to terminate this contract, which shall not be unreasonably exercised by the County, shall include, but not be limited to, instances in which a corporate acquisition and/or merger represent a conflict of interest or are contrary to any local, state, or federal laws. Action by the County awarding a proposal to a firm that has disclosed its intent to assign or subcontract in its response to the RFP, without exception shall constitute approval for purpose of this Agreement.
15. **LOBBYING:**

Lobbying shall be prohibited on all County competitive selection processes and purchasing contract awards pursuant to this division, including, but not limited to, requests for proposals, requests for quotations, requests for qualifications, bids or the award of purchasing contracts of any type. The purpose of this prohibition is to protect the integrity of the procurement process by shielding it from undue influences prior to the contract award, or the competitive selection process is otherwise concluded. However, nothing herein shall prohibit a prospective bidder/proposer/protestor from contacting the Purchasing Department or the county attorney's office to address situations such as clarification and/or pose questions related to the procurement process.

Lobbying of evaluation committee members, County government employees, elected/appointed officials, or advisory board members regarding requests for proposals, requests for quotations, requests for qualifications, bids, or purchasing contracts, by the bidder/proposer, any member of the bidder's/proposer's staff, any agent or representative of the bidder/proposer, or any person employed by any legal entity affiliated with or representing a bidder/proposer/protestor, is strictly prohibited from the date of the advertisement, or on a date otherwise established by the Board, until either an award is final, or the competitive selection process is otherwise concluded. Any lobbying activities in violation of this section by or on behalf of a bidder/proposer shall result in the disqualification or rejection of the proposal, quotation, statement of qualification, bid or contract.

For purposes of this provision, "lobbying" shall mean influencing or attempting to influence action or non-action, and/or attempting to obtain the goodwill of persons specified herein relating to the selection, ranking, or contract award in connection with any request for proposal, request for quotation, request for qualification, bid or purchasing contract through direct or indirect oral or written communication. The final award of a purchasing contract shall be the effective date of the purchasing contract.

Any evaluation committee member, County government employee, elected/appointed official, or advisory board member who has been lobbied shall immediately report the lobbying activity to the Director.

16. **PROTEST PROCEDURE:**

As per Section 2-162 of County Code

(a) **Right to Protest.** A Vendor who is aggrieved by the contents of the bid or proposal package, or a Vendor who is aggrieved in connection with the recommended award on a bid or proposal solicitation, may file a written protest to the Director, as provided herein. This right to protest is strictly limited to those procurements of goods and/or services solicited through invitations to bid or requests for proposals, including solicitations pursuant to F.S. § 287.055, the "Consultants' Competitive Negotiation Act." No other actions or recommendations in connection with a solicitation can be protested, including: (i) requests for quotations, negotiations, qualifications or letters of interest; (ii) rejection of some, all or parts of bids or proposals; (iii) disqualification of bidders or proposers as non-responsive or non-responsible; or (iv) recommended awards less than the mandatory bid or proposal amount. Protests failing to comply with the provisions of this section shall not be reviewed.

(b) **Posting.** The Purchasing Department shall post the recommended award on or through the departmental website.

(c) **Requirements to Protest.**

(1) If the protest relates to the content of the bid or proposal package, a formal written protest must be filed no later than 5:00 p.m. EST on the fifth full Business Day after issuance of the bid or proposal package.

(2) If the protest relates to the recommended award of a bid or proposal, a formal written protest must be filed no later than 5:00 p.m. EST on the fifth full Business Day after posting of the award recommendation.

(3) The formal written protest shall identify the protesting party and the solicitation involved; include a statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances or other legal authorities which the protesting party deems applicable to such grounds; and specifically request the relief to which the protesting party deems itself entitled by application of such authorities to such grounds.

(4) A formal written protest is considered filed with the County when the Purchasing Department receives it. Accordingly, a protest is not timely filed unless it is received within the time specified above by the Purchasing Department. Failure to file a formal written protest within the time period specified shall constitute a waiver of the right to protest and result in relinquishment of all rights to protest by the bidder or proposer.
(d) **Sole Remedy.** These procedures shall be the sole remedy for challenging the content of the bid or proposal package or the recommended award.

(e) **Lobbying.** Protestors and anyone acting on their behalf, are prohibited from attempts to influence, persuade, or promote a bid or proposal protest through any other channels or means, and contacting any County official, employee, advisory board member, or representative to discuss any matter relating in any way to the solicitation being protested, other than the Purchasing Department's or county attorney's office to address situations such as clarification and/or pose questions related to the procurement process. The prohibitions provided for herein shall begin with the filing of the protest and end upon the final disposition of the protest; provided, however, at all times protestors shall be subject to the procurement lobbying prohibitions in section 2-189 of this Code. Failure to adhere to the prohibitions herein shall result in the rejection of the protest without further consideration.

(f) **Time Limits.** The time limits in which protests must be filed as specified herein may be altered by specific provisions in the bid or proposal.

(g) **Authority to Resolve.** The Director shall resolve the protest in accordance with the documentation and applicable legal authorities and shall issue a written decision to the protestor no later than 5:00 p.m. EST on the tenth full Business Day after the filing thereof.

(h) **Review of Director's Decision.**

1. The protesting party may request a review of the Director's decision to the county administrator by delivering written request for review of the decision to the Director by 5:00 p.m. EST on the fifth full Business Day after the date of the written decision. The written notice shall include any materials, statements, and arguments which the bidder or proposer deems relevant to the issues raised in the request to review the decision of the Director.

2. The county administrator shall issue a decision in writing stating the reason for the action with a copy furnished to the protesting party no later than 5:00 p.m. EST on the seventh full Business Day after receipt of the request for review. The decision shall be final and conclusive as to the County unless a party commences action in a court of competent jurisdiction.

(i) **Stay of Procurement During Protests.** There shall be no stay of procurement during protests.

17. **INTEGRITY OF REQUEST FOR PROPOSAL (RFP) DOCUMENTS:**
   Proposers shall use the original RFP Form(s) provided by the Purchasing Department and enter information only in the spaces where a response is requested. Proposers may use an attachment as an addendum to the RFP Form(s) if sufficient space is not available on the original form for the proposer to enter a complete response. Any modifications or alterations to the original RFP documents by the proposer, whether intentional or otherwise, will constitute grounds for rejection of a RFP. Any such modifications or alterations a proposer wishes to propose must be clearly stated in the proposer's RFP response and presented in the form of an addendum to the original RFP documents.

18. **SERVICES AGREEMENT:**
   A written agreement, in substantially the form attached, will be prepared by the County, signed by the successful proposer and presented to the Board of County Commissioners, County Administrator or Director of Purchasing for approval and signature.

19. **OWNERSHIP OF DOCUMENTS:**
   A. Drawings, specifications, designs, models, photographs, reports, surveys, calculations, and other data provided in connection with this RFP are and shall remain the property of the County whether the project for which they are made is executed or not. Such finished or unfinished documents, data, calculations, studies, surveys, specifications, drawings, maps, models, photographs and reports prepared by the Consultant shall be delivered by the Consultant to the County at the conclusion of the project or the termination of the Consultant’s services.

   B. When such documents are provided to other parties, the Consultant shall ensure return of the County’s property.
SECTION A – GENERAL CONDITIONS

20. INDEPENDENT CONTRACTOR STATUS AND COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986:
Consultant acknowledges that it is functioning as an independent contractor in performing under the terms of this contract, and it is not acting as an employee of Pinellas County. The consultant acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, located at 8 U.S.C. Section 1324, et seq., and regulations relating thereto. Failure to comply with the above provisions of the contract shall be considered a material breach and shall be ground for immediate termination of the contract.

21. PROHIBITION AGAINST CONTINGENT FEE:
The consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the consultant to solicit or secure this contract and that he has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the consultant, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this contract.

22. TRUTH IN NEGOTIATIONS:
The Consultant certifies to truth-in-negotiation and that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. Further, the original contract amount and any additions thereto shall be adjusted to exclude any significant sums where the County determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Such adjustments must be made within one (1) year following the end of the contract.

23. JOINT VENTURES:
All Proposers intending to submit a proposal as a Joint Venture are required to have filed proper documents with the Florida Department of State, the Division of Professions, Construction Industry Licensing Board and any other state or local licensing Agency prior to submitting the proposal (see Section 489.119 Florida statutes).

Joint Venture Firms must provide an affidavit attesting to the formulation of a joint venture and provide either proof of incorporation as a joint venture or a copy of the formal joint venture Agreement between all joint venture parties, indicating their respective roles, responsibilities and levels of participation for the project.

24. PAYMENT/INVOICES:
SUPPLIER shall submit invoices for payment due as provided herein with such documentation as required by Pinellas County and all payments shall be made in accordance with the requirements of Section 218.70 et. seq, Florida Statutes, “The Local Government Prompt Payment Act.” Invoices shall be submitted to the address below unless instructed otherwise on the purchase order, or if no purchase order, by the ordering department:

Finance Division Accounts Payable
Pinellas County Board of County Commissioners
P. O. Box 2438
Clearwater, FL 33757

Each invoice shall include, at a minimum, the Supplier's name, contact information and the standard purchase order number. In order to expedite payment, it is recommended the Supplier also include the information shown in below. The County may dispute any payments invoiced by SUPPLIER in accordance with the County's Dispute Resolution Process for Invoiced Payments, established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County's Dispute Resolution Process.
INVOICE INFORMATION:

**Supplier Information**
Company name, mailing address, phone number, contact name and email address as provided on the PO

**Remit To**
Billing address to which you are requesting payment be sent

**Invoice Date**
Creation date of the invoice

**Invoice Number**
Company tracking number

**Shipping Address**
Address where goods and/or services were delivered

**Ordering Department**
Name of ordering department, including name and phone number of contact person

**PO Number**
Standard purchase order number

**Ship Date**
Date the goods/services were sent/provided

**Quantity**
Quantity of goods or services billed

**Description**
Description of services or goods delivered

**Unit Price**
Unit price for the quantity of goods/services delivered

**Line Total**
Amount due by line item

**Invoice Total**
Sum of all of the line totals for the invoice

Pinellas County offers a credit card payment process (ePayables) through Bank of America. Pinellas County does not charge vendors to participate in the program; however, there may be a charge by the company that processes your credit card transactions. For more information please visit Pinellas County purchasing website at [www.pinellascounty.org/purchase](http://www.pinellascounty.org/purchase).

25. **TAXES:**
The County is immune or exempt from all state and federal sales, use, transportation and excise taxes. Taxes of any kind and character, payable on account of the work performed and materials furnished under the award, shall be paid by the proposer and deemed to have been included in the RFP. The Laws of the State of Florida provide that sales and use taxes are payable by the proposer upon the tangible personal property incorporated in the work and such taxes shall be paid by the proposer and be deemed to have been included in the RFP.

26. **DISPUTE RESOLUTION FOR PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS IN MATTERS OF INVOICE PAYMENTS:**
Payment of invoices for work performed for Pinellas County Board of County Commissioners (County) is made, by standard, in arrears in accordance with Section 218.70, et. seq., Florida Statutes, the Local Government Prompt Payment Act.

If a dispute should arise as a result of non-payment of a payment request or invoice the following Dispute Resolution process shall apply:

A. Pinellas County shall notify a vendor in writing within ten (10) days after receipt of an improper invoice, that the invoice is improper. The notice should indicate what steps the vendor should undertake to correct the invoice and resubmit a proper invoice to the County. The steps taken by the vendor shall be that of initially contacting the requesting department to validate their invoice and receive a sign off from that entity that would indicate that the invoice in question is in keeping with the terms and conditions of the agreement. Once sign off is obtained, the vendor should then resubmit the invoice as a “Corrected Invoice” to the requesting department which will initiate the payment timeline.
SECTION A – GENERAL CONDITIONS

1. Requesting department for this purpose is defined as the County department for whom the work is performed.

2. Proper invoice for this purpose is defined as an invoice submitted for work performed that meets prior agreed upon terms or conditions to the satisfaction of Pinellas County.

B. Should a dispute result between the vendor and the County about payment of a payment request or an invoice then the vendor should submit their dissatisfaction in writing to the Requesting Department. Each Requesting Department shall assign a representative who shall act as a “Dispute Manager” to resolve the issue at departmental level.

C. The Dispute Manager shall first initiate procedures to investigate the dispute and document the steps taken to resolve the issue in accordance with section 218.76 Florida Statutes. Such procedures shall be commenced no later than forty-five (45) days after the date on which the payment request or invoice was received by Pinellas County, and shall not extend beyond sixty (60) days after the date on which the payment request or invoice was received by Pinellas County.

D. The Dispute Manager should investigate and ascertain that the work, for which the payment request or invoice has been submitted, was performed to Pinellas County’s satisfaction and duly accepted by the Proper Authority. Proper Authority for this purpose is defined as the Pinellas County representative who is designated as the approving authority for the work performed in the contractual document. The Dispute Manager shall perform the required investigation and arrive at a solution before or at the sixty (60) days’ timeframe for resolution of the dispute, per section 218.76, Florida Statutes. The County Administrator or his or her designee shall be the final arbiter in resolving the issue before it becomes a legal matter. The County Administrator or his or her designee will issue their decision in writing.

E. Pinellas County Dispute Resolution Procedures shall not be subject to Chapter 120 of the Florida Statutes. The procedures shall also, per section 218.76, Florida Statutes, not be intended as an administrative proceeding which would prohibit a court from ruling again on any action resulting from the dispute.

F. Should the dispute be resolved in the County’s favor interest charges begin to accrue fifteen (15) days after the final decision made by the County. Should the dispute be resolved in the vendor’s favor the County shall pay interest as of the original date the payment was due.

G. For any legal action to recover any fees due because of the application of sections 218.70 et. seq., Florida Statutes, an award shall be made to cover court costs and reasonable attorney fees, including those fees incurred as a result of an appeal, to the prevailing party. If it is found that the non-prevailing party held back any payment that was the reason for the dispute without having any reasonable lawful basis or fact to dispute the prevailing party’s claim to those amounts.

27. INSURANCE:
Notice: The Contractor/Vendor must provide a certificate of insurance and endorsement in accordance with the insurance requirements listed below (Section C). Failure to provide the required insurance within a ten (10) day period following the determination or recommendation of the highest ranked firm may result in the County to vacate the original determination or recommendation and proceed with recommendation to the second highest ranked firm.

28. PUBLIC RECORDS/TRADE SECRETS:
Pinellas County Government is subject to the Florida Public Records law (Chapter 119, Florida Statutes), and all documents, materials, and data submitted to any solicitation as part of the response are governed by the disclosure, exemption and confidentiality provisions relating to public records in Florida Statutes. Except for materials that are “trade secrets” or “confidential” as defined by applicable Florida law, ownership of all documents, materials, and data submitted in response to the solicitation shall belong exclusively to the County.

To the extent that Proposer/Bidder/Quoter desires to maintain the confidentiality of materials that constitute trade secrets pursuant to Florida law, trade secret material submitted must be identified by some distinct method that the materials that constitute a trade secret, and Proposer/Bidder/Quoter shall provide an additional copy of the proposal/bid/quote that redacts all designated trade secrets. By submitting materials that are designated as trade secrets and signature of the Proposer/Bidder/Quoter Signature Page, Proposer/Bidder/Quoter acknowledges and agrees:
(i) that after notice from the County that a public records request has been made for the materials designated as a trade secret, the Proposer/Bidder/Quoter shall be solely responsible for defending its determination that submitted material is a trade secret that is not subject to disclosure at its sole cost, which action shall be taken immediately, but no later than 10 calendar days from the date of notification or Proposer/Bidder/Quoter will be deemed to have waived the trade secret designation of the materials;

(ii) that to the extent that the proposal/bid/quote with trade secret materials is evaluated, the County and its officials, employees, agents, and representatives in any way involved in processing, evaluating, negotiating contract terms, approving any contract based on the proposal/bid/quote, or engaging in any other activity relating to the competitive selection process are hereby granted full rights to access, view, consider, and discuss the materials designated as trade secrets through the final contract award;

(iii) to indemnify and hold the County, and its officials, employees, agents and representatives harmless from any actions, damages (including attorney’s fees and costs), or claims arising from or related to the designation of trade secrets by the Proposer/Bidder/Quoter, including actions or claims arising from the County’s non-disclosure of the trade secret materials.

(iv) that information and data it manages as part of the services may be public record in accordance with Chapter 119, Florida Statutes and Pinellas County public record policies. Proposer/Bidder/Quoter agrees prior to providing goods/services it will implement policies and procedures to maintain, produce, secure and retain public records in accordance with applicable laws, regulations, and County Policies, which are subject to approval by the County, including but limited to the Section 119.0701, Florida Statutes.

Notwithstanding any other provision in the solicitation, the classification as trade secret of the entire proposal/bid/quote document, line item and/or total proposal/bid/quote prices, the work, services, project, goods, and/or products to be provided by Proposer/Bidder/Quoter, or any information, data, or materials that may be part of or incorporated into a contract between the County and the Proposer/Bidder/Quoter is not acceptable to the County and will result in a determination that the proposal/bid/quote is nonresponsive; the classification as trade secret of any other portion of a proposal/bid/quote document may result in a determination that the proposal/bid/quote is nonresponsive.

29. PUBLIC RECORDS – CONTRACTOR’S DUTY
If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor’s duty to provide public records relating to this contract, contact the Pinellas County Board of County Commissioners, Purchasing Department, Operations Manager custodian of public records at 727-464-3311, purchase@pinellascounty.org, Pinellas County Government, Purchasing Department, Operations Manager, 400 S. Ft. Harrison Ave, 6th Floor, Clearwater, FL 33756
1. **INTENT:**
The Pinellas County Board of County Commissioners (Board) is seeking proposals from professional Design firms (CONSULTANT) interested in qualifying to provide professional services for the design and construction administration of the Tampa Bay Innovation Center Incubator, a state-of-the-art business incubator located on a currently undeveloped site within the City of St. Petersburg in accordance with requirements of a grant awarded by the U.S. Economic Development Administration (EDA). The CONSULTANT will be selected in accordance with the “Consultants’ Competitive Negotiation Act” (CCNA). The CCNA establishes contracting procedures by which counties must select architects, professional engineers, landscape architects, and surveyors and mappers (“Professional Firms”) for architectural, engineering, landscaping and mapping services (“Professional Services”).

The CCNA process allows for professional firms to be chosen on quality of personnel, minority business enterprise consideration, past performance, willingness to meet time and budget requirements, location, workload, and volume of work previously awarded to each Professional Firm by the County.

This project is partially funded with federal funds. All requirements of 2 C.F.R. § 200, et seq., the United States Department of Commerce Economic Development Administration’s (“EDA”) “Summary of Construction Standards,” “EDA Contracting Provisions for Construction Projects,” and all applicable EDA grant requirements are incorporated herein by reference and supersede any provisions to the contrary.

2. **PERIOD OF CONTRACT:**
This contract shall remain in effect through the end of project construction close-out, but not later than October 29, 2023. This Agreement shall become effective on the date of final execution of the Agreement by the last party to execute the Agreement.

3. **EVALUATION CRITERIA for Written Proposals:**
Following is the criteria that will be used by the County to evaluate and score responsive written proposals. Proposers shall include sufficient information to allow the County to thoroughly evaluate and score their proposals. Each proposal submitted shall be evaluated and ranked by an evaluation committee. If an oral presentation is requested, a minimum of three (3) highest ranked firms (if at least three firms submitted and are deemed qualified to proceed) shall be shortlisted and invited to an oral presentation. The average written scores from the short listed firms are carried forward. Final ranking recommendation is based on the combined average scores obtained for a total potential 2,000 points.

   a. **Ability of Firm and its Professional Personnel. Willingness and Ability to Meet Schedule and Budget Based on Current and Projected Workload.** 475 Points

   1. Reviews the level of qualifications and experience of the firm and project team and appropriateness of the organization of the project team.
   2. Reviews the professional resources available to properly provide services as requested in the RFP document.
   3. Reviews the project team to insure the team proposed contains all of the critical disciplines required.
   4. Prime team proposed should have exceptional professional resources to properly provide services.
   5. The project manager and proposed team should be uniquely qualified to provide the desired services.
   6. Evaluates the workload commitments that will impact the firm’s ability to complete services on schedule.
   7. The submittal should demonstrate that the firm has adequate time available and personnel to complete services on schedule and additional backup staffing capability in the event of unforeseen circumstances.
b. **Firm Experience with Projects of Similar Size and Past Performance**  
425 Points

1. Reviews the firm’s experience with projects of similar size, type and scope and the performance on those specific projects.
2. The prime firm must have adequate, recent (within the past five years) experience with projects of similar type as defined in the RFP document.
3. Experience pertaining to specific Pinellas County projects may also be considered. Pinellas County staff shall not however furnish references for such projects.
4. The scope of services provided should represent projects that are similar to those defined in the RFP document.
5. The overall performance of the firm relative to projects of similar size and scope should be evaluated.

c. **Volume of Work Previously Awarded by the County**  
50 Points

Pre-populated by the Purchasing Department, the purpose of this criterion is to effect an equitable distribution of contracts. This criterion is evaluated based on all CCNA Non-Continuing contracts awarded to a firm during the two (2) previous completed fiscal years through to current date. The date utilized for establishing award shall be the date the Board of County Commissioners or County Administrator initially awards the contract. The points are worth 5 percent of the overall points available and are distributed as follows:

- $0 - $200,000 – five (5%) percent of points available
- $200,001 - $400,000 – four (4%) percent of points available
- $400,001 – $600,000 – three (3%) percent of points available
- $600,001- $800,000 – two (2%) percent of points available
- $800,001 - $1,000,000 – one (1%) percent of points available
- Over $1,000,000 – zero (0%) percent of points available

Based on a typical 1,000 point evaluation scoring process, a firm deemed to be in the $0-$200,000 category threshold would be allotted 50 points etc.

d. **Minority Business Status**  
25 Points

Provides points pre-populated by the Purchasing Department for minority business status as designated by the State of Florida. If the firm, or its sub-consultant, is designated as a minority business by the Florida State Office of Supplier Diversity, Department of Management Services, five (5%) percent of the total evaluation points are awarded. If the firm does not have minority business status as per the Florida State Office of Supplier Diversity, Department of Management Services, zero (0%) percent of the points available are awarded.

e. **Location**  
25 Points

Provides points pre-populated by the Purchasing Department. Evaluates the location of the project team relative to Pinellas County including the prime firm and project manager. If firm has an established office located in Pinellas, Manatee, Hillsborough or Pasco counties, 25 points are awarded. If not, no points will be awarded.

**Total** 1,000 Points
4. EVALUATION CRITERIA for Oral Presentations

An oral presentation may be requested at the evaluation committee’s discretion. The average scores from the written evaluation phase will be carried forward (for the shortlisted firms deemed qualified to proceed) and combined with average scores from the oral presentation process for one total average score potential of 2,000 points.

a. Understanding of Project/Firm Qualifications 500 Points

1. Evaluation of the firm’s understanding of the overall project including the scope of work which may include but is not limited to; studies performed that affect the project, key design elements and effect on the community involved.
2. Evaluation of the firm’s qualifications and qualifications of the individuals proposed for the project including the project manager and staff of the firm to be assigned. Qualifications shall include but not be limited to experience with similar projects, management experience, firm experience, etc.
3. Evaluation of the firm’s understanding and ability to provide professional design services that comply with 2 C.F.R. § 200, et seq., the United States Department of Commerce EDA’s “Summary of Construction Standards,” “EDA Contracting Provisions for Construction Projects,” and all applicable EDA grant requirements.

b. Ability to Provide Required Services Within the Schedule and Budget 300 Points

Evaluation of the firm’s overall approach including experience in scheduling projects, systems that will be used to keep track of the project schedule, cost control, quality assurance and quality control, issues and methods employed to avoid cost overruns and project delays.

c. Managerial Methods used to Plan, Design and Administer the Project 200 Points

Evaluation of the overall approach to the project proposed by the firm and the appropriateness of the methods proposed to plan, design and administer the project in relation to the scope of work and County requirements.

Total: 1,000 Points

5. TIME LINE:

Following is a listing of actions and anticipated dates; the County reserves the right to change the dates, if necessary.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan 3, 2020</td>
<td>Advertising &amp; Publishing RFP</td>
</tr>
<tr>
<td>N/A</td>
<td>Pre-proposal Conference</td>
</tr>
<tr>
<td>Jan 21, 2020</td>
<td>Deadline for Questions/Clarifications</td>
</tr>
<tr>
<td>Feb 4, 2020</td>
<td>Proposals due in Purchasing by 3:00 p.m. Public bid opening to follow immediately.</td>
</tr>
<tr>
<td>Mar 2020</td>
<td>Evaluation of the RFP</td>
</tr>
<tr>
<td>Mar 2020</td>
<td>Recommendation due to Purchasing from Department</td>
</tr>
<tr>
<td>May 2020</td>
<td>Submit recommendation to Board for Award of Contract</td>
</tr>
<tr>
<td>July 9, 2021</td>
<td>Expected Construction Start Date</td>
</tr>
</tbody>
</table>

6. INFORMATION PACKAGE:

Request for Letters of Interest for Professional Services As Governed by Florida Statute 287.055

1) "Professional services" is defined as those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

2) An award may not be issued without proof that your firm is registered with the Florida Division of Corporations, as per Florida Statute §607.1501 (http://www.flsenate.gov/Laws/Statutes/2011/607.1501).

3) A foreign corporation (foreign to the State of Florida) may not transact business in this state until it obtains a certificate of authority from the Department of State. Please visit www.sunbiz.org for this information on how to become registered.
7. **SUBMITTAL REQUIREMENTS:**

Please review this document carefully. Offers that are accepted by the county are binding contracts. All documents and submittals shall be received by the Purchasing Department on or before date and hour specified for receipt (see page #1). Late proposals will be returned unopened.

Submittal of current SF-330 (federal Standard Form), Part I and II, with all sections completed. SF-330 can be obtained from U. S. General Services Administration (GSA) website - [http://gsa.gov/forms](http://gsa.gov/forms), then select Standard Form on the menu and go to the 330.

The submittals shall be in the format of Standard Forms (SF) 330. The submittal shall be limited to one hundred (100) pages, must be in format of a 3 ring loose leaf binder. The selection of the firms will be based on the information provided on the forms and in the additional sections.

A contractor may submit a response as a prime and also be a subcontractor to another firm.

**Note:** Standard Form (SF) 330 - Part II should be submitted for each firm and for each subcontractor.

Submittal requirements must be indexed and listed in the order described below:

A. **Introduction Tab**

1. Letter of Interest by corporate office or principal of the firm.
2. Specific Professional services to be offered (please delineate each service your firm offers).
3. Table of Contents.

B. **Tab 1 - Standard Form (SF) 330 – Part I & II**

Should be a Maximum of 50 pages and fully completed as required by the law governing Standard Form (SF) 330.

Please furnish a list of ten (10) projects, where multiple team members worked together, if possible, illustrating the proposed team’s qualifications for performance pertaining to this project. The County does not request nor require an amount greater than ten (10) projects be submitted. Your firm will not be penalized if more than ten (10) projects are furnished as part of your submittal; however, submitting more than ten (10) projects will not provide your firm an advantage during the evaluation process.

**Note:** Information submitted in Tab 2 through Tab 6 should be a maximum of 50 pages.

C. **Tab 2 - Statements and Documentation**

1. Proof of licenses/certifications
2. Provide proof of proper State of Florida business licensure and professional certifications/registration(s) in the State of Florida.
3. Provide proof of corporate registration to operate in the State of Florida by the Department of State, Division of Corporations. Information concerning certification with the Secretary of State can be obtained at: [http://ccfcorp.dos.state.fl.us/index.html](http://ccfcorp.dos.state.fl.us/index.html). Must be active status.
4. Provide Certificate of Florida Small and Minority Business issued by the Florida State Office of Supplier Diversity, Department of Management Services (if applicable).
5. State and provide address, phone number, contact, etc., if firm has an established office located in Pinellas, Manatee, Hillsborough or Pasco counties.

D. **Tab 3 - Certificate(s) of Insurance**

Section C reflects the insurance requirements deemed necessary for this project by County Risk Management. It is not necessary to have this level of insurance in effect at the time of submission, but certificates indicating that the insurance is currently carried, or acknowledgment from the carrier indicating upgrade availability will speed the review process.
E. Tab 4 - Key Personnel Statement

Submit a statement that personnel listed in the submittal will be available for and shall be assigned to this project. Failure to produce the proposed key personnel may be grounds for dismissal.

F. Tab 5 -
1. Acknowledgment of Addenda (if applicable).
2. W-9 Request for Taxpayer Identification Number and Certification
3. Section D Vendor References
4. Page 1, Signature Page of the RFP
5. Section F – Electronic Payment (ePayable) form

G. Tab 6 - Include any additional information to represent your firm for consideration.

Original letters shall be signed by an authorized representative of the firm. All information requested must be submitted. Failure to submit all information may delay evaluation of the proposal. Letters, which are substantially incomplete or lack key information, may be rejected by the County at its discretion.

Information submitted with your letter of interest should include documentation to demonstrate your firm’s qualifications and abilities to perform as noted in the scope of services and also include information to allow for a clear understanding of past projects, especially in Florida, staff experience and abilities, and any additional information to present your firm for consideration.

An evaluation committee will review the information submitted. Once review is complete and the firm confirms the maximum ceiling for establishing a fee schedule, a recommendation to the Board of County Commissioners will be prepared. This contract will result in negotiated rates that will be fully loaded and will encompass all profit, markup, and local travel expenses. Award(s) resulting from this solicitation shall be subject to the provisions of Section 2-178, contracting for Designated Professional Services of the Ordinances of Pinellas County and Section 10 of the Purchasing Policies and Procedures of Pinellas County.

For questions and additional information, contact person indicated on page 1.

Letters of Interest will be evaluated using the criteria listed in Item 3 of this Section. Firms will be notified in writing if they have been selected in a reasonable time after submittal date.

All proposals shall be signed in ink by authorized principals of the firm.

Proposals are to be submitted in a sealed envelope. The face of the envelope shall indicate the RFP number, name, and address of the firm, and title of the proposal.

Proposals are to be submitted to Pinellas County Purchasing Department, 400 S. Ft. Harrison Avenue, Annex Bldg, 6th Floor, Clearwater, FL 33756 by the date and time indicated on the cover sheet.

8. PROPOSAL SUBMITTAL COPIES

Proposals shall be submitted in one (1) original paper document and three (3) electronic Travel Drives in PDF format. The preferred method is PDF conversion from the Proposer’s source files (to minimize file size and maximize quality and accessibility) rather than scanning so that the County can open, print, read and save the pdf file you have created. To ensure consistency, the electronic copy should be ONE file document and in the same order as the paper original. If this is not possible, the electronic copy files should be in the same order as the paper copy, with a directory listing of the files.

Please note the evaluation committee will use the electronic media copies to review your submittal. Failure to include all information in the electronic media copies may have an impact on your evaluation scores.

Instructions for Providing Files in PDF Format to Pinellas County Government

Why does Pinellas County Government want all the documents as PDF files?

Answer- It’s much more efficient to go paperless, and PDF is a universal file format that fits perfectly into government workflow processes.
SECTION B – SPECIAL CONDITIONS

How do I convert my files to PDF format?

**Answer:** If you have a program such as Adobe Acrobat, creating a PDF of any file is a simple print function. Rather than printing to a traditional printer, the file converts to a PDF format copy of your original. Any program (such as Word, PowerPoint, Excel, etc.) can be converted this way by simply selecting the print command and choosing PDF as the printer.

**Should I scan everything and save as PDF?**

**Answer:** Not unless you are scanning with OCR (optical character recognition). Scanning will create unnecessarily large files because a scan is just a picture of a page rather than actual page text. Furthermore, the result of scanning is that your pages will not look nearly as “clean” or professional as simply using the print to PDF method from the program from which the file originates. Additionally, since scan pages are pictures of text, not really text, they may not be considered accessible* under Federal ADA guidelines (*unless the scans are OCR).
SECTION C – LIMITATION ON LIABILITY, INDEMNIFICATION, AND INSURANCE REQUIREMENTS

1. LIMITATIONS ON LIABILITY. By submitting a Proposal, the Proposer acknowledges and agrees that the services will be provided without any limitation on Proposer’s liability. The County objects to and shall not be bound by any term or provision that purports to limit the Proposer’s liability to any specified amount in the performance of the services. Proposer shall state any exceptions to this provision in its response, including specifying the proposed limits of liability in the stated exception to be included in the Services Agreement. Proposer is deemed to have accepted and agreed to provide the services without any limitation on Proposer’s liability that Proposer does not take exception to in its response. Notwithstanding any exceptions by Proposer, the County reserves the right to declare its prohibition on any limitation on Proposer’s liability as non-negotiable, to disqualify any Proposal that includes exceptions to this prohibition on any limitation on Proposer’s liability, and to proceed with another responsive, responsible proposal, as determined by the County in its sole discretion.

2. INDEMNIFICATION. By submitting a Proposal, the Proposer acknowledges and agrees to be bound by and subject to the County’s indemnification provisions as set out in the Services Agreement. The County objects to and shall not be bound by any term or provision that purports to modify or amend the Proposer’s indemnification obligations in the Services Agreement, or requires the County to indemnify and/or hold the Proposer harmless in any way related to the services. Proposer shall state any exceptions to this provision in its response, including specifying the proposed revisions to the Services Agreement indemnification provisions, or the proposed indemnification from the County to the Proposer to be included in the Services Agreement. Proposer is deemed to have accepted and agreed to provide the services subject to the Services Agreement indemnification provisions that Proposer does not take exception to in its response. Notwithstanding any exceptions by Proposer, the County reserves the right to declare its indemnification requirements as non-negotiable, to disqualify any Proposal that includes exceptions to this paragraph, and to proceed with another responsive, responsible proposal, as determined by the County in its sole discretion.

3. INSURANCE:

The recommended Proposer must provide a certificate of insurance and endorsement in accordance with the insurance requirements listed below, prior to award of contract. Failure to provide the required insurance within the requested timeframe may result in your submittal being deemed non-responsive.

The contracted Proposer shall obtain and maintain, and require any sub-contractors to obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth. For projects with a Completed Operations exposure, Contractor shall maintain coverage and provide evidence of insurance for two (2) years beyond final acceptance. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and have an AM Best rating of A- VIII or better.

a) Proposal submittals should include, the Proposer’s current Certificate(s) of Insurance in accordance with the insurance requirements listed below. If Proposer does not currently meet insurance requirements, Proposer shall also include verification from their broker or agent that any required insurance not provided at that time of submittal will be in place prior to the award of contract.

b) Proposer shall email certificate that is compliant with the insurance requirements to Sue Steele at ssteele@pinellascounty.org. If certificate received with bid was a compliant certificate no further action may be necessary. The Certificate(s) of Insurance shall be signed by authorized representatives of the insurance companies shown on the Certificate(s). A copy of the endorsement(s) referenced in paragraph d) for Additional Insured shall be attached to the certificate(s) referenced in this paragraph.

c) No work shall commence at any project site unless and until the required Certificate(s) of Insurance are received and approved by the County. Approval by the County of any Certificate(s) of Insurance does not constitute verification by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate(s) of Insurance is in compliance with the requirements of the Agreement. County reserves the right to require a certified copy of the entire insurance policy, including endorsement(s), at any time during the RFP and/or contract period.

d) All policies providing liability coverage(s), other than professional liability and workers compensation policies, obtained by the Proposer and any subcontractors to meet the requirements of the Agreement shall be endorsed to include Pinellas County a Political subdivision of the State of Florida as an Additional Insured.

e) If any insurance provided pursuant to the Agreement expires prior to the completion of the Work, renewal Certificate(s) of Insurance and endorsement(s) shall be furnished by the Proposer to the County at least thirty (30) days prior to the expiration date.
SECTION C – LIMITATION ON LIABILITY, INDEMNIFICATION, AND INSURANCE REQUIREMENTS

(1) Proposer shall also notify County within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, nonrenewal or adverse material change in coverage received by said Proposer from its insurer. Notice shall be given to: Pinellas County Risk Management at InsuranceCerts@pinellascounty.org. Be sure to include your organization’s unique identifier, which will be provided upon notice of award. Nothing contained herein shall absolve Proposer of this requirement to provide notice.

(2) Should the Proposer, at any time, not maintain the insurance coverages required herein, the County may terminate the Agreement, or at its sole discretion may purchase such coverages necessary for the protection of the County and charge the Proposer for such purchase or offset the cost against amounts due to proposer for services completed. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the County to purchase such insurance shall in no way be construed to be a waiver of any of its rights under the Agreement.

f) The County reserves the right, but not the duty, to review and request a copy of the Contractor’s most recent annual report or audited financial statement when a self-insured retention (SIR) or deductible exceeds $50,000.

g) If subcontracting is allowed under this RFP, the Prime Proposer shall obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth; and require any subcontractors to obtain and maintain, at all times during its performance of the Agreement, insurance limits as it may apply to the portion of the Work performed by the subcontractor; but in no event will the insurance limits be less than $500,000 for Workers’ Compensation/Employers’ Liability, and $1,000,000 for General Liability and Auto Liability if required below.

(1) All subcontracts between Proposer and its subcontractors shall be in writing and are subject to the County’s prior written approval. Further, all subcontracts shall (1) require each subcontractor to be bound to Proposer to the same extent Proposer is bound to the County by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor; (2) provide for the assignment of the subcontracts from Proposer to the County at the election of Owner upon termination of the Contract; (3) provide that County will be an additional indemnified party of the subcontract; (4) provide that the County will be an additional insured on all insurance policies required to be provided by the subcontractor except workers compensation and professional liability; (5) provide waiver of subrogation in favor of the County and other insurance terms and/or conditions as outlined below; (6) assign all warranties directly to the County; and (7) identify the County as an intended third-party beneficiary of the subcontract. Proposer shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Section C and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents.

h) Each insurance policy and/or certificate shall include the following terms and/or conditions:

(1) The Named Insured on the Certificate of Insurance and insurance policy must match the entity’s name that responded to the solicitation and/or is signing the agreement with the County. If Proposer is a Joint Venture per Section A, titled Joint Venture of this RFP, Certificate of Insurance and Named Insured must show Joint Venture Legal Entity name and the Joint Venture must comply with the requirements of Section C with regard to limits, terms and conditions, including completed operations coverage.

(2) Companies issuing the insurance policy, or policies, shall have no recourse against County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Contractor.

(3) The term “County” or “Pinellas County” shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and Constitutional offices of County and individual members, employees thereof in their official capacities, and/or while acting on behalf of Pinellas County.

(4) The policy clause “Other Insurance” shall not apply to any insurance coverage currently held by County or any such future coverage, or to County’s Self-Insured Retentions of whatever nature.

(5) All policies shall be written on a primary, non-contributory basis.
(6) Any Certificate(s) of Insurance evidencing coverage provided by a leasing company for either workers compensation or commercial general liability shall have a list of covered employees certified by the leasing company attached to the Certificate(s) of Insurance. The County shall have the right, but not the obligation to determine that the Proposer is only using employees named on such list to perform work for the County. Should employees not named be utilized by Proposer, the County, at its option may stop work without penalty to the County until proof of coverage or removal of the employee by the contractor occurs, or alternatively find the Proposer to be in default and take such other protective measures as necessary.

(7) Insurance policies, other than Professional Liability, shall include waivers of subrogation in favor of Pinellas County from both the Proposer and subcontractor(s).

i) The minimum insurance requirements and limits for this Agreement, which shall remain in effect throughout its duration and for two (2) years beyond final acceptance for projects with a Completed Operations exposure, are as follows:

(1) **Workers’ Compensation Insurance**

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<tr>
<th>Limit</th>
<th>Florida Statutory</th>
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<tr>
<td>Employers’ Liability Limits</td>
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<tr>
<td>Per Employee</td>
<td>$ 500,000</td>
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<tr>
<td>Per Employee Disease</td>
<td>$ 500,000</td>
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<tr>
<td>Policy Limit Disease</td>
<td>$ 500,000</td>
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(2) **Commercial General Liability Insurance** including, but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operations, and Personal Injury.

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<th>Limits</th>
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<tr>
<td>Combined Single Limit Per Occurrence</td>
<td>$ 1,000,000</td>
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<tr>
<td>Products/Completed Operations Aggregate</td>
<td>$ 2,000,000</td>
</tr>
<tr>
<td>Personal Injury and Advertising Injury</td>
<td>$ 1,000,000</td>
</tr>
<tr>
<td>General Aggregate</td>
<td>$ 2,000,000</td>
</tr>
</tbody>
</table>

(3) **Professional Liability (Errors and Omissions) Insurance** with at least minimum limits as follows. If “claims made” coverage is provided, “tail coverage” extending three (3) years beyond completion and acceptance of the project with proof of “tail coverage” to be submitted with the invoice for final payment. In lieu of “tail coverage”, Proposer may submit annually to the County, for a three (3) year period, a current certificate of insurance providing “claims made” insurance with prior acts coverage in force with a retroactive date no later than commencement date of this contract.

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<tr>
<th>Limits</th>
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<tr>
<td>Each Occurrence or Claim</td>
<td>$ 2,000,000</td>
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<tr>
<td>General Aggregate</td>
<td>$ 2,000,000</td>
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For acceptance of Professional Liability coverage included within another policy required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Professional Liability and other coverage combined.

(4) **Property Insurance** Proposer will be responsible for all damage to its own property, equipment and/or materials.
SECTION D – VENDOR REFERENCES

Proposal Title: Tampa Bay Innovation Center Incubator – Professional Architectural Services

Proposal Number: 190-0140-NC (SS)

THE FOLLOWING INFORMATION IS REQUIRED IN ORDER THAT YOUR PROPOSAL MAY BE REVIEWED AND PROPERLY EVALUATED.

COMPANY NAME: __________________________________________________________________________________

LENGTH OF TIME COMPANY HAS BEEN IN BUSINESS: ___________________________________________________

BUSINESS ADDRESS: _______________________________________________________________________________

HOW LONG IN PRESENT LOCATION: __________________________________________________________________

TELEPHONE NUMBER: _______________________________ FAX NUMBER: ________________________________

TOTAL NUMBER OF CURRENT EMPLOYEES: ________ FULL TIME _________ PART TIME

NUMBER OF EMPLOYEES YOU PLAN TO USE TO SERVICE THIS CONTRACT: __________

All references will be contacted by a County Designee via email, fax, mail or phone call to obtain answers to questions, as applicable before an evaluation decision is made.

EITHER LOCAL COMMERCIAL OR GOVERNMENTAL REFERENCE(S) (PINELLAS COUNTY GOVERNMENT REFERENCES WILL NOT BE ACCEPTED) THAT YOU HAVE PREVIOUSLY PERFORMED SIMILAR CONTRACT SERVICES FOR:

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<th>COMPANY NAME</th>
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<td>CITY, STATE</td>
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A. **OBJECTIVE:**
The Pinellas County Board of County Commissioners (Board) is seeking proposals from professional design firms (Consultant) interested in qualifying to provide professional services for the design and construction administration of the Tampa Bay Innovation Center Incubator, a state-of-the-art business incubator located on a currently undeveloped site within the City of St. Petersburg (City) in accordance with requirements of a grant awarded by the U.S. Economic Development Administration (EDA). The Consultant will be selected in accordance with the guidelines established within Pinellas County’s CCNA, State of Florida selection procedures and EDA Financial Assistance and Special Award Conditions (SAC).

B. **BACKGROUND:**
On July 29, 2019 the U.S. Economic Development Administration (EDA) awarded Pinellas County (County) a grant to help fund design and construction of the Tampa Bay Innovation Center Incubator, a state-of-the-art business incubator located in an Opportunity Zone in St. Petersburg. The incubator will enhance and strengthen the entrepreneurial ecosystem by providing affordable and quality office space for product development for growing businesses in the region.

Once completed, the project will support economic diversification and resilience in the aftermath of Hurricane Irma and sudden and severe events including employment loss in the industrial sector, which will help facilitate new business formation, job growth and increase tax revenue throughout the region. The grantee estimates that this investment will help create 466 jobs and leverage $66,600,000 in private investment.

The site is a vacant 2.5-acre MOL parcel located at the southwest corner of 11th Avenue South and 4th Street South. The City conveyed the property to the County.

C. **SCOPE OF WORK:**
The Consultant shall complete all programming, schematic design, design development, 100% construction documents, specifications, bid evaluation, and permitting for the complete design and construction administration of the project.

The delivery method of the project shall be design-bid-build and the Consultant shall assist the County in the selection of the general contractor who will perform the work of constructing the building.

The Consultant shall design a two (2) story structure of approximately 45,000 Square Feet (sq. ft.) state-of-the-art business incubator solution, to be named The Tampa Bay Innovation Center. The purpose of this project is to construct a two-story 45,000 sq. ft. facility to house the Tampa Bay Innovation Center business incubator. The facility will include approximately 30,000 sq. ft. of client space, plus co-working/collaboration space, offices, and a conference/community room. Parking will be under a portion of the building and also at the rear of the facility.

The Consultant shall coordinate with the applicable review agencies for permitting of construction. Design and construction services shall meet current Florida Building Codes (FBC) and current National Fire Protection Association (NFPA) codes and standards.

The Consultant shall coordinate with the County for the purposes of meeting the requirements of the EDA grant and provide such information as is necessary to maintain good status.
D. **DISCIPLINES REQUIRED INCLUDE, BUT ARE NOT LIMITED TO:**

1. Architectural
2. Civil
3. Structural
4. Mechanical, Electrical, Plumbing, Fire Protection
5. Engineering Services
6. Interior Design
7. Furniture, Fixtures & Equipment Design
8. Audio/Visual & IT/CCTV
9. Security
10. Acoustics
11. Accessibility
12. Landscape Design
13. Construction Administration Services

E. **ATTACHMENTS:**

1. Sample Agreement
2. Exhibit 1 - Aerial Image of site
3. Exhibit 2 - Survey by George F. Young dated Aug 2019
4. Exhibit 3 - EDA Grant Contract Requirements (use following link):
   https://www.dropbox.com/sh/uu86j1v4ub65n76/AAAcrcU58RcZlXPb1fU9vcEya?dl=0
5. Exhibit 4 - EDA Summary of Construction Standards
6. Exhibit 5 - EDA Contracting Provisions for Construction Projects

F. **BUDGET ESTIMATE:**

The total estimated design services costs are $825,000.00. The total estimated construction project costs are $10,627,000. Additional funding will be sought for equipping the facility.
Electronic Payment (ePayables)

The Pinellas County Board of County Commissioners (County) offers a credit card payment process (ePayables) through Bank of America. Pinellas County does not charge vendors to participate in the program; however, there may be a charge by the company that processes your credit card transactions. For more information please visit Pinellas County purchasing website at www.pinellascounty.org/purchase.

Would your company accept to participate in the ePayables credit card program?

☐ Yes  ☐ No

Company Name

Authorized Signature (for payment acceptance)

Printed Signature/Title/Department

Phone Number
W-9 REQUEST FOR TAXPAYER ID NUMBER AND CERTIFICATION

<table>
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<tr>
<th>Name (as shown on your income tax return)</th>
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<tr>
<th>Business name, if different from above</th>
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Check appropriate box:  
- Individual/Sole proprietor  
- Corporation  
- Partnership  
- Limited liability company: Enter the tax classification (D=dissolved entity, C=corporation, P=partnership)  
- Other (see instructions)  
- Exempt payee

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<tr>
<th>Address (number, street, and apt. or suite no.)</th>
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Requester’s name and address (optional)

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<tr>
<th>City, state, and ZIP code</th>
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List account number(s) here (optional)

Part I: Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

OR

Employer identification number

Part II: Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined in the instructions).

Certification instructions. You must cross out Item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, Item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Signature of U.S. person

Date

*Instructions to Form W-9 available upon request.

Detach on the perforation

Section 119.071(5), Florida Statutes Notice:

Your Tax Identification Number (which for individuals is your social security number) is collected on Form W9 for use in filing information returns with the IRS as described more fully below. Collection of the tax identification number (or social security number as applicable) is mandatory pursuant to Section 6109 of the Internal Revenue Code (26 U.S.C. § 6109).

Privacy Act Notice:

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.
Proposal Title: Tampa Bay Innovation Center Incubator – Professional Architectural Services

Proposal No: 190-0140-NC (SS)

### PLEASE ACKNOWLEDGE RECEIPT OF ADDENDA FOR THIS RFP BY SIGNING AND DATING BELOW:

<table>
<thead>
<tr>
<th>ADDENDA NO.</th>
<th>SIGNATURE/PRINTED NAME</th>
<th>DATE RECEIVED</th>
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**Note:** Prior to submitting the response to this solicitation, it is the responsibility of the firm submitting a response to confirm if any addenda have been issued. If such document(s) has been issued, acknowledge receipt by signature and date in section above and return Addenda Acknowledgement Form with RFP. Failure to do so may result in being considered non-responsive or result in lowering the rating of a firm’s proposal.

Information regarding Addenda issued is available on the Purchasing Department section of the County’s CCNA website at, [http://www.pinellascounty.org/purchase/CCNA.htm](http://www.pinellascounty.org/purchase/CCNA.htm)
NOTE: If you do not intend to submit a proposal on this requirement, please return this form immediately. Thank you.

Pinellas County Purchasing Department
400 South Fort Harrison Avenue, 6th Floor
Clearwater, Florida 33756

We, the undersigned have declined to submit a proposal for RFP No. 190-0140-NC (SS) for Tampa Bay Innovation Center Incubator – Professional Architectural Services.

Specifications too "tight", i.e., geared toward one brand or manufacturer only (explain below).

____ Insufficient time to respond to the Request for Proposal.

____ We do not offer this product or service.

____ Our schedule would not permit us to perform.

____ Unable to meet specifications.

____ Unable to meet Bond requirement.

____ Specifications unclear (explain below).

____ Unable to Meet Insurance Requirements.

____ Remove Us from Your "Notification List" Altogether

____ Other (specify below).

REMARKS:

________________________________________________________________________________________

________________________________________________________________________________________

________________________________________________________________________________________

________________________________________________________________________________________

We understand that if the "No Proposal" letter is not executed and returned our name may be deleted from the Consultants Notification List of Pinellas County.

COMPANY NAME: ____________________________________________

DATE: ____________________________________________

SIGNATURE: ____________________________________________

TYPED NAME OF ABOVE: ____________________________________________

TELEPHONE: ____________________________________________

FAX: ____________________________________________

EMAIL: ____________________________________________
PINELLAS COUNTY GOVERNMENT IS COMMITTED TO PROGRESSIVE PUBLIC POLICY, SUPERIOR PUBLIC SERVICE, COURTEOUS PUBLIC CONTACT, JUDICIOUS EXERCISE OF AUTHORITY AND SOUND MANAGEMENT OF PUBLIC RESOURCES, TO MEET THE NEEDS AND CONCERNS OF OUR CITIZENS TODAY AND TOMORROW.
PROFESSIONAL ENGINEERING SERVICES NON-CONTINUING SERVICES SAMPLE AGREEMENT

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EXHIBIT C - EDA GRANT CONTRACT REQUIREMENTS
SECTION 1
INTENT OF AGREEMENT

AGREEMENT FOR PROFESSIONAL ARCHITECTURAL SERVICES FOR
Tampa Bay Innovation Center Incubator – Professional Architectural Services

THIS AGREEMENT, entered into on the _____ day of _____, 20_____, between PINELLAS COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the COUNTY, represented by its Board of County Commissioners, and, (Insert Company Name) with offices in (Insert City), Florida hereinafter referred to as the CONSULTANT.

WITNESSETH, That:

WHEREAS, Pinellas County, herein referred to as the COUNTY, requires PROFESSIONAL ARCHITECTURAL SERVICES associated with support to develop plans and specifications and perform all other professional architectural services as may be required during the construction of The Tampa Bay innovation Center, that will be constructed on a vacant 2.5-acre MOL parcel located at the southwest corner of 11th Avenue South and 4th Street South in Pinellas County, Florida. The purpose of this project is to construct a two-story 45,000 sq. ft. facility to house the Tampa Bay Innovation Center business incubator. The facility will include approximately 30,000 sq. ft. of client space, plus co-working/collaboration space, offices, and a conference/community room. Parking will be under a portion of the building and also at the rear of the facility;

WHEREAS, this project is partially funded with federal funds, and the CONSULTANT specifically covenants that it will provide design services on behalf of the COUNTY that comply with the United States Department of Commerce Economic Development Administration’s (“EDA”) “Summary of Construction Standards,” “EDA Contracting Provisions for Construction Projects,” and all applicable EDA grant requirements;

WHEREAS, the COUNTY desires the CONSULTANT provide PROFESSIONAL ARCHITECTURAL SERVICES requisite to the development of the PROJECT; and

WHEREAS, the CONSULTANT has expressed the willingness and ability to provide the aforementioned Services; and

NOW THEREFORE, the COUNTY and the CONSULTANT, in consideration of the mutual covenants hereinafter set forth, agree as follows:
SECTION 2
SCOPE OF PROJECT

2.1 PROJECT DESCRIPTION AND PROFESSIONAL REQUIREMENTS

For the purposes of this Agreement the term PROJECT shall include all areas of proposed improvements, all areas that may reasonably be judged to have an impact on the PROJECT, and all PROJECT development phases and the services and activities attendant thereto. It is not the intent of this Agreement to identify the exact limits or details involved in providing satisfactorily completed PROJECT construction documents. The CONSULTANT shall provide the following professional services to prepare construction plans, specifications, and complete applications for and receive all federal, state, and local permits required for construction of the PROJECT. The PROJECT design shall be based on the following data:

All required permits shall be obtained by the architectural consultant. Plans shall be prepared in accordance with AutoCad Pinellas County Requirements. Exhibit A, Scope of Services is attached. Exhibit A, Scope of Services is attached. The Summary of Construction Standards, EDA Contracting Provisions for Construction Projects, and the grant requirements ("Grant Document Design Contract Requirements") are also attached hereto as composite Exhibit C.

a) Required Deliverables

- AutoCad file (eTransmit) of construction plans and for each transmittal phase. The plans shall be provided electronically, plus two (2) paper prints signed and sealed by a Professional Engineer certified in the State of Florida.
- All technical specifications required for construction of project.
- Any and all other applicable requirements as set forth in the Grant Document Design Contract Requirements.

2.2 PROJECT PHASES

Time is of the essence. All project phases shall be completed on or before the milestone dates provided in the COUNTY approved PROJECT design schedule referenced in Exhibit A, but in no event later than the timeframes set forth in the Grant Document Design Contract Requirements.

2.3 CONSULTING RESPONSIBILITIES

A. It is the intention of the COUNTY that the CONSULTANT is held accountable for its work, including checking and review of plans, and that submittals are complete.

B. The CONSULTANT shall be responsible for the accuracy of the work and shall promptly correct its errors and omissions without additional compensation. Acceptance of the work by the COUNTY will not relieve the CONSULTANT of the responsibility for subsequent correction of any errors and the clarification of any ambiguities.

C. The CONSULTANT represents that it has secured or will secure, at its own expense, all personnel necessary to complete this Agreement; none of whom shall be employees of or have any contractual relationship with the COUNTY. Primary liaison with the COUNTY will be through the CONSULTANT’S Project Manager. All of the services required hereunder will be performed by the CONSULTANT or under the CONSULTANT’S supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under law to perform such services.

D. The CONSULTANT shall endorse all reports, calculations, contract plans, and survey data. Services shall be prepared under the direction of an architect registered in the State of Florida and qualified in the required discipline. Products or services performed or checked shall be signed and sealed by the CONSULTANT’S Florida registered architect and/or engineer.
E. The CONSULTANT shall be responsible for the preparation of a PROJECT design schedule, which shows a breakdown of all tasks to be performed, and their relationship in achieving the completion of each phase of work. A bar chart schedule showing overall PROJECT time frames should also be prepared. These schedules must be submitted for COUNTY approval within ten (10) days of the initial PROJECT Notice to Proceed. These schedules will be used to verify CONSULTANT performance in relationship to Fees claimed and to allow the COUNTY’S Project Manager to monitor the CONSULTANT’S efforts. The CONSULTANT shall be responsible for any updates to these schedules and for documenting in writing to the COUNTY any major deviations in the actual versus estimated PROJECT time frames.

F. The CONSULTANT shall respond, in writing, to all review comments made by the COUNTY, and shall incorporate appropriate design adjustments into the PROJECT, in a timely manner, resulting from the review exchange.

2.4 GENERAL DESIGN CONDITIONS

2.4.1 The CONSULTANT shall coordinate and solicit appropriate input, with the knowledge of the COUNTY.

2.4.2 All design data, plans, and drawings shall be delivered electronically formatted to .DXF or .DWG utilizing Autodesk AutoCad software version 2016 or later; as well as providing reproducible hard copies of plans and drawings. All specification and other documents shall be delivered electronically in Adobe pdf format, as well as the reproducible hard copies.

2.4.3 One (1) original and one (1) copy of all deliverables are required unless specific submittal requirements are specified elsewhere in this Agreement.

2.4.4 The CONSULTANT shall develop acceptable alternates to any and all design recommendations that may be declared unacceptable.

2.4.5 This CONSULTANT will ensure that all design deliverables are in compliance with the Grant Document Design Contract Requirements and 2 C.F.R. § 200, et seq.

2.5 GOVERNING SPECIFICATIONS REGULATIONS AND PERTINENT DOCUMENTS

The PROJECT shall be designed by the CONSULTANT in accordance with applicable industry standards. The CONSULTANT shall be responsible for utilizing and maintaining current knowledge of any laws, ordinances, codes, rules, regulations, standards, guidelines, special conditions, specifications, the Grant Document Design Contract Requirements, or other mandates relevant to the PROJECT or the services to be performed.

SECTION 3
SERVICES TO BE FURNISHED BY THE CONSULTANT

3.1 SEE EXHIBIT A – SCOPE OF SERVICES.

3.2 BIDDING PHASE

The CONSULTANT shall prepare with the COUNTY’S assistance the necessary bidding information, bidding forms, the conditions of the contract, and the form of agreement between the COUNTY and the Contractor. The CONSULTANT also, shall bear the cost of two (2) complete sets of documents (plans and specifications), two (2) of which shall be signed and sealed by the CONSULTANT as original record sets for the PROJECT. Each sheet in the two (2) construction plans print sets shall be signed, sealed and dated. The title sheet only of the two (2) specifications sets shall be signed, sealed, and dated. Additionally, any required addenda shall be signed, sealed, and dated.
3.2.1  The CONSULTANT, following the COUNTY’S review of the Construction Documents and of the latest Statement of Probable Construction Cost, shall be available to assist the COUNTY in obtaining bids, and in preparing and awarding construction contracts for each bid package. The CONSULTANT shall assist conducting pre-bid conferences, and shall prepare a Bid Tabulation spreadsheet following receipt of bids.

3.2.2  If the Advertisement for bids has not commenced within sixty (60) days after the CONSULTANT submits the approved Construction Documents to the COUNTY, any fixed limit of Construction Cost established as a condition of this Agreement shall be adjusted to reflect any change in the general level of prices which may have occurred during that period of time in construction industry. The adjustment shall reflect changes between the date of submission of the Construction Documents to the COUNTY and the date on which the Advertisement for Bids occurred.

3.2.3  The CONSULTANT shall prepare any required addenda to construction plans and specifications on the PROJECT during the bidding phase affecting the CONSULTANT’S plans and specifications. The CONSULTANT shall also provide any addenda during the Construction Phase in sufficient quantity to distribute to all necessary parties as determined by the COUNTY. Addenda material shall be placed in envelopes by the CONSULTANT for mailing by the COUNTY. The CONSULTANT shall also furnish certified mail receipt material and prepare mailing labels. The COUNTY shall mail all addenda.

3.3  CONSTRUCTION PHASE

All contact and/or communication from the CONSULTANT to the Contractor shall be coordinated through the COUNTY’s Project Manager.

A.  Construction Consultation Services

1.  Processing, review, approval and distribution of shop drawings, product data, samples and other submittals required by the Contract Documents.

2.  Maintenance of master file of submittals with duplicate for COUNTY.

3.  Construction Field Observation Services consisting of visits to the site as frequent as necessary, but not less than once every week, to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Contract Documents and prepare related reports and communications. Provide written report of each visit. This field observation requirement shall include any sub-consultants at appropriate construction points.

4.  Review for comment or approval any and all proposal requests, supplemental drawings and information and change orders.

5.  Review for correctness Contractors pay requests for the COUNTY.

6.  Prepare, reproduce and distribute supplemental drawings, specifications and interpretations in response to requests for clarification by the Contractor or the COUNTY as required by construction exigencies. Response to any request must be received by the COUNTY within twenty-four (24) hours of request, or the next available working day when the request is prior to a weekend or holiday.

7.  Review, upon notice by the Contractor that work is ready for final inspection and acceptance.

8.  Notify the COUNTY of any deficiencies found in follow-up reviews.

9.  Evaluate all testing results and make recommendations to the COUNTY.
10. Assist in the establishment by the COUNTY of programs of operation and maintenance of the physical plant and equipment.

11. Arrange for and coordinate instructions on operations and maintenance of equipment in conjunction with manufacturer’s representatives.

12. Prepare an operation and maintenance manual for the COUNTY’S use.

13. The CONSULTANT shall visit the project as necessary, but at a minimum of three (3) month, six (6) month and upon construction completion in order to certify that the permit conditions have been met satisfactorily. This shall not relieve the CONSULTANT of other needed visits to the project should specific issues arise.

14. Assistance in the training of the facility operation and maintenance personnel in proper operations, schedules, procedures and maintenance inventory.

15. Prepare as-built record drawings, based on information furnished by the Contractors including significant changes in the work made during construction. The CONSULTANT will provide one (1) set of signed and sealed prints and one (1) CADD disk of the as-built record construction documents.

16. Transmit certified as-built record drawings and general data, appropriately identified, to the COUNTY within thirty (30) days following completion of construction.

17. Consult with, and recommend solutions to, the COUNTY during the duration of warranties in connection with inadequate performance of materials, systems, and equipment under warranty.

18. Review facilities or equipment prior to expiration of warranty period(s) to ascertain adequacy of performance, materials, systems and equipment.

19. Document noted defects or deficiencies and assist the COUNTY in preparing instructions to the Contractor for correction of noted defects.

20. The Contractor shall provide the CONSULTANT with all the required project close out material for CONSULTANT’S use in the warranty period services.

21. The Contractor shall have prime responsibility in the warranty period for all services herein. The CONSULTANT shall assist, consult, observe review and document as noted.

3.4 PROVISIONS RELATED TO ALL PHASES

3.4.1 The CONSULTANT will investigate and confirm in writing to the COUNTY, to the best of the CONSULTANT’S knowledge, conformance with all applicable local public and utility regulations.

3.4.2 The CONSULTANT will coordinate work designed by various disciplines.

3.4.3 The CONSULTANT shall submit to the COUNTY design notes and computations to document the design conclusions reached during the development of the construction plans.
a. Five (5) copies of the design notes and computations shall be submitted to the COUNTY with the design development review plans. When the plans are submitted for final review, the design notes and computations corrected for any COUNTY comments shall be resubmitted. At the PROJECT completion, a final set of the design notes and computations, properly endorsed by the CONSULTANT, shall be submitted with the record set of plans and tracings.

b. The design notes and calculations shall include, but not be limited to, the following data:

1) Design criteria used for the PROJECT.
2) Roadway geometric calculations
3) Structural calculations.
4) Drainage calculations.
5) Traffic design calculations
6) Traffic control calculations
7) Calculations as required by provisions of the Florida Energy Conservation Manual (Department of General Services), latest revision.
8) Calculations showing probable cost comparisons of various alternatives considered.
9) Documentation of decisions reached resulting from meetings, telephone conversations or site visits.
10) Other PROJECT-related correspondences as appropriate.

3.4.4 Each set of plans for the PROJECT shall be accurate, legible, complete in design, suitable for bidding purposes and drawn to scales acceptable to the COUNTY. The completed plans shall be furnished on reproducible material and in a format, which is acceptable to the COUNTY.

3.4.5 The CONSULTANT shall make such reviews, visits, attend such meetings and conferences and make such contacts as are necessary for the proper preparation of plans and specifications for the PROJECT.

3.4.6 The COUNTY in no way obligates itself to check the CONSULTANT'S work and further is not responsible for maintaining project schedules.

3.4.7 Other CONSULTANT responsibilities shall be as listed below:

a. Provide necessary sealed drawings to obtain building permits or any utility permit.
b. Assist the COUNTY in Contractor claims and/or litigation.
c. Review the Adequacy and completeness of documents submitted by the Contractor to protect the COUNTY against claims by suppliers or third parties.
d. Ensure compliance with the Grant Document Design Contract Requirements, all EDA grant requirements, and federal laws applicable to design professionals.

3.4.8 The CONSULTANT must be familiar with the intent, thoroughness, safety factors and design assumptions of all structural calculations.

3.4.9 All work prepared and/or submitted shall be reviewed and checked by a CONSULTANT (Architect/Engineer) registered in Florida. All plans shall be signed and sealed by the Professional CONSULTANT in responsible charge.

3.5 PERMIT APPLICATIONS AND APPROVALS

3.5.1 The CONSULTANT shall prepare all permit applications, data and drawings required for submittal by the COUNTY for approval of local, state and federal agencies.

3.5.2 The CONSULTANT shall, at no additional cost to the COUNTY, make all reasonable and necessary construction plans revisions required to obtain the necessary permit approvals for construction of the PROJECT.
3.5.3 For the purpose of ensuring the timely approval of all permits necessary for the construction of the PROJECT, the CONSULTANT shall schedule the necessary contacts and liaison with all agencies having permit jurisdiction over the PROJECT, and shall furnish, on a timely basis, such plans, data and information as may be necessary to secure approval of the required permits.

3.6 COORDINATION WITH UTILITY SERVICES AND AFFECTED PUBLIC AGENCIES

3.6.1 The requirements of the various utility services shall be recognized and properly coordinated with the PROJECT design.

3.6.2 Drainage investigations and drainage design shall be coordinated with any city or drainage district that may be affected by or have an effect on the PROJECT.

SECTION 4
SERVICES TO BE FURNISHED BY THE COUNTY

4.1 The COUNTY shall provide the following for the CONSULTANT’S use and guidance:

A. Copies of existing maps, existing aerial photographs, as-built construction plans and data pertinent to the PROJECT design, which the COUNTY may have in its possession.

B. Reproducibles of the COUNTY Engineering Department Standard Drawings applicable to the PROJECT.

C. Sample copies of the COUNTY standard contract documents and specifications.

SECTION 5
PRESENTATIONS, PUBLIC MEETINGS AND TECHNICAL LIAISON

The following services shall be provided at no additional cost to the COUNTY:

5.1 Prior to the commencement of design activities, the COUNTY will conduct with the CONSULTANT a pre-design conference for the purpose of discussing issues relative to the PROJECT, plans preparation and submittal procedures and to convey to the CONSULTANT such items provided for under Section 4 as may be required and available at that time.

5.2 The CONSULTANT shall make presentations to the COUNTY’S Director of Administrative Services or designee or the public as often as reasonably requested and at any point in the PROJECT development should issues arise which make additional presentations other than those listed elsewhere in this Agreement, in the COUNTY’S best interest.

5.3 The CONSULTANT shall participate in Monthly PROJECT Conferences with COUNTY staff personnel. The meetings will be scheduled by the COUNTY at a location provided by the COUNTY.

5.4 The CONSULTANT shall attend, as technical advisor to the COUNTY all meetings or hearings conducted by permitting agencies or public bodies in connection with any permit required for the construction of the PROJECT, and shall prepare all presentation aids, documents and data required in connection with such meetings or hearings, and at the discretion of the COUNTY, shall either plead the COUNTY’S case or provide engineering and technical assistance to the COUNTY in its pleading of the case.

5.5 The CONSULTANT shall keep accurate minutes of all meetings and distribute copies to all attending. These meetings shall be set up through the COUNTY and appropriate COUNTY staff shall attend.
SECTION 6
PAYMENT GUIDELINES AND CATEGORY OF SERVICES

6.1 BASIC SERVICES

The services described and provided for under Sections 2, 3 and Exhibit A shall constitute the Basic Services to be performed by the CONSULTANT under this Agreement.

6.2 OPTIONAL SERVICES

Services noted in Exhibit A of this Agreement as “Optional” shall constitute the Optional Services to be performed by the CONSULTANT under this Agreement. Optional Services shall be rendered by the CONSULTANT only upon written authorization by the COUNTY’s Director of the Administrative Services, or designee.

6.3 CONTINGENCY SERVICES

When authorized in writing by the COUNTY’S Director of Administrative Services or designee, the CONSULTANT shall furnish services resulting from unforeseen circumstances not anticipated under Basic Services due to minor changes in the PROJECT scope.

Compensation for any Contingency Services assignments shall be negotiated between the COUNTY and the CONSULTANT.

6.4 ADDITIONAL SERVICES

When executed by the County Administrator or Board of County Commissioners as an amendment to this Agreement, the CONSULTANT shall provide such additional services as may become necessary because of changes in the Scope of PROJECT. Additional Services shall be classified as any change beyond the Contingency Services upset limit for compensation.

6.5 INVOICING

The CONSULTANT may submit invoices for fees earned on a monthly basis. Such invoicing shall be supported by a Progress Report showing the actual tasks performed and their relationship to the percentage of fee claimed for each phase. Billings within each phase of work shall be for the percentage of work effort completed to date for that phase. The COUNTY shall make payments to the CONSULTANT for work performed in accordance with the Local Government Prompt Payment Act, Section 218.70 et. seq., F.S.
The following services shall be considered reimbursable services, but all only upon prior written approval by the County, and may be filled in full upon their completion and acceptance. Before any reimbursement can be issued, the CONSULTANT must provide copies of supporting receipts/invoices/billing documentation. Self-performed reimbursable work shall be reimbursed at the firm’s standard hourly rates for all related services. A breakdown of man hours and billing rates shall be provided with each invoice. An hourly rate sheet is attached (Exhibit B).

A. Soil Analysis/Geotechnical Investigations (if required).

B. Contamination Assessments/Hazardous Material Analysis (if required).

C. Aerial Photography (if required).

D. Payment of Permit Fees (if required).

E. Payment of the Public Information Meeting Advertisements (if required).

F. Payment of the Court Reporter for public meetings (if required).

G. Printing and Binding Services (if required).

Should an invoiced amount for fees earned appear to exceed the work effort believed to be completed, the COUNTY may, prior to processing of the invoice for payment, require the CONSULTANT to submit satisfactory evidence to support the invoice.

All progress reports shall be mailed to the attention of the designated Project Manager, Derek Weaver, 509 East Avenue South, Clearwater, FL 33756.

SUPPLIER shall submit invoices for payment due as provided herein with such documentation as required by Pinellas County and all payments shall be made in accordance with the requirements of Section 218.70 et. seq, Florida Statutes, “The Local Government Prompt Payment Act.” Invoices shall be submitted to the address below unless instructed otherwise on the purchase order, or if no purchase order, by the ordering department:

Finance Division Accounts Payable
Pinellas County Board of County Commissioners
P. O. Box 2438
Clearwater, FL 33757

Each invoice shall include, at a minimum, the Supplier’s name, contact information and the standard purchase order number. The County may dispute any payments invoiced by SUPPLIER in accordance with the County’s Dispute Resolution Process for Invoiced Payments, established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County’s Dispute Resolution Process.

Fees for contingent or additional services authorized shall be invoiced separately, and shall be due and payable in full upon the presentation of satisfactory evidence that the corresponding services have been performed.
SECTION 7
COMPENSATION TO THE CONSULTANT

7.1 For the BASIC SERVICES provided for in this Agreement, as defined in Section 3, the COUNTY agrees to pay the CONSULTANT as follows:

A Lump Sum Fee of: for the Task 1 – General Task Phase of the PROJECT.
A Lump Sum Fee of: for the Task 2 - Phase of the PROJECT.
A Lump Sum Fee of: for the Task 3 – Phase of the PROJECT.
A Lump Sum Fee of: for the Task 4 – Phase of the PROJECT.
A Lump Sum Fee of: for the Task 5 – Phase of the PROJECT.
A Lump Sum Fee of: for the Task 6 – Phase of the PROJECT.
A Lump Sum Fee of: for the Task 7 – Phase of the PROJECT.

The above fees shall constitute the total not to exceed amount of ($) to the CONSULTANT for the performance of Basic Services. All man hours are billed per the established and agreed hourly rates. The hourly rates are fully loaded and include all labor, overhead, expenses and profit of any nature including travel within the Tampa Bay Metropolitan Statistical area. Travel outside of the Tampa Bay Metropolitan Statistical Area will be reimbursed in accordance with Section 112.061 F.S. and/or the County Travel Policy, as approved by the County.

7.2 For the OPTIONAL SERVICES provided for in the Agreement, as defined in Exhibit A, the COUNTY agrees to pay the CONSULTANT as follows:

A Lump Sum Fee of: ($) for the Task 7.2 of the PROJECT

7.3 For any CONTINGENCY SERVICES performed, the COUNTY agrees to pay the CONSULTANT, a negotiated fee based on the assignment, up to a maximum amount not to exceed ($) for all assignments performed.

7.4 Total agreement not-to-exceed amount ($).

7.5 For any ADDITIONAL SERVICES, the COUNTY agrees to pay the CONSULTANT a negotiated total fee based on the work to be performed as detailed by a written amendment to this Agreement.

7.6 In the event that this Agreement is terminated under the provisions of this contract the total and complete compensation due the CONSULTANT shall be as established by the COUNTY based on the COUNTY’S determination of the percentage of work effort completed to date of termination.

SECTION 8
PERFORMANCE SCHEDULE

Time is of the essence in this Agreement. The CONSULTANT shall plan and execute the performance of all services provided for in this Agreement in such manner as to ensure their proper and timely completion in accordance with the following schedule:

8.1 The services to be rendered by the CONSULTANT shall be commenced upon receipt from the COUNTY of written “NOTICE TO PROCEED.”

8.2 All project phases shall be completed on or before the milestone dates provided in the COUNTY approved PROJECT design schedule referenced in 2.3 E.
8.3 The CONSULTANT shall not be held responsible for delays in the completion of the PROJECT design when the COUNTY causes such delays. The COUNTY reviews related to the above submittals shall not exceed twenty-one (21) days.

SECTION 9
AUTHORIZATION FOR CONTINGENT OR ADDITIONAL SERVICES

9.1 The CONTINGENCY services provided for under this Agreement shall be performed only upon prior written authorization from the Director of Administrative Services or designee.

9.2 The ADDITIONAL services provided for under this Agreement shall be performed only upon approval of the County Administrator or Board of County Commissioners.

9.3 The CONSULTANT shall perform no services contemplated to merit compensation beyond that provided for in this Agreement unless such services, and compensation therefore, shall be provided for by appropriate written authorization or amendment(s) to this Agreement.

SECTION 10
FIRMS AND INDIVIDUALS PROVIDING SUBCONSULTING SERVICES

The COUNTY reserves the right to review the qualifications of any and all subconsultants, and to reject any subconsultant in a proper and timely manner, deemed not qualified to perform the services for which it shall have been engaged. Any subconsultant not listed as part of the prime consultants team at time of award must be approved by the Director of Purchasing prior to performing any service.

SECTION 11
SATISFACTORY PERFORMANCE

All services to be provided by the CONSULTANT under the provisions of this Agreement, including services to be provided by subconsultants, shall be performed to the reasonable satisfaction of the COUNTY’S Director of [_____ or designee].

SECTION 12
RESOLUTION OF DISAGREEMENTS

12.1 The COUNTY shall reasonably decide all questions and disputes, of any nature whatsoever, that may arise in the execution and fulfillment of the services provided for under this Agreement.

12.2 The decision of the COUNTY upon all claims, questions, disputes and conflicts shall be final and conclusive, and shall be binding upon all parties to this Agreement, subject to judicial review.

SECTION 13
CONSULTANT’S ACCOUNTING RECORDS

13.1 Records of expenses pertaining to all services performed shall be kept in accordance with generally accepted accounting principles and procedures.
13.2 The CONSULTANT’S records shall be open to inspection and subject to examination, audit, and/or reproduction during normal working hours by the COUNTY’S agent or authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the CONSULTANT or any of his payees pursuant to the execution of the Agreement. These records shall include, but not be limited to, accounting records, written policies and procedures, subconsultant files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this Agreement. They shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. The COUNTY shall not audit payroll and expense records on task assignments paid by lump sum fee.

13.3 For the purpose of such audits, inspections, examinations and evaluations, the COUNTY’S agent or authorized representative shall have access to said records from the effective date of the Agreement, for the duration of work, and until five (5) years after the date of final payment by the COUNTY to the CONSULTANT pursuant to this Agreement.

13.4 The COUNTY’S agent or authorized representative shall have access to the CONSULTANT’S facilities and all necessary records in order to conduct audits in compliance with this Section. The COUNTY’S agent or authorized representative shall give the CONSULTANT reasonable advance notice of intended inspections, examinations, and/or audits.

SECTION 14
OWNERSHIP OF PROJECT DOCUMENTS

Upon completion or termination of this Agreement, all records, documents, tracings, plans, financial payments and records, specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by the CONSULTANT under this Agreement shall be delivered to and become the property of the COUNTY. The CONSULTANT, at its own expense, may retain copies for its files and internal use. The COUNTY shall not reuse any design plans or specifications to construct another project at the same or a different location without the CONSULTANT’S specific written verification, adaptation or approval.

SECTION 15
INSURANCE COVERAGE AND INDEMNIFICATION

15.1 The Consultant must maintain insurance in at least the amounts required in the Request for Proposal throughout the term of this contract. The contractor must provide a Certificate of Insurance in accordance with Insurance Requirements of the Request for Proposal, evidencing such coverage prior to issuance of a purchase order or commencement of any work under this Contract. See Section C Insurance Requirements – Attached

15.2 If the CONSULTANT is an individual or entity licensed by the state of Florida who holds a current certificate of registration under Chapter 481, Florida Statutes, to practice architecture or landscape architecture, under Chapter 472, Florida Statutes, to practice land surveying and mapping, or under Chapter 471, Florida Statutes, to practice engineering, and who enters into a written agreement with the COUNTY relating to the planning, design, construction, administration, study, evaluation, consulting, or other professional and technical support services furnished in connection with any actual or proposed construction, improvement, alteration, repair, maintenance, operation, management, relocation, demolition, excavation, or other facility, land, air, water, or utility development or improvement, the CONSULTANT will indemnify and hold harmless the COUNTY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Agreement.
SECTION 16
EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

Unless CONSULTANT is exempt from Executive Order 11246, as amended, during the performance of this contract, the CONSULTANT agrees as follows:

1. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The 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, sex, sexual orientation, gender identity, or national origin. 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 CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The CONSULTANT will, in all solicitations or advancements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT’s legal duty to furnish information.

4. The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers’ representative of the CONSULTANT’s commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The CONSULTANT will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6. The CONSULTANT will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. In the event of the CONSULTANT’s noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8. The CONSULTANT will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor 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 subcontractor or vendor as a result of such direction, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]
In the event that CONSULTANT is exempt from the provisions of Executive Order 11246, as amended, in carrying out the contract, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, or national origin.

SECTION 17
INDEPENDENT CONTRACTOR STATUS AND COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

CONSULTANT acknowledges that it is functioning as an independent Consultant in performing under the terms of this Agreement, and it is not acting as an employee of COUNTY. CONSULTANT acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, located at 8 U.S.C. Section 1324, et seq., and regulations relating thereto. Failure to comply with the above provisions of this contract shall be considered a material breach and shall be grounds for immediate termination of the contract.

SECTION 18
PROHIBITION AGAINST CONTINGENT FEE

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement.

SECTION 19
TRUTH IN NEGOTIATIONS

By execution of this Agreement, the CONSULTANT certifies to truth-in-negotiations and that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. Further, the original contract amount and any additions thereto shall be adjusted to exclude any significant sums where the COUNTY determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Such adjustments must be made within one (1) year following the end of the contract.

SECTION 20
SUCCESSORS AND ASSIGNS

The CONSULTANT shall not assign, sublet, or transfer his interest in this Agreement without the written consent of the COUNTY.

SECTION 21
INTEREST ON JUDGMENTS

In the event of any disputes between the parties to this Agreement, including without limitation thereto, their assignees and/or assigns, arising out of or relating in any way to this Agreement, which results in litigation and a subsequent judgment, award or decree against either party, it is agreed that any entitlement to post judgment interest, to either party and/or their attorneys, shall be fixed by the proper court at the rate of five percent (5%), per annum, simple interest. Under no circumstances shall either party be entitled to pre-judgment interest. The parties expressly acknowledge and, to the extent allowed by law, hereby opt out of any provision of federal or state statute not in agreement with this paragraph.
SECTION 22
TERMINATION OF AGREEMENT

22.1 The COUNTY reserves the right to cancel this Agreement, without cause, by giving thirty (30) days prior written notice to the CONSULTANT of the intention to cancel. Failure of the CONSULTANT to fulfill or abide by any of the terms or conditions specified shall be considered a material breach of contract and shall be cause for immediate termination of the contract at the discretion of COUNTY. Alternatively, at the COUNTY’S discretion, the COUNTY may provide to CONSULTANT thirty (30) days to cure the breach. Where notice of breach and opportunity to cure is given, and CONSULTANT fails to cure the breach within the time provided for cure, COUNTY reserves the right to treat the notice of breach as notice of intent to cancel the Agreement for convenience.

22.2 If COUNTY terminates the Agreement for convenience, other than where the CONSULTANT breaches the Agreement, the CONSULTANT’S recovery against the COUNTY shall be limited to that portion of the CONSULTANT’S compensation earned through date of termination, together with any costs reasonably incurred by the CONSULTANT that are directly attributable to the termination. The CONSULTANT shall not be entitled to any further recovery against the COUNTY, including but not limited to anticipated fees or profit on work not required to be performed.

22.3 Upon termination, the CONSULTANT shall deliver to the COUNTY all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement.

22.4 In the event that conditions arise, such as lack of available funds, which in the COUNTY’S opinion make it advisable and in the public interest to terminate this Agreement, it may do so upon written notice.

SECTION 23
AGREEMENT TERM

This Agreement will become effective on the date of final execution by the last party to execute the Agreement, and will remain in effect through the end of project construction close-out, but not later than October 29, 2023.

SECTION 24
CONFLICT OF INTEREST

24.1 By accepting award of this Contract, the CONSULTANT, which shall include its directors, officers and employees, represents that it presently has no interest in and shall acquire no interest in any business or activity which would conflict in any manner with the performance of services required hereunder, including as described in the CONSULTANT’S own professional ethical requirements. An interest in a business or activity which shall be deemed a conflict includes but is not limited to direct financial interest in any of the material and equipment manufacturers suppliers, distributors, or contractors who will be eligible to supply material and equipment for the PROJECT for which the CONSULTANT is furnishing its services required hereunder.

24.2 If, in the sole discretion of the County Administrator or designee, a conflict of interest is deemed to exist or arise during the term of the contract, the County Administrator or designee may cancel this contract, effective upon the date so stated in the Written Notice of Cancellation, without penalty to the COUNTY.

SECTION 25
ENTIRE AGREEMENT

This Agreement represents, together with all Exhibits and Appendices, the entire written Agreement between the COUNTY and the CONSULTANT and may be amended only by written instrument signed by both the COUNTY and the CONSULTANT.
SECTION 26
PUBLIC ENTITY CRIMES

CONSULTANT is directed to the Florida Public Entity Crime Act, Fla. Stat. 287.133, and Fla. Stat. 287.135 regarding Scrutinized Companies, and CONSULTANT agrees that its bid and, if awarded, its performance of the agreement will comply with all applicable laws including those referenced herein. CONSULTANT represents and certifies that CONSULTANT is and will at all times remain eligible to bid for and perform the services subject to the requirements of these, and other applicable, laws. CONSULTANT agrees that any contract awarded to CONSULTANT will be subject to termination by the County if CONSULTANT fails to comply or to maintain such compliance.

SECTION 27
PUBLIC RECORDS

Consultant acknowledges that information and data it manages as part of the services may be public records in accordance with Chapter 119, Florida Statutes and Pinellas County public records policies. Contractor agrees that prior to providing services it will implement policies and procedures to maintain, produce, secure, and retain public records in accordance with applicable laws, regulations, and County policies, including but not limited to the Section 119.0701, Florida Statutes. Notwithstanding any other provision of this Agreement relating to compensation, the Consultant agrees to charge the County, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes, and County policy for locating and producing public records during the term of this Agreement.

CONTRACTOR’S DUTY

If the contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor’s duty to provide public records relating to this contract, contact the Pinellas County Board of County Commissioners, Purchasing Department, Operations Manager custodian of public records at 727-464-3311, purchase@pinellascounty.org, Pinellas County Government, Purchasing Department, Operations Manager, 400 S. Ft. Harrison Ave, 6th Floor, Clearwater, FL 33756.

SECTION 28
CONTRACT PROVISIONS

The documents comprising this Agreement, which shall be known as the “Contract Documents”. The following portions of the Contract Documents are listed for the purposes of determining priority:

EDA Summary of Construction Standards
EDA Contracting Provisions for Construction Projects
EDA grant contract requirements
Agreement

If there is a conflict between the terms of the Contract Documents, then the conflict shall be resolved by priority according to the order in which the Contract Documents are listed above.
SECTION 29
GOVERNING LAW AND AGREEMENT EXECUTION

This Agreement shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the parties herein have executed this Agreement as of the day and year first written above.

Firm Name: PINELLAS COUNTY, by and through its Board of County Commissioners

By: ________________________________  By: ________________________________
Print Name: ________________________________  Name ________________________________
Title: ________________________________  Date: __________  Date: __________
   Chairman

ATTEST:

Ken Burke, Clerk of the Circuit Court

By: ________________________________
   Deputy Clerk  Date: __________

APPROVAL AS TO FORM:

By: ________________________________
   Office of the County Attorney
Exhibit A
Scope of Services

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(Document to be Provided Prior to Agreement Execution)
Exhibit B
Hourly Rate Sheet

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(Document to be Provided Prior to Agreement Execution)
BOUNDARY SURVEY OF:
BUSINESS INCUBATOR SITE — ST. PETERSBURG

Parcel 1:
Lots 1, 2, 3, 4, 5 and 6, ROYAL POINCIANA SUBDIVISION, according to the plat thereof as recorded in Plat Book 7, Page 8, of the Public Records of Hillsborough County, Florida, of which Pinellas County, Florida was formerly a part.

Parcel 2:
Lot 1, ROYAL POINCIANA SUBDIVISION — KAMARI PARTIAL PLAN, according to the plat thereof as recorded in Plat Book 61, Page 91, of the Public Records of Pinellas County, Florida.

VICINITY MAP

SECT 30, TOWNSHIP 31 SOUTH, RANGE 17 EAST

GRAPHIC SYMBOLS:

SHEET INDEX
1 COVER SHEET / VICINITY MAP / GRAPHIC SYMBOLS
2 LAND SURVEYOR REPORT / LEGAL DESCRIPTION / MONUMENTATION
3 BOUNDARY SURVEY
Exhibit 3 – EDA Grant Requirements

EDA Grant Requirements Link:

https://www.dropbox.com/sh/uu86j1v4ub65n76/AAAcrcU58RcZtXPb1fU9vcEya?dl=0
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I. PURPOSE AND SCOPE OF THIS SUMMARY

A. PURPOSE

1. This “Summary of EDA Construction Standards” (hereinafter referred to as “Summary”) describes the procedures for compliance, reporting, and record-keeping, and administrative requirements that apply to construction investments made by the Economic Development Administration (“EDA”) under sections 201 or 209 (42 U.S.C. §§ 3141 and 3149) of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 et seq.) (“PWEDA”).

2. Terms and Conditions. Form CD-450, “Financial Assistance Award,” (the “Award”), executed by EDA and the Recipient, together with the EDA-approved project budget and scope of work, standard terms and conditions, special award conditions, and all applicable federal statutory and regulatory requirements as incorporated by reference, constitute the complete requirements, hereinafter referred to as the “Terms and Conditions,” applicable to the EDA investment. This Summary is designed to help clarify these requirements. In the event that any term or provision in this Summary conflicts with or is inconsistent with any provision contained in the Terms and Conditions, the provisions of the Terms and Conditions are controlling.

B. SCOPE

1. This Summary applies to all Awards for construction projects and is based on the Office of Management and Budget’s (“OMB”) administrative and programmatic requirements for federal grants as set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and in EDA’s regulations implementing PWEDA. These requirements are published in the Code of Federal Regulations (“C.F.R.”), each as amended from time to time:

   (a) 13 C.F.R. chapter III (Economic Development Administration, Department of Commerce); and
   (b) 2 C.F.R. part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

2. This Summary supplements the requirements set out in PWEDA, EDA’s regulations at 13 C.F.R. chapter III, the Terms and Conditions of the Award, 2 C.F.R. part 200 and the applicable requirements and authorities listed in the Appendix to this Summary and the hyperlinks set out therein (see section IX.). This Summary should be used as a reference tool to implement various requirements that apply to EDA construction investments made under sections 201 or 209 of PWEDA (42 U.S.C. §§ 3141 and 3149). This Summary is not a comprehensive source of information. In addition to PWEDA, a list of primary sources of legal requirements is set out above in section I.B.1.
II. DEPARTMENT OF COMMERCE AND EDA POLICIES

A. As a federal agency, EDA is obligated to promulgate regulations and establish policies and procedures applicable to Recipients of EDA investments to:

1. Ensure compliance with applicable federal requirements;
2. Safeguard the public’s interest in the grant assets; and
3. Promote the effective use of grant funds in accomplishing the purpose(s) for which they were awarded.

B. EDA or the Department of Commerce (the “Department” or “Departmental”) may issue changes from time to time to EDA’s regulations and other requirements and policies that apply to the Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering the Award. The implementation of any such regulatory, administrative or programmatic change in administering the Award must have prior EDA written approval.

C. EDA’s policy is to administer all Awards uniformly; however, there may be special circumstances that warrant a variance. To accommodate these circumstances and to encourage innovative and creative ways to address economic development problems, EDA may consider requests for variances to the procedures set out in this Summary if they do not conflict with applicable federal statutory and regulatory requirements, are consistent with the goals of EDA’s programs, and make sound economic and financial sense.

III. REQUIREMENTS APPLICABLE TO EDA INVESTMENTS

A. GRANT RECIPIENT AS TRUSTEE

The Recipient of an EDA investment holds grant funds and any EDA-funded project property in trust for the purpose(s) for which the Award was made. The Recipient’s obligation to the Federal government continues for the estimated useful life of the project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the “Federal Interest”) in the property improved, in whole or in part, with the EDA investment. See 13 C.F.R. § 314.2; 2 C.F.R. §§ 200.41, 200.316.

If EDA determines that the Recipient fails or has failed to meet this obligation, the agency may exercise any rights or remedies with respect to its Federal Interest in the project. However, EDA’s forbearance in exercising any right or remedy in connection with the Federal Interest does not constitute a waiver thereof.

B. THE RECIPIENT’S RESPONSIBILITIES

1. The Recipient is responsible for complying with all federal laws (and the regulations issued thereunder), federal, Departmental and EDA policies, Executive Orders, and 2 C.F.R. part 200, as referenced in the Terms and Conditions, each as may be amended from time to time. These statutes, regulations, policies, Executive Orders and 2 C.F.R. part 200 may include administrative and audit requirements, federal cost principles, programmatic requirements, financial requirements, and property management requirements. See 13 C.F.R. § 302.6. The Recipient is responsible for the design, bidding, construction, and operation of the project to ensure compliance with all grant requirements, including those set out at 13 C.F.R. part 305.
2. In order to facilitate timely implementation, EDA may accept the Recipient’s certification, accompanied by evidence satisfactory to EDA, that it meets the requirements for receiving the Award and that it will comply with its Terms and Conditions. See 13 C.F.R. § 302.15; 2 C.F.R. § 200.208. EDA also may require the Recipient submit specific certifications for critical issues, such as major procurement and costs claimed in requests for disbursement of grant funds. EDA will monitor project progress and compliance with the Terms and Conditions through the:

(a) Recipient’s written reports;
(b) Review of the Recipient’s records during EDA visits to the project site;
(c) Department’s Office of Inspector General audits; and
(d) Single or program-specific audit conducted in accordance with Subpart F of 2 C.F.R. Part 200 and the related Compliance Supplements. See section VIII.A. of this Summary.

3. During the construction period, the Recipient is responsible for:

(a) Monitoring project progress and reporting progress to EDA;
(b) Providing for adequate construction inspection;
(c) Paying costs incurred for the project promptly; and
(d) Monitoring contractors’ compliance with applicable local, State and federal requirements.

4. After construction is completed, the Recipient is responsible for submitting close-out documentation and properly administering, operating and maintaining the project for its estimated useful life, as determined by EDA and as set forth in the Terms and Conditions. See 13 C.F.R. § 302.12; 2 C.F.R. §§ 200.316, 200.343-200.344.

5. Failure to satisfy any Term or Condition may result in disallowance of costs, or suspension or termination of the Award and recovery of grant funds. In addition, such failure may have a negative impact on the Recipient’s ability to receive future funding from the Department. See 13 C.F.R. § 302.18; 2 C.F.R. §§ 200.213, 200.338-200.342. In particular, the project development time schedule, a Term of the Award, can be extended only through the Recipient’s written request for an amendment to the Award and written approval by EDA. See 13 C.F.R. § 302.7. The Terms and Conditions of the Award place the Recipient on notice that the grant may be suspended for not proceeding in accordance with the EDA-approved time schedule set out in the Award. No disbursement of EDA funds is permitted when a project has exceeded the EDA-approved time schedule, unless EDA has given written approval to a time schedule extension. See 13 C.F.R. § 305.9 regarding project phasing and investment disbursement.

C. EMINENT DOMAIN

In making a discretionary award for a construction project, EDA considers the policy on eminent domain set out in Executive Order 13406, “Protecting the Property Rights of the American People.” The Terms and Conditions of the Award include appropriate provisions to ensure that the Recipient has agreed:

1. Not to use any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the project for the purpose of advancing the economic interests of private parties;
2. Not to accept title to land, easements or other interests in land acquired by the use of any power of eminent domain for use in connection with the project for such purposes; and
3. Any use of the power of eminent domain to acquire land, easements, or other interests in land, whether by the Recipient or any other entity that has the power of eminent domain, in connection with the project without prior written consent of EDA is an unauthorized use of the project. If the Recipient puts the project to an unauthorized use, the Recipient will be required to compensate EDA for its fair share in accordance with 13 C.F.R. §§ 314.4 and 314.5.

D. RECORD-KEEPING REQUIREMENTS

The Recipient is responsible for maintaining records that document compliance with the Terms and Conditions of the Award. At a minimum, the Recipient’s records must contain documentation that fully discloses:

1. The amount and disposition of the EDA investment assistance;
2. All project expenditures and procurement actions;
3. The total cost of the project that the Award funds;
4. The amount and nature of the portion of project costs provided by non-EDA sources;
5. Contractor compliance with applicable federal requirements; and
6. Such other records as EDA determines will facilitate an effective audit.


E. THE FINANCIAL ASSISTANCE AWARD

The Recipient should pay particular attention to the following provisions of the Award:

1. Description of Project. The description of the project in the Award, together with more detailed information provided in the Award application, determines and defines the scope(s) of work to be funded under the Award.
2. Federal Requirements. The listed federal requirements describe applicable administrative or programmatic obligations for which the Recipient is responsible. Critical documents are listed in section IX. (Appendix) of this Summary. These publications provide important information on requirements regarding procurement, record-keeping, eligible project costs and other administrative or programmatic issues.
3. Standard Terms and Conditions. The standard terms and conditions are applicable to all EDA-assisted construction projects.
4. Special Award Conditions. The special award conditions may contain conditions that must be satisfied prior to advertisement for bids, start of construction, or disbursement of Award funds, as well as conditions unique to the Award that are ongoing for the estimated useful life of the project.

F. FINANCIAL REPORTING

1. Semiannual financial reports. Any Recipient whose Award has not been fully disbursed is required to submit a “Federal Financial Report” (Form SF-425 or any successor form) to EDA semiannually to report on the status of unreimbursed obligations. This report will provide information on the amount of allowable project expenses that have been incurred, but not claimed for reimbursement by the Recipient. The first report shall be as of March 31 of each year and shall be submitted to EDA no later than April 30 of each year, and the second report shall be of September 30 of each year and shall be submitted to EDA no later than October 30 of each year. Instructions for completing and submitting Form SF-425 will be furnished to the Recipient at least sixty (60) days before the report is due. While EDA generally does not advance funds, when the agency does so, the Recipient must submit Form SF-425 within fifteen (15) business days following the end of each quarter for an award under $1 million, fifteen
(15) business days following the end of each month for an award totaling $1 million or more, or as otherwise specified in a special award condition.

2. **Final financial report.** The Recipient must submit a final financial report using Form SF-425 within ninety (90) days of the expiration date of the Award (or from the date the Recipient accepts the project from the contractor, whichever occurs earlier).

3. **Noncompliance with financial reporting requirements.** Noncompliance with these requirements will result in appropriate enforcement action under this Award, including but not limited to suspension of Award payments or disallowance of costs. Financial reports are to be submitted to the Project Officer.

**G. MONITORING AND REPORTING PROJECT PROGRESS**

1. **Quarterly Project Progress (Performance) Reports.**

   (a) Quarterly Project Progress Reports must be submitted in accordance with the procedures set out in 2 C.F.R. § 200.328, as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under the Award; deferral of processing of new awards, amendments or supplemental funding pending the receipt of the overdue report(s); or the establishment of an account receivable for the difference between the total federal share of outlays last reported and the amount disbursed. See 13 C.F.R. § 302.18.

   (b) Unless otherwise specified in the Award, the Quarterly Project Progress Reports will contain the following information for each project program, function, or activity:

   (i) A comparison of planned and actual accomplishments according to the timetable or list of project objectives in the Award;
   (ii) An explanation of any delays or failures to meet the project timetable or project goals; and
   (iii) Any other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

   (c) Quarterly Project Progress Reports shall be submitted for each calendar quarter to the Project Officer. Each project progress report must be submitted in accordance with the deadlines outlined in the special award conditions, or, where not otherwise specified, project progress reports will be due on a quarterly basis not later than January 31, April 30, July 31, and October 31 for the immediate previous quarter. The final Project Progress Report shall be submitted to EDA no more than 90 days after the project closeout date. This reporting requirement begins with the Recipient’s acceptance of the Award and ends when EDA approves project closeout.

   The Recipient shall submit Quarterly Project Progress Reports to the Project Officer electronically, unless otherwise specified in the Special Award Conditions.

**Interim performance reporting.** The Recipient must report any event that will or may have a significant impact upon the project, including delays or adverse conditions that materially may affect the ability of the Recipient to attain project objectives within established time periods or meet the project development time schedule. The recipient must disclose such problems to the Project Officer in the most time-expedient way
possible and then, if the initial report was not made in writing, report the event to the Project Officer in writing. Such a report shall include a statement of the event or issue, a statement of the course of action taken or contemplated to resolve the matter, and any federal assistance needed to resolve the situation. If budget changes are required, the Recipient must submit a written budget revision request. See 2 C.F.R. § 200.308(g). Any changes made to the project without EDA’s prior approval are made at the Recipient’s risk of nonpayment of costs, suspension, termination, or other applicable EDA action. See 13 C.F.R. § 302.7.

2. **Government Performance and Results Act reporting.** In addition to Quarterly Project Progress Reports, EDA may require the Recipient to report on project performance beyond the project closeout date for Government Performance and Results Act (“GPRA”) purposes. In no case shall the Recipient be required to submit any report more than ten years after the project closeout date. Data used by the Recipient in preparing reports shall be accurate and, whenever possible, from independent sources. See 13 C.F.R. § 302.16.

3. **Reporting on real property.** The Recipient must submit reports (using Form SF- 429 “Real Property Status Report” or any successor form) at least annually, on the status of real property in which EDA retains an interest, unless the Federal interest in the real property extends 15 years or longer. When EDA’s interest extends for a period of 15 years or more, EDA, at its option, may require the Recipient to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or annual reporting for the first three years of the Award and thereafter every five years). See 2 C.F.R. § 200.329.

### IV. PRE-CONSTRUCTION REQUIREMENTS

#### A. ENVIRONMENTAL COMPLIANCE

Each Recipient must comply with all environmental standards and shall identify to EDA any impact a proposed project may have on the environment. In some cases, Award funds can be withheld by EDA under a special award condition requiring the Recipient to submit additional environmental compliance information sufficient to enable EDA to make an assessment on any impacts that a project may have on the environment.

EDA undertakes environmental reviews of projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 et seq., as implemented under 40 C.F.R. parts 1500-1508) (“NEPA”), and all other federal environmental statutes, regulations and Executive Orders, as listed in the Terms and Conditions of the Award. These authorities include the implementing regulations of NEPA, which require EDA to provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 C.F.R. § 1506.6(b). The Recipient must pay special attention to and comply with any special environmental conditions in the Award. See 13 C.F.R. § 302.1.
B. CIVIL RIGHTS COMPLIANCE

In accordance with the following authorities, discrimination is prohibited by a Recipient or “Other Party” (as defined in 13 C.F.R. § 302.20(b)) with respect to a project receiving EDA investment assistance under PWEDA:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and the Department’s implementing regulations at 15 C.F.R. part 8, which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.) prohibiting discrimination on the basis of sex under federally-assisted education programs or activities;
4. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Department’s implementing regulations at 15 C.F.R. part 8b, which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from federal assistance;
5. The Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), and the Department’s implementing regulations at 15 C.F.R. part 20, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;
6. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation; and other federal statutes, regulations and Executive Orders, as applicable. See generally 13 C.F.R. § 302.20.

Consistent with 2 CFR § 200.321, the Recipient and any subrecipient must take all necessary affirmative steps to ensure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

C. START OF CONSTRUCTION

1. Early construction starts. The Recipient shall make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). For project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the project facilities is in compliance with the Terms and Conditions. If construction commences prior to EDA’s determination, the Recipient proceeds at its own risk until EDA’s review and concurrence. See 13 C.F.R. § 305.11.

2. Delayed construction starts. If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in the grant Award (or the expiration of any extension granted in writing by EDA), whichever is later, the EDA grant will be automatically suspended and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously. See also sections VII.B. and F. of this Summary.
D. PROJECT MANAGEMENT CONFERENCE

1. Shortly after approval of the Award, EDA may contact the Recipient to arrange a project management conference. The purpose of the project management conference is to explain to the Recipient its post-approval responsibilities for administration of the Award and applicable federal requirements.

2. Whenever practicable, the project management conference should be held when and where appropriate EDA regional office personnel will be available. The Recipient’s authorized representative, architect/engineer, attorney and possibly the Recipient’s financial representative should attend.

E. ARCHITECT/ENGINEER SERVICES

1. The architect/engineer agreement shall provide for all services required by the Recipient for the planning, design and engineering phases of the project. Appropriate standards or guidance developed by professional organizations, such as the American Consulting Engineers Council (“ACEC”), American Society of Civil Engineers (“ASCE”), National Society of Professional Engineers (“NSPE”), and/or the American Institute of Architects (“AIA”), may be used where the Recipient does not have standard procurement or contracting documents.

The architect/engineer agreement shall cover all services necessary for the successful execution of the project including consultations, surveys, soil investigations, supervision, travel, “as-built” or record drawings, arrow diagram (“CPM/PERT”) where applicable, and incidental costs. Regardless of who furnishes the construction inspector, the architect/engineer shall be held responsible for making sufficient visits to the project site to ensure that the work proceeds in accordance with the approved plans and specifications.

2. The Recipient must select the architect/engineer in accordance with the procurement standards set forth in 2 C.F.R. part 200. Unless EDA has approved a different type of award, the compensation to the architect/engineer for basic services must be either a fixed price or a cost reimbursement with an agreed maximum to be eligible for EDA participation. The amount of EDA participation will be based on EDA’s determination (subject to audit) that the compensation is reasonable. The “cost-plus-a-percentage-of-cost” and “percentage of construction cost” methods of contracting are specifically prohibited.

3. In addition to other provisions required by the Federal agency or Recipient, in accordance with 2 C.F.R. § 200.326, all contracts made by the Recipient under an Award must contain the applicable provisions set out in Appendix II to 2 C.F.R. part 200, which address various contractual requirements including remedies, termination for cause and convenience, Equal Employment Opportunity, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, rights to inventions, environmental quality, energy efficiency, debarment and suspension, the Byrd Anti-Lobbying Amendment, and procurement of recovered materials. See Appendix II to 2 C.F.R. part 200 for a full explanation of these requirements.

F. SERVICES PERFORMED BY RECIPIENT’S OWN FORCES

The Recipient may have a portion or all of the design, construction, inspection, legal services, or other work or services in connection with the project performed by personnel who are employed by the Recipient either full-time or part-time (“in-house forces”). See 13 C.F.R. § 305.7.
EDA may approve the use of “in-house forces” subject to the following conditions:

1. The services are routinely performed by the Recipient for all construction projects performed by the Recipient;
2. The Recipient has a special skill required for the construction of the project;
3. The Recipient has made all reasonable efforts to obtain a contractor, but has failed to do so because of uncontrollable factors such as the remoteness of the project site or an overabundance of construction work in the region; or
4. The Recipient demonstrates substantial cost savings.

“In-house forces” may be considered an eligible cost for EDA reimbursement if the work or services performed are in conformance with 2 C.F.R. part 200.

G. TRIBAL EMPLOYMENT RIGHTS ORDINANCES

In accordance with Departmental policy, EDA recognizes Tribal Employment Rights Ordinances (“TEROs”), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Federal awards granted to American Indian and Alaska Native tribal governments generally may provide for preference in contracting, hiring, firing, and the payment of a TERO fee.

The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is “necessary and reasonable for the performance of the Federal Award,” as provided under 2 C.F.R. § 200.403.

H. LAND, EASEMENTS AND RIGHTS OF WAY

1. Except as provided in 13 C.F.R. § 314.6(b) or as otherwise authorized by EDA, Recipient-owned property acquired or improved in whole or in part with investment assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered.

2. The Recipient must disclose to EDA all encumbrances. EDA will not accept any encumbrance that interferes with the construction, intended use, operation or maintenance of the project during its estimated useful life. Before advertising for construction bids or at such other time as EDA requires, the Recipient must furnish evidence, satisfactory in form and substance to EDA, that title to real property required for the project is vested in the Recipient and that such rights-of-way, easements, State or local government permits, long-term leases or other items required for the project have been or will be obtained by the Recipient within an acceptable time, as determined by EDA. See 13 C.F.R. § 314.7.

I. RELOCATION ASSISTANCE

The Recipient is subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) (the “Uniform Act”) and implementing regulations issued at 49 C.F.R. part 24. The Uniform Act establishes uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation or demolition of real property acquired for a project financed wholly or in part with federal assistance funds. Recipients and any subrecipients are required to comply fully with the intent of the Uniform Act and to provide evidence of such compliance if requested. See 13 C.F.R. § 302.5.
J. EDA REVIEW OF PLANS AND SPECIFICATIONS

1. The Recipient (with the assistance of its architect/engineer) is responsible for the accuracy and completeness of the design, dimensions, details, proper selection of materials, and compliance with local building codes or ordinances, and is expected to use the “EDA Contracting Provisions for Construction Projects,” which provides a list of applicable EDA and other federal requirements as guidance in developing all construction contracts.

2. Plans, specifications, and related documents must be submitted for EDA review and concurrence prior to advertising for bids. EDA’s review is to ensure compliance with the Terms and Conditions of the Award and does not attest to the accuracy of design, dimensions, details, proper selection of materials, nor compliance with local building codes or ordinances. This responsibility rests with the Recipient.

EDA’s review is intended to confirm that:

(a) The project as designed complies with the scope of work as described in the project application and in the Award;

(b) Deductive alternates, if used, are taken in a specific order as shown in the bid documents;

(c) Any non-EDA funded work, if included, is identified so separate project progress and separate project costs can be determined; and

(d) The EDA project number and applicable EDA participation appears on the cover of all contract drawings and on the face sheet of the specification document(s).

3. EDA also will review for acceptability after advertising but before award of the contract if:

(a) The procurement is expected to exceed the simplified acquisition threshold (currently set at $50,000) and is to be awarded without competition after one bid or offer is received in response to a solicitation;

(b) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;

(c) A proposed contract modification changes the scope of a contract or increases the contract amount above the simplified acquisition threshold;

(d) The Recipient’s procurement procedures or operations fail to comply with the procurement standards set out in the Award; or

(e) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a “name brand” product.

4. Until EDA has reviewed and concurred with the Recipient’s proposed contracts and related documents and determined they comply with the Terms and Conditions, the Recipient will be proceeding at its own risk regarding the eligibility of any costs incurred. See 13 C.F.R. § 305.11.

K. NON-EDA WORK

If the Recipient plans to include both EDA-funded and non-EDA-funded work in a single contract, the following requirements apply:

1. The plans and specifications must clearly define and separate costs included in the EDA project scope of work from other costs;
2. The Recipient may offer for bid and award work in addition to the EDA project, provided:
   (a) the Recipient understands that EDA will participate only in the EDA-approved project; and
   (b) the additional work does not adversely affect the original intent or economic impact of the EDA-approved project;

3. Plans and specifications must be drawn so that the EDA project is clearly identifiable at all times during construction; and

4. Bid underruns cannot be applied to fund work that is not a part of the EDA project. It is the responsibility of the Recipient to pay in full for all additional work beyond the scope of the EDA project. See 13 C.F.R. § 305.10.

Where a proposed contract includes EDA-funded and non-EDA-funded scope(s) of work, the contract will normally be awarded to the lowest bidder on all the work. EDA’s participation will be determined based on the bid price for the lowest qualified bid for the EDA-funded scope of work. The Recipient must include pertinent information with the contract award documentation prior to submitting it for EDA concurrence.

L. ALTERNATE CONSTRUCTION PROCUREMENT METHODS

1. Recipients shall seek EDA’s prior written approval to use alternate construction procurement methods to the traditional design/bid/build procedure (including lump sum or unit price-type construction contracts). These methods may include design/build, construction management at-risk and “in-house forces”. If an alternate method is used, the Recipient shall submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process. See 13 C.F.R. § 305.6.

2. If the Recipient elects to use “in-house forces”, EDA will furnish specific guidance to the Recipient to determine if the cost for such work is eligible for EDA reimbursement. See section IV.F. of this Summary.

3. For all procurement methods, the Recipient must comply with the procedures and standards set forth in 2 C.F.R. part 200.

M. OVERRUN AT THE BID OPENING

If there is an overrun at bid opening, the Recipient may:

1. Take deductive alternatives to eliminate certain project elements in case of insufficient funds – if provided for in the bid documents – in the exact order shown on the invitation for bid until at least one of the responsive bids, less deductive alternative(s), results in a price within the budget for that item of work. It should be noted that the use of deductive alternates may result in a new low bidder. Therefore, care must be taken that the above procedure is followed exactly when deductive alternates are used to determine the lowest bid within the funds available.

2. Reject all bids and re-advertise if there is a rational basis for believing that re-advertising will result in a lower bid (i.e., the Recipient will have the project redesigned or there will be wider advertising).
3. Augment the Recipient’s share by an amount sufficient to cover the excess cost. If the Recipient intends to finance the overrun from its own funds, it must furnish a letter to EDA identifying the source of the additional funds and confirming that the funds are from an acceptable source, will be available as needed, and are not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Award.

4. Request in writing additional EDA financial assistance as a last resort. EDA may not approve the request for additional funds, which may require the termination of the project. See sections VII.C. and D. of this Summary.

V. REQUIREMENTS DURING CONSTRUCTION

A. THE RECIPIENT’S RESPONSIBILITIES

1. General. The Recipient (with the assistance of the architect/engineer) is responsible for:

   (a) ensuring project completion in accordance with approved plans and specifications;
   (b) monitoring project progress;
   (c) keeping EDA advised of project progress;
   (d) providing for adequate construction inspection; (e) paying costs incurred for the project promptly; and (f) monitoring the contractors’ compliance with local, State and federal requirements. See also section III.B. of this Summary.

2. EDA construction sign. The Recipient is responsible for constructing, erecting and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the project site indicating that the Federal government is participating in the project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with the State or local law. See 13 C.F.R. § 305.12.

3. Inspection of construction. The Recipient must provide competent project inspection during the construction period. The inspector may be an employee of the Recipient, an employee of the architect/engineer, or a person(s) under contract with the Recipient. EDA must review and concur with the extent of the inspection and the selection of the inspector.

4. Occupancy prior to completion. If the project or any part of it is to be occupied or used prior to its acceptance from the contractor, the Recipient must:

   (a) follow the requirements of local or State law;
   (b) notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use;
   (c) secure the written consent of the contractor;
   (d) secure an endorsement from the insurance carrier and consent of the surety permitting occupancy or use during the period of construction; and
   (e) secure permanent fire and extended coverage insurance and, where applicable, grant the contractor a permit to complete construction.
Occupancy or use prior to final acceptance from the contractor is entirely at the Recipient’s risk. See 13 C.F.R. § 305.14.

5. Labor standards. All contractors on EDA-assisted projects are required to perform their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by U.S. Department of Labor’s regulations (29 C.F.R. parts 5 and 1926). The Recipient or its architect/engineer should periodically check the contractor’s compliance. The Recipient shall notify EDA of all serious accidents and/or injuries that occur on the EDA-assisted project.

6. Inspection for final acceptance. The Recipient will schedule a final inspection when all construction has been completed, the architect/engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed. Representatives of the Recipient, the architect/engineer and the contractor(s) will make the final inspection. EDA must be notified in advance of the final inspection so that an EDA representative also may have the opportunity to participate.

7. Contractor payrolls. The Recipient must require each contractor and subcontractor to maintain weekly payroll records. EDA may require that copies of payroll records be furnished to the applicable regional office.

8. Equal employment opportunities. The regulations at 41 C.F.R. § 60-1.7 issued pursuant to Executive Order 11246, “Equal Employment Opportunity”, as amended, require all “prime contractors” and “subcontractors,” as those terms are defined in 41 C.F.R. § 60-1.3, to submit compliance reports regarding equal employment opportunities. The purpose of the regulations at 41 C.F.R. part 60-1 is to achieve the aims of parts II, III and IV of Executive Order 11246, as amended, for promoting and ensuring equal opportunity for all persons, without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin, employed or seeking employment with Federal government contractors or with contractors performing under federally-assisted construction contracts.

B. CONTRACT CHANGE ORDERS

1. After the construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the Recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. See 13 C.F.R. § 305.13.

2. The work on the project may continue pending EDA review and concurrence with the change order but the Recipient should be aware that all such work is at the Recipient’s risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received for the change order.

3. The Recipient (or its architect/engineer) shall perform a cost or price analysis in connection with every change order that affects the contract price. Generally, change orders should be submitted to EDA for review and concurrence as such changes occur. The Recipient will prepare proposed contract change orders in sufficient quantity so that one (1) copy can be furnished to EDA for concurrence. Necessary supporting statements, estimates, specifications and plans should be attached. Before submission to the EDA regional office, the change order must be signed by the Recipient, the architect/engineer and the contractor. The Recipient will be notified in writing of EDA’s concurrence if the change order is acceptable to EDA.
4. EDA will not allow changes to the authorized purpose and intent of the project. Change orders that add minimally or incidentally to the cost of the project but do not alter the project scope may be allowed by EDA, provided, that either:

(a) The Recipient has agreed in writing to fund the additional cost, in which case all work involved in the accomplishment of the change order will be an ineligible project cost and no EDA funds will be used to pay for it; or

(b) There are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.

5. EDA will not approve EDA financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the EDA-approved project budget. EDA will concur with a change order if the work in the change order is within the project scope and is necessary for the proper implementation of the project.

6. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. Variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity that will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract. A change order also may be required at project completion to establish final quantities for unit price contracts.

C. SPECIFIC REQUIREMENTS FOR SUBCONTRACTORS

1. The Recipient is responsible for ensuring that the contractor causes applicable provisions to be inserted in all subcontracts to bind subcontractors to EDA and Departmental requirements as contained in the Terms and Conditions of the Award and in Appendix II to 2 C.F.R. part 200, as appropriate.

2. Each subcontractor must agree to comply with all applicable federal, State, and local requirements.

3. As required by 2 C.F.R. § 200.213, the Recipient (or subrecipient) must not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or otherwise excluded from federal assistance programs under 2 C.F.R. part 180 and Executive Orders 12549, “Debarment and Suspension,” and 12689, “Debarment and Suspension.” The Recipient may access the System for Award Management (“SAM”), maintained by the General Services Administration, at www.sam.gov. See also 2 C.F.R. part 1326.

4. The Terms and Conditions of the Award may impose additional requirements, which the Recipient will be required to have the prime contractor impose on any subcontractor(s).

D. CONTRACTING STANDARDS

1. States. If a State is the Recipient of EDA investment assistance, when procuring property or services, the State must follow the same policies and procedures it uses for procurements from its non-federal funds. The State will comply with 2 C.F.R. § 200.322 dealing with the procurement of recovered materials and ensure that every
purchase order or other contract includes clauses required by Appendix II to 2 C.F.R. part 200.

2. **Recipients other than States.** Consistent with the requirements of 2 C.F.R. § 200.318, a Recipient of EDA investment assistance other than a State will use its own documented procurement procedures which reflect applicable State and local laws and regulations; provided that the procedures conform to applicable federal law and the standards identified in 2 C.F.R. §§ 200.318 – 200.326. A Recipient may request EDA to review its procurement system to determine whether its system meets these standards. See 2 C.F.R. § 200.324(c)(1).

Additionally, the Recipient or subrecipient may self-certify its procurement system. Under a self-certification procedure, EDA may rely on written assurances from the Recipient or subrecipient that it is complying with the standards in 2 C.F.R. §§ 200.318 – 200.326. The Recipient or subrecipient must cite specific policies, procedures, regulations, or standards as being in compliance with 2 C.F.R. §§ 200.318 – 200.326, and have its system available for EDA to review. See also section IV.G. for special provisions applicable to certain Indian Tribal Recipients.

3. **Standards of conduct.** Recipients shall maintain a written code of conduct, which shall govern the actions of any Interested Party (as defined in 13 C.F.R. § 300.3) engaged in the award and administration of contracts supported by EDA funds. No Interested Party shall participate in selection or in the award or administration of a contract supported by EDA funds if a conflict of interest, real or apparent, is or could be involved. A conflict may arise when any Interested Party has a financial or personal interest in the firms selected for award. A conflict also may exist where there is an appearance that an Interested Party’s objectivity in performing his or her duties is impaired. See 13 C.F.R. § 302.17 and 2 C.F.R. § 200.318(c).

4. **Awards to responsible contractors.** Recipients will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources. See 2 C.F.R. § 200.318(h).

5. **Maintenance of records.** Recipients will maintain records sufficient to detail the history of each procurement transaction related to the EDA project. These records will include but are not necessarily limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for concluding the contract price. See 2 C.F.R. § 200.318(i).

6. **Settlement of issues.** Recipients alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. EDA will not substitute its judgment for that of the Recipient unless the matter, as determined in EDA’s sole discretion, primarily involves a federal concern.

7. **Wage rate requirements.** Wage rates paid for labor must not be less than the prevailing area wages, as determined by the U.S. Secretary of Labor and must be embodied in the construction contract pursuant to the requirements of the Davis-Bacon Act, as amended (40 U.S.C. § 3141 et seq.). See also section IX. (Appendix) of this Summary.
E. COMPETITIVE PROCUREMENT REQUIREMENTS

1. General. All procurement transactions in relation to the EDA project must be conducted in a manner providing full and open competition consistent with applicable federal requirements. See 2 C.F.R. § 200.319.

2. Geographic preferences. Recipients must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this guidance preempts State licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criterion, provided its application leaves an appropriate number of qualified firms (given the nature and size of the project) to compete for the contract. See 2 C.F.R. § 200.319.

3. Written selection procedures. Recipients must have written selection procedures for procurement actions. These procedures must ensure that all solicitations:

(a) Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such descriptions must not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of the material, product or service. The specific features of a name brand which must be met by offerors must be clearly stated; and

(b) Identify all requirements which offerors must fulfill and all factors to be used in evaluating bids or proposals.


(a) Should the Recipient, acting upon the advice of his/her consultant architect/engineer, desire to obtain competitive prices for differing materials, such bids should be requested on the basis of “alternate bids.” As used herein, this term refers to the method used to obtain bids on more than one material to be used for the same purpose. For example, for 2,000 linear feet of sewer line, Bid A might call for the pipe material to be cast iron. Bid B might call for the pipe material to be ductile iron. Bid C might call for the material to be asbestos cement.

(b) If bids are asked for on the basis of two or more alternate bids, the bid documents must clearly state that the contract will be awarded to the bidder having the lowest responsible bid price based upon the availability of funds.

(c) If the Recipient wishes to use a material that will result in increased cost, EDA may permit the use of such material, but the amount of EDA’s participation in the project must remain based on the lowest bid from a responsible bidder.
5. **Allowable methods of procurement and related requirements.**

(a) **Procurement by sealed bids (formal advertising).** Bids are to be publicly solicited and a firm fixed-price contract (lump sum or unit price) is to be awarded to the bidder whose bid, conforming to all material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction services if the conditions in the following sentence are met. In order for sealed bidding to be feasible, the following conditions should be present: (i) a complete, adequate, and realistic specification or purchase description is available; (ii) two or more responsible bidders are willing and able to compete effectively for the business; and (iii) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

The following requirements apply to sealed bids:

(i) The invitation for bids is publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for the opening of bids;

(ii) The invitation for bids, which includes any applicable specifications and pertinent attachments, must adequately define the items or services, in order for the bidder to properly respond;

(iii) All bids are publicly opened at the time and place prescribed in the invitation for bids;

(iv) A firm fixed-price contract award will be made in writing to the lowest responsive responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound and properly documented reason.

*See 2 C.F.R. § 200.320(c).*

The advertising process for inviting bids should be in compliance with applicable State or local requirements where the project will be constructed. In the absence of State or local requirements, the advertisement should appear in publications of general circulation a minimum of four (4) times within a 30-day period prior to the opening of bids. Generally, a minimum of thirty (30) days should be allowed for submission of bids.

(b) **Procurement by competitive proposals.** Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. This method generally is used when conditions are not appropriate for the use of sealed bids. The following requirements apply to competitive proposals:

(i) Requests for proposals are publicized and identify all evaluation factors and their relative importance; any response to a publicized request for proposals must be considered to the maximum extent practical;

(ii) Proposals are solicited from an adequate number of qualified sources (generally, EDA requires responses from at least three responsible firms);

(iii) Recipients have a written method for conducting technical
evaluations of the proposals received and for selecting awardees;

(iv) Awards are made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered, as appropriate; and

(v) Recipients may use competitive proposal procedures for qualification-based procurement of architectural/engineering professional services whereby competitors’ qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not a selection factor, can be used only for procuring architectural/engineering professional services. It cannot be used to purchase other types of services though architectural/engineering firms are a potential source to perform the proposed effort.

See 2 C.F.R. § 200.320(d).

(c) Procurement by noncompetitive proposals. This technique requires EDA’s prior written concurrence and is conducted by solicitation of a proposal from only one source. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and when one or more of the following circumstances apply:

(i) The item is available only from a single source;
(ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
(iii) EDA expressly authorizes noncompetitive proposals in response to a written request from the Recipient; or
(iv) After soliciting a number of sources, competition is determined inadequate.


(d) Procurement by Micro Purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed $10,000 (or $2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micropurchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable. The $10,000 threshold is periodically adjusted for inflation. For more information, please see Uniform Guidance (2 CFR Part 200.67 and 200.320(a)).

(e) Procurement by Small Purchase Procedures.

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold of $250,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. The $250,000 threshold is periodically adjusted for inflation. For more information, see Uniform Guidance (2 CFR Part 200.320(b)).

(f) Contract cost analysis.
(i) The Recipient must perform a cost or price analysis in connection with every procurement action in excess of $150,000, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Recipient must make independent estimates before receiving bids or proposals.

(ii) The Recipient must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(iii) Costs or prices based on estimated costs for contracts under grants will be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles (see section VI.A.3. of this Summary). The Recipient may reference its own cost principles that comply with applicable federal cost principles.

(iv) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

See 2 C.F.R. § 200.323

(g) Bonding and insurance requirements. For construction or facility improvement contracts or for subcontracts exceeding $150,000, EDA may accept the bonding policy and requirements of the Recipient or subrecipient if EDA or the pass-through entity determines that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements shall apply:

(i) A bid guarantee must be obtained from each bidder equivalent to five (5) percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(ii) A performance bond must be required from the contractor for one hundred (100) percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

(iii) A payment bond must be required from the contractor for one hundred (100) percent of the contract price. A “payment bond” is one executed in connection with a contract to ensure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contracts.

See 2 C.F.R. § 200.325.

The Recipient shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with EDA funds as provided for property owned by the Recipient. Federally owned property need not be otherwise insured unless required by the Terms and Conditions of the Award. See 2 C.F.R. § 200.310.

The Recipient shall require each construction contractor and all
subcontractors to maintain, during the life of its contract, Workmen’s Compensation Insurance, Public Liability Insurance, and such other types of special coverage required by applicable State or local law. Where appropriate, the Recipient shall require the prime contractor to provide Builder’s Risk Insurance as part of the construction contract. In all cases, the Recipient is responsible for seeing that coverage is obtained and kept in force. When obtained by the Recipient directly, such coverage is an eligible project cost.

VI. DISBURSEMENT OF GRANT FUNDS AND FINANCIAL ADMINISTRATION

A. PRE-DISBURSEMENT REQUIREMENTS

1. General. The Grants Officer determines the appropriate method of payment. Unless otherwise specified in a special award condition, the method of payment will be reimbursement. Disbursements of grant funds will be made by electronic transfer based on the Recipient’s actual rate of expenditure. EDA will make disbursements based on the percentage of EDA participation, but in no event for more than the total sum stated in the Award. The initial disbursement will be made only after the following conditions have been met:

   (a) EDA determines that the Recipient has satisfied all applicable Terms and Conditions of the Award (see 13 C.F.R. § 305.9(b));
   (b) The Recipient has completed and submitted Form SF-3881, “ACH Vendor/Miscellaneous Payment Enrollment Form;”
   (c) The Recipient has requested disbursement by submitting Form SF-271, “Outlay Report and Request for Reimbursement for Construction Programs” (OMB Control No. 0348-0002), for incurred costs that are itemized and eligible;
   (d) The Recipient certifies that its proportionate share of funds (including overruns) is on deposit; and
   (e) The Recipient meets such other requirements as EDA may establish.

Recipients shall disburse program income, rebates, refunds, contract settlements, and audit recoveries before requesting additional grant disbursements.

2. Allowable costs. EDA allowable costs are determined by reference to Subpart E of 2 C.F.R. part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Generally, costs that are allowable include salaries, supplies and other expenses that are reasonable and necessary for the completion of the scope of work. Allowable costs must be determined in accordance with the cost principles.

3. Acceptable costs and contributions. In determining the amount of the non-federal share of the cost of a project, EDA may provide credit towards the non-federal share of all contributions both in cash and in-kind, fairly evaluated, including contributions of space, equipment, assumptions of debt, and services. See section 204(b) of PWEDA (42 U.S.C. § 3144).

The matching share may include funds from other federal agencies only if authorized by statute that allows such use, which may be determined by EDA’s reasonable interpretation of such authority. See 13 C.F.R. § 300.3.

Neither cash nor the value of in-kind contributions may count towards satisfying a cost-sharing requirement of a grant agreement if it has been or will be counted towards
satisfying a cost-sharing requirement of another federal grant agreement, a federal procurement contract, or any other award of federal funds. The eligible applicant must show that the matching share is committed to the EDA project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Award. See 13 C.F.R. § 301.5.

B. INTERIM DISBURSEMENTS

After the initial disbursement has been made, the Recipient may request interim disbursements by submitting Form SF-271 and including substantiating invoices and/or vouchers, as required for reimbursement of EDA’s share of eligible project costs. Interim disbursements will normally continue until ninety (90) percent of the grant funds have been disbursed, with the remaining ten (10) percent normally held pending final disbursement and project close-out.

C. FINAL DISBURSEMENT

When project construction and final inspection have been completed, or substantially completed as determined by EDA, and the Recipient has accepted the project from the contractor, the Recipient can begin the close-out process by submitting the following documentation to EDA:

1. A request for final disbursement on an executed Form SF-271;

2. A written certification that all costs charged against the Award (EDA share and non-Federal share) are for eligible activities and represent allowable costs, for which there is documentation in the Recipient’s records;

3. An executed certificate of final acceptance signed by the Recipient and the Recipient’s architect/engineer;

4. The Recipient’s certification that its currently valid single or program-specific audit in accordance with Subpart F of 2 C.F.R. part 200, if applicable, does not contain any material findings (if the Recipient’s currently valid audit does contain material findings, the Recipient shall submit the applicable audit preferably via email to the Project Officer, who will review with the Grants Officer);

5. The Recipient’s certification that its currently valid audit (in accordance with Subpart F of 2 C.F.R. part 200), if applicable, has been submitted to the Federal Audit Clearinghouse; and

6. Other documentation as may be required by EDA.

The Recipient will be advised by EDA of costs found eligible, costs found ineligible and the reasons for findings of ineligibility. If a balance of the grant is due to the Recipient, the balance will be paid by wire transfer. If the Recipient has received a grant amount in excess of the amount due the Recipient, the Recipient must refund the excess to EDA. The Recipient shall contact the Project Officer for refund instructions.

VII. AWARD AMENDMENTS, APPROVALS, AND NOTIFICATIONS

Between approval and closeout of an EDA construction project, modifications to the Terms and Conditions may be necessary to resolve unforeseen problems. In most instances, the proposed modification can be accomplished only if EDA agrees to a formal amendment to the Award.
A. AMENDMENTS

In order to amend the Award, the Project Officer shall prepare Form CD-451, “Amendment to Financial Assistance Award,” for execution by both the Regional Director and the Recipient’s authorized representative. Form CD-451 is required for any of the following amendments to an Award:

1. Changes to project scope of work;
2. Budget revisions requiring additional EDA or non-EDA sources of funds;
3. Budget revisions that result in cumulative transfers among direct cost categories in excess of ten (10) percent of the total project cost when the federal share exceeds $150,000;
4. The inclusion of certain costs for which EDA’s prior approval is needed under 2 C.F.R. part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;”
5. Change of site location;
6. Change to or addition of Recipient;
7. Time extensions; and
8. Modifications to the Terms and Conditions of the Award, other than time extensions.

See 2 C.F.R. § 200.308.

When Form CD-451 is required, the Recipient must submit a request for amendment in writing to the EDA regional office. If the request is approved, the EDA regional office completes and transmits the Form CD-451 to the Recipient. The Recipient’s authorized representative must execute the Form CD-451 and return it to the EDA regional office.

B. TIME SCHEDULE EXTENSIONS

1. Unless otherwise authorized in 2 CFR § 200.308, or a special award condition, any extension of the period of performance can only be authorized by the Grants Officer in writing. A verbal or written assurance of funding from other than the Grants Officer, including Regional Office staff other than the Grants Officer, does not constitute authority to obligate funds for programmatic activities beyond the expiration date of the period of performance.

2. The Recipient is responsible for implementing the project in accordance with the project development time schedule contained in the Award. As soon as the Recipient becomes aware that it will not be possible to meet the project development time schedule, it must notify the EDA regional office. The Recipient’s notice to EDA must contain the following information:

   (a) An explanation of the reason for the Recipient’s inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor’s ability to excavate the site, major re-engineering required in order to obtain State or federal approvals, unplanned environmental mitigation required);
   (b) A statement that no other changes to the project are contemplated;
   (c) Documentation that demonstrates there is still a bona fide need for the project; and
   (d) A statement that no further delay is anticipated and that the project can be completed within the revised time schedule.

3. EDA expects construction on a project to start within two (2) years from the date of grant award. In accordance with EDA policy, the maximum construction start time extension
that any region can grant is restricted to a date wherein the project will still be completed within five (5) years from the date of grant award. If the delayed construction start date might impact the project being completed within five (5) years or any extension beyond that five (5) year limit must be approved by the Assistant Secretary of Commerce for Economic Development.

4. EDA reserves the right to withhold disbursements while the Recipient is not in compliance with the time schedule and to suspend or terminate an Award if the Recipient fails to proceed with reasonable diligence to accomplish the project as intended. See also sections IV.C and VII.F. of this Summary.

C. BUDGET REVISIONS

1. The tabulation of estimated project costs contained in the Award (i.e., the EDA-approved budget) is the controlling budget plan for the project. The Recipient must notify EDA of any proposed deviation from the budget or program plans in accordance with 2 C.F.R. § 200.308, including any change in scope of work or the objective of the project (even if there is no associated budget revision requiring prior written approval). If prior written approval is not required under 2 C.F.R. § 200.308, the Recipient may request the Grants Officer’s review of and guidance on proposed revisions to the budget.

2. The transfer of funds from line items other than the contingencies line item may be permitted, provided there will be no significant adverse effect on the objective of the line item from which the transfer is to be made.

3. Transfers shall not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior written approval. See 2 C.F.R. § 200.308.

4. The construction line item will be revised at the time of contract award to reflect the actual contract amount(s). Underrun amounts shall be transferred to the contingencies line item. Contingency funds are to be used to address situations resulting from unknown conditions and changes required for the fulfillment of authorized project activities under the Award. EDA may approve the use of underrun funds to increase the EDA share of the project or further improve the project, as long as EDA determines that the use is consistent with the original purpose of the approved-EDA investment. See 13 C.F.R. § 308.1.

D. ADDITIONAL EDA FUNDING

1. In accepting financial assistance from EDA, the Recipient agreed to fund any overrun(s) from non-Federal sources. Additional EDA assistance for a project may not be approved. To be considered for approval, it must compete with other requests for scarce EDA funds.

2. If an overrun occurs as a result of the construction contract bid opening, before EDA will consider a formal request for additional EDA funds, it is necessary for the Recipient to furnish the following documentation:

(a) A written statement from the Recipient’s architect/engineer, giving reasons for his/her professional opinion that redesign of the project within the approved scope, or using new or additional deductive alternates cannot reasonably be expected to
reduce the cost to within the available funds; and

(b) A written statement from the administrative head of the Recipient’s organization justifying why the Recipient cannot furnish the additional funds required, why non-EDA sources of funds cannot be secured, and certifying that the Recipient’s borrowing capacity has been exhausted.

3. EDA’s consideration of a request for additional EDA assistance does not indicate approval.

See 13 C.F.R. § 305.10.

E. ADMINISTRATIVE APPROVALS AND NOTIFICATIONS

1. EDA shall issue a written administrative approval for budget revisions that result in the cumulative transfer among direct cost categories of less than 10 percent of the total project cost and to approve budget revisions that result in the transfer of funds between direct and indirect cost categories, as long as those transfers are also less than 10 percent of the total project cost.

2. EDA shall issue a written administrative notification upon EDA’s approval and acceptance of the Recipient’s documentation of compliance with special award conditions (for example, compliance with environmental or historic preservation law requirements) and upon EDA’s change in the Project Officer or other administrative official assigned to the Recipient’s project, if applicable.

F. TERMINATION OF INVESTMENT ASSISTANCE

1. In accordance with 2 C.F.R. § 200.339, an Award may be terminated in whole or in part as follows:

   (a) Termination by EDA for the Recipient’s Failure to Comply with any Term or Condition of the Award. Examples of recipient failure to comply with terms and conditions of the award include if:

       (i) Any representation made by the Recipient to EDA in connection with the application for the Award is incorrect or incomplete in any material respect;

       (ii) The project has changed substantially, without EDA approval, so as to affect significantly the accomplishment of the project as intended (including an unauthorized use of property as provided in 13 C.F.R. § 314.4.);

       (iii) The Recipient has violated commitments it made in its application and supporting documents or has violated any of the terms and conditions of the Award;

       (iv) The conflicts-of-interest rules at 13 C.F.R. § 302.17 are violated; or

       (v) The Recipient fails to report immediately to EDA any change of authorized representative acting in lieu of or on behalf of the Recipient.

   (b) Termination by EDA for Cause. EDA may terminate the Award for cause if required by a circumstance beyond EDA’s control, such as a Congressional
mandate.

(c) **Termination by the Recipient.** The Recipient may terminate the Award in whole or in part upon sending the EDA Grants Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if EDA determines in the case of partial termination that the reduced or modified portion of the EDA Award will not accomplish the purposes for which the EDA Award was made, EDA may terminate the Award in its entirety.

(d) **Termination Upon Mutual Agreement.** EDA and the Recipient may mutually agree to terminate the Award in whole or in part. In such cases, EDA and the Recipient must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

2. If the Award is wholly or partially terminated, the Recipient remains responsible for compliance with the requirements in 2 C.F.R. §§ 200.343 and 200.344.

3. Failure to comply with the provisions of this Award may be grounds for appropriate enforcement action pursuant to 2 C.F.R. § 200.338, including initiating suspension and debarment proceedings in accordance with 2 CFR parts 180 and 1326. *See also* 2 C.F.R. § 200.213.

4. In taking any remedy for non-compliance, EDA will provide the Recipient an opportunity to object and provide information and documentation challenging the suspension or termination action. *See* 2 C.F.R. § 200.341.

5. Costs resulting from obligations incurred by the Recipient during a suspension or after termination of the Award are not allowable unless EDA expressly authorizes them in the notice of suspension or termination, or subsequently. However, costs during suspension or after termination are allowable if:

   (a) The costs result from obligations that were properly incurred by the Recipient before the effective date of the suspension or termination, are not in anticipation of it; and

   (b) The costs would be allowable if the Award were not suspended or expired normally at the end of the period of performance in which the termination takes effect. *See* 2 C.F.R. § 200.342.

6. When EDA terminates an award prior to the end of the period of performance due to the Recipient’s material failure to comply with the Award terms and conditions, EDA must report the termination to the OMB-designated integrity and performance system accessible through SAM. *See* 2 C.F.R. § 200.339.

7. Other Federal agencies that consider making an Award to the Recipient during the five-year period an EDA termination is available in SAM, must consider that information in judging whether the Recipient is qualified to receive the Award, when the Federal share of the Award is expected to exceed $150,000 over the period of performance. *See* 2 C.F.R. § 200.205.
VIII. POST-CONSTRUCTION REQUIREMENTS

A. ORGANIZATION-WIDE, PROGRAM-SPECIFIC, AND PROJECT AUDIT REQUIREMENTS

1. Requirement to have an audit performed. Organization-wide or program-specific audits must be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by subpart F of 2 C.F.R. part 200. Recipients that expend $750,000 or more in Federal awards during their fiscal year shall have an audit conducted for that year in accordance with the requirements set forth in subpart F of 2 C.F.R. part 200.

2. Requirement to submit audit to Federal Audit Clearinghouse. Within the earlier of 30 calendar days after receipt of the auditor’s report, or nine months after the end of the audit period, the Recipient must submit a copy of the audit to the Federal Audit Clearinghouse website at http://harvester.census.gov/sac/.

   If it is necessary to submit using paper, the address for submission is:

   Federal Audit
   Clearinghouse
   Bureau of the Census
   1201 E. 10th Street
   Jeffersonville, IN 47132

   Within 90 days of the end of the fiscal year of a Recipient subject to subpart F of 2 C.F.R. part 200, the entity is responsible for notifying the Grants Officer of the amount of Federal awards, including all EDA and non-EDA awards, the Recipient expended during its fiscal year.

   A Recipient that expends less than $750,000 in Federal awards during its fiscal year is exempt from Federal audit requirements for that year, except as noted at 2 C.F.R. § 200.503, but records must be available for review and audit by EDA, DOC, or other designated Government officials.

   Failure to provide audit reports within the timeframes specified may result in appropriate enforcement action, up to and including termination of the Award, and may jeopardize eligibility for receiving future awards.

3. EDA-specific audit requirements. EDA’s Public Works and Economic Adjustment Assistance programs generally have specific audit guidelines that will be incorporated into the Award and may be found in the annual Compliance Supplement, which is Appendix XI to 2 C.F.R. part 200 and is available on OMB’s website (https://www.whitehouse.gov/omb/circulars_default). When EDA does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 C.F.R. § 200.507. The Recipient may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer.

4. Recipient responsibility. Recipients are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. In accordance with 2 C.F.R. § 200.331(d)(3), pass-through entities are responsible for issuing a management decision for any audit findings pertaining to the Award provided to a subrecipient.
5. **Requirement to submit audit to EDA.** If the Recipient’s currently valid audit required under subpart F of 2 C.F.R. part 200 contains material findings, the Recipient must submit a copy of the audit to the Project Officer, who will review it with the Grants Officer.

**B. DEPARTMENTAL AUDIT RESOLUTION PROCESS**

1. Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 et seq.), EDA or the Department’s Office of the Inspector General (“OIG”) may conduct an audit of the Award at any time. The Department’s Inspector General, or any of his or her duly authorized representatives, shall have access to all pertinent books, documents, papers and records of the Recipient, whether written, printed, recorded, produced or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law. This right also includes timely and reasonable access to the Recipient’s personnel for the purpose of interview and discussion related to such documents. See 2 C.F.R. § 200.336 and 13 C.F.R. § 302.14.

When the OIG requires a program audit on the Award, the OIG will usually make the arrangements to audit the Award, whether the audit is performed by an independent accountant under contract with the Department, OIG personnel, or any other federal, State or local audit entity.

2. An audit of the Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (an account receivable) due to EDA. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence when disputing audit determinations.

3. In accordance with the *Federal Register* notice dated January 27, 1989 (54 Fed. Reg. 4053), a Recipient has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt after an audit:

   (a) The Recipient has thirty (30) business days from the date of the transmittal of the OIG’s “Draft Audit Report” to submit written comments and documentary evidence.

   (b) The Recipient has thirty (30) business days from the date of the transmittal of the “Final Audit Report” to submit written comments and documentary evidence. There will be no extension of this deadline.

   (c) EDA will review any documentary evidence submitted by the Recipient, and will notify the Recipient of the results in an “Audit Resolution Determination Letter.” The Recipient has thirty (30) business days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.

   (d) An appeal of the Audit Resolution Determination Letter does not prevent the establishment of any audit-related debt nor does it prevent the accrual of interest on such debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the Recipient against funds due to the Recipient.

   (e) EDA or the Department, as applicable, will review the Recipient’s appeal. EDA
will notify the Recipient of the results in an “Appeal Determination Letter.” After the opportunity to appeal has expired or after the appeal determination has been rendered, EDA or the Department will not accept any further documentary evidence from the Recipient. No other EDA or Department administrative appeals are available.

C. PROPERTY MANAGEMENT

1. Any property that is acquired or improved, in whole or in part, with EDA investment assistance, whether through a grant or a cooperative agreement, is subject to the requirements of PWEDA and the regulations at 13 C.F.R. part 314. Requirements related to title, authorized use, successor Recipient, property disposition, and Federal Share (as defined in 13 C.F.R. § 314.5) are set out at 13 C.F.R. part 314.

2. During the estimated useful life of the project involving the acquisition, construction or improvement of a building, as determined by EDA, EDA retains a Federal Interest in the project property. See section III.A. of this Summary; 13 C.F.R. § 314.2; and 2 C.F.R. §§ 200.41, 200.316. The Federal Interest secures compliance with the ownership, purpose, scope and intended use of the EDA project and may be reflected by a recorded lien, covenant, statement or other recordable instrument setting forth EDA’s property interest (e.g., a mortgage). See 13 C.F.R. § 314.8.

3. A Recipient may request a release of the Federal Interest in property acquired or improved with EDA investment assistance and fully compensate EDA for its Federal Share in the property. A release pursuant to 13 C.F.R. § 314.2(b) gives the Recipient title to the property free and clear of any further governmental interest except with respect to non-discrimination requirements set forth in 13 C.F.R. § 302.20 and the inherently religious activities prohibition. See 13 C.F.R. §§ 302.20 and 314.10.

A Recipient may request a release of the Federal Interest in project assets where the estimated useful life has expired or for projects that are subject to an estimated useful life in excess of the statutory twenty (20) year limitation. See section 601(d)(2) of PWEDA (42 U.S.C. § 3211) and 13 C.F.R. § 314.10. In that case, EDA may release its Federal Interest, however, the property acquired or improved with EDA investment assistance may not be used: (a) in violation of the nondiscrimination requirements set forth in 13 C.F.R. § 302.20; or (b) for inherently religious activities prohibited by applicable federal law.

D. CLOSEOUT PROCEDURES

1. After construction is completed and the project is closed out financially, the Recipient has an ongoing responsibility to properly administer, operate and maintain the project for its estimated useful life (as determined by EDA) in accordance with its original purpose. See 13 C.F.R. § 302.12. The Recipient must comply with all Award requirements and maintain records to document such compliance, which shall be made available for inspection by EDA or other government officials as required. When project construction and final inspection have been completed, or substantially completed as determined by EDA, and the Recipient has accepted the project from the contractor, the Recipient may begin the closeout process by submitting the following documentation to EDA:

(a) A request for final disbursement on an executed SF-271.
(b) A written certification that all costs charged against the Award (EDA and non-EDA shares) are eligible activities and represent allowable costs, for which there is documentation in the Recipient’s records.
(c) An executed certification of final acceptance signed by the Recipient and the Recipient’s architect/engineer.

(d) The Recipient’s certification that its currently valid single or program-specific audit in accordance with subpart F of 2 C.F.R. part 200, if applicable, does not contain material findings (if the Recipient’s currently valid audit does contain material findings, the Recipient shall submit the applicable audit preferably via email to the Project Officer, who will review with the Grants Officer).

(e) The Recipient’s certification that its currently valid audit (in accordance with subpart F of 2 C.F.R. part 200), if applicable, has been submitted to the Federal Audit Clearinghouse.

(f) A copy of the completed “Project Close-out Checklist” available on the Post-Approval Construction CD.

(g) Other documentation as may be required by EDA.

2. If a Recipient chooses not to complete and submit the “Project Close-out Checklist” available on the Post-Approval Construction CD, the Recipient must provide EDA the following documentation in addition to that listed above:

(a) Verification of compliance with all Award terms and conditions, including special award conditions (if not already provided).

(b) Verification of procurement of permanent insurance for above-ground facilities.

(c) Verification of compliance with the requirement that all changes to the project have been brought to EDA’s attention.

(d) Verification of recipient’s compliance with the requirement to retain all records pertinent to the Award for three years from the date of submission of the final expenditure report, with the following exceptions:

(i) If any litigation, claim, or audit begins before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken;

(ii) Records for real property and equipment acquired with federal funds must be retained for three years after final disposition; and

(iii) When records are transferred or maintained by EDA, the three-year retention requirement is not applicable to the recipient.

(e) Verification of receipt of as-built drawings from the contractor or the architect/engineer.

(f) Certification that there are no outstanding Davis-Bacon Act or local labor employment violations.

(g) Any change, lien, mortgage, or other encumbrance relating to the ownership of the property acquired or improved with EDA assistance.

(h) Documentation on any unresolved contract/contractor disputes.

(i) Documentation verifying execution and recordation in the appropriate jurisdiction of a lien or covenant of purpose, use, and ownership in favor of EDA, if a lien or covenant of purpose has not already been executed and recorded.

(j) Certification that the project facility will be maintained by the recipient for its entire estimated useful life as determined by EDA, during which period the recipient shall not alienate its ownership or alter the use and purpose of the EDA-assisted facility without EDA’s written permission.

(k) Any other documentation required by the EDA Engineer/Construction Manager or Project Officer to ensure compliance with the terms and conditions of the Award.
3. The Recipient shall submit, within ninety (90) calendar days after the project closeout date, all financial, performance and other reports as required by the Terms and Conditions of the Award. The Grants Officer may extend the ninety (90) calendar day closeout period upon a written request from the Recipient.

4. Unless EDA authorizes an extension, the Recipient must liquidate all obligations incurred under the Award no later than ninety (90) calendar days after acceptance of the project from the contractor or within ninety (90) calendar days of the expiration date of the Award, whichever occurs earlier, as specified in the Terms and Conditions of the Award.

5. The closeout of an Award does not affect any of the following:
   (a) The right of EDA to disallow costs and recover funds on the basis of a later audit or other project review;
   (b) The Recipient’s obligation to return any funds due as a result of later corrections or other transactions;
   (c) Requirements for property management, records retention and performance measurement reports; or
   (d) Single or program-specific audit requirements in accordance with subpart F of 2 C.F.R. part 200 or other project review;
   (e) The Recipient’s obligation to return any funds due as a result of later corrections or other transactions;
   (f) Requirements for property management, records retention and performance measurement reports; or
   (g) Single or program-specific audit requirements in accordance with subpart F of 2 C.F.R. part 200.
IX. APPENDIX

The following documents are available from the Office of Management and Budget’s, the Department of Commerce’s, and the Government Printing Office’s websites at www.whitehouse.gov/omb/, www.commerce.gov, www.gpoaccess.gov, public libraries, and other sources. Each document listed below contains a link that will take you directly to that document on the internet.

1. 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
2. 2 C.F.R. part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)
3. 2 C.F.R. part 1326, Department of Commerce regulations on Nonprocurement Debarment and Suspension
4. 2 C.F.R. part 182, Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
5. 13 C.F.R. Chapter III (EDA’s regulations)
6. 48 C.F.R. part 31, Contract Cost Principles and Procedures
7. 49 C.F.R. part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs
8. Davis Bacon Wage Rate Determinations: www.wdol.gov/
EDA CONTRACTING PROVISIONS
FOR CONSTRUCTION PROJECTS

These EDA Contracting Provisions for Construction Projects (EDA Contracting Provisions) are intended for use by recipients receiving federal assistance from the U. S. Department of Commerce - Economic Development Administration (EDA). They contain provisions specific to EDA and other federal provisions not normally found in non-federal contract documents. The requirements contained herein must be incorporated into all construction contracts and subcontracts funded wholly or in part with federal assistance from EDA.
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1. **DEFINITIONS**

*Agreement* – The written instrument that is evidence of the agreement between the Owner and the Contractor overseeing the Work.

*Architect/Engineer* - The person or other entity engaged by the Recipient to perform architectural, engineering, design, and other services related to the work as provided for in the contract.

*Contract* – The entire and integrated written agreement between the Owner and the Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

*Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

*Contractor* – The individual or entity with whom the Owner has entered into the Agreement.

*Drawings or Plans* – That part of the Contract Documents prepared or approved by the Architect/Engineer that graphically shows the scope, extent, and character of the Work to be performed by the Contractor.

**EDA** - The United States of America acting through the Economic Development Administration of the U.S. Department of Commerce or any other person designated to act on its behalf. EDA has agreed to provide financial assistance to the Owner, which includes assistance in financing the Work to be performed under this Contract. Notwithstanding EDA’s role, nothing in this Contract shall be construed to create any contractual relationship between the Contractor and EDA.

*Owner* – The individual or entity with whom the Contractor has entered into the Agreement and for whom the Work is to be performed.

*Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

*Recipient* – A non-Federal entity receiving a Federal financial assistance award directly from EDA to carry out an activity under an EDA program, including any EDA-approved successor to the entity.

*Specifications* – That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

*Subcontractor* – An individual or entity having direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
Work – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

2. **APPLICABILITY**

The Project to which the construction work covered by this Contract pertains is being assisted by the United States of America through federal assistance provided by the U.S. Department of Commerce - Economic Development Administration (EDA). Neither EDA, nor any of its departments, entities, or employees is a party to this Contract. The following EDA Contracting Provisions are included in this Contract and all subcontracts or related instruments pursuant to the provisions applicable to such federal assistance from EDA.

3. **FEDERALLY REQUIRED CONTRACT PROVISIONS**

(a) All contracts in excess of the simplified acquisition threshold - currently fixed at $150,000 (see 41 U.S.C. §§ 134 and 1908) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(b) All contracts in excess of $10,000 must address termination for cause and for convenience by the Recipient including the manner by which it will be effected and the basis for settlement.

(c) All construction contracts awarded in excess of $10,000 by recipients of federal assistance and their contractors or subcontractors shall contain a provision requiring compliance with Executive Order 11246 of September 24, 1965, *Equal Employment Opportunity*, as amended by Executive Order 11375 of October 13, 1967, and Department of Labor implementing regulations at 41 C.F.R. part 60.

(d) All prime construction contracts in excess of $2,000 awarded by Recipients must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148) as supplemented by Department of Labor regulations at 29 C.F.R. part 5. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) as supplemented by Department of Labor regulations at 29 C.F.R. part 3.

(e) All contracts awarded by the Recipient in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704 (the Contract Work Hours and Safety Standards Act) as supplemented by Department of Labor regulations at 29 C.F.R. part 5.

(f) All contracts must include EDA requirements and regulations that involve a requirement on the contractor or sub-contractor to report information to EDA, the Recipient or any other federal agency.
(g) All contracts must include EDA requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(h) All contracts must include EDA requirements and regulations pertaining to copyrights and rights in data.

(i) All contracts and subgrants in excess of $150,000 must contain a provision that requires compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1251 et seq.), and Executive Order 11738, Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans.

(j) Contracts must contain mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

(k) Contracts must contain a provision ensuring that contracts are not to be made to parties on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180.

(l) Contracts must contain a provision ensuring compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) under which contractors that apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(m) If the Recipient is a state agency or agency of a political subdivision of a state, any contract awarded must contain a provision ensuring compliance with section 602 of the Solid Waste Disposal Act (42 U.S.C. § 6962), as amended by the Resource Conservation and Recovery Act related to the procurement of recovered materials.

4. **REQUIRED PROVISIONS DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and 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 forthwith be physically amended to make such insertion of correction.
5. **INSPECTION BY EDA REPRESENTATIVES**

The authorized representatives and agents of EDA shall be permitted to inspect all work, materials, payrolls, personnel records, invoices of materials, and other relevant data and records.

6. **EXAMINATION AND RETENTION OF CONTRACTOR’S RECORDS**

(a) The Owner, EDA, or the Comptroller General of the United States, or any of their duly authorized representatives shall, generally until three years after final payment under this contract, have access to and the right to examine any of the Contractor’s directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. “Subcontract,” as used in this clause, excludes purchase orders that do not exceed $10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Owner, EDA, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

7. **CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES**

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in a form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due to the Contractor in accordance with the progress schedule. The Contractor also shall furnish the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only to determine the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

8. **CONTRACTOR’S TITLE TO MATERIAL**

No materials, supplies, or equipment for the work shall be purchased by the Contractor or by any subcontractor that is subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants and guarantees that he/she has good title to all work, materials, and equipment used by him/her in the Work, free and clear of all liens, claims, or encumbrances.
9. **INSPECTION AND TESTING OF MATERIALS**

All materials and equipment used in the completion of the Work shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses.

10. **"OR EQUAL" CLAUSE**

Whenever a material, article, or piece of equipment is identified in the Contract Documents by reference to manufacturers’ or vendors’ names, trade names, catalogue numbers, etc., it is intended merely to establish a standard. Any material, article, or equipment of other manufacturers and vendors that will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. However, such substitution material, article, or equipment shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

11. **PATENT FEES AND ROYALTIES**

(a) Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Architect/Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents.

(b) To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner and the Architect/Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

12. **CLAIMS FOR EXTRA COSTS**

No claims for extra work or cost shall be allowed unless the same was done in pursuance of a written order from the Architect/Engineer approved by the Owner.
13. **CONTRACTORS AND SUBCONTRACTORS INSURANCE**

(a) The Contractor shall not commence work under this Contract until the Contractor has obtained all insurance reasonably required by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved.

(b) Types of insurance normally required are:

1. Workmen's Compensation
2. Contractor's Public Liability and Property Damage
3. Contractor's Vehicle Liability
4. Subcontractors' Public Liability, Property Damage and Vehicle Liability
5. Builder's Risk (Fire and Extended Coverage)

(c) **Scope of Insurance and Special Hazards:** The insurance obtained, which is described above, shall provide adequate protection for the Contractor and his/her subcontractors, respectively, against damage claims that may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him/her and also against any of the special hazards that may be encountered in the performance of this Contract.

(d) **Proof of Carriage of Insurance:** The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates, and dates of expiration of applicable insurance policies.

14. **CONTRACT SECURITY BONDS**

(a) If the amount of this Contract exceeds $150,000, the Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and also a payment bond in an amount equal to one hundred percent (100%) of the Contract price or in a penal sum not less than that prescribed by State, Territorial, or local law, as security for the payment of all persons performing labor on the Work under this Contract and furnishing materials in connection with this Contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law. Before final acceptance, each bond must be approved by EDA. If the amount of this Contract does not exceed $150,000, the Owner shall specify the amount of the payment and performance bonds.

(b) All bonds shall be in the form prescribed by the Contract Documents except as otherwise provided in applicable laws or regulations, and shall be executed by such sureties as are named in the current list of **Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies** as published in Treasury Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent’s
authority to act. Surety companies executing the bonds must also be authorized to transact business in the state where the Work is located.

15. **LABOR STANDARDS - DAVIS-BACON AND RELATED ACTS**
(as required by section 602 of PWEDA)

(a) **Minimum Wages**

(1) All laborers and mechanics employed or working upon the site of the Work in the construction or development of the Project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act at 29 C.F.R. part 3, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, which is attached hereto and made a part hereof, regardless of any contractual relationship that may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates determined under 29 C.F.R. § 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics to be employed under the Contract, but not listed in the wage determination, shall be classified in conformance with the wage determination. EDA shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and EDA or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by EDA or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and EDA or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), EDA or its designee shall refer the questions, including the views of all interested parties and the recommendation of EDA or its designee, to the Administrator for determination.

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

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

(b) **Withholding**

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

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have ceased. EDA or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

(c) **Payrolls and basic records**

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

(2) (i) For each week in which Contract work is performed, the Contractor shall submit a copy of all payrolls to the Owner for transmission to EDA or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose. It may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402; or downloaded from the U.S. Department of Labor’s website at [https://www.dol.gov/whd/forms/wh347.pdf](https://www.dol.gov/whd/forms/wh347.pdf). The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(ii) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(A) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. § 5.5(a)(3)(i) and that such information is correct and complete;

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

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

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph 15(c)(2)(ii) of this section.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 3729 of Title 31 of the U.S. Code.

(3) The Contractor or subcontractor shall make the records required under paragraph 15(c)(1) of this section available for inspection, copying, or transcription by authorized representatives of EDA or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, EDA or its designee may, after written notice to the Contractor or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.

(d) Apprentices and Trainees.

(1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training (Bureau), or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any
apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) **Trainees.** Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program that has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity

(e) **Compliance with Copeland Anti-Kickback Act Requirements.** The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States”). The Act provides that the Contractor and any subcontractors shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The Owner shall report all suspected or reported violations to EDA.

(f) **Subcontracts.** The Contractor and any subcontractors will insert in any subcontracts the clauses contained in 29 C.F.R. §§ 5.5(a)(1) through (10) and such other clauses as EDA or its designee may require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. § 5.5.

(g) **Contract termination; debarment.** The breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

(h) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

(j) **Certification of Eligibility.**

(1) By entering into this Contract, the Contractor certifies that neither it nor any person or firm that has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

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

16. **LABOR STANDARDS - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.

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

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

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

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

17. **EQUAL EMPLOYMENT OPPORTUNITY**

(a) The Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. chapter 60, which is paid for in whole or in part with funds obtained from EDA, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

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(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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 Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by EDA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of
this Contract or with any of the said rules, regulations, or orders, this Contract may be
canceled, terminated, or suspended in whole or in part and the Contractor may be
declared ineligible for further Government contracts or federally-assisted construction
contracts in accordance with procedures authorized in Executive Order 11246 of
September 24, 1965, and such other sanctions may be imposed and remedies invoked as
provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or
order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding
paragraph 17(a)(1) and the provisions of paragraphs 17(a)(1) through (8) in every
subcontract or purchase order unless exempted by rules, regulations, or orders of the
Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of
September 24, 1965, so that such provisions will be binding upon each subcontractor or
vendor. The Contractor will take such action with respect to any subcontract or purchase
order as EDA or the Secretary of Labor may direct as a means of enforcing such
provisions, including sanctions for noncompliance. Provided, however, that in the event
the Contractor becomes involved in or is threatened with litigation with a subcontractor
or vendor as a result of such direction by EDA or the Secretary of Labor, the Contractor
may request the United States to enter into such litigation to protect the interests of the
United States.

(9) The Recipient further agrees that it will be bound by the above equal opportunity
clause with respect to its own employment practices when it participates in federally-
assisted construction work. Provided, however, that if the Recipient so participating is a
State or local government, the above equal opportunity clause is not applicable to any
agency, instrumentality, or subdivision of such government that does not participate in
work on or under the Contract.

(10) The Recipient agrees that it will assist and cooperate actively with EDA and the
Secretary of Labor in obtaining the compliance of contractors and subcontractors with the
equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of
Labor, that it will furnish EDA and the Secretary of Labor such information as they may
require for the supervision of such compliance, and that it will otherwise assist EDA in
the discharge of the EDA’s primary responsibility for securing compliance.

(11) The Recipient further agrees that it will refrain from entering into any contract or
contract modification subject to Executive Order 11246 of September 24, 1965, with a
Contractor debarred from, or who has not demonstrated eligibility for, Government
contracts and federally assisted construction contracts pursuant to the Executive Order
and will carry out such sanctions and penalties for violation of the equal opportunity
clause as may be imposed upon contractors and subcontractors by EDA or the Secretary
of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Recipient
agrees that if it fails or refuses to comply with these undertakings, EDA may take any or
all of the following actions: Cancel, terminate, or suspend in whole or in part this EDA
financial assistance; refrain from extending any further assistance to the applicant under
the program with respect to which the failure or refund occurred until satisfactory
assurance of future compliance has been received from such applicant; and refer the case
to the Department of Justice for appropriate legal proceedings.

(b) Exemptions to Above Equal Opportunity Clause (41 C.F.R. chapter 60):

(1) Contracts and subcontracts not exceeding $10,000 (other than Government bills of lading, and other than contracts and subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes) are exempt. The amount of the Contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding $10,000 for standard commercial supplies or raw materials are exempt.

18. **CONTRACTING WITH SMALL, MINORITY AND WOMEN’S BUSINESSES**

(a) If the Contractor intends to let any subcontracts for a portion of the work, the Contractor shall take affirmative steps to assure that small, minority and women’s businesses are used when possible as sources of supplies, equipment, construction, and services.

(b) Affirmative steps shall consist of:

(1) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;

(2) Ensuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises;

(4) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women’s business enterprises;

(5) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies;

(6) Requiring each party to a subcontract to take the affirmative steps of this section; and
(7) The Contractor is encouraged to procure goods and services from labor surplus area firms.

19. **HEALTH, SAFETY, AND ACCIDENT PREVENTION**

(a) In performing this contract, the Contractor shall:

(1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;

(2) Protect the lives, health, and safety of other persons;

(3) Prevent damage to property, materials, supplies, and equipment; and

(4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

(1) Comply with regulations and standards issued by the Secretary of Labor at 29 C.F.R. part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708); and

(2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 C.F.R. part 1904.

(d) The Owner shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor’s representative at the site of the Work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Owner may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors’ compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as EDA, or the Secretary of Labor shall direct as a means of enforcing such provisions.
20. CONFLICT OF INTEREST AND OTHER PROHIBITED INTERESTS

(a) No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof.

(b) No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

(c) The Contractor may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the Contract Documents has a corporate or financial affiliation with the supplier or manufacturer.

(d) The Owner’s officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, may be involved. Such a conflict may arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in the Contractor. The Owner’s officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from the Contractor or subcontractors.

(e) If the Owner finds after a notice and hearing that the Contractor, or any of the Contractor’s agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the Owner or EDA in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, the Owner may, by written notice to the Contractor, terminate this Contract. The Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which the Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.

(f) In the event this Contract is terminated as provided in paragraph (e) of this section, the Owner may pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, the Owner may pursue exemplary damages in an amount (as determined by the Owner) which shall not be less than three nor more than ten times the costs the Contractor incurs in providing any such gratuities to any such officer or employee.
21. **RESTRICTIONS ON LOBBYING**

(a) This Contract, or subcontract is subject to 31 U.S.C. § 1352, regarding lobbying restrictions. The section is explained in the common rule, 15 C.F.R. part 28 (55 FR 6736-6748, February 26, 1990). Each bidder under this Contract or subcontract is generally prohibited from using federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this EDA Award.

(b) **Contract Clause Threshold**: This Contract Clause regarding lobbying must be included in each bid for a contract or subcontract exceeding $100,000 of federal funds at any tier under the EDA Award.

(c) **Certification and Disclosure**: Each bidder of a contract or subcontract exceeding $100,000 of federal funds at any tier under the federal Award must file Form CD-512, *Certification Regarding Lobbying – Lower Tier Covered Transactions*, and, if applicable, Standard Form-LLL, *Disclosure of Lobbying Activities*, regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the Contractor or subcontractor at the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.

(d) **Continuing Disclosure Requirement**: Each Contractor or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.

(e) **Indian Tribes, Tribal Organizations, or Other Indian Organizations**: Indian tribes, tribal organizations, or any other Indian organizations, including Alaskan Native organizations, are excluded from the above lobbying restrictions and reporting requirements, but only with respect to expenditures that are by such tribes or organizations for lobbying activities permitted by other federal law. An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide EDA with the citation of the provision or provisions of federal law upon which it relies to conduct lobbying activities that would otherwise be subject to the prohibitions in and to the Certification and Disclosure requirements of 31 U.S.C. § 1352, preferably through an attorney's opinion. Note, also, that a non-Indian subrecipient, contractor, or subcontractor under an award to an Indian tribe, for example, is subject to the restrictions and reporting requirements.

22. **HISTORICAL AND ARCHAEOLOGICAL DATA PRESERVATION**

The Contractor agrees to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction. Any excavation by the Contractor that uncovers an historical or archaeological artifact shall be immediately reported to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the State Historic

23. **CLEAN AIR AND WATER**

Applicable to Contracts in Excess of $150,000

(a) **Definition.** “Facility” means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the United States Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

(b) In compliance with regulations issued by the EPA, 2 C.F.R. part 1532, pursuant to the Clean Air Act, as amended (42 U.S.C. § 7401 et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.); and Executive Order 11738, the Contractor agrees to:

1. Not utilize any facility in the performance of this contract or any subcontract which is listed on the Excluded Parties List System, part of the System for Award Management (SAM), pursuant to 2 C.F.R. part 1532 for the duration of time that the facility remains on the list;

2. Promptly notify the Owner if a facility the Contractor intends to use in the performance of this contract is on the Excluded Parties List System or the Contractor knows that it has been recommended to be placed on the List;

3. Comply with all requirements of the Clean Air Act and the Federal Water Pollution Control Act, including the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all applicable clean air and clean water standards; and

4. Include or cause to be included the provisions of this clause in every subcontract and take such action as EDA may direct as a means of enforcing such provisions.

24. **USE OF LEAD-BASED PAINTS ON RESIDENTIAL STRUCTURES**

(a) If the work under this Contract involves construction or rehabilitation of residential structures over $5,000, the Contractor shall comply with the Lead-based Paint Poisoning Prevention Act (42 U.S.C. § 4831). The Contractor shall assure that paint or other surface coatings used in a residential property does not contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight. For purposes of this section, “residential property” means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not
including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

(b) As a condition to receiving assistance under PWEDA, recipients shall assure that the restriction against the use of lead-based paint is included in all contracts and subcontracts involving the use of federal funds.

25. ENERGY EFFICIENCY

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201) for the State in which the Work under the Contract is performed.

26. ENVIRONMENTAL REQUIREMENTS

When constructing a Project involving trenching and/or other related earth excavations, the Contractor shall comply with the following environmental constraints:

(1) Wetlands. When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert wetlands.

(2) Floodplains. When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency (FEMA) Floodplain Maps, or other appropriate maps, i.e., alluvial soils on Natural Resource Conservation Service (NRCS) Soil Survey Maps.

(3) Endangered Species. The Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of the Contractor, the Contractor will immediately report this evidence to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the U.S. Fish and Wildlife Service.

27. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSIONS

As required by Executive Orders 12549 and 12689, Debarment and Suspension, 2 C.F.R. Part 180 and implemented by the Department of Commerce at 2 C.F.R. part 1326, for prospective participants in lower tier covered transactions (except subcontracts for goods or services under the $25,000 small purchase threshold unless the subrecipient will have a critical influence on or substantive control over the award), the Contractor agrees that:

(1) By entering into this Contract, the Contractor and subcontractors certify, that neither it nor its principals is presentely debarred, suspended, proposed for debarment, declared
 ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

(2) Where the Contractor or subcontractors are unable to certify to any of the statements in this certification, the Contractor or subcontractors shall attach an explanation to this bid.

See also 2 C.F.R. part 180 and 2 C.F.R. § 200.342.

28. **EDA PROJECT SIGN**

The Contractor shall supply, erect, and maintain in good condition a Project sign according to the specifications provided by EDA. To the extent practical, the sign should be a free standing sign. Project signs shall not be located on public highway rights-of-way. Location and height of signs will be coordinated with the local agency responsible for highway or street safety in the Project area, if any possibility exists for obstructing vehicular traffic line of sight. Whenever the EDA site sign specifications conflict with State law or local ordinances, the EDA Regional Director will permit such conflicting specifications to be modified so as to comply with State law or local ordinance.

29. **BUY AMERICA**

To the greatest extent practicable, contractors are encouraged to purchase American-made equipment and products with funding provided under EDA financial assistance awards.