

**EAST-WEST GATEWAY COUNCIL OF GOVERNMENTS
INVITATION FOR SEALED BIDS
BID #04-17-04 SELF CONTAINED BREATHING APPARATUS**

April 12, 2017

SECTION I

East-West Gateway Council of Governments (“East-West Gateway” or the “Council”) is requesting sealed bids for:

- A single item OR
 Multiple items

The detailed specifications for this solicitation are attached to this invitation for bid (“IFB”) in *Attachment I – Detailed Bid Specifications*, and can be found on the Council’s website at www.ewgateway.org. There is **no charge** for downloading the IFB documents.

A. IFB Submission Date, Time & Address

Sealed bids are due **no later than 1:00 p.m. local time on May 3, 2017** to the following address:

“Sealed Bids—Bid #04-17-04 SCBA”
c/o Mr. James Wild, Executive Director
East-West Gateway Council of Governments
1 S. Memorial Drive, Suite 1600
St. Louis, MO 63102

Further instructions regarding the information that must be included in the sealed bids can be found in Part E below.

Emailed bid packages will be accepted. HOWEVER, to ensure that files are transmitted and received on time, emailed bids must be received by the Council **no later than 12:00 p.m. local time on May 3, 2017**. Please note that the time we will use is the time of receipt in our email system. Unless otherwise due to extenuating circumstances and approved by the Council in advance, any bid packages received after the date and time listed above will be rejected and returned unopened.

Emailed bids must be sent to bids@ewgateway.org with the **bid number and description in the subject line**. If the vendor is submitting bids on multiple items, please send a separate email for each item.

FAXED BIDS WILL NOT BE ACCEPTED.

All bid packages, including attachments, appendices, etc., submitted under this IFB become the exclusive property of East-West Gateway and will not be returned to the bidding firm unless otherwise noted in this IFB or East-West Gateway determines that such action is warranted.

B. Bid Opening Date & Time

Sealed bids will be opened at 1:30 p.m. local time on May 3, 2017 at the following address:

East-West Gateway Council of Governments
1 S. Memorial Drive, Suite 1600
St. Louis, MO 63102

C. Inquiry Submission & Deadline

Direct inquiries regarding this IFB or the project must be submitted no later than 2:00 p.m. local time on April 25, 2017. The Council will not accept any inquiries after this date and time. Inquiries include questions about or requests for clarification of the information contained in this IFB or about the project in general.

Inquiries must be submitted to:

Leah Hummert-Watkins
Grants and Contracts Coordinator
East-West Gateway Council of Governments
1 S. Memorial Drive, Suite 1600
St. Louis, MO 63102
314-421-4220 ext. 208
leah.hummert-watkins@ewgateway.org

D. Q & A—Addendums Posted On-Line

In order to ensure that all potential bidders receive the same information relative to this solicitation, the Council will post its responses to any request for supplemental information on its website at www.ewgateway.org. Please visit this website periodically to check for any additional information. If a bidder wishes to have a printed copy of the information mailed, then it must mail or email a written request to the staff contact listed in Part C above.

E. Sealed Bid Contents & Instructions

All bid packages must include the information listed below. Bid packages that do not contain the required information may be deemed non-responsive and may not be considered. The Council reserves the right to waive minor errors, omissions, or technicalities as determined to be in the best interest of the Council and that do not impede the Council's ability to determine if the bidder best responds in quality, fitness, and capacity to the requirements for the project.

Bidders may bid on a single item or on multiple items contained in this solicitation. If a firm wishes to bid on multiple items, then the firm should submit one bid package (i.e. one sealed envelope) that contains the required information for all of the bids, as follows:

1. For **each item** on which the firm is bidding, the firm must submit:
 - a. One printed original marked "Original" **and** one printed duplicate marked "Copy" of Attachment 1. This form must be signed **and** completed in ink or typed, and any mistakes must be crossed out, corrections typed adjacent, and must be initialed by the person signing the bid. The form must be signed by a representative of the company/person submitting the bid. An *.xlsx version of Attachment 1 can be found on the Council's website at www.ewgateway.org.
 - b. Information that provides a clear description of the warranties that will be supplied by the firm, if the firm is selected for the project.
 - c. Descriptive literature, brochures, and/or pictures and specifications showing the exact products that the bidder proposes to provide. If applicable, the price noted in Attachment 1 should include the cost of two Operator's Manuals, Parts Books, and/or Technical Service Manuals.
 - d. The specifications in Attachment 1 may require additional information to be provided with the bid package. If such additional information is required, then this information must be addressed in the bid package.

2. For **each bid package*** submitted by the firm, the firm must submit:
 - a. Signed Conflict of Interest Disclosure Statement (see Attachment 2).
 - b. Signed *Attachment 4 – Certification Regarding Debarment & Suspension*.
 - c. Signed *Attachment 5 – Certification Regarding Lobbying*.
 - d. W-9 Form, if responding firm has not done business with the Council in the past.
 - e. Any exceptions, as noted in Section II of this IFB.
 - f. One CD that contains an electronic copy (*.pdf) of each of the documents described in Part E #1 and #2.

*Bid package refers to a single, sealed package (i.e. envelope or other parcel) that contains all the bids from the bidder for this bid number, whether the package includes one bid for a single item or several bids for multiple items listed in this solicitation.

Please note that submitting the required forms, certifications, and other information as part of this IFB does not alleviate a firm from having to submit these items for future solicitations. For example, if a firm submits a Conflict of Interest Disclosure Statement for this IFB, it will be required to submit a new statement for any future solicitation documents that are issued by the Council.

F. Disadvantaged & Small Business Participation and Equal Opportunity Provisions

The Council has adopted a Disadvantaged Business Enterprise (“DBEs”) Program to insure that DBEs shall have an equal opportunity to participate in Council projects; this program also includes Small Business Enterprises (“SBEs”). DBEs and SBEs are encouraged to submit proposals as prime contractors for this project. Non-disadvantaged firms are encouraged to use DBEs and SBEs as subcontractors and/or form joint ventures on this project.

The term "Disadvantaged Business" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Members of the following named groups (Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans and women regardless of race, ethnicity or origin) and persons certified as socially and economically disadvantaged by the Small Business Administration (“SBA”) under the SBA Section 8(a) program will be presumed to be both socially and economically disadvantaged by the Council.

The term “Small Business Enterprise” is defined in accordance with the SBA’s definition, as follows: “... a small business concern is one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period.” The Council will use the SBE size standards provided in 13 CFR Part 121 (as it may be amended from time-to-time) to determine a small business enterprise’s eligibility.

In order to be considered a DBE, a firm must be certified and registered as a DBE with the Missouri Department of Transportation. Please refer to the MRCC DBE Directory at:

http://www.modot.mo.gov/business/contractor_resources/external_civil_rights/mrcc.htm

In order to be considered an SBE, a firm must certify that it meets the definition of a small business, as indicated above.

A bidder may enclose with its bid package a copy of the relevant MoDOT or SBA DBE and/or SBE certification(s).

G. Funding Source

The U.S. Department of Homeland Security through the Missouri Office of Homeland Security is providing 100 percent of the funding for this project.

H. Conflict of Interest and Unauthorized Communications

After the release of this bid invitation, a responding firm's contact regarding this bid or the subject of this bid must be limited to the person identified in Section IX, Part A. Unless the person contacted is the person identified in Section I, Part C, any communication (whether oral or written) about this bid invitation or the subject of this bid with any person or organization listed below is prohibited and may result in the responding firm's disqualification from the procurement process.

1. Members of the evaluation team or selection committee.
2. A Council or STARRS staff member.
3. A member of the STARRS Board of Directors or other committees, including the following:
 - (a) Fire Services / Hazmat
4. A member of the Council's Board of Directors or other committees.
5. The staff persons or personnel of an organization that will benefit from the project / IFB, including:
 - (a) St. Louis Regional Fire Service agencies

SECTION II

This solicitation is governed by certain standard terms and conditions. These terms are provided in *Section II – Standard Terms & Conditions (Invitation for Bids)*. By submitting a bid in response to this IFB, each bidder is acknowledging that it has read and understood these terms and is certifying that it agrees to abide by these terms. Any subsequent purchase order, if issued, will be governed by certain standard terms and conditions and/or special terms and conditions. These terms and conditions are provided in *Attachment 3 – Purchase Order Terms & Conditions*. By submitting a bid in response to this IFB, each bidder is acknowledging that it has read and understood these terms and is certifying that it agrees to abide by these terms. The Council reserves the right to modify these terms and conditions as warranted. Each bidder must include in its bid package any exceptions to the terms and conditions expressed in Section II and Attachment 3. It is within the Council's sole discretion whether to accept the selected bidder's exceptions to the terms and conditions, and, unless and until the Council provides its express written approval, such exceptions will not be binding upon the Council.

Section II Standard Terms And Conditions (Invitation for Bids)

The bidding firm agrees and understands that the solicitation is governed by these terms and conditions and that, as a condition of being selected for this project, it must adhere to the terms and conditions provided below. The bidding firm agrees and understands that its failure to adhere to the terms and conditions and/or any misrepresentation with regard to the solicitation may result in East-West Gateway Council of Governments ("East-West Gateway" or the "Council") disqualifying the firm from this procurement and/or rescinding a contract / purchase order if one is authorized as a result of the solicitation.

1.0 SPECIFICATIONS: The specifications in the solicitation are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are quoted, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. East-West Gateway shall be the sole judge of equivalency. A representative of East-West Gateway may request a demonstration of the products prior to bid award. If requested, the bidder shall make a reasonable effort to arrange a presentation of the items proposed.

2.0 DEVIATIONS AND EXCEPTIONS: Deviations and exceptions from original text, terms, conditions, or specifications expressed in the solicitation shall be described fully, on the vendor's letterhead, signed, and attached to the bid package. In the absence of such statement, the bid shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidders shall be held liable.

3.0 ALL BIDS CONSIDERED FINAL: All bid packages submitted in response to the solicitation are considered final. Unless otherwise due to extenuating circumstances and approved by the Council in advance, no additions, deletions, corrections, or adjustments will be accepted after the date and time specified in Part A of the solicitation.

4.0 ACCEPTANCE-REJECTION: East-West Gateway reserves the right to accept or reject any or all bids, to waive minor errors, omissions, or technicalities in any bid submitted, and to accept any part of a bid as deemed to be in the best interest of East-West Gateway.

Bids MUST be date and time stamped by East-West Gateway on or before the date and time that the bid is due.

5.0 CANCELLATION: East-West Gateway reserves reserves the right to accept or reject any or all of the bids received as a result of the solicitation, or to cancel this request in whole or in part at any time (including, but not limited to, after the Council's Board of Directors has authorized the Executive Director to make a purchase) if it is in the best interest of the Council. East-West Gateway reserves the right to cancel any contract / purchase order in whole or in part without penalty due to nonappropriation of funds or for failure of the bidding firm to comply with terms, conditions, and specifications of the solicitation and/or subsequent contract / purchase order.

6.0 NO OBLIGATION TO AWARD A CONTRACT / PURCHASE ORDER OR PAY FOR COST TO DEVELOP BID PACKAGE: The solicitation issued by the Council does not commit the Council to award a contract / purchase order, to pay any costs incurred in the preparation of a bid, or to procure or contract for services or products.

7.0 METHOD OF AWARD: If an award is made, it will be made to the lowest priced, responsible vendor, whose offer is responsive to the solicitation and best responds in quality and fitness to the requirements provided in the solicitation and is, therefore, in the best interest of the Council. If this is a multiple award bid, then each item shall be evaluated separately and may be awarded separately to the lowest priced, responsible vendor, whose offer is responsive to the solicitation and best responds in quality and fitness to the requirements provided in the solicitation and is, therefore, in the best interest of the Council. Bids may be held for a period not to exceed

thirty (30) calendar days from the bid opening for the purpose of reviewing the bid and investigating the qualifications of bidders prior to awarding the contract / purchase order.

8.0 CONFLICTS OF INTERESTS: Actual and perceived objectivity will be an important part of successfully completing this project. Moreover, the Council is committed to ensuring a fair, competitive procurement process. The Council's policy is to award contracts / purchase orders to only those firms whose objectivity is not impaired because of any related, past, present, or planned interest, financial or otherwise, in organizations that are currently working with or are members of the Council and/or the St. Louis Area Regional Response System ("STARRS") or in organizations whose interests may be substantially affected by the Council's and/or STARRS's activities. Each bidder must enclose with its bid package a signed Conflict of Interest Disclosure Statement. Please refer to Attachment 2 for a description regarding what information must be provided in the signed statement.

9.0 DEBARMENT & SUSPENSION AND LOBBYING CERTIFICATIONS: For certain purchases, the selected vendor may be required to complete, sign, and return with its bid, a *Certification Regarding Debarment & Suspension* and/or a *Certification Regarding Lobbying*. For purchases expected to cost \$25,000 or more the bidder must include in its bid package the *Certification Regarding Debarment & Suspension* and for purchases expected to cost \$100,000 or more the bidder must also include in its bid package a *Certification Regarding Lobbying*. If these certifications are required for the solicitation, each will be included as Attachment 4 and Attachment 5, respectively. If no Attachment 4 or Attachment 5 is included in the solicitation documents, then the bidder is not required to submit these certifications with its bid package.

Notwithstanding the paragraph above, the selected vendor must not be presently debarred or suspended by any Federal or State agency. East-West Gateway reserves the right to disqualify from the procurement process and/or cancel future contract / purchase order with any federally or state debarred vendor or a vendor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts or on the State of Missouri Suspended Vendors List.

10.0 PUBLIC RECORDS ACCESS: It is the intention of East-West Gateway to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. Bid openings are public unless otherwise specified in the invitation for bids.

Bidders should be aware that any information submitted in response to the solicitation might be subject to disclosure under the Missouri Sunshine Act. East-West Gateway will handle all requests for information in regard to the solicitation in accordance with the applicable state statutes, and will not disclose any information submitted in response to the solicitation *prior* to the selection and retention of a vendor unless authorized in writing to do so by the bidder or compelled to do so by law or judicial decree.

11.0 PROPRIETARY INFORMATION: Any restrictions on the use of data contained within the solicitation, must be clearly stated in the bid itself. Proprietary information submitted in response the solicitation will be handled in accordance with applicable State of Missouri procurement regulations and the Missouri public records law, as stated in Part 10.0 above. Proprietary restrictions normally are not accepted. However, when accepted, it is the bidder's responsibility to defend the determination in the event of an appeal or litigation.

11.1 Data contained in a bid, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented.

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All data, documentation, and innovations become the property of East-West Gateway.

- 11.2** Any material submitted by the vendor in response to the solicitation that the vendor considers confidential and proprietary information and which qualifies as a trade secret, or material which can be kept confidential under the Missouri Sunshine Act, must be identified as Confidential and Proprietary Information. Quoted prices cannot be held confidential.
- 12.0 PROMOTIONAL ADVERTISING / NEWS RELEASES / NON-ENDORSEMENT:** Reference to or use of East-West Gateway and/or STARRS for commercial promotion is prohibited. News releases pertaining to the solicitation shall not be made without prior approval of East-West Gateway. Release of broadcast e-mails pertaining to this solicitation shall not be made without prior written authorization of the Council. If a bid is accepted by the Council, the successful bidder shall not issue any news releases or other statements pertaining to the award or servicing of the agreement that state or imply the Council's and/or STARRS's endorsement of the successful firm's services or goods.
- 13.0 UNAUTHORIZED COMMUNICATIONS:** After release of the solicitation document, the bidder's contact regarding the solicitation with members of the evaluation team, selection committee, the Council's staff other than that listed in Part C of the solicitation, or the Council's Board or committee members, including members of the STARRS Board or other committees, is prohibited and may result in disqualification from the procurement process. Bidders shall not offer any gratuities, favors, or anything of monetary value to any officer, employee, agent, director, or Board or committee member of the Council and/or STARRS for the purpose of influencing a favorable disposition toward the firm's bid or otherwise affect the disposition of any bid submitted as a result of the solicitation.
- 14.0 QUANTITIES:** The quantities shown in the solicitation are based on estimated needs. East-West Gateway reserves the right to increase or decrease quantities to meet actual needs. The Council reserves the right to accept any item or group of items offered, unless the bidder qualifies its bid by specific limitations. The bid can be on an "all or none" basis if wording in the bid so states and if all items solicited are included in the bid package. Firms must check the appropriate box in Attachment 1 if it intends its bid to be an "all or none" basis.
- 15.0 QUALITY:** Unless otherwise indicated in the solicitation, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by East-West Gateway. Poor quality will be sufficient reason for the Council to reject all or any part of the completed project. The deduction for rejected items will be prorated proportionate to the total bid price.
- 16.0 WARRANTY:** The selected vendor must warrant all work against defects in materials and workmanship, and lack of durability for the term specified in the solicitation documents. All costs associated with warranty repair will be at the selected vendor's expense. Additional warranty restrictions are provided in Attachment 3 and the solicitation documents.
- 17.0 DELIVERY:** The bidder must provide an estimated delivery schedule, as noted in Attachment 1. All deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified. All delivery costs or charges shall be included in the F.O.B. destination bid price. The bidder agrees and understands that delivery of the products in accordance with the delivery schedule approved by the Council is considered a material component of any award made to the selected vendor. Failure by the selected vendor to adhere to the delivery schedule will be considered a material breach of the award and the Council may rescind the award and/or seek other legal remedies available to the Council. Failure of the selected vendor to adhere to delivery schedule as specified or to promptly replace rejected materials shall render the selected vendor liable for all costs in excess of the contract / purchase order price when alternate procurement is necessary. Excess costs shall include administrative costs.
- 18.0 PRICING AND DISCOUNT:** East-West Gateway qualifies for governmental discounts, including U.S. General Services Administration ("GSA") pricing for information technology equipment. Unit prices shall reflect these discounts.
- 18.1** Unit prices shown in the bid and/or subsequent contract / purchase order shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated in the solicitation or subsequent contract / purchase order. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the bid evaluation and contract administration.
- 18.2** Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the Council thirty (30) calendar days before the proposed effective date of the price increase, and shall be limited to fully documented cost increases to the selected vendor which are demonstrated to be industrywide. The conditions under which price increases may be granted shall be expressed in the solicitation and/or contract / purchase order terms.
- 18.3** In determination of award, discounts for early payment will only be considered when all other conditions are equal and when payment terms allow at least ten (10) calendar days, providing the discount terms are deemed favorable. All payment terms must allow the option of net thirty (30) calendar days.
- 18.4** All prices included in the bid package must be guaranteed for a minimum of ninety (90) calendar days.
- 19.0 ORDERING:** A contract / purchase order, if issued, shall be placed directly to the selected vendor by an authorized representative. No other contracts / purchase orders are authorized.
- 20.0 PAYMENT TERMS AND INVOICING:** East-West Gateway normally will pay properly submitted vendor invoices within thirty (30) calendar days of receipt provided that the goods and/or services have been delivered, installed (if required) and accepted prior to the issuance of the invoice.
- Invoices presented for payment must be submitted in accordance with instructions contained in the contract / purchase order including reference to contract / purchase order number and submittal to the correct address for processing.
- A good faith dispute creates an exception to prompt payment.
- 21.0 TAXES:** East-West Gateway is exempt from payment of all state, county, and city sales taxes in the state of Missouri on its purchases and such costs must be excluded. A tax exempt letter will be provided to the successful vendor. East-West Gateway may be subject to other states' taxes on its purchases in that state depending on the laws of that state.
- 22.0 MATERIAL SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29 CFR 1910.1200, provide one (1) copy of a Material

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Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

23.0 SAFETY REQUIREMENTS: All materials, equipment, and supplies provided to East-West Gateway must comply fully with all safety requirements as set forth by the Missouri Administrative Code and all applicable Occupational Health & Safety Administration (a.k.a. OSHA) Standards.

24.0 PATENT INFRINGEMENT: The vendor selling to East-West Gateway the products described in the solicitation guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The selected vendor covenants that it will at its own expense defend every suit which shall be brought against East-West Gateway (provided that such vendor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

25.0 INSURANCE RESPONSIBILITY: The selected vendor, if performing professional services for East-West Gateway, shall:

25.1 Maintain worker's compensation insurance as required by Missouri Statutes, for all employees engaged in the work.

25.2 Maintain general commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out the agreement/contract. Minimum coverage shall be three million dollars (\$3,000,000) aggregate, one million dollars (\$1,000,000) per occurrence commercial general liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned, and hired vehicles that are used in carrying out the contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

25.3 All insurance must be provided from a company authorized to issue insurance in Missouri.

25.4 East-West Gateway reserves the right to require higher or lower limits where warranted.

26.0 HOLD HARMLESS: The selected vendor will indemnify and save harmless East-West Gateway and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the selected vendor, or of any of its subcontractors, in prosecuting work under the terms of the solicitation and/or future contract / purchase order.

27.0 FORCE MAJEURE: Neither party shall be in default by reason of any failure in performance of any agreement that arises due to the solicitation in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the performing party.

28.0 APPLICABLE LAW AND COMPLIANCE: The solicitation and subsequent contract / purchase order shall be governed under the laws of the State of Missouri. The selected vendor shall at all times comply with and observe all federal and state laws, local laws,

ordinances, and regulations which are in effect during the period of the project and which in any manner affect the work or its conduct.

29.0 NONDISCRIMINATION / AFFIRMATIVE ACTION: The selected vendor shall not participate either directly or indirectly in the discrimination prohibited by federal regulations including employment practices. The selected vendor shall comply with all the requirements imposed by Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 790 *et seq.*). Failure to comply with the conditions of this clause may result in the selected vendor becoming declared an "ineligible" contractor, termination / cancellation of the contract / purchase order, or withholding of payment.

29.1 In connection with the performance of work under the contract / purchase order, the selected vendor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability, sexual orientation, or national origin. This provision 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. Except with respect to sexual orientation, the vendor further agrees to take affirmative action to ensure equal employment opportunities.

29.2 The selected vendor shall not discriminate on grounds of the race, color, religion, creed, sex, national origin, or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

29.3 These nondiscrimination requirements shall apply to all solicitations either by competitive bidding or negotiation made by the successful vendor for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the vendor of these requirements relative to nondiscrimination on grounds of the race, color, religion, creed, sex, national origin, or ancestry of any individual.

30.0 ASSIGNMENT: No right or duty in whole or in part of the selected vendor under the solicitation and/or subsequent contract / purchase order may be assigned or delegated without the prior written consent of East-West Gateway. East-West Gateway may assign or transfer the subsequent contract / purchase order as indicated in the solicitation document.

31.0 ENTIRE AGREEMENT: Many of these Standard Terms and Conditions will be included as a part of any contract / purchase order awarded as a result of the solicitation; except where special requirements are stated elsewhere in the solicitation; in such cases, the special requirements shall apply. Further, the contract / purchase order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the Council.

Attachment 1 - Detailed Bid Specifications
Self Contained Breathing Apparatus
Bid Item 04-17-04

Quantity Required: Three (3) Self Contained Breathing Apparatus that meet the specifications provided below.

Instructions for Completing the Form:

- For each specification listed in Parts A & B below please indicate whether your product meets the minimum specifications by placing either an "E", "Y" or a "N" in the appropriate cell. If the product offered by your firm is different than that indicated by the minimum specifications please describe the product offered. If the cells are left blank, EWG will assume that your product does NOT meet the required specifications.
- In the appropriate cells in Part C below provide the unit cost for each line - item listed. If a particular specification / item of cost is included in a single total cost, then please insert "Incl" in the "Notes" cell for that item. For example, if there is not a separate cost for delivery of the items, then put \$0.00 in the unit cost for the delivery and in the Notes column put "Incl" or something similar. **If a cell is left blank, EWG will assume that the cost for that item is included in the total price quoted.**
- You must provide the information requested in Part D. If Part D is not completed, your bid may be rejected as non-responsive.
- In the event of a discrepancy between the unit cost and the total cost, EWG will use the unit cost quoted to determine the total cost. EWG also reserves the right to reject a bid due to errors on the form or to correct the errors on the form if needed and determined to be in the best interest of EWG.
- You may modify the formulas as needed in order to provide an accurate price and/or the information that has been requested.
- This form must be completed in ink or typed, and any mistakes must be crossed out, corrections typed adjacent, and must be initialed by the person submitting the bid.
- The bid form must be signed by a representative of the company/person submitting the bid and dated.

Required Minimum Specifications: All sizes indicated are approximate, and where manufacturers/brands are listed, equivalents are acceptable.	Vendor's Product Meets Minimum Specifications (Exceeds, Yes or No)	Product Offered by Vendor, If Different from the Specifications
A Self Contained Breathing Apparatus: The SCBA must consist of the following major sub-assemblies: (1) full facepiece assembly; (2) a removable, facepiece-mounted, positive pressure breathing regulator with air-saver switch; (3) an automatic dual path redundant pressure-reducing regulator; (4) end-of-service time indicators; (5) a harness and backframe assembly for supporting the equipment on the body of the wearer; (6) a shoulder strap mounted, remote gauge indicating cylinder pressure; (7) a rapid intervention crew/universal air connection (RIC/UAC); and (8) cylinder and valve assembly for storing breathing air under pressure.		
The SCBA must be approved to NIOSH 42 CFR, Part 84 for chemical, biological, radiological and nuclear protection (CBRN).		
The SCBA must be compliant to the NFPA 1981, 2013 Edition, Standard on Open-Circuit Self-Contained Breathing Apparatus for Emergency Services		
The SCBA must be compliant to the NFPA 1982, 2013 Edition (if including optional PASS Device), Standard on Personal Alert Safety Systems		
If the SCBA is to include an optional integrated self-rescue device, the device must be compliant to the NFPA 1983, 2012 Edition, Standard on Life Safety Rope and Equipment for Emergency Services		
All electronic components must be approved for Intrinsic Safety under UL 913 Class I, Groups C and D, Class II, Groups E, F and G, Hazardous locations		
FACEPIECE, REGULATOR & INDICATOR REQUIREMENTS		
The facepiece must have a large diameter inlet serving as the female half of a quarter (1/4) turn coupling which mates with the positive pressure breathing regulator		
The facepiece must be approved for use with multiple respiratory applications to enable the same user to switch from one application to another without the use of tools and without doffing the facepiece		
The full facepiece assembly must fit persons of varying facial shapes and sizes with minimal visual interference		
The full facepiece assembly must be available in small through large sizes marked		
The facepiece sizes must be easily identifiable through a color-coding scheme		
The facepiece assembly, including head harness, must be latex free		

Attachment 1 - Detailed Bid Specifications

Self Contained Breathing Apparatus

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	The facepiece series must have a faceseal that is secured to the lens by a U-shaped channel frame that is retained to the lens using two fasteners		
	The faceseal must be a reverse reflex design		
	The facepiece must contain inhalation valves that are readily visible to enable quick visual inspection		
	The lens must be a single, replaceable, modified cone configuration constructed of a non-shatter type polycarbonate material		
	In accordance with NIOSH 42 CFR part 84, the facepiece must meet penetration and impact requirements, including compliance with ANSI Z87.1 – 2010		
	The lens must have a coating to resist abrasion and chemical attack and meet the requirements of NFPA-1981, for lens abrasion		
	The lens must have an internal anti-fog coating to reduce fogging of the lens		
	Multi-directional voicemitters must be mounted on both sides of the facepiece and ducted directly to an integral silicone nosecup to enhance voice transmission		
	The facepiece assembly must be able to incorporate multiple electronic communications options (amplification, radio interface, wireless, etc) without affecting NIOSH approvals or NFPA/CBRN approvals		
	The facepiece must enable the installation of communications bracket on either the right or left side		
	The head harness must be available in a five-point suspension made in the fashion of a net hood to minimize interference between securing of the facepiece and the wearing of head protection		
	The head harness must be available in a five-strap and four-strap configuration		
	The head harness must be constructed of a para-aramid material for fire, first responder and CBRN applications		
	The head harness must include either a positioning strap (five-strap configuration) or an integrated handle (four-strap configuration) to assist with donning of the facepiece		
	Two flame resistant elastic straps, attached to the faceseal in four locations, must provide adjustment for proper face sealing		
	The facepiece-mounted positive pressure-breathing regulator must supply and maintain air to the facepiece to satisfy the needs of the user at a pressure greater than atmospheric by no more than 1.5 inches of water pressure static		
	The breathing regulator must maintain positive pressure during flows of up to 500 standard liters per minute		
	The regulator must also meet or exceed a dynamic flow requirement of remaining positive while supplying a minute volume of 160 liters		
	The breathing regulator must have attached a low pressure hose which must be threaded through the left shoulder strap to couple to the pressure-reducing regulator mounted on the backframe		
	An optional regulator must be available with a quick connect coupling in line for use with the optional outlet manifold and accessory hose to allow the breathing regulator to be disconnected from the unit and reconnected to the auxiliary hose of a second unit in the event rescue is required		
	The optional quick connect coupling must be easily connected and disconnected by trained individuals with a gloved hand and/or in low light conditions		
	The optional quick connect coupling must not allow the air hose to be connected without the HUD Connection		
	The optional coupling must also be guarded against inadvertent disconnect during use of the equipment		
	The low-pressure hose must be equipped with a swivel attachment at the facepiece mounted regulator		
	The regulator must connect to the facepiece by way of a quarter (1/4) turn coupling		
	The user must hear an audible sound when the regulator is attached to the facepiece		

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	The regulator must be equipped with a doughnut-shaped gasket which provides a seal against the mating surface of the facepiece		
	The regulator cover must be fabricated of a flame resistant, high impact plastic		
	The breathing regulator must have a demand valve to deliver air to the user, activated by a diaphragm responsive to respiration		
	The demand valve must use an extended temperature range dynamic O- ring seal composed of a fluorosilicone elastomer		
	The diaphragm must include the system exhalation valve and must be constructed from a high strength butyl elastomer		
	A purge valve must be situated at the inlet of the breathing regulator and must be capable of delivering airflow of between 125 and 225 standard liters per minute		
	The breathing regulator must be designed to direct the incoming air through a spray bar and over the inner surface of the facepiece lens for defogging purposes		
	The components of the breathing regulator must be constructed of materials that are not vulnerable to corrosion		
	The flame resistant cover must contain an air saver switch and pressure demand bias mechanism		
	The regulator must reactivate and supply air only in the positive pressure mode when the wearer affects a face seal and inhales		
	This device must not affect the breathing flow through the system while in operation		
	The pressure-reducing regulator must be mounted at the waist on the backframe and be coupled to the cylinder valve through a patented stainless steel quick connect snout for engagement and sealing within the cylinder valve outlet		
	The cylinder must be secured to the pressure-reducing regulator with two pull-rings 180° from each other		
	A stainless steel rod must secure each of the pull-rings to prevent removal of the cylinder while the SCBA is pressurized		
	The stainless steel rods must be actuated when the cylinder is opened and when cylinder pressure is above 30 psig		
	In lieu of a manual by-pass, the pressure-reducing regulator must include a back-up pressure-reducing valve connected in parallel with the primary pressure-reducing valve and an automatic transfer valve for redundant control		
	The back-up pressure-reducing valve must also be the means of activating the low-pressure alarm devices in the facepiece-mounted breathing regulator		
	This warning must denote a switch from the primary reducing valve to the back-up reducing valve whether from a malfunction of the primary reducing valve or from low cylinder supply pressure		
	A press-to-test valve must be included to allow bench testing of the back-up reducing valve		
	The pressure-reducing regulator must have extended temperature range dynamic O-ring seals composed of fluorosilicone elastomer		
	The pressure-reducing regulator must have incorporated a reseatable over-pressurization relief valve which must prevent the attached low pressure hose and facepiece-mounted breathing regulator from being subjected to high pressure		
	The SCBA must have two end-of-service time indicators (EOSTI). A tactile alarm and a Heads-Up Display (HUD).		
	The primary EOSTI must be the integral low-pressure alarm device that must combine an audible alarm with simultaneous vibration of the facepiece		
	The primary EOSTI must be located in the Facepiece-Mounted Positive Pressure Regulator		
	This alarm device must indicate either low cylinder pressure (33% +5%, -0%) or a malfunction of the primary pressure-reducing valve (first stage regulator).		
	The HUD must serve as the secondary EOSTI		

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Self Contained Breathing Apparatus

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	The HUD must be powered by the SCBA's single power supply		
	It must be mounted in the user's field of vision on the Facepiece-Mounted Positive Pressure Regulator		
	It must display cylinder pressure in increments of 100%, 75%, 50% and 33%		
	The display must not have a numerical representation of bottle pressure		
	At full bottle pressure, two green Light Emitting Diodes (LED) must be illuminated		
	At three-quarter bottle pressure, one green LED must be illuminated		
	At one-half bottle pressure, one "yellow" LED must be illuminated and flash at a rate not to exceed one (1x) time per second		
	At one-third bottle pressure, one "red" LED must be illuminated and flash at a rate not to exceed ten (10x) times per second		
	The HUD must have a low battery indication that is distinct and distinguishable from the bottle pressure indications		
HARNES AND BACKFRAME ASSEMBLY			
	A lightweight, lumbar support style backframe and harness assembly must be used to carry the cylinder and valve assembly and the pressure-reducing regulator assembly		
	The backframe must be a solid, one-piece black powder-coated aluminum alloy frame that is contoured to follow the shape of the user's back		
	It must include a shroud to streamline hose and wire management by minimizing exposure of the low pressure hose and electronics molded cable		
	The backframe must include a mounting for the pressure reducer located at the waist		
	The backframe must include an over-the-center, adjustable tri-slide fixture, a para-aramid strap and a double-locking latch assembly to secure 30, 45, 60, or 75 minute cylinders		
	The harness assembly must consist of a one size black para-aramid strap with a yellow stripe		
	This harness must include box-stitched construction with no screws or bolts		
	The harness assembly must incorporate parachute-type, quick-release buckles and must include shoulder and hip pads. Optional spring (alligator) clips must also be available		
	The harness must include a seat-belt type waist attachment		
	The shoulder strap must be fitted with a drag rescue loop (DRL) capable of being deployed in an emergency situation to drag a downed firefighter to safety		
	The shoulder strap must be attached to the backframe by way of a single, articulating metal bracket to allow for optimal shoulder movement		
	The backframe must include accommodation and a mounting area suitable for installation of a distress alarm integrated with the SCBA		
	The mounting area must permit installation of a distress alarm sensor module in an area between the pressure reducer and the backframe		
RAPID INTERVENTION CREW / UNIVERSAL AIR CONNECTION (RIC/UAC)			
	The SCBA must incorporate a RIC/UAC fitting to be compliant with the 2013 edition of the NFPA 1981 Self-Contained Breathing Apparatus standard		
	The RIC/UAC must be an integral part of the pressure reducer and protected by the backframe		
	The RIC/UAC inlet connection must be within 4" (4-inches) of the tip of the CGA threads of the cylinder valve		
	The RIC/UAC must consist of a connection for attaching a high-pressure air source and a self-resetting relief valve allowing a higher pressure than that of the SCBA to be attached to the SCBA		
	The self-resetting relief valve must be color-coded to identify pressure rating of the SCBA		

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	The RIC/UAC must have a check valve to prevent the loss of air when the high-pressure air source has been disconnected		
CYLINDER REQUIREMENTS			
	The cylinder threads must be straight with an O-ring or quad-ring gasket type seal		
	The cylinder valve must be a "fail open" type, constructed of forged aluminum and designed such that no stem packing or packing gland nuts are required		
	It must contain an upper and lower seat such that the pressure will seal the stem on the upperseat, thus preventing leakage past the stem		
	The cylinder valve outlet must be a modification of the Compressed Gas Association (CGA) standard threaded connection number 346 for breathing air for 2216 and CGA 347 for 4500 and 5500 systems		
	Each cylinder valve must consist of the following: 1) a hand activated valve mechanism with a spring-loaded, positive action, ratchet type safety lock and lock-out release for selecting "lock open service" or "non-lock open service"; 2) an upstream connected frangible disc safety relief device; 3) a dual reading pressure gauge indicating cylinder pressure at all times; 4) an elastomeric bumper; 5) an angled outlet		
	The SCBA must maintain all NIOSH and NFPA standards with any of the following types of cylinders listed as provided by the SCBA manufacturer		
	The cylinder must be manufactured in accordance with DOT specifications / requirements with working pressures of 2216, 4500, or 5500 psig		
	The cylinder must be lightweight, composite type cylinder consisting of an aluminum alloy inner shell, with a total overwrap of carbon fiber, fiberglass and an epoxy resin		
	The cylinder must be available in a 60-minute duration based on the NIOSH breathing rate of 40 liters per minute (lpm)		
	The cylinder must be available in an approved 30-year life design as defined by the DOT Special Permit 14232		
PERSONAL ALERT SAFETY SYSTEM			
	The PASS Device must be compliant to the NFPA 1982, 2013 Edition Standard on Personal Alert Safety Systems		
	Operation of this distress alarm must be initiated with the opening of the valve of an SCBA charged cylinder		
	The system must feature a "hands-free" re-set capability that may be activated by means of a slight movement of the SCBA when the system is in a pre-alarm mode		
	The system must operate from a single power source containing six "AA" batteries		
	The battery life of the SCBA with PASS only must be no less than 200 hours		
	The system must have a battery check function that provides an LED indication of battery status while the SCBA is not pressurized		
	The PASS System must be upgradeable to include a 2.4 GHz integrated locator system		
	The PASS system must be upgradeable to include a 2.4 GHz integrated SCBA air / PASS (telemetry) management system		
	The PASS device must contain two components: a Console and a Sensor Module		
	When the PASS device goes into pre-alarm, the user must be notified through a distinct light pattern in the HUD display		
CONSOLE			
	The console must be located on the user's right shoulder harness		
	The control console must come with a mechanical (analog) pressure gauge that is angled at 30° with a sweeping display		
	The console must contain an integral edge lit mechanical pressure gauge that is automatically energized by opening the cylinder valve		

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	The console must display to the user the following: Pre-Alarm: alternating red flashing LED's; Full Alarm: dual flashing red LED's and a flashing PASS icon; Low Battery: red flashing LED's; Normal System Operation: flashing green LED		
	The console must contain a photo sensing diode to dim and brighten the HUD as the ambient lighting changes		
	The console must contain push buttons for user interface		
	The push buttons must be designed to minimize accidental activation		
	A yellow color-coded push button must permit system re-set		
	A red color-coded push button must permit manual activation of the full alarm mode		
	The console must be equipped with a LED "External HUD" allowing others to determine the wearer's cylinder pressure through the same color-code scheme as the standard HUD		
	A green LED must be illuminated across the gauge face to indicate a cylinder with greater than half bottle pressure		
	A yellow LED must be illuminated across the gauge face to indicate a cylinder with less than half bottle pressure		
	A red LED must be illuminated across the gauge face to indicate a cylinder with less than one-third bottle pressure		
SENSOR MODULE			
	The system must include a sensor module mounted to the SCBA backframe and located in an area between the cylinder and backframe in a manner designed to protect the assembly from damage		
	The sensor module must contain a motion sensor that is sensitive to user hip movement to reduce false activation		
	The sensor module must contain redundant, dual sound emitters for the audible alarm and dual visual "buddy" indicators		
	The sensor module sound emitters must be oriented in multi-directions for optimal sound projection		
	The visual indicators on the backframe mounted sensor module must flash green during normal operation		
	The visual indicators must flash red when the device is in pre-alarm and full-alarm		
	The visual indicators must flash orange when the SCBA has reached one-half bottle pressure		
	The visual indicators must flash a combination of red, green, and white when the SCBA has reached one-third bottle pressure		
ELECTRONIC VOICE AMPLIFIER			
	The respirator must have an optional facepiece-mounted voice amplification device to electronically project the user's voice		
	The voice amplification device must be mounted to the facepiece by means of a bracket that is secured around the voicemitter of the facepiece		
	The device must contain a bayonet-style mounting fixture that enables the user to insert the voice amplifier into the bracket and secure it with a quarter-turn counter-clockwise when it must lock into place		
	The device must contain a thumb latch to permit removal when it is pressed and the device is rotated a quarter-turn clockwise		
	The thumb latch must contain a captive screw that enables the user to prevent removal		
	The device must weigh no more than 7 ounces and its size must not exceed the following dimensions: Length: 3.50 inches; width: 2.0 inches; depth (extension from voice emitter): 1.75 inches.		
	The device must be able to be upgraded to a voice amplifier, radio interface, and stand-alone radio communication system that all reside in a single housing with a single power source		
	The device must contain a momentary on/off switch with a tactile indication and audible click when depressed		

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Self Contained Breathing Apparatus

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	The switch must be covered with a sheath made of a silicone material		
	The device must contain an LED which illuminates green when the device is activated and flashes once per second when a low battery condition (approximately 10% of battery life remaining) is present		
	The device must provide audible tones to indicate that the system has been energized, de-energized and to provide a low battery indication		
	The device must be powered by three AAA alkaline batteries, which must provide no less than 50 hours of continuous operation with fully-charged batteries		
	The batteries must be contained in a gasket sealed compartment secured in place by means of a fastener		
	The door of the battery compartment must be user-replaceable		
	The device must contain an automatic shutdown function that de-energizes the voice amplifier approximately 20 minutes after the last time the user speaks		
	Designed to conserve battery life when a user forgets to turn off the voice amplifier, the voice amplifier must be reactivated after shutdown by pressing the on/off switch		
	The microphone must be located on the surface of the bayonet mounting fixture and voice projection must be facilitated by means of a circular gasket that seals the device to the communications mounting bracket		
	The amplifier must contain a custom speaker designed for pushing sound through background noises commonly found at emergency events		
	The device must not feedback for longer than 1 second when worn in a Level A HazMat suit		
	The device must be able to provide a minimum STI score of 0.65		
	The voice amplifier, when attached to a facepiece, must be able to withstand a 30 minute tumble test		
	A single voice amplifier must be able to withstand eight, 6 foot drops, once on each side and on two edges		
	The voice amplifier must be able to withstand a 30 minute tumble test not attached to the facepiece		
B	N/A/		

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Self Contained Breathing Apparatus

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C	Price	QTY	Unit Cost	Total Cost	Notes
1	Cost of Self Contained Breathing Apparatus that meets the specifications above.	3		\$0.00	
2	Delivery of units to one (1) location in the St. Louis region.	1		\$0.00	
TOTAL COST OF SELF CONTAINED BREATHING APPARATUS				\$0.00	

**Refer to Section II - Standard Terms & Conditions (Invitation for Bids), Paragraph 17.0 for information regarding delivery requirements.*

D	Additional Information Requested
1	Is your firm an authorized dealer / distributor of the aforementioned product?
2	Is your firm capable of providing product information, warranty information and services, and product recall notices?
3	How long will it take your firm to deliver equipment once it has received a purchase order from EWG?
4	If your firm cannot meet the September 30, 2017 delivery date, what is the delivery date that your firm can meet?

The responding firm understands and acknowledges that the Council reserves the right to accept any individual item or group of items listed above, unless the responding firm indicates below that its bid is an "all or none" bid. Please check the box below if this bid is an all or none bid. If the box is not checked, then the Council will assume that it may purchase any individual item, some of the items, or all of the items listed above and at the unit prices quoted above.

This bid is offered on an "all or none" basis, meaning that the items listed above must be purchased as a group and cannot be purchased individually.

By signing below I certify that I am authorized to submit this bid on behalf of my firm and I commit this bid for a minimum of 90 calendar days. I have read and understood the terms and conditions provided in Section II and Attachment 3 and agree to abide by each.

The Council encourages disadvantaged, small, women-owned, and/or minority business participation. Please check the box(es) below to identify your firm's status:

- Disadvantaged Business Enterprise
- Minority Business Enterprise
- Small Business Enterprise
- Women-owned Business Enterprise
- None of the above

Firm Name

DUNS # (REQUIRED)

Name & Title of Person Submitting the Bid

Email & Phone Number (BOTH REQUIRED)

Signature of Person Submitting the Bid

Date

Conflicts of Interest Policy Procurement Process

A. Policy & Purpose

Actual and perceived objectivity will be an important part of successfully completing any project for East-West Gateway Council of Governments (the Council) including the St. Louis Area Regional Response System (STARRS). Moreover, the Council is committed to ensuring a fair, competitive procurement process. The Council's policy is to award contracts to only those firms whose objectivity or ability to perform the project work is not impaired because of any prior, present, or planned activities, relationships, contracts, or financial interests. Additionally, the Council must ensure that a firm competing for a contract award does not have or will not gain an unfair competitive advantage due to the firm's prior, present, or planned activities, relationships, contracts, or financial interests.

B. Organizational Conflicts of Interest

1. General

The Council is concerned about organizational conflicts of interest that exist, appear to exist, or may arise in the future with respect to the firms responding to a solicitation (i.e. invitation for bids or a request for proposals or qualifications).

2. Conflicts, Occur When

An organizational conflict of interest can occur when a contractor has activities, relationships, contracts, or financial interests that:

- (a) render the contractor unable to provide impartial assistance or advice to the Council,
- (b) limit the contractor's ability to perform its work objectively,
- (c) provide the contractor with an unfair competitive advantage, or
- (d) appear to do (a), (b), or (c).

3. Prior, Present, or Planned

An organizational conflict of interest can arise due to the contractor's prior, present, or planned activities, relationships, contracts, or financial interests that are directly related to the Council's project. In the context of organizational conflicts of interest, the terms prior, present, or planned have the following meanings:

- (a) *Prior* - Refers to one of two situations:
 - (i) those activities, relationships, or contracts that the contractor undertook or financial interests that the firm had within one year preceding the date the solicitation was issued, or
 - (ii) those activities, relationships, contracts, or financial interests that were conducted / engaged in as a prior part or phase of the Council's project no matter when it occurred (*i.e. the contractor, under a prior and separate contract, developed specifications for the current project*).
- (b) *Present* - Refers to those activities, relationships, or contracts that the contractor is engaged in / committed to or financial interests that the firm had at the time the solicitation was issued or at any time during the procurement / contracting process.
- (c) *Planned* - Refers to those activities, relationships, contracts, or financial interests that the contractor has taken steps towards undertaking / engaging in or intends to undertake / engage in but had not yet initiated at the time the solicitation was issued.

4. Bias and Unfair Competitive Advantage

Organizational conflicts of interest create two issues for the Council: bias and unfair competitive advantage. These terms have the definitions provided in Part B, #4(a).

- (a) *Definitions*.
 - (i) *Bias* - Occurs when a contractor's prior, present, or planned activities, relationships, contracts, or financial interests:
 - (1) render the firm unable to provide impartial advice,
 - (2) prevent the firm from objectively performing work for the Council, or
 - (3) appear to do either of (1) or (2).

Conflicts of Interest Policy Procurement Process

- (i) ***Unfair Competitive Advantage*** - Occurs when a contractor has gained access to information that meets both of the following criteria:
 - (1) the information is non-public, meaning it is information to which other firms competing for the contract award did not have access and it could not have been obtained during the course of the contractor's normal course of business, and
 - (2) the information would unfairly disadvantage other firms during the competitive procurement process.
- (b) ***Bias, Can Arise When*** - The potential for bias usually arises when a contractor has, or appears to have, substantial obligations to both the Council and another organization that may have interests that are different from or compete with the Council's interests. In these situations, a contractor may have an incentive to distort its advice or recommendations to the Council in order to benefit a competing interest of the firm's other client(s). The firm may also perform its work for the Council in such a way that it would benefit the firm's other client rather than in a way that best achieves the Council's goals for the project.
- (c) ***Unfair Competitive Advantage, Can Arise When*** - A contractor may gain access to non-public information in several ways including, but not limited to:
 - (i) The contractor's current or past relationship with the Council / STARRS or with organizations that are expected to benefit from the Council's project.
 - (1) ***Relationships*** - The relationships referred to in Part B, #4(c)(i) are most likely formed through prior contract work that the contractor has completed for the Council / STARRS or the organizations that are expected to benefit from the Council's project, but can also arise through the non-paid activities of the contractor.
 - (ii) The contractor has employees that serve / have served on any one of the Council's / STARRS' committees or sub-committees.
 - (1) ***Committees & Sub-Committees*** - The Council and STARRS have many committees and sub-committees, some of which make decisions regarding the approval of projects, expenditure of funds, and other matters that may directly affect the project that is the subject of the solicitation. A contractor may gain an unfair competitive advantage if a contractor participates in non-public meetings or has an employee that serves in any capacity on one of these committees or sub-committees. Through the committees or sub-committees the contractor may gain access to not only information regarding the project but also the Council's preferences and other information that may not be publicly available.

5. ***Real, Apparent, or Potential***

The Council's policy regarding conflicts of interest applies to those conflicts that are real, apparent, or potential. Each of these terms is defined below.

- (a) ***Real*** - Refers to a conflict that exists in fact.
- (b) ***Apparent*** - Refers to a conflict that appears to exist based on the circumstances when examined under a reasonable person standard.
 - (i) ***Reasonable Person Standard*** - Under the reasonable person standard, the Council will consider how the situation will appear if covered by the news media, how it will appear to the Council's Board of Directors, stakeholders, members, or funding agencies, or how it will appear to the general public.
- (c) ***Potential*** - Refers to a conflict that may not currently exist, but that could arise if the Council does not take steps to mitigate or eliminate the circumstances that may lead to a conflict of interest.
- (d) ***Examples*** - Examples of the various conflicts are provided in Part E.

C. **Disclosing Conflicts of Interest**

1. ***Questionnaire & Disclosure Statement***

Based on the Council's Conflict of Interest Policy, each firm responding to the Council's solicitation must include in its submittal a signed Conflict of Interest Questionnaire & Disclosure Statement that provides the Council with sufficient information to determine if a conflict of interest exists, appears to exist, or could arise with regard to the responding firm.

2. ***Council Review***

The Council will review the information provided by the responding firm on its Conflict of Interest Questionnaire & Disclosure Statement and may seek additional information from the firm. All such information, and any other relevant information, will be used to determine whether a contract award to the responding firm constitutes a real, apparent, or potential conflict of interest.

Conflicts of Interest Policy Procurement Process

3. Conflict Found

If any such a conflict is found to exist during the procurement process, the Council may:

- (a) disqualify the responding firm from the procurement process, or
- (b) determine that it is otherwise in the Council's best interest to continue with the procurement process and award a contract to the responding firm and will include, in the awarded contract, appropriate provisions to mitigate or avoid the conflict.

4. After Discovered Conflicts

- (a) *Definition* - An after discovered conflict of interest is one that a responding firm / contractor discovers either after the Council receives the firm's submittal or after the contract has been awarded.
- (b) *Process* - If an after discovered conflict arises, the responding firm / contractor must make an immediate, written, full disclosure to the Council. This disclosure must include a full description of the conflict and a description of the action that the responding firm / contractor has taken, or proposes to take, to avoid or mitigate such conflict. The disclosure must be sent to the person listed in Part D.
- (c) *Council Review* - In the event of an after-discovered conflict, the Council will review the information provided and, if a conflict is found to exist, will undertake a course of action that is in the best interest of the Council, this may include, but is not limited to:
 - (i) disqualifying the responding firm from the procurement process,
 - (ii) terminating the contract without penalty to the Council, or
 - (iii) continue with the procurement or contracting process and will include, in the awarded contract, appropriate provisions to mitigate or avoid the conflict.

5. Subcontractors

The requirements in this policy apply equally to a responding firm's subcontractors. This means that if the responding firm has hired a subcontractor or proposes to hire a subcontractor for the project then the responding firm is obligated to disclose the information required by this Part C.

6. Failure to Disclose

A firm that is competing for a Council contract has an obligation to disclose a conflict of interest (as it is described in this policy).

- (a) *Definition* - A firm's failure to disclose a conflict can occur when the firm:
 - (i) does not provide the required Conflict of Interest Questionnaire & Disclosure Statement,
 - (ii) refuses to provide additional information the Council has requested, or
 - (iii) misrepresents the information disclosed in the Conflict of Interest Questionnaire & Disclosure Statement.
- (b) *Disqualification / Contract Termination* - A firm's failure to disclose may result in the firm being disqualified from the procurement process. If the failure to disclose is discovered after the contract is awarded, the Council may immediately terminate the contract without penalty to the Council.

D. Point of Contact

Questions regarding this Conflicts of Interest policy and any information that must be submitted pursuant to this policy must be directed to:

Staci Alvarez
Grant/Contract Compliance Administrator
East-West Gateway Council of Governments
1 S. Memorial Drive, Suite 1600
St. Louis, MO 63102
(314) 421-4220 ext. 263
staci.alvarez@ewgateway.org

Conflicts of Interest Policy Procurement Process

E. Examples of Conflicts of Interest

The Council has provided the examples below to illustrate various situations in which an organizational conflict of interest may exist, appear to exist, or could arise. In each situation, the responding firm must disclose its activities, relationships, contracts, or financial interests. The examples below are not exhaustive; there are many situations that may create a real, apparent, or potential conflict of interest.

#1 - The Council is seeking a consultant to perform engineering / architecture work for one of its transportation projects. The transportation project will focus on making bicycle / pedestrian improvements to Street A. Street A is owned and maintained by the City of Z. The Responding Firm has a current contractual relationship with City of Z to perform certain architecture / engineering services with respect to Street A roadway improvements and the intersecting Street B. In this situation Responding Firm may have a conflict of interest which may cause or appear to cause the Responding Firm to be biased. Responding Firm may be put in the position to choose between the competing obligations it has to the Council and its other client, City of Z. Responding Firm may have an incentive to provide the Council biased recommendations or may be unable to objectively perform its work for the Council. On its Conflict of Interest Questionnaire & Disclosure Statement, Responding Firm must disclose its contractual relationship with City of Z.

#2 - The Council is seeking a consultant to perform planning services for Project X. The planning services are related to improving the walkability of Corridor N in R-City. Corridor N is owned and maintained by R-City. R-City is planning to hire a consultant to complete architecture / engineering services as part of a major construction project at a location along Corridor N and within the Project X planning area. R-City is planning to issue a solicitation for these services sometime after Project X has begun. Responding Firm is aware of R-City's construction project and plans to compete for the architecture / engineering contract. In this situation, Responding Firm's planned activities may create a conflict of interest which may cause or appear to cause Responding Firm to be biased. Responding Firm's planned activities with regard to the architecture / engineering project may affect its ability to objectively perform services for Project X and to provide impartial recommendations for improvements to Corridor N. Responding Firm may have also an incentive to perform its services in such a way as to put itself in a better competitive position for the construction project. Moreover, a potential conflict may arise if Responding Firm is selected for the future project and will have competing obligations to the Council and R-City. On its Conflict of Interest Questionnaire & Disclosure Statement, Responding Firm must disclose its plan to compete for the R-City contract.

#3 - The Council is seeking a vendor to build and deliver Truck B. Truck B is being purchased by the Council / STARRS for City of Q Police Department ("QPD"). Prior to the Council issuing the solicitation, a QPD employee contacts Responding Firm and asks for assistance in preparing specifications for Truck B. Responding Firm complies and helps QPD put together the specifications for Truck B. In addition, Responding Firm's personnel attends a couple of meetings of the STARRS Sub-Committee D to discuss the Truck B project and provide the subcommittee with information about Responding Firm's products. The subcommittee meeting is not a public meeting and the information provided to Responding Firm about the project is not publicly available. In this situation, Responding Firm may have a conflict of interest which may or appears to provide Responding Firm with an unfair competitive advantage. First, Responding Firm helped write the specifications for the solicitation which enhances Responding Firm's position during the procurement process. Second, Responding Firm gained access to non-public information by communicating with QPD personnel and attending the Sub-Committee D meetings and this information could not have been obtained during the normal course of Responding Firm's business. Responding Firm must disclose each of the following on its Conflict of Interest Questionnaire & Disclosure Statement: (A) its role in developing the specifications for Truck B, (B) its communications with the QPD employee, and (C) its participation in the Sub-Committee D meetings.

#4 - STARRS Sub-Committee C decided at its last meeting to allocate a portion of its budget to fund a professional services contract to provide training for local first responders. Sub-Committee C's meeting is not a public meeting and the information shared at the meeting is not publically available. Responding Firm provides this type of training as part of its business and it decides to submit a proposal in response to the solicitation. Responding Firm proposes to hire Individual F as a subconsultant for the project. Individual F will serve as the lead trainer in the event that the contract is awarded to Responding Firm. Individual F does not assist Responding Firm with the preparation of Responding Firm's proposal; however, Individual F is a member of Sub-Committee C and attends the sub-committee meetings, including the meeting at which the decision was made regarding the professional services contract. In this situation Responding Firm may have a conflict of interest which may or appears to provide Responding Firm with an unfair competitive advantage. Individual F, and by extension, Responding Firm, had access to non-public information regarding the project and the solicitation and this information could not have been obtained during the normal course of Responding Firm's business. Responding Firm must disclose, on its Conflict of Interest Questionnaire & Disclosure Statement, Individual F's membership on Sub-Committee C and Individual F's participation in Sub-Committee C meetings.

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Attachment 2 - Conflicts of Interest Questionnaire & Disclosure Statement (pg. 1 of 2)

Instructions

The Council's Conflicts of Interest Policy was included as part of the solicitation documents for the above captioned project. Please refer to this policy for a description of the Council's policies and procedures regarding this Conflicts of Interest Questionnaire & Disclosure Statement (Statement). The definition for each relevant term used in this Statement can also be found in the Council's Conflicts of Interest Policy.

Each responding firm must complete this Statement in full and include a copy in its submittal.

(A) If the responding firm answers "Yes" to any of the questions, then the responding firm must check box #1 below and attach the following: (i) the applicable question number; (ii) a concise description of the conflict; (iii) an explanation as to why the situation does not affect the firm's ability to objectively perform the contract or does not / will not present an unfair competitive advantage to the firm; and (iv) a concise description of the efforts the firm has taken, or proposes to take, to mitigate the effects of the interest.

(B) If the responding firm answers "No" to each question, then the responding firm must check box #2 below certifying that there is no interest and that, to the best of its knowledge and belief, there is no affiliation / relationship that exists that is relevant to a possible conflict of interest.

When completing this questionnaire, please keep the following in mind:

1. "Organizations that are expected to benefit from the project / solicitation" are those organizations that are listed in Section I, Part H of the solicitation documents.
2. References to the firm's "employees" include all personnel of the responding firm, including part-time, contract, or temporary employees.
3. References to committees or sub-committees refer to every committee or sub-committee of the Council or STARRS including the Board of Directors of each organization. These references also include those committees set-up to monitor, oversee, or coordinate specific projects. Membership on any committee or sub-committee includes non-voting or ex officio membership.
4. References to the "firm" include the firm's proposed subcontractors / subconsultants; therefore, the answers given below must take into account the prior, present, or planned activities, relationships, contracts, or financial interests of the subcontractors / subconsultants.

Questions

I. INTERESTS - The questions below relate to the prior, present, or planned interests of the responding firm. Please refer to the Council's Conflicts of Interest Policy for the definition of "prior," "present," and "planned" interests. A firm must respond "Yes" to the question if the firm has an interest, including if the interest is in regard to the Council itself, STARRS, or the organizations that are expected to benefit from the project / solicitation.

- A. **Prior Interest** - In the past year (from the date the solicitation was issued) did the firm engage in activities, relationships, or contracts or have any financial interests that are directly related to the Council's project? Yes No
- B. **Prior Interest** - Has the firm ever engaged in activities, relationships, or contracts or have any financial interests that were conducted / engaged in as a prior part or phase of the Council's project? Yes No
- C. **Present Interest** - Is the firm presently engaged in activities, relationships, or contracts or does the firm presently have any financial interests that are directly related to the Council's project? Yes No
- D. **Planned Interest** - Does the firm have any planned activities, relationships, or contracts or financial interests that are directly related to the Council's project? Yes No

II. COMMITTEES & SUB-COMMITTEES - The questions below relate to the membership on or participation in meetings of the committees and sub-committees of the Council and STARRS. Please refer to note #3 in the Instructions for information about what is meant by "committee" or sub-committee."

- A. Are any of the firm's employees presently members of any Council or STARRS committees or sub-committees? Yes No
- B. In the past year (from the date the solicitation was issued) were any of the firm's employees members of any Council or STARRS committees or sub-committees? Yes No

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Attachment 2 - Conflicts of Interest Questionnaire & Disclosure Statement (pg. 2 of 2)

II. COMMITTEES & SUB-COMMITTEES, con't.

C. Did any of the firm's employees attend any Council or STARRS committee or sub-committee meeting where the project / solicitation was discussed? Yes No

III. COMMUNICATIONS - The questions below relate to communications with the staff / personnel of the Council, STARRS, the organizations that are expected to benefit from the project / solicitation, or any member of Council or STARRS committees or sub-committees. Communications include oral discussions and e-mails or other written correspondence. *A firm must answer "Yes" to the question only if the firm's communications were in regard to the project / solicitation and were with any person other than the person identified in Section IX, Part A of the solicitation documents.*

A. Did any of the firm's employees communicate with any staff / personnel of the Council? Yes No

B. Did any of the firm's employees communicate with any staff / personnel of STARRS? Yes No

C. Did any of the firm's employees communicate with any staff / personnel of the organizations that are expected to benefit from the project / solicitation? Yes No

D. Did any of the firm's employees communicate with any member of Council and/or STARRS committees or sub-committees? Yes No

IV. SPECIFICATIONS / SCOPE OF WORK FOR PROJECT / SOLICITATION - The questions below relate the development of the specifications / scope of work for the project / solicitation. "Assist" includes providing any information that was used to create the specifications / scope of work for the project / solicitation, except for information that was provided as part of a request for information or similar formal process initiated by the Council. *A firm must answer "Yes" to the question if the assistance was provided directly to the Council itself or if it was provided to STARRS, any of the organizations that are expected to benefit from the project / solicitation, or any member of Council or STARRS committees or sub-committees.*

A. Did any of the firm's employees assist with the development of the specifications / scope of work for the project / solicitation? Yes No

Based on the information contained in this Statement (please check one):

#1 -- My firm does / may have an interest, as described in the Council's Conflicts of Interest Policy, and I have provided the information required by Part A of the Instructions above (Additional Information MUST be attached). *A firm must check box #1 if the firm answered "Yes" to any of the questions in this Statement.*

OR

#2 -- My firm does not have an interest, as described in the Council's Conflicts of Interest Policy, and that, to the best of my knowledge and belief, there is no affiliation that exists that is relevant to possible conflicts of interest. *A firm may only check box #2 if it answered "No" to each question in this Statement.*

Please note that if a box is not checked, then the Council will assume that your firm has a conflict of interest and may disqualify it from the procurement process or may deem your firm's submittal non-responsive.

Bidding Firm _____

Name & Title of Authorized Official _____

Signature of Authorized Official _____

Date _____

EAST-WEST GATEWAY COUNCIL OF GOVERNMENTS
PURCHASE ORDER
ATTACHMENT 1: STANDARD TERMS & CONDITIONS

Seller understands and agrees that the following terms and conditions apply to the purchase order that was issued by East-West Gateway Council of Governments (the "Council"). These Standard Terms & Conditions ("Attachment 1") may be supplemented by the language included on the face of the purchase order form itself or the terms expressed in certain attachments as indicated below (with a check mark or "X"):

- Attachment 2: Special Terms & Conditions ("Attachment 2")
- Attachment 3: Specifications ("Attachment 3")
- Attachment 4: ("Attachment 4")

Seller further understands and agrees that failure to adhere to these terms and conditions constitutes a material breach of its contract with the Council and that the Council may take appropriate action against Seller to ensure compliance with these provisions, up to and including, ordering a stoppage of work, suspending payments, or cancelling or rescinding the purchase order.

1.0 ACCEPTANCE: The purchase order issued by the Council includes the purchase order form, Attachment 1, or, as applicable: Attachment 2, Attachment 3, and Attachment 4 and, unless otherwise noted, these documents are hereinafter referred to collectively as the "Purchase Order." The Purchase Order is an offer to buy the goods or services described in the Purchase Order, and becomes a binding contract on the terms and conditions contained in the Purchase Order when the Purchase Order is accepted by Seller by acknowledgement either by: (1) submitting a quote/bid/proposal/response in response to the Council's procurement request (i.e. request for quotes; invitation for bids; or request for proposals/qualifications); (2) shipment of the goods; or (3) by other commencement of work. Any acceptance of the Purchase Order is limited to acceptance of the express terms of the offer contained in the Purchase Order. No revisions of the Purchase Order shall be valid unless agreed to in writing by the Council and signed by an authorized representative of the Council. No condition stated by Seller in acceptance of or acknowledging the Purchase Order shall be binding upon the Council if it conflicts with, is inconsistent with, or is in addition to the terms and conditions contained in the Purchase Order, unless such condition is expressly accepted by the Council in writing and signed by an authorized representative of the Council.

2.0 QUANTITIES & SPECIFICATIONS: By accepting the Purchase Order, Seller shall be deemed to have inspected and approved all plans, drawings, and specifications applicable to the goods or services ordered by the Council. Seller shall not deliver, and the Council shall not have any obligation or liability with respect to, any quantity of goods or services in excess of the quantity specified in the Purchase Order, unless the Council otherwise directs Seller in writing. The specifications for the goods or services, if applicable, are attached to the Purchase Order in Attachment 3. If Attachment 3 is inapplicable, then the specifications that apply to the Purchase Order are those contained in the procurement documents or on the face of the purchase order form.

3.0 WARRANTIES: Seller expressly warrants that it will convey title to all goods furnished under the Purchase Order and that all goods or services furnished under the Purchase Order will conform to all specifications and appropriate standards, will be free from defects in material workmanship, will be merchantable, and will be safe and appropriate for the purpose for which the goods of that kind are normally used. Seller knows and has reason to know the particular purpose for which the Council intends to use the goods, Seller warrants that such goods will be fit for such particular purpose. The warranties of Seller run to the Council and the Council's successors, assigns, sub-grantees, sub-recipients, customers, or the intended users of the goods or services. Seller hereby assigns to the Council any warranties or guaranties provided by manufacturers or suppliers of products incorporated into goods or services provided by Seller under the Purchase Order and shall, upon request, enforce any such warranty or guaranty on behalf of the Council. In addition to the warranties described in this Paragraph 3.0, Seller agrees to the warranty provisions included in the procurement documents on the face of the purchase order form, as applicable. **NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTY OR SELLER'S LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.**

4.0 DEFECTIVE OR NONCONFORMING GOODS OR SERVICES: No goods or services received by the Council pursuant to the Purchase Order shall be deemed accepted until the Council or the Council's authorized representative has had a reasonable opportunity to inspect or observe performance on such goods or services. The Council or the Council's authorized representative shall have access to the right to inspect all work prior to its completion. Notwithstanding any such inspection, Seller shall be solely responsible for the conformance of the work to the specifications provided by the Council. Seller shall promptly correct defects or replace any goods or services not conforming to any of Seller's warranties or the specifications, as described in the Purchase Order, without expense to the Council and provided that the Council chooses to provide Seller with an opportunity to do so. The Council is not obligated to provide Seller an opportunity to correct defects or replace any goods or services. Irrespective of whether a defect or nonconformity was discovered upon initial inspection (or at a later time if not readily ascertainable upon initial inspection), in the event that Seller fails to correct defects or replace nonconforming goods promptly, the Council, after providing reasonable notice to Seller, may make such corrections or replace such goods and charge Seller for the costs incurred by the Council in doing so. Such remedies shall not affect the Council's discount privilege and shall not include, without limitation, other legal, equitable, or contractual remedies of the Council as a result of Seller's delivery of defective or nonconforming goods or services.

5.0 PRICE WARRANTY: Seller warrants that the prices for the goods sold to the Council under the Purchase Order are not less favorable than those currently extended to any other customer of Seller for the same or similar goods in similar quantities. If Seller reduces its prices for such goods during the term of the Purchase Order, Seller agrees to reduce the prices offered under the Purchase Order correspondingly. Seller warrants that the prices shown on the Purchase Order are complete and that no additional charges or charges of any type shall be added without the Council's express written consent. Such additional charges include, but are not limited to: shipping, packaging, labeling, customer duties, taxes, insurance, storage, boxing, and crating. Delay in receiving invoices and errors and omissions on statements or invoices will be considered just cause for withholding settlement without the Council losing its discount privileges.

6.0 DELIVERY: Time is of the essence for providing the goods or services governed by the Purchase Order. The Council and Seller have agreed to a delivery schedule as indicated in Paragraph 2.0 of Attachment 3 or on the face of the purchase order form, as applicable. Seller understands and agrees that strict adherence to the delivery schedule is a material component of the Purchase Order and that Seller's failure to adhere to the schedule will be considered a material breach of the contract and the Council may cancel or rescind the Purchase Order or seek other legal or equitable remedies available to the Council. Failure of Seller to adhere to the delivery schedule shall render Seller liable for any and all expenses and costs incurred by the Council as a result of such failure, including but not limited to reasonable attorney's fees and administrative costs. Seller shall immediately notify the Council of any delays or threatened delays in the performance of the Purchase Order. No acceptance of the goods or services after the scheduled delivery date will waive the Council's rights with respect to such late delivery nor shall it be deemed a waiver of future compliance with the terms of the Purchase Order. All deliveries shall be F.O.B. destination freight prepaid.

7.0 PAYMENT TERMS AND INVOICING: The Council will pay properly submitted vendor invoices within thirty (30) calendar days of receipt, provided that the goods or services have been delivered, installed (if required), and accepted prior to the Seller issuing an invoice to the Council. Pre-payment of costs is not permitted, unless the Council provides its express written pre-approval. Invoices presented for payment must be submitted in accordance with instructions contained in the Purchase Order including reference to Purchase Order number and submitted to the correct address for processing. **Unless specifically requested or authorized by the Council, faxed or e-mailed invoices will not be accepted.** A good faith dispute creates an exception to these payment terms. Seller understands and agrees that its failure to adhere to these payment and invoicing requirements or its failure to respond timely to the Council's requests for additional information may result in a delay in the invoice review / payment process without any penalty to the Council.

8.0 TAXES: The Council is exempt from payment of state, county, and city sales taxes in the state of Missouri on its purchases. A tax exempt letter will be provided to Seller upon request. The Council may be subject to other states' taxes on its purchases in that state depending on the laws of that state.

9.0 RISK OF LOSS: All risk of loss shall be upon Seller from the time the goods first come under Seller's control until such time as the goods shall be delivered to the destination specified in Paragraph 3.0 of Attachment 3 or on the face of the purchase order form, as applicable, and accepted by the Council. Seller agrees to indemnify and hold the Council harmless for any and all losses, costs, damages, and expenses (including reasonable attorney's fees) which the Council may sustain as a result of or in consequence of the loss of or damage to the goods during such period of time.

10.0 INDEMNIFICATION: To the fullest extent permitted by law, Seller shall save and hold the Council, its directors, officers, employees, agents, and representatives harmless from and indemnify, defend, and protect such parties against all liability, loss, claims, demands, damage (including damage to property and bodily injury) and expenses (including reasonable attorney's fees) arising out of or in any way resulting from Seller's performance or non-performance under the Purchase Order, including, but not limited to: (1) any defect or non-conformity with Seller's warranties of the goods and services delivered under the Purchase Order; (2) any act or omission of Seller, its agents, employees, or subcontractors; (3) any act or omission of any carrier selected and employed by Seller to deliver goods ordered under the Purchase Order; (4) any failure by Seller, its agents, employees, carriers, or subcontractors to comply with the terms of the Purchase Order; (5) any infringement or claim of infringement of any patent, unpatented invention, copyright, design process, trademark, trade name, brand, slogan, unfair competition, or other adverse rights; or (6) any litigation brought or arising out of any of the foregoing.

11.0 LIMITATION ON THE COUNCIL'S LIABILITY; STATUTE OF LIMITATION: Except as provided in Paragraph 17.0 of this Attachment, in no event shall the Council be liable for anticipated profits or for incidental or consequential damages. The Council shall not be liable for expenses, costs, or penalties of any description. Any action resulting from any breach on the part of the Council as to the goods or services delivered under the Purchase Order must be commenced within one (1) year after the cause of action has accrued.

12.0 SETOFF: All claims for money due or to become due from the Council shall be subject to deduction or setoff by the Council by reason of any counterclaim arising out of this or any other transaction with Seller.

13.0 FORCE MAJEURE: The Council or Seller may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Council and shall deliver them when the cause affecting the delay has been removed. Causes beyond the control of the Council or Seller shall include: government action or failure of the government to act where such action is required; acts of god; strikes; fires; accidents; or other such causes not due to the Council's or Seller's fault or negligence.

14.0 NONDISCRIMINATION / AFFIRMATIVE ACTION: Seller shall not participate either directly or indirectly in the discrimination prohibited by federal statutes and regulations including employment practices. Seller shall comply with all the requirements of federal civil rights and nondiscrimination statutes, regulations, rules, and executive orders. Seller shall comply with the conditions of this Paragraph 14.0 may result in Seller being declared an "ineligible" contractor, cancellation of the Purchase Order, or withholding of payment. In connection with the performance of work under the Purchase Order, Seller agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, national origin, or ancestry. This provision shall include, but is not limited to, the following actions: 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 vendor further agrees to take affirmative action to ensure equal employment opportunities. Seller shall not discriminate on grounds of the race, color, religion, sex, disability, age, national origin, or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. These nondiscrimination requirements shall apply to all solicitations either by competitive bidding or negotiation made by Seller for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the vendor of these requirements relative to nondiscrimination on grounds of the race, color, religion, sex, disability, age, national origin, or ancestry of any individual.

15.0 CHANGES: The Council shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for the Seller's performance, an equitable negotiated adjustment shall be made and the agreement created by the acceptance of the Purchase Order shall be modified in writing by the Council. Seller shall undertake no work on any such change, addition, or omission unless and until the Seller delivers a Quote to the Council and the Council issues a written change order approving the change. Seller agrees to accept any such changes subject to this Paragraph 15.0.

16.0 REMEDIES FOR NONCOMPLIANCE: Where Seller violates, breaches, or otherwise fails to comply with the terms of the Purchase Order, the Council, in its sole discretion, may take one (1) or more of the following actions:

- 16.1 Terminate, cancel, or suspend the Purchase Order, in whole or in part;
- 16.2 Disallow all or part of the cost of the activity or action not in compliance with the Purchase Order;
- 16.3 Withhold payments to Seller pending Seller's correction of any deficiency;
- 16.4 Rescind payments made to Seller if it is later determined that the payment was made for a cost or activity not in compliance with the Purchase Order; or
- 16.5 Recommend that the funding agency initiate suspension or debarment proceedings against Seller;
- 16.6 Deem Seller ineligible to receive any further contract awards from the Council until the deficiency is corrected; or
- 16.7 Pursue any other available legal or equitable remedy.

**EAST-WEST GATEWAY COUNCIL OF GOVERNMENTS
PURCHASE ORDER
ATTACHMENT 1: STANDARD TERMS & CONDITIONS**

17.0 TERMINATION & CANCELLATION: The Council reserves the right to terminate any undelivered or unperformed portion of the Purchase Order for the Council's sole convenience without liability to Seller other than for work performed by Seller prior to receipt of the notice of termination. The Council may also cancel the Purchase Order in whole or in part for cause and, in such event, the Council shall not be liable to Seller for any amount and Seller shall be liable to the Council for any and all damages sustained by reason of the cause which gave rise to the cancellation. For purposes of the Purchase Order "cause" shall include: (1) late delivery or performance; (2) a delivery of defective or nonconforming goods or workmanship; (3) a breach of any of Seller's warranties; (4) any other material default or noncompliance by Seller with the terms and conditions expressed in the Purchase Order; (5) the commencement or continuance of any bankruptcy or insolvency proceeding by or against Seller; (6) any other legal process or order directing or requiring the Council to undertake or refrain from undertaking any business or certain types of business with the result that the goods or services ordered under the Purchase Order shall be unnecessary to the Council; (7) erroneous information on the Seller's Conflict of Interest Disclosure Statement or after-discovered conflicts of interests that were not disclosed in accordance with the terms of the Purchase Order; (8) debarment/suspension action by any state or federal entity or failure to properly notify the Council of an erroneous certification, as required by Paragraph 3.2 of Attachment 2; (9) any misrepresentation in any other certification required by the Purchase Order or failure to report any erroneous certification; or (10) any misrepresentation in the quote/bid/proposal/response submitted to the Council for the goods or services or otherwise made during the procurement or contract process or in any invoice submitted to the Council, which if known to the Council would have resulted in the Purchase Order not being awarded or funds not being provided. Any termination or any cancellation, whether in whole or in part, shall be effective upon receipt of Seller of a notice of termination or cancellation. "Receipt" is defined in Paragraph 21.2 of this Attachment 1.

18.0 LEGAL COMPLIANCE: Seller warrants and agrees that in the performance of its obligations under the Purchase Order, Seller, its agents, employees, carriers, and subcontractors shall: (1) comply with all applicable laws, ordinances, codes, rules, regulations, and orders, including executive orders now existing or hereafter enacted, adopted, or enforced by any governmental body or agency, including where applicable all such laws, ordinances, codes, rules, regulations, and orders pertaining to labor and working conditions, safety and health, food and drug quality, and hazardous materials; (2) apply for, obtain, and pay for any applicable fees associated with all necessary permits and licenses; and (3) pay promptly when due any and all applicable sales, excise, or other taxes due on materials furnished in connection with services performed, and all taxes and amounts due under applicable unemployment, social security, and worker's compensation laws.

19.0 CONFIDENTIALITY: The contents of the Purchase Order and all related commercial and technical information shall be kept secret and confidential by Seller and will not be divulged by Seller to any third party or utilized by Seller otherwise than in connection with the Purchase Order, unless the Council provides its express written approval that such information may be disclosed. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time to the Council by Seller shall be deemed secret or confidential and Seller shall have no rights against the Council with respect to such information except such rights as any exist under any applicable patent law. It is Seller's responsibility to inform the Council of Seller's rights under applicable patent law; and such rights must be disclosed to the Council upon receipt by the Council of Seller's commercial and technical information. The Council has no obligation to affirmatively or actively ascertain whether Seller has rights under patent or other laws prior to the Council disclosing Seller's commercial and technical information.

20.0 FUNDING SOURCE & CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: The funding for this project is provided by the departments / agencies noted below and in the percentages noted below:

Funding Agency #1
Funding Agency Type
Agency Name
CFDA Number
Funding Percentage

Funding Agency #2
Funding Agency Type
Agency Name
CFDA Number
Funding Percentage

Funding Agency #3
Funding Agency Type
Agency Name
CFDA Number
Funding Percentage

21.0 GENERAL TERMS:

21.1 INDEPENDENT CONTRACTOR: It is understood that Seller is an independent contractor and not an employee or agent of the Council and that Seller shall have no power whatsoever to bind the Council in any way in any dealings between Seller and third parties and Seller shall not attempt or purport to do so.

21.2 NOTICE: All notices required by the Purchase Order shall be deemed given only if: (1) submitted in writing to the points of contacts provided in Paragraph 4.0 of Attachment 3, if applicable, or, when Attachment 3 is inapplicable, to: Executive Director, East-West Gateway Council of Governments, 1 S. Memorial Drive, Suite 1600, St. Louis, MO 63102; and (2) delivered by one of the following methods: (a) hand delivery; (b) sent by Federal Express, United Parcel Services, or similar services; or (c) sent by U.S. Postal Service registered or certified mail, postage prepaid and return receipt requested. All notices shall be effective upon first receipt, unless otherwise specified in the Purchase Order. "Receipt" is defined as: when the notice arrives at the address specified in this Paragraph 21.2 above or in Paragraph 4.0 of Attachment 3, if Attachment 3 is applicable, as indicated by either: (d) signature of a person employed or designated by the Council or Seller; or (e) delivery date noted on mail/delivery service's tracking receipt/slip/other tracking document including internet based or electronic documents (i.e. e-mail or information downloaded from a website), whichever occurs first.

21.3 ASSIGNMENT: Seller shall not assign, transfer, or hypothecate the Purchase Order or any monies payable or to become payable under the Purchase Order without in each case obtaining the prior written approval of the Council; such approval shall not be unreasonably withheld by the Council. The Council may assign or transfer the Purchase Order, but only to the extent stipulated in the procurement documents issued by the Council (i.e. request for quotes, invitation for bids, or request for proposals/qualifications).

21.4 WAIVER: No waiver by either the Council or Seller of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of the Purchase Order and shall not be deemed a waiver of any of the Council's or Seller's rights, privileges, claims, or remedies, nor of the Council's or Seller's right to insist on strict compliance thereafter.

21.5 INTEGRATION: The Purchase Order, including the attachments and other documents referenced in this Attachment 1, constitute the entire understanding of the Council and Seller and revokes and supersedes all prior agreements between the Council and Seller as any may relate to the subject matter of the Purchase Order and it is intended as the final expression of the Council's and Seller's agreement. The Purchase Order may not be modified except by writing signed by both the Council and Seller.

21.6 GOVERNING LAW: The Purchase Order shall be interpreted under and governed by the laws of the State of Missouri.

21.7 JURISDICTION & VENUE: It is agreed by the Council and Seller that any action at law, suit in equity, or other judicial proceeding to enforce or construe the Purchase Order or regarding its alleged breach shall be instituted only in the Circuit Court of St. Louis City, Missouri.

21.8 SEVERABILITY: In the event that any of the terms or provisions of the Purchase Order are declared void or unenforceable for any reason, the remaining terms and provisions of the Purchase Order shall remain in full force and effect and shall not be affected by such declaration.

21.9 SURVIVAL OF TERMS: All provisions of the Purchase Order which by their nature should survive termination, cancellation, or expiration of the Purchase Order shall survive, including but not limited to: provisions regarding indemnification, warranty, limitation of liability, records retention and confidentiality.

21.10 CONTENTS OF THE PURCHASE ORDER & ORDER OF PRECEDENCE: The contract between the Council and Seller consists of the terms on the face of the purchase order form or the terms in Attachment 1, Attachment 2, Attachment 3, and Attachment 4. In the event that a conflict or inconsistency arises among the various parts of the contract, the following order of precedence shall dictate which terms shall control: (1) face of the purchase order form; (2) Attachment 1; (3) Attachment 2; (4) Attachment 3; and (5) Attachment 4.

EAST-WEST GATEWAY COUNCIL OF GOVERNMENTS
PURCHASE ORDER
ATTACHMENT 2: SPECIAL TERMS & CONDITIONS

Seller understands and agrees that the following terms and conditions apply to the Purchase Order that was issued by East-West Gateway Council of Governments (the "Council"). These Special Terms & Conditions ("Attachment 2") supplement the Standard Terms & Conditions ("Attachment 1"). Seller further understands and agrees that failure to adhere to these terms and conditions constitutes a material breach of its contract with the Council and that the Council may take appropriate action against Seller to ensure compliance with these provisions, up to and including, ordering a stoppage of work, suspending payments, or cancelling or rescinding the Purchase Order.

1.0 INSURANCE RESPONSIBILITY: Seller, if performing professional services for the Council, shall:

- 1.1 Maintain worker's compensation insurance as required by Missouri Statutes, for all employees engaged in the work.
- 1.2 Maintain general commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out the Purchase Order. Minimum coverage shall be three million dollars (\$3,000,000) aggregate, one million dollars (\$1,000,000) per occurrence commercial general liability for bodily injury and property damage including products liability and completed operations.
- 1.3 Maintain motor vehicle insurance for all owned, non-owned, and hired vehicles that are used in carrying out the Purchase Order. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
- 1.4 All insurance must be provided from a company authorized to issue insurance in Missouri.
- 1.5 The Council reserves the right to require higher or lower limits where warranted.
- 1.6 Seller must provide the Council with written proof of its insurance coverages, upon request by the Council.
- 1.7 Seller must notify the Council in writing within seven (7) calendar days of receiving a notice that any of its insurance policies have been reduced, terminated, or cancelled (even in part) for any reason.

2.0 CONFLICTS OF INTERESTS & GRATUITIES: Actual and perceived objectivity will be an important part of successfully completing the project. As such, Seller affirms that it will adhere to each of the following:

- 2.1 **CONFLICT OF INTEREST DISCLOSURE STATEMENT:** For purchases equal to or greater than \$10,000, during the procurement process, Seller submitted to the Council a Conflict of Interest Disclosure Statement, which indicated that Seller does not have any present conflicts of interest with regard to the project. By accepting the Council's Purchase Order, Seller re-affirms the information contained in its Conflict of Interest Disclosure Statement and agrees to immediately notify the Council in writing in the event that an error in this Statement is discovered or a conflict of interest arises during the course of the project. Such notice shall be sent in accordance with Paragraph 21.2 of Attachment 1. Failure to correct errors or disclose after-discovered conflicts of interest may result in the Council cancelling the Purchase Order for cause. A copy of the Conflict of Interest Disclosure Statement will be provided to Seller upon request.
- 2.2 **INTEREST OF SELLER:** Seller covenants that it presently has no interest and shall not acquire any interest (direct or indirect) which would conflict in any manner or degree with the services required to be performed or goods to be provided under the Purchase Order. In the performance of the Purchase Order, Seller will not employ any person having these types of interests. Seller will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of a personal or organizational conflict of interest or personal gain.
- 2.3 **INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS:** Seller shall not admit any members of or delegates to the Congress of the United States to any share or part of the Purchase Order or to any benefit arising from the Purchase Order.
- 2.4 **GRATUITIES:** If the Council finds that Seller or any agent or representative of Seller offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the Council (including the St. Louis Area Regional Response System ("STARRS") or the Federal, State, or local funding agency, and the gratuities were given with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of the Purchase Order, then the Council may immediately terminate the Purchase Order and may pursue other rights or remedies provided by law under the Purchase Order. The Council's finding must be reached after the Council provides notice to Seller and conducts a hearing on the matter.

3.0 CERTIFICATIONS:

- 3.1 **LOBBYING CERTIFICATION:** For all purchases of goods or services that are equal to or greater than \$100,000, Seller certifies compliance with 31 U.S.C. § 1352 and implementing Federal funding agency regulations contained in the Code of Federal Regulations ("CFR"), covering government-wide restrictions on lobbying, which provide that no federal appropriated funds have been paid or will be paid, by or on behalf of the Seller, to any person for influence or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. Seller further certifies that if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Federal contract, grant, loan, or cooperative agreement, the Seller shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Seller shall require that the language of this Paragraph 3.1 be included in the award documents for all contracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative contracts) and that all subcontractors shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction as imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - 3.1.1 **PROHIBITION ON LOBBYING:** For all purchases of goods or services, no matter the dollar amount, Seller shall not use any federal funds, either directly or indirectly in support of the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government, without the express prior written approval of the Council.

3.2

REGARDING DEBARMENT, SUSPENSION & OTHER RESPONSIBILITY MATTERS

CERTIFICATION: For all purchases of goods or services that are equal to or greater than \$25,000, Seller certifies to the best of its knowledge and belief, that it and its principals: (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; (2) have not within a three (3) year period preceding the Purchase Order been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (3) are not presently debarred, suspended, or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense; (4) have not within a three (3) year period preceding the Purchase Order had one or more public transactions (federal, state, or local) terminated for cause or default. This certification is a material representation of fact upon which reliance was placed when the Council determined whether to enter into this transaction. If it is later determined that Seller knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the Council may cancel the Purchase Order for cause. Seller shall provide immediate written notice to the Council if at any time Seller learns that its certification was erroneous because of changed circumstances. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principle," "proposal," and "voluntarily excluded" will have the meaning set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549 and Executive Order 12689. Seller shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Council. Seller shall review the "Excluded Parties Listing System" at www.sam.gov/portal/public/SAM and the Missouri "Suspended Vendors List" at <http://www.mo.gov/purch/agencyinfo/suspven.pdf> to ensure that it does not enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. Seller agrees that it will include the Paragraph 3.2, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. Seller may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless Seller knows the certification is erroneous.

FEDERAL DEBT STATUS CERTIFICATION: In order to be eligible to receive payments under the Purchase Order, Seller must be non-delinquent in its repayment of any Federal debt, including but not limited to, delinquent payroll and other taxes, audit disallowances, and benefits overpayments. Seller certifies that it is not currently delinquent in its repayment of any Federal debt and agrees to notify the Council immediately if Seller will be in breach of this provision. The Council may immediately cancel the Purchase Order in the event that Seller breaches this Paragraph 3.3.

4.0 MATERIAL SAFETY DATA SHEET: If any item(s) on the Purchase Order is a hazardous chemical, as defined under 29 CFR 1910.1200, Seller must provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

5.0 SAFETY REQUIREMENTS: All materials, equipment, and supplies provided to EWG must comply fully with all safety requirements as set forth by the Missouri Administrative Code and all applicable Occupational Health & Safety Administration (a.k.a. OSHA) Standards.

6.0 PATENT INFRINGEMENT: Seller guarantees that the articles, goods, or materials being provided to the Council under the Purchase Order were manufactured or produced in accordance with applicable federal labor laws. Further, Seller guarantees that the sale or use of the articles, goods, or materials described in the Purchase Order will not infringe any United States patent. Seller covenants that it will at its own expense defend every suit which shall be brought against the Council (provided that such vendor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, goods, or materials, and agrees that it will pay all costs (including reasonable attorney's fees), damages, and profits recoverable in any such suit.

7.0 ADMINISTRATIVE & STATUTORY AND REGULATORY REQUIREMENTS:

7.1

INSPECTION OF WORK & RECORDS: For all purchases of goods or services that are equal to or greater than \$10,000, the Council, the State or Federal funding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall, at any time, be allowed to review and inspect the services performed or the goods provided under the Purchase Order; and, for purposes of making audits, examination, excerpts, and transcriptions, each shall, at any time, have access to the premises, to all books, documents, papers, records, correspondence, instructions, receipts, vouchers, and memoranda of every description which are directly pertinent to the Purchase Order. The Council, if prior notice is warranted and possible, shall notify Seller in advance of the Council's intent to conduct such an inspection. All financial records, supporting documents, statistical records, and all other records pertinent to the Purchase Order shall be retained by Seller for at least five (5) years from the date provided by the Council in writing (e-mail notification is acceptable). Retention is required for purposes of examination and audit by the Council, the State, or the Federal Government and audit. Records may be retained in an automated format. The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of the award and Seller's financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under the Purchase Order, whether they are employed full-time or part-time. Seller must adequately protect records against fire or other damage. If any litigation, claim, negotiation, audit, or other action involving the records has started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the regular five (5) year period, whichever is later. The records retention period may be extended if Seller is notified in writing by the Council that the records retention period has been extended. The Council's written notice will specify the time frame for the extended records retention period.

**EAST-WEST GATEWAY COUNCIL OF GOVERNMENTS
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- 7.2 FALSE CLAIMS AND PROGRAM FRAUD:** Seller acknowledges that the provisions of the False Claims Act, 31 U.S.C. § 3729 *et seq.* and the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and federal implementing regulations, including without limitation the Federal funding agency's regulations contained in the CFR, apply to Seller's actions pertaining to the Purchase Order. Upon acceptance of the Purchase Order, Seller certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Purchase Order or the federally assisted project for which its work is being performed. In addition to other penalties that may be applicable, Seller further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 and other related federal statutes on Seller to the extent the Federal Government deems appropriate. Seller also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by the Federal funding agency, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001, implementing federal regulations, and any other applicable federal statute on Seller, to the extent the Federal Government deems appropriate. Seller agrees to include this provision in each subcontract financed in whole or in part with the Federal assistance provided by Federal funding agency noted in Paragraph 20.0 of Attachment 1. It is further agreed that this Paragraph 7.2 shall not be modified, except to identify the subcontractor who will be subject to the provisions.
- 7.3 DRUG-FREE WORKPLACE:** Seller certifies that it will comply with the requirements of the federal Drug-Free Workplace Act, 41 U.S.C. § 701 *et seq.*, as amended, and implemented in the Federal funding agency's regulations contained in the CFR.
- 7.4 COMPLIANCE WITH ENERGY CONSERVATION PLANS:** Seller shall comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321 *et seq.*
- 7.5 RECOVERED MATERIALS:** Seller agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.
- 7.6 FEDERAL WATER POLLUTION CONTROL ACT AND CLEAN AIR ACT:** Seller agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*, Executive Order 11738, and Environmental Protection Agency regulations located at 40 CFR Part 15. Seller agrees to report each recognized violation to the Council and understands and agrees that the Council will, in turn, report each recognized violation as required to assure notification to Federal funding agency and the appropriate Environmental Protection Agency Regional Office. Seller agrees to include these requirements in each subcontract made under the Purchase Order that exceeds \$100,000.
- 7.7 FREEDOM OF INFORMATION AND MISSOURI SUNSHINE ACT:** Seller understands and agrees that the Missouri Sunshine Act ("Sunshine Act"), Section 610.010, RSMo, may apply to the information and documents, both paper and electronic, submitted to the Council regarding the goods or services provided under the Purchase Order. All materials submitted to the Council that are related to the goods or services will become agency records and are or may be subject to the Sunshine Act and to public release through individual Sunshine Act requests, unless the Council determines that a valid exemption under the Sunshine Act applies. The Council has adopted a presumption of disclosure; therefore, the Council does not consent to honor any "routine" confidentiality statements that may appear on documents or correspondence (i.e. e-mails, letters, etc.) in paper or electronic that accompany the submission of project information, absent a requirement under federal or state law or regulation that the information must be kept confidential. Seller shall clearly and specifically mark genuinely confidential or privileged information and shall justify the information as confidential or privileged. The Council will review documents and information that are the subject of each Sunshine Act request, as permitted by federal or state law or regulation, and determine the extent to which the Council must or should exercise its discretion and withhold those documents. Further, Seller understands and acknowledges that the applicability of the Sunshine Act or the Council's exercise of discretion to withhold a document does not affect the State or Federal funding agency's right to make a separate determination about the disclosure of a document related to a project under the Sunshine Act or the federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552; however, if the State or Federal funding agency make the determination that a document may be disclosed under the Sunshine Act or FOIA, the Council will presume that the document is subject to disclosure under the Sunshine Act unless Seller demonstrates otherwise.
- 7.8 OTHER STATUTORY AND REGULATORY REQUIREMENTS:** If the Purchase Order is funded by the U.S. Department of Homeland Security, then Seller agrees to comply and ensure compliance on behalf of its employees, with the following statutory and requirements (as applicable):
- 7.8.1** Titles I and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
 - 7.8.2** Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
 - 7.8.3** Davis-Bacon Act (40 U.S.C. §§ 3141-3148), as supplemented by U.S. DOL regulations (29 CFR Part 5), the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) as supplemented by DOL regulations (29 CFR Part 3), and Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by DOL regulations (29 CFR Part 5).
 - 7.8.4** Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.
- 7.8.5** The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- 7.8.6** National Flood Insurance Act of 1968 Section 1306(c), as amended, which provides for benefit payments under the Standard Flood Insurance Policy for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. These regulations are codified at 44 CFR Part 63.
- 7.8.7** Environmental standards which may be prescribed pursuant to the following: (1) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11511; (2) notification of violating facilities pursuant to EO 11738; (3) protection of wetlands pursuant to EO 11990; (4) evaluation of flood hazards in floodplains in accordance with EO 11988; (5) assurance of project consistency with the approved State management plan developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 *et seq.*); (6) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176 of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 *et seq.*); (7) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523) and, (8) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- 7.8.8** Clean Air Act of 1970 (42 U.S.C. §§ 7401 *et seq.*), the Clean Water Act of 1977 (33 U.S.C. § 1251 *et seq.* and Executive Order 11738) and Environmental Protection Agency regulations (40 CFR Part 15), which provides for the protection and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters is considered research for other purposes.
- 7.8.9** Coastal Wetlands Planning, Protection, and Restoration Act of 1990 and Executive Order 11990, which provides that federally funded construction and improvements minimize the destruction, loss, or degradation of wetlands. The Executive Order provides that, in furtherance of Section 101(b)(3) of NEPA (42 U.S.C. § 4331(b)(3)), Federal agencies, to the extent permitted by law, must avoid undertaking or assisting with new construction located in wetlands under the head of the agency finds that there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors. The public disclosure requirement described above also pertains to early public review of any plans or proposals for new construction in wetlands. This is codified at 44 CFR Part 9.
- 7.8.10** Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1 *et seq.*).
- 7.8.11** P.L. 93-348 and federal regulations at 45 CFR Part 46 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance. Seller must also comply with the requirements in DHS Management Directive 026-04, Protection of Human Subjects, prior to implementing any work with human subjects. For purposes of 45 CFR Part 46, research means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to general knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. The regulations specify additional protections for research involving human fetuses, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 CFR Part 46.
- 7.8.12** Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 *et seq.*) which requires that minimum standards of care and treatment be provided for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public. Seller must establish appropriate policies and procedures for the humane care and use of animals based on the Guide for the Care and Use of Laboratory Animals and comply with the Public Health Service Policy and Government Principles Regarding the Care and Use of Animals.
- 7.8.13** Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 *et seq.*) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
- 7.8.14** 106(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and implementing regulations at 2 CFR Part 175. The Council may terminate the Purchase Order without penalty if Seller: (1) Engages in severe forms of trafficking in persons during the time that the Purchase Order is in effect; (2) Procures a commercial sex act during the period of time that the Purchase Order is in effect; or (3) uses forced labor in the performance of the Purchase Order or any subcontract issued under the terms of the Purchase Order.

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- 7.8.15 Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728 - 4763) relating to prescribed standards for merit systems for programs funded under on the nineteen (19) statutes or regulations specified in Appendix A of OPM's Standards for Merit System of Personnel Administration (5 CFR Part 900, Subpart F).
- 7.8.16 Fly America Act of 1974 which codifies requirements of the Preference for U.S. Flag Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretive guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.
- 7.8.17 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act of 2001), which amends 18 U.S.C. §§ 175-175c, among other things, it prescribes criminal penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose. The act also establishes restrictions on access to specified materials. "Restricted persons," as defined by the act, may not possess, ship, transport, or receive any biological agent or toxin that is listed as a select agent.
- 7.8.18 U.S. legal requirements related to combating terrorist financing, which include, but are not limited to: various sanctions programs administered by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) and federal statutes that prohibit: financing of terrorism (18 U.S.C. § 2339(C)), providing material support or resources to terrorists (18 U.S.C. § 2339(A)), and providing material support or resources to designated terrorist organizations (18 U.S.C. § 2339(B)). OFAC sanctions programs include, without limitation, the requirements expressed in Executive Order 13224 - *Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*.
- 7.8.19 In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225(a) *et seq.*, Seller must ensure that all conference, meeting, convention, and training space funded in whole or in part by the Purchase Order comply with the Federal Fire Prevention and Control Act of 1974 (P.L. 93-498), as amended by Section 3(a) of the Hotel and Motel Fire Safety Act of 1990 (15 U.S.C. § 2224).
- 7.8.20 The statutory requirements for whistleblower protections (if applicable), 10 U.S.C. § 2409, 41 U.S.C. § 4172, 10 U.S.C. § 2324, and 41 U.S.C. §§ 4304 and 4310.
- 7.8.21 **COPYRIGHTS:** Under 2 CFR Part 200 § 200.315(b), DHS / FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the copyright in any work developed under the Purchase Order and any rights of copyright to which the Seller acquires ownership with the funds, whether in whole or in part, under the Purchase Order. Unless broader rights are granted elsewhere in the Purchase Order, the Council, at a minimum, reserves the same license that is granted to DHS / FEMA under this Paragraph 7.8.21.
- 7.8.22 **COLLECTION AND USE OF PERSONALLY IDENTIFIABLE INFORMATION:** If Seller collects Personally Identifiable Information ("PII") as defined by DHS, then Seller shall have a publicly-available privacy policy that describes what PII Seller collects, how Seller uses the PII, whether Seller shares the PII with third-parties, and how individuals may have their PII corrected where appropriate. Seller's privacy policy must, at a minimum, comply with the requirements of DHS's guidelines, as each may be amended from time to time.
- 7.8.23 **ACTIVITIES CONDUCTED ABROAD:** Seller shall ensure that activities funded by the Purchase Order and that are carried on outside of the United States are coordinated as necessary with appropriate government authorities and that the appropriate licenses, permits, or approvals are obtained.

Purchase Order Attachment 3
Subject to Change
& Conditions

Bid Item 04-17-04

Attachment 4 - Certification Regarding Debarment and Suspension

Please read the certification below and check the appropriate box. If you are unable to provide this certification, then you must provide an explanation in the space provided below.

#1 - I certify that, to the best of my knowledge and belief, that the responding firm and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any State or Federal department or agency;
- (b) Have not within a three-year period preceding its submission for the above captioned project been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding its submission for the above captioned project had one or more public transactions (Federal, State or local) terminated for cause or default.

#2 - I am unable to certify to any of the statements in this certification. *An explanation must be provided in the space below.*

Bidding Firm _____

Name & Title of Authorized Official _____

Signature of Authorized Official _____

Date _____

Bid Item 04-17-04

Attachment 5 - Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Bidding Firm _____

Name & Title of Authorized Official _____

Signature of Authorized Official _____

Date _____