

**A REQUEST FOR PROPOSAL**  
**for**  
**REGIONAL VISION ZERO PUBLIC EDUCATION CAMPAIGN**

**December 14, 2020**

**DENVER REGIONAL COUNCIL OF GOVERNMENTS**  
**1001 17<sup>th</sup> Street, Suite 700**  
**Denver, Colorado 80202**

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## I. INSTRUCTIONS FOR SUBMITTAL OF PROPOSAL

### A. Summary

The Denver Regional Council of Governments (DRCOG) hereby issues this Request for (RFP) (referred to further herein also as solicitation) in order to solicit proposals from individuals, firms, and teams (referred to further herein also as “respondent”, “contractor” or “consultant” interchangeably) with experience in planning and implementing advertising campaigns.

### B. Solicitation Schedule

Consideration of the responses will be governed by the following schedule, which is subject to revision by DRCOG.

Milestone	Details	Date
Distribution	Solicitation will be forwarded to respondents and firms who have indicated an interest in participating in this project.	December 14, 2020
Questions and Inquiries	The solicitation is posted on the BidNet Direct System at: <a href="http://www.bidnetdirect.com">www.bidnetdirect.com</a> Questions and inquiries should be sent to <a href="mailto:bids@drcog.org">bids@drcog.org</a> .	December 28, 2020
Question Responses	DRCOG will respond to questions and inquiries via the BidNet Direct System. Responses are posted as an addendum to the solicitation by this date.	December 30, 2020
Submittals Due	Responses to this request must be received no later than 3:00 p.m. Mountain time. Proposals must be submitted via the BidNet Direct System at <a href="http://www.bidnetdirect.com">www.bidnetdirect.com</a> .	January 15, 2021
Interviews	Registration for the site is free. If you have any questions related to registration or the BidNet Direct site, please call the BidNet customer support line at 1-800-835-4603. Note that DRCOG staff is unable to assist with the registration process. Interviews, if required, will be held on or before this date. Notification of selection for an interview will be given on or before January 20, 2021.	January 29, 2021
Recommendation and Authorization	Following review of responses, DRCOG staff to prepare recommendation to proceed to contract with one (or more) of the respondent(s).	February 17, 2021

	DRCOG staff to seek approval from DRCOG's Finance and Budget Committee if applicable to proceed to contract with selected respondent(s). This date is approximate.	
Contract Execution	DRCOG staff to begin contract negotiations with selected respondent(s). DRCOG may contract with one (or more) respondent(s) to complete the entire scope of work. This date is approximate.	March 3, 2021

**C. General Instructions**

1. **Questions** – Questions regarding this solicitation must be submitted by the date listed above. Questions should be submitted electronically to [bids@drcog.org](mailto:bids@drcog.org).
2. **Signatory Requirements** – Responses must be signed by a duly authorized official of the respondent. Consortiums, joint ventures, or teams submitting responses will not be considered responsive unless it is established that all contractual responsibility to DRCOG with regard to the project shall rest solely with one contractor or legal entity, which shall not be a subsidiary or affiliate with limited resources. Each response should indicate the entity responsible for execution on behalf of the team.
3. **Responses to Solicitation** – All responses to this solicitation become the property of DRCOG upon receipt and will not be returned to the respondent. Selection or rejection will not affect this right. DRCOG shall have the right to use any or all of the ideas or adaptations of the ideas contained in any response received, excluding case study materials or other reference materials prepared for clients of respondent. Any confidential/proprietary information submitted in response to this request shall be readily identified, clearly marked and separated from the rest of the response. Co-mingling of confidential/proprietary and other information is not acceptable. Submittals will be handled in accordance with applicable federal and state public records laws and procurement regulations. Neither cost information nor the total response will be considered confidential/proprietary.

**D. Required Elements in Response/Response Format**

1. **Cover Letter** – Respondents should submit a cover letter expressing their interest in the project. The letter must contain, at a minimum, the following information:
  - a. Statement of interest in completion of the work as described herein.
  - b. Certification that the information and data submitted is true and complete to the best knowledge of the individual signing the letter.
  - c. Respondent's name, address, telephone number, fax number and e-mail address of the individual to contact regarding the submittal.
  - d. An authorized principal or partner of a firm shall sign the letter.

e. Identification of whether the prime respondent is certified as a Disadvantage Business Enterprise, or indication as to the Respondent's goals for DBE participation, if any (see Section E.5).

2. **Qualifications and Experience of the Respondent (s)** – Respondents shall describe projects and experience of the past three years relevant to the draft scope of services described in Section II, Project Description, below. Respondents should place particular emphasis on projects for which key staff to be assigned to this project have either been primarily responsible or have performed substantial work. If subcontractors are to be used, the means by which these firms will participate must be specified and their experience and credentials presented in this section.
3. **Qualifications and Experience of Key Staff** – Respondents shall identify the key individuals to be assigned to this project (by name and position) and describe the work tasks assigned to each individual. The respondent must also provide experience summaries of these key individuals, describing for each individual their previous experience on similar projects in similar roles, their educational background, and their length of tenure with the consulting firm. Resumes of these key individuals may also be included and can be added in the optional section. Respondents shall also list any professional affiliations, licensures, and certifications that are pertinent to the work described in Section II, Project Description.
4. **References** – Respondents shall submit names, addresses, and phone numbers of references familiar with the Respondent's ability, experience, and reliability in the performance and management of projects of a similar nature.
5. **Cost Information** – Both cost and other factors listed herein will be weighed in selecting a respondent.

Respondents shall provide a listing of the hourly billing rates for each job classification and job title they would expect to deploy on this project, including any supporting personnel.

Respondents shall also include a breakout of general operating expenses, the costs associated with any materials or services that may be required, or any other miscellaneous costs that are anticipated in the course of performing the tasks outlined below. Overhead costs, including, without limitation, faxing, cellular phone air time, and computer processing time, must be borne exclusively by the selected respondent(s) as a cost of doing business.

Allowable costs under any contract with the selected Respondent will be administered in accordance with Attachment A of this solicitation.

6. **Contract Review** – The successful Respondent will be required to sign a Contract for Services substantially similar to the contract form in Attachment E. DRCOG reserves the right to add or delete provisions to the form prior to contract execution. Respondents shall undertake a detailed review of the Sample Contract and submit with their proposal a list of all questions, issues, or modifications which the Respondent would like DRCOG to review and address, should they be selected as the top ranked respondent. Respondents are strongly advised to seek legal counsel prior to preparing such a list.

DRCOG shall assume that the Sample Contract has been thoroughly reviewed and discussed with legal counsel prior to submission of the list of issues.

Comments to Sample Contract for Services.

Prospective respondents are required to provide any and all comments, concerns, suggested edits, and clarifying questions pertaining to the provided sample Contract for Services (Attachment E). The intent of this section is to expedite the negotiation time between respondent selection and final contracting. Any objections to the legal terms and conditions of the sample contract submitted after the submission of the proposal will not be considered by DRCOG and may result in the rejection of the proposal.

Respondents are strongly advised to seek legal counsel prior to preparing this section. DRCOG shall assume that the sample Contract has been thoroughly reviewed and discussed with legal counsel prior to the submission of this comments list. Comments submitted in this section do not count toward the prescribed page limits (if any).

DRCOG reserves the right to add or delete provisions to the form prior to contract execution.

7. **Project Management and Scheduling Expertise** – Respondents shall identify the management techniques that they are using to assure the completion of projects within schedule and budget.
8. **Insurance Requirements** – Respondents shall provide acknowledgement of the following insurance requirements and a statement ensuring they are able to meet these minimum requirements. Any Contract resulting from award of this solicitation will require the selected respondent(s) to procure and maintain, and shall cause each subcontractor of respondent to procure and maintain the minimum insurance coverages listed below:
  - a. Workers' Compensation in statutory limits.
  - b. Employer's Liability Insurance: \$100,000/each accident, \$500,000/disease - policy limit, and \$100,000/disease - each employee.
  - c. Comprehensive General Liability Insurance \$1,000,000/Occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed operations aggregate; \$50,000 any one fire.
  - d. Automobile Liability or Hired & Non-Owned Vehicle Liability Insurance: \$1,000,000/each accident.
  - e. Professional Liability Insurance: \$1,000,000 per occurrence; \$2,000,000 aggregate.

DRCOG, its officers, employees, and the State are to be named as additional insured under both the Contractor's General Liability and Automobile Liability policies. Said insurance will be required to be maintained in full force and effect during the term of the contract.

The foregoing insurance types, limits, and coverages may be modified only with the express written consent of DRCOG and shall be subject to additional terms and conditions of any contract awarded pursuant to this solicitation.

9. **Disadvantaged Business Enterprise Information** – All Respondents shall complete and return with their response the Disadvantaged Business Enterprise Information Request Form (Attachment C).

10. **Equal Employment Opportunity Clause – Parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a), 60-250-5, 60-300.5(a), 60-741.5(a) and 29 C.F.R. § 471, Appendix A, if applicable. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.**
11. **Reservations and Special Conditions –** The respondent should review the Special Conditions in Section F below, the principles for determining costs in Attachment A, and the Federal and State Requirements in Attachment B. The respondent should note any elements/reservations, special conditions, constraints, and exclusions related to the terms of this solicitation. Failure to comply with the requirements in Attachments A and B may result in termination of the contract with the selected respondent.

## **E. Selection Process**

Evaluations of proposals will be based on the following criteria:

1. **Experience and Capability** – Respondents will be evaluated with respect to the experience of the respondent(s) and personnel assigned to the project both in terms of past efforts in this type of work and the quality and level of commitment to this project. Of prime concern will be the capabilities and accomplishments of the individuals to be assigned to this particular project.
2. **Management Qualifications** – Qualifications of the respondent in terms of its ability, experience, and reliability in performing and managing work within a schedule and budget will be included in the evaluation process.
3. **Cost Information** – Likely project cost, determined from the standard service fee break out provided by the respondent, will be considered in the selection; however, it will not be the only determining factor. Specific attention will be given to the commitment implied for key staff and the overall labor effort proposed, and their relationship to the estimated project cost.
4. **References** – Information provided by respondent's references addressing the knowledge, skills, abilities and performance of the respondent to complete the work outlined below will be included in the staff evaluation of the response.
5. **Disadvantaged Business Enterprise (DBE) Participation** – It is the policy of DRCOG that equal opportunity to participate in its procurements is provided to disadvantaged business enterprises. The selected respondent(s) shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts.
6. **Other** – Other factors that may be determined by DRCOG to be necessary or appropriate in its discretion.

## F. Special Conditions

1. **Rejection Rights** – All respondents are notified that the execution of a contract pursuant to this solicitation is dependent upon approval by DRCOG. DRCOG reserves the right to reject all responses and re-solicit if deemed by DRCOG to be in its best interests, and to abandon the project and this solicitation at any time for any or no reason. Selection of a respondent or respondents is also conditioned on the negotiation of an acceptable contract.
2. **Other Conditions; Reservation of Rights** – This is a solicitation and not an offer to contract. The provisions in this solicitation and any procurement or purchasing policies or procedures of DRCOG are solely for the fiscal responsibility of DRCOG and confer no rights, duties, or entitlements to any party submitting responses to this solicitation. DRCOG reserves the right to issue clarifications and other directives concerning this solicitation, to make and issue modifications to the solicitation schedule; to require clarification or further information with respect to any response or proposal received; to waive any informalities or irregularities; and to determine the final scope and terms of any contract, and whether to enter any contract. The provisions herein confer no rights, duties or entitlements to any respondent.
3. **Costs of Response Preparation and Other Charges** – Respondents are solely responsible for all costs of preparing their proposals and participation in this solicitation and DRCOG assumes no responsibility for payment of any expenses incurred by a respondent as part of this process. For the selected firm, no reimbursement will be made by DRCOG for any costs incurred prior to full execution of a contract and issuance of written notice by DRCOG to commence project services.
4. **Conflict of Interest** – Respondents shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of respondent's obligations in this project. Respondents shall acknowledge that with respect to any subsequent contract, even the appearance of a conflict of interest is harmful to DRCOG's interests. Absent DRCOG's prior written approval, respondents shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of respondents' obligations to DRCOG. If a conflict or appearance exists, or if respondent is uncertain whether a conflict or the appearance of a conflict of interest exists, respondent shall submit to DRCOG a disclosure statement setting forth the relevant details for DRCOG's consideration. Failure to promptly submit a disclosure statement or to follow DRCOG's direction in regard to the apparent conflict constitutes a breach of contract.
5. **Federal and State Requirements** – The selected respondent shall be responsible, at all times during the execution of the project, for strictly adhering to and complying with all applicable federal and state laws and regulations, including but not limited to those set forth in Attachment B.
6. **Suspension and Debarment** – By submitting a proposal in response to this solicitation, the respondent represents its organization and its principals are not suspended or debarred per Federal requirements.



7. **Period of Performance** – Performance of the contract resulting from this solicitation will commence on or about March 3, 2021. The initial term of the work to be performed will terminate December 31, 2021.

## II. PROJECT DESCRIPTION

In June 2020, the Denver Regional Council of Governments adopted a plan to eliminate traffic deaths in the Denver region called [Taking Action on Regional Vision Zero](#). Vision Zero is a transportation safety philosophy based on the principle that loss of life is not an acceptable price to pay for mobility. Among those concerned with traffic safety, Vision Zero has become a useful framework to eliminate traffic deaths and severe injuries in the transportation system with a proactive, preventive approach. Vision Zero recognizes that humans make mistakes and therefore the transportation system should be designed to minimize the consequences of human error. *Taking Action on Regional Vision Zero* establishes a target of zero fatalities and serious injuries on the Denver region's transportation system.

The Vision Zero approach is fundamentally different from the traditional traffic safety approach in American communities in six keyways:

- Reframes traffic deaths as **preventable**
- Integrates **human error** into the approach
- Focuses on **preventing fatal and severe crashes** rather than eliminating all crashes
- Aims to **establish safe systems** prioritizing human life first and foremost when designing a road network
- Applies **data-driven decision making**
- Establishes road safety as a **social equity issue**.

There are six objectives and twenty-five action initiatives listed in *Taking Action on Regional Vision Zero*. One of the primary objectives of the plan is to increase awareness and adoption of Vision Zero. *Action Initiative 4* within the plan is to develop and implement an ongoing Regional Vision Zero partnership program modeled on the Way to Go program to promote and prioritize safety in the DRCOG region. In 2021, DRCOG wants to focus on a public education marketing campaign to increase awareness of Vision Zero, educate the public, and promote behavior change to reduce fatalities and serious injuries on our region's roadways and has a budget of \$250,000 to accomplish this.

### 1. Purpose of this solicitation

The purpose of this solicitation is to seek and retain a contractor to develop and implement a regional public education campaign, promoting Vision Zero principles and improving safety. The lead agency is responsible for advertising campaigns, promotional marketing (including the use of social media), media strategies and tactics (including media buying), public relations strategies and innovative ideas to induce positive behavior change in roadway users. In addition, thorough analysis and research on the success of the campaign is imperative.

To successfully compete for and be awarded this contract, a firm must demonstrate the experience, capability, understanding and resources to handle this type of public education advertising campaign. The successful firm should have at least a solid knowledge of the Denver region – including geography, transportation, and demographics – and there is a preference for

staff representation in the Denver metro area. Experience in transportation or government communications will be considered but is not required.

The Denver region includes many diverse target audiences that vary socioeconomically, geographically, and culturally. Experience developing effective communications programs that apply different outreach strategies to reach individual ethnic populations with varying cultural, linguistic, socioeconomic, geographic and educational levels and needs is highly desired. Firms that have expertise or resources to conduct media buys targeting the Spanish-speaking community or other diverse communities in the Denver region will be strongly considered.

The objective of a regional Vision Zero public education campaign is to promote Vision Zero principles and educate the public on changes they can make to improve safety. The selected respondent will recommend, create, and implement regional advertising, marketing, promotional and public relations campaigns that promote traffic safety through Vision Zero principles.

### **Scope of Work**

DRCOG seeks a lead agency to be responsible for creative, production, media strategies and placement and to guide public relations for Vision Zero principles (both traditional and non-traditional).

The general scope of services includes strategic planning, advertising, media buying, research, promotional services and public relations strategy with the primary purpose of promoting Vision Zero safety educational principles to the Denver metro region.

### **Contractor Responsibilities**

Qualified firms and their staff must demonstrate capabilities and proven successes in handling campaigns of a similar nature, size and complexity. Working with DRCOG and its member government stakeholders, the Contractor will be required to provide a comprehensive marketing plan including the strategies to execute the plan. Services which may be required include, but are not limited to, the following:

- a. Become familiar with Vision Zero principles.
- b. Identify target audiences for marketing campaigns.
- c. Develop an advertising and marketing plan in conjunction with DRCOG staff and the Regional Vision Zero Working Group. The plan should include general information about public educational campaign and should also target specific travel modes (driving, bicycling, motorcycling, and walking) and common crash types.
- d. Develop a tactical marketing plan that uses various and diverse media, both traditional and non-traditional, to promote Vision Zero traffic safety principles.
- e. Provide consultation and analysis with regard to marketing plans.
- f. Develop a plan for the advertising budget to include recommended expenditures for media, production, creative and collateral, as well as marketing/advertising research. Recommend areas for budget savings.

- g. Provide media analysis and planning, negotiate agreements, and place media.
- h. Produce materials (digital and printed), and perform other tasks required to support events.
- i. Estimate the media and production expenditures in advance of the purchase of print (including out-of-home), radio, television and online advertising. Written cost estimates of anticipated costs for any expenditure shall be approved by authorized DRCOG staff.
- j. Integrate earned media public relations strategies and tactics in overall plans.
- k. Collaborate and cooperate with DRCOG website staff and/or website contractor if applicable.
- l. Create and produce advertising materials for print, broadcast and other media as approved by DRCOG and the Regional Vision Zero Working Group.
- m. Negotiate purchase for placement of all time, space or other media on behalf of DRCOG. Media will be billed to DRCOG at cost without markup and with all credits, discount, offsets, commissions and other considerations applied solely to the benefit of DRCOG, as DRCOG shall further define in any contract.
- n. Verify all media placements according to contracts and placement instructions.
- o. Evaluate performance of all media placements for effectiveness.
- p. Select media buys that consider the diverse target audiences that vary socioeconomically, geographically, and culturally.
- q. The Contractor shall assume all responsibility for the performance of all required services, whether or not subcontractors are used for specific work on a project. The Contractor is the sole point of contact regarding all matters.
- r. The Contractor will specify for DRCOG all sub-contractors it intends to use and what each subcontractor's function will include.

### **General Scope and Services Required**

Planning (March 2021 – May 2021)

Develop an advertising plan using diverse media strategies and tactics based on appropriate local, regional and national research and DRCOG's objective to increase awareness and adoption of Vision Zero:

- Recommend best means and methods for obtaining maximum returns and results in promoting traffic safety.
- Recommend and develop measures for evaluating all advertising, marketing and promotional campaigns.

- Develop and recommend value-added opportunities.

#### Creative Production & Implementation (May 2021 – December 2021)

- Develop and present marketing and advertising concepts with recommendations on tactics as well as design.
- Produce advertising copy and design for all chosen media, including traditional and non-traditional formats.
- Manage all aspects of advertising and promotional campaigns, including media selection, placement, and purchases. Negotiate the most favorable rates, position/placement of all time, space and other media. Verify costs and placement of all media. Provide all materials and information to media outlets.
- Advise on public relations campaigns as integral parts of paid media campaigns, to be implemented by DRCOG's Communications & Marketing public relations specialist.
- Work with DRCOG's Communications & Marketing team, as appropriate, to develop or assist in the development of creative. To reduce cost, DRCOG's graphic designers will be a resource to implement creative, including materials or video production.

#### Account Management & Reporting

- The Contractor's account executive and/or other appropriate key staff are expected to provide advice at meetings of DRCOG's Regional Vision Zero Working Group, a stakeholder group of member governments and other interested regional agencies working to implement the *Taking Action on Regional Vision Zero* plan.
- Develop, maintain and distribute to DRCOG monthly reports on status, progress and successes of the campaign's advertising efforts, its expenditures and status updates of major decisions.
- Comprehensively research and evaluate campaign effectiveness to help measure awareness and behavior change among the public.

#### Scenario

*Each proposal must include a complete and thorough response to the following hypothetical scenario. Please keep the response to this scenario under one page.*

As crash speed increases, the likelihood of a severe injury or fatality also increases, especially for people walking and biking. For example, research completed by the AAA Foundation for Traffic Safety shows that the likelihood of a fatality or severe injury is 13 percent for a person walking struck by a vehicle traveling at 20 miles per hour, but this likelihood increases to 40 percent at 30 miles per hour and 73 percent at 40 miles per hour.

If the budget for this campaign was \$100,000 (as a part of our \$250,000 overall budget), present your creative ideas for a campaign targeted in the Denver region to educate the public about the dangers, risks and consequences of speeding. Please include proposed advertising tactics, what type of media buy you would recommend, a timeline/length for the buy, as well as a

general breakdown of how you would recommend spending the money (including for paid media and research, if applicable) to achieve the desired results of reducing distracted driving crashes among the target audience using Vision Zero principles. Finally, describe how you would analyze and measure the effectiveness of the campaign.

**ATTACHMENT A**  
**PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO CONTRACTS**  
**WITH THE DENVER REGIONAL COUNCIL OF GOVERNMENTS**

**A. Purpose and Scope**

Objective. This policy procedure sets forth principles for determining the allowable costs of contracts with DRCOG and provides a general summary of applicable policies. Allowable costs are determined and administered in accordance with these principles and applicable federal regulations and requirements, including without limitation 49 C.F.R. Part 18 Subpart C and 49 C.F.R. 18.22.

Applicable Cost Principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. The following table lists the kinds of organizations and the applicable cost principles:

For the costs of a: State, local, or federal-recognized Indian tribal government	Use the principles in: 2 C.F.R. Part 225 (OMB Circular A-87)
Private nonprofit organization other than: (1) an institution of higher education; (2) a hospital; or (3) organization named in 2 CFR Part 230, Appendix C, as not subject to that part	2 C.F.R. Part 230 (OMB Circular A-122)
Institutions of Higher Education	2 C.F.R. Part 220 (OMB Circular A-21)
For-profit organizations other than: (1) a hospital; (2) a commercial organization; or (3) a non-profit organization listed in 2 CFR Part 230, Appendix C, as not subject to that part	48 C.F.R. Subpart 31.2

Policy Guides. The application of these principles is based on the fundamental premises that:

- a. Contractors are responsible for the efficient and effective administration of contract programs through the application of sound management practices.
- b. Contractors assume the responsibility for seeing that contract funds have been expended and accounted for consistent with underlying agreements and contract objectives and provisions.
- c. Each contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

Application. These principles will be applied to all contracts with DRCOG in determining costs and cost reimbursement type contracts including subcontracts.

**B. Definitions**

Approval or authorization of DRCOG means documentation evidencing consent prior to incurring specific costs.

Cost allocation plan means the documentation identifying, accumulating, and distributing allowable costs under DRCOG's contracts, together with the allocation methods used.

Cost, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the DRCOG as a discharge of the Contractor's accountability for DRCOG's funds.

Cost objective means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific on-site direct and indirect activities.

Contract program means those activities and operations of the Contractor which are necessary to carry out the purposes of the contract.

Services, as used herein, means goods and facilities, as well as services.

Supporting services, means auxiliary functions necessary to sustain the direct effort involved in administering a contract or an activity providing service to the program. These services may include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

### **C. Basic Guidelines**

Factors Affecting Allowability of Costs. To be allowable under a DRCOG contract, costs must meet the following general criteria:

- a. Meet the standards and criteria set forth in the applicable federal regulations and requirements.
- b. Be necessary and reasonable for proper and efficient administration of the contract, be allocable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of the Contractor.
- c. Be authorized or not prohibited under state or local laws or regulations.
- d. Conform to any limitations or exclusions set forth in these principles, federal laws, or other governing limitations as to types or amounts of cost items.
- e. Be consistent with policies, regulations, and procedures that apply uniformly to all activities of the Contractor.
- f. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.
- g. Not be allocable to or included as a cost of any other program in either the current or a prior period.
- h. Be net of all applicable credits.
- i. Be satisfactorily documented.

Allocable Costs. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

Applicable Credits. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to contracts as direct or indirect



costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sales or publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayment or erroneous charges.

#### **D. Composition of Cost**

**Total Cost.** The total cost of a contract is comprised of the allowable direct cost incident to its performance, plus its allocable portion of authorized indirect costs, less applicable credits.

**Classification of Costs.** There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the contract or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost.

#### **E. Direct Costs**

**General.** Direct costs are those that can be identified specifically with a final cost objective.

**Application.** Typical direct costs chargeable to DRCOG's contracts are:

- a. Compensation of employees for the time and effort devoted specifically to the execution of contract work effort.
- b. Cost of materials acquired, consumed or expended specifically for the purpose of the contract.
- c. Other items of expense incurred specifically to carry out the contract work statement.

#### **F. Indirect Costs**

**General.** Indirect costs are those that, because of their incurrence for common or joint purposes benefitting more than one cost objective, are not readily subject to treatment as a direct cost. The costs must be allowable based on applicable federal cost principles and be the result of an approved Indirect Cost Plan.

**Application.** After direct costs have been determined and assigned directly to the contract, indirect costs are those remaining to be allocated to benefitted cost objectives. A contractor desiring to claim indirect costs must prepare an indirect cost proposal and related documentation to support those costs and maintain the proposal and documentation for any required review by DRCOG or federal funding agencies.

#### **G. Accounting System**

The Contractor shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that project funds are expended and costs accounted in a manner consistent with the contract and project objectives.

All allowable costs charged to the project, including any approved services contributed by the Contractor or others, shall be supported by properly executed payrolls, time records, invoices, contractors or vouchers evidencing in detail the nature of the charges.

Any check or order drawn up by the Contractor, including any item which is or will be chargeable against the project account, shall only be drawn up in accordance with a properly signed voucher on file in the office of the Contractor, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.

#### **H. Billing Procedure**

Billings shall include appropriate documentation, such as detailed listing of charges being submitted for payment including billable hours and hourly rate, payments to sub-contractors, parking and mileage, supplies, etc. Certain funding sources may require more documentation, such as approved timesheet copies of invoices paid, etc. Contractors must maintain detailed records that are subject to review and/or audit by DRCOG or its representatives.

## **ATTACHMENT B FEDERAL AND STATE REQUIREMENTS**

**Nondiscrimination Provisions** - In connection with this request, the selected respondent(s) shall not discriminate against any employee or applicant for employment because of age, race, sex, color, religion, veteran status, marital status, national origin, disability, being a disadvantaged person, genetic information, sexual orientation or any other status protected by applicable state or local law. 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 any apprenticeship.

Selected respondent shall comply with all applicable provisions of Title VI of the Civil Rights Act of 1964 and Section 162(a) of the Federal Aid Highway Act of 1973 and with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21).

The selected respondent(s) will furnish all necessary information and reports and will permit access to its books, records, and accounts by DRCOG for purposes of investigation to ascertain compliance with the nondiscrimination provisions of any resultant contract.

**Prohibition Against Employing Illegal Aliens** - Prior to entering into any Contract for this Project, the respondent must certify that it does not knowingly employ or contract with an illegal alien; and that the respondent will participate in the E-Verify program or the Department Program, as defined in C.R.S. §§ 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively in order to verify that it does not employ any illegal aliens.

The respondent acknowledges that any contract shall also include a prohibition against employing illegal aliens in conformance with C.R.S. § 8-17.5-101 et seq., and that respondent will comply with the requirements of C.R.S. § 8-17.5-101 et seq.

**Noncompliance** - In the event of the selected respondent(s) noncompliance with the nondiscrimination provision of any resultant contract, DRCOG shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- a. Withholding of payments under the contract until the compliance by the selected respondent(s), and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

**Single Audit Act Amendment** – State and local governments and nonprofit organizations receiving more than \$500,000 in Federal funds (all federal sources, not just FHWA funds), shall comply with the audit requirements of OMB Circular A-133.

**Employee Financial Interest/Conflict of Interest** (C.R.S. § 24-18-201 and 24-50-507) – These laws require the selected respondent to aver that no State employee has any personal or beneficial interest in the contract and that it has no interest and shall acquire no interest that would conflict with its performance of the services.

The Hatch Act (5 U.S.C. 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

42 USC 6101 et seq. 42 U.S.C. 2000d, 29 U.S.C. 794, and implementing regulation, 45 C.F.R. Part 80 et. seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds;

The Americans with Disabilities Act (Public Law 101-336); 42 U.S.C. 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213; 47 U.S.C. 225 and 47 U.S.C. 611.

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 U.S.C. 701 et seq.).

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

**ATTACHMENT C  
DENVER REGIONAL COUNCIL OF GOVERNMENTS DISADVANTAGED BUSINESS  
ENTERPRISE PROGRAM INFORMATION REQUEST FORM**

General Information

Business Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

This firm was established  
on:

\_\_\_\_\_ MM/DD/YYYY

Specify the gross annual receipts of the firm:

- Under \$100,000
- \$100,000-\$500,000
- \$500,000-\$1,000,000
- Over \$1,000,000

Is your company certified as a Disadvantaged Business Enterprise under the Colorado Unified Certification Program (UCP)?  Yes  No

\_\_\_\_\_  
RESPONDENT

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

**ATTACHMENT D**  
**E-VERIFY FEDERAL CONTRACTOR RULE EMPLOYMENT ELIGIBILITY VERIFICATION**

(a) *Definitions.* As used in this clause—

*Commercially available off-the-shelf (COTS) item—*

(1) Means any item of supply that is—

- (i) A commercial item (as defined in paragraph (1) of the definition at 2.101);
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 140102(4)), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

*Employee assigned to the contract* means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

- (1) Normally performs support work, such as indirect or overhead functions; and
- (2) Does not perform any substantial duties applicable to the contract.

*Subcontract* means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

*United States*, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.*

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) *All new employees.*

(A) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United

States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts*. The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for—(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or (ii) Construction;

(2) Has a value of more than \$3,500; and

(3) Includes work performed in the United States.



**ATTACHMENT E  
SAMPLE CONTRACT**

**CONTRACTOR SERVICES AGREEMENT  
BY AND BETWEEN THE**

**DENVER REGIONAL COUNCIL OF GOVERNMENTS**

1001 17<sup>th</sup> Street, Suite 700  
Denver, Colorado 80202

and

**CONTRACTOR**

Address  
City, State, Zip

Project Number:

Contract Number:

This Agreement ("Agreement") is made by and between the Denver Regional Council of Governments ("DRCOG") and [Vendor] ("Contractor").

**RECITALS:**

- A. DRCOG desires to engage the Contractor for the purpose of providing [Service].
- B. Contractor represents that it has the special expertise, qualifications and background necessary to complete the Services.

**TERMS:**

**Section 1. Scope of Services.** Contractor shall provide the Services as described in the attached Exhibit A ("Services"), which is incorporated herein by reference. In its sole discretion, DRCOG may contract with other Contractors to provide the same or similar services during the term of this Agreement.

**Section 2. Term.** The term of this Agreement shall commence upon execution and shall end [Date]. No work shall commence and no costs shall be incurred prior to the execution of this Agreement, as reflected by the execution date herein. After the initial term, this Agreement may be extended by mutual written agreement for [Additional Term] (Additional Term) additional one-year terms on terms and conditions agreed upon by both parties. Either party must give written notice of its intent to terminate by [Date] of the then-current year. If notice of intent is not so given, the contract shall renew for an additional one-year term, subject to the above limitation and to the parties' rights to otherwise terminate as provided herein.

**This Agreement may be terminated as follows:**

- a. Termination of Agreement for Cause. If through any cause, the Contractor shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, DRCOG shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination which shall be effective upon receipt of the written notice. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials

prepared by the Contractor under this Agreement shall, at the option of DRCOG, become its property, and subject to DRCOG's right of setoff, the Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents or other materials which were completed to the satisfaction of DRCOG. Notwithstanding the above, the Contractor shall not be relieved of liability to DRCOG for any damages sustained by DRCOG by virtue of any breach of the Agreement by the Contractor, and DRCOG may withhold all payments to the Contractor for the purpose of setoff for damages due DRCOG.

- b. Termination for Convenience of DRCOG. DRCOG may terminate this Agreement at any time by giving 30 days written notice to the Contractor of such termination, which shall be effective upon receipt of the written notice. In that event, all finished or unfinished documents and other materials shall, at the option of DRCOG, become its property. If the Agreement is terminated by DRCOG as provided herein, the Contractor will be paid for services satisfactorily rendered through the date of termination in accordance with the tasks and rates set forth in Exhibit B.
- c. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Contractor is to be paid, reimbursed, or otherwise compensated with funds provided to DRCOG for the purpose of contracting for the services provided for herein, and therefore, the Contractor expressly understands and agrees that all its rights, demands, and claims to compensation arising under this Agreement are contingent upon receipt of such funds by DRCOG. In the event that such funds or any part thereof are not received by DRCOG, DRCOG may immediately terminate this Agreement without liability, including costs for termination.

**Section 3. Payment.** The total cost of the Agreement shall not exceed [Contract Amount] Dollars (\$0.00). The Contractor shall submit monthly invoices to DRCOG's Accounting Department for services rendered and expenses incurred both referenced by task and only in conformity with the project budget attached hereto (Exhibit B). The foregoing amounts of compensation shall be inclusive of all costs of whatsoever nature associated with the Contractor's efforts, including but not limited to salaries, benefits, overhead, administration, profits, and expenses. To be considered for payment, invoices for payment pursuant to this Agreement must be received within 30 days after the period for which payment is being requested and final billing on the Agreement must be received within 30 days after the end of the Agreement term.

**Section 4. Allowable Costs.** Contractor shall only be reimbursed for costs incurred for the performance of this Agreement which are determined by DRCOG to be allowable, allocable, and reasonable in accordance with the following Federal cost principles: as from time to time amended: 2 C.F.R. Part 220 (OMB Circular A-21); 2 C.F.R. Part 225 (OMB Circular A-87), 2 C.F.R. Part 230 (OMB Circular A-122); and Federal Acquisition Regulations at 48 C.F.R. Part 31.2, whichever may apply.

- a. Expenses shall not exceed U.S. General Services Administration ("GSA") per diem rates available at: <http://www.gsa.gov/portal/content/104877>.
- b. Reimbursement for automobile travel shall be at the prevailing State rate on the effective date of this contract. Car rental costs shall be reimbursed only when pre-approved by DRCOG.

- c. Air travel must be pre-approved by DRCOG. All air travel must be at the lowest, reasonably available coach fare. First class or business class travel is not authorized.

**Section 5. Use of Funds.** Contractor shall use funds only for eligible costs identified herein and/or in the Project Budget, Exhibit B. Contractor may adjust budgeted expenditure amounts up to 10% between line items of said Budget without approval of DRCOG. Budget line item adjustments exceeding 10% must be submitted in advance of actual expenditure and receive written approval by DRCOG's appointed Program Manager, or other representative as DRCOG may designate. Approval may be transmitted informally by email or such other means that does not rise to the level of an amendment to this Agreement. Budget adjustments shall not increase DRCOG's total consideration beyond the maximum amounts designated in Section 3 without an amendment to this Agreement.

**Section 6. Assurances.** In addition to all other obligations contained herein, Contractor agrees: (a) to accurately proceed with diligence and promptness and to perform the Services in accordance with the highest professional workmanship and service standards in the field to the satisfaction of DRCOG; (b) to produce work related to such Services that is free from any material errors or omissions; and (c) to comply, at its own expense, with the provisions of all state, local and federal laws, regulations, ordinances, requirements and codes which are applicable to the performance of the Services hereunder or to Contractor as an employer.

**Section 7. Inspection and Audit.** DRCOG and its duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

**Section 8. Indemnification.** Contractor agrees to indemnify and hold harmless DRCOG or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Contractor or any of their employees, subcontractors or agents in performing work pursuant to this Agreement. Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands. Contractor shall further bear all other costs and expenses incurred by DRCOG and Contractor related to any such liability, claims and demands, including but not limited to court costs, expert witness fees and attorney fees if the court determines that these incurred costs and expenses are related to such negligent acts, errors, and omissions or other fault of the Contractor. Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of DRCOG.

**Section 9. Insurance.** Contractor shall procure and maintain, and shall cause each subcontractor hired by Contractor to perform services under this Agreement pursuant to its' obligations herein to procure and maintain, the minimum insurance coverages listed below. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured by Contractor to maintain such continuous coverage.

- 1) Workers' Compensation in statutory limits.

- 2) Employer's Liability Insurance: \$100,000/ each accident, \$500,000/ disease - policy limit, and \$100,000/ disease - each employee.
  - 3) Comprehensive General Liability Insurance: \$1,000,000/Occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed operations aggregate; \$50,000 any one fire.
  - 4) Automobile Liability or Hired & Non-Owned Vehicle Liability Insurance: \$1,000,000/each accident.
  - 5) Professional Liability Insurance: \$1,000,000/Occurrence; \$2,000,000 aggregate
- a. DRCOG, its officers, employees, and the State are to be named as additional insured for both the Contractor's General and Automobile Liability policies under sections Certificate Holder and Description of Operations. In addition, the term of said Agreement and the contract number must be outlined under the Description of Operations. Said insurance will be required to be maintained in full force and effect during the term of the Agreement.
  - b. All coverages shall be continuously maintained from the date of commencement of services hereunder, and in the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured by the Contractor so as to maintain such continuous coverage. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. All insurance policies required hereunder shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against DRCOG, its agencies, institutions, organizations, officers, agents, employees and volunteers.
  - c. The insurance shall include provisions preventing cancellation without 30 days prior notice to DRCOG by certified mail or email notification.
  - d. **The Contractor shall provide certificates showing adequate insurance coverage, as required above to DRCOG with the signed Agreement. No later than 15 days prior to the expiration date of any such coverage, Contractor shall deliver to DRCOG certificates of insurance evidencing renewals thereof. Upon request by DRCOG at any other time during the term of this Agreement, Contractor, shall, within 10 days of such request supply to DRCOG evidence satisfactory to DRCOG or the State of compliance with the provisions of this Section.**
  - e. If the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the Contractor shall at all times during the term of this contract maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act.

**Section 10. Equal Opportunity Employer.** Contractor will not discriminate against any employee or applicant for employment because of age 40 and over, race, sex, color, religion, veteran status, national origin, disability, genetic information, sexual orientation or any other status protected by applicable federal, state or local law. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to age 40 and over, race, sex, color, religion, veteran status, national origin, disability, genetic information, sexual orientation or any other status protected by

applicable federal, state or local law. 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

**Contractor shall comply with the appropriate areas of the Americans with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations.**

**The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable.**

**This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.**

**Section 11. Assignment.** This Agreement shall not be assigned by Contractor without the prior written consent of DRCOG.

**Section 12. Rights In Data, Documents, and Computer Software** Any software, research, reports, studies, estimates, data, photographs, negatives or other documents, plans, drawings, memoranda, computation sheets or materials prepared by the Contractor in the performance of its obligations under this contract shall be the exclusive property of DRCOG without restriction and all such materials shall be delivered by the Contractor to DRCOG at no further expense to DRCOG upon completion, termination, or cancellation of this contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of Contractor's obligations under this contract without the prior written consent of DRCOG. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

**Section 13. Report.** Without limiting the foregoing, Contractor acknowledges that DRCOG is the owner of all final reports produced on behalf of DRCOG as part of this Agreement, whether produced by Contractor, any subcontractor of Contractor, or any other person or entity for whom Contractor is responsible. This includes all reports, whether they are produced for internal use by DRCOG or external use. All final reports, plans, specifications and other documents completed as a part of this Agreement, other than those exclusively used for internal use by DRCOG, will carry a notation identifying the preparer on the inside back cover of the report, as shown in the attached sample (Appendix A).

**Section 14. Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other

address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given two days after deposit in the United States mail.

**Section 15. Waiver.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

**Section 16. Governing Law; Venue.** This Agreement shall be governed by the laws of the State of Colorado. Venue for any action relating to this Agreement shall be in the City and County of Denver, Colorado and federal district courts for the State of Colorado. Nothing herein shall preclude the parties from mutually agreeing to submit to arbitration or mediation to resolve a dispute arising hereunder.

**Section 17. Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

**Section 18. Subcontractors.** Contractor may utilize subcontractors to assist with non-specialized works as necessary to complete projects provided that it first submits any proposed subcontractor and the description of their services to DRCOG for approval. DRCOG will not work directly with the subcontractors.

**Section 19. Independent Contractor.** The Contractor is an independent contractor and not an employee of DRCOG. As an independent contractor, Contractor and its employees are not entitled to workers' compensation benefits except as may be provided by the Contractor nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the Contractor or some other entity. The Contractor is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this contract relationship. The parties agree that the Contractor is free from the direction and control of DRCOG except such control as may be required by any state or federal statute or regulation, and that DRCOG does not require the Contractor to work exclusively for DRCOG; does not provide tools, training or benefits to the Contractor, and does not dictate the time of performance by the Contractor, except through a completion schedule. Contractor shall not create any indebtedness on behalf of DRCOG.

**Section 20. No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to DRCOG and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement.

**Section 21. Employing Illegal Aliens.** **Exhibit C**, the "DRCOG Contractor Services Contract Addendum-Prohibition Against Employing Illegal Aliens", is attached hereto and incorporated herein by reference. **Exhibit D**, Executive Order 12989 requires that federal Contractors agree to verify employment eligibility of their employees using E-verify. It also requires federal Contractors to agree, through language inserted into their federal contracts, to use E-Verify to confirm the employment eligibility of all persons hired during a contract term. In addition, the new rule requires federal Contractors to confirm the employment eligibility of current employees who are "assigned to the federal contract" within the United States.

**Section 22. Entire Agreement.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

**Section 23. Debarment, Suspension.** By signing this Agreement, the Contractor represents that its organization and its principals are not suspended or debarred per federal requirements.

**Section 24. CORA Disclosure.** To the extent not prohibited by federal law, this Contract and the performance measures and standards under CRS § 24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS § 24-72-101, et seq., as may updated.

**Section 25. Confidential Information – State Records.** Contractor shall comply with the provisions of this Section 25 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, any State records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS. §24-72-101 et seq.

- a. **Confidentiality.** Contractor shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Contractor shall be immediately forwarded to DRCOG.
- b. **Notification.** Contractor shall notify its agents, employees, subcontractors, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.
- c. **Use, Security, and Retention.** Confidential information of any kind shall not be distributed or sold to any third party or used by Contract or its agents in any way, except as authorized by this Agreement or approved in writing by DRCOG. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Agreement or approved in writing by DRCOG.
- d. **Disclosure-Liability.** Disclosure of State records or other confidential information by Contractor for any reason may be cause for legal action by third parties against Contractor, DRCOG, the State or their respective agents. Contractor shall indemnify, save, and hold harmless DRCOG, the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to this Section.



**Section 26. Federal Requirements.** Contractor shall at all times during the term of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this Agreement. Contractor shall also require compliance with these statutes and regulations in subcontract agreements associated with this Agreement.

**Section 27. Authority.** The undersigned signatories of Contractor represent that they have been duly authorized to execute this Agreement and have full power and authority to bind Contractor to the terms and conditions hereof, and certify that their signatures below, whether handwritten, electronic, or digital or submitted by facsimile or electronic mail are their own. Contractor further understands and agrees that no further certification authority or third party verification is necessary to validate any signature hereto and that the lack of such certification or verification will not in any way affect the enforceability of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and acknowledge that electronic or digital signatures hereto are the legally binding equivalent to handwritten signatures.

**DENVER REGIONAL COUNCIL  
OF GOVERNMENTS**

**CONTRACTOR**

By: \_\_\_\_\_  
Douglas W. Rex, Executive Director

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Jenny Dock, Division Director  
Administration and Finance

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A**  
**Scope of Services**

SAMPLE

**Exhibit B**

SAMPLE

## Exhibit C

### **DRCOG Contractor Services Contract Addendum Prohibition Against Employing Illegal Aliens**

**Prohibition Against Employing Illegal Aliens.** Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

Contractor will participate in either the E-verify program or the Department program, as defined in C.R.S. § 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. Contractor is prohibited from using the E-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under this contract for services knowingly employs or contracts with an illegal alien, Contractor shall:

- a. Notify the subcontractor and DRCOG within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this paragraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. Section 8-17.5-102(5).

If Contractor violates a provision of this Agreement required pursuant to C.R.S. Section 8-17.5-102, DRCOG may terminate the contract for breach of contract. If the contract is so terminated, the Contractor shall be liable for actual and consequential damages to DRCOG.

**Pre-Contract Certification in Compliance with C.R.S. Section 8-17.5-102(1)**

The undersigned hereby certifies as follows:

That at the time of providing this certification, the undersigned does not knowingly employ or contract with an illegal alien; and that the undersigned will participate in the E-Verify program or the Department program, as defined in C.R.S. § 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform under the public contract for services.

Contractor:

\_\_\_\_\_

By \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Date

\* This Pre-Contract Certification shall not apply to the following types of contracts: (1) intergovernmental agreements; (2) agreements for information technology services or products and services; (3) agreements relating to the offer, issuance, or sale of securities; (4) agreements for investment advisory services or fund management services; (5) any grant, award, or contract funded by any federal or private entity for any research or sponsored project activity of an institution of higher education or an affiliate of an institution of higher education that is funded from moneys that are restricted by the entity under the grant, award, or contract, pursuant to C.R.S. § 8-17.5-101(6)(b).

**EXHIBIT D**  
**E-VERIFY FEDERAL CONTRACTOR RULE**  
**EMPLOYMENT ELIGIBILITY VERIFICATION**

(a) *Definitions.* As used in this clause—

*Commercially available off-the-shelf (COTS) item—*

(1) Means any item of supply that is—

- (i) A commercial item (as defined in paragraph (1) of the definition at 2.101);
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 140102(4)), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

*Employee assigned to the contract* means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

- (1) Normally performs support work, such as indirect or overhead functions; and
- (2) Does not perform any substantial duties applicable to the contract.

*Subcontract* means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

*United States*, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.*

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) *All new employees.*

(A) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of

all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for—(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or (ii) Construction;

(2) Has a value of more than \$3,500; and

(3) Includes work performed in the United States.