Energy Smart Leasing:

Improving Energy Efficiency, Worker Productivity and Sales in Commercial Leased Space

RFP #DDPHE18-AUG-KM
August 21st, 2018

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Goals and Vision
The City is seeking a Contractor to develop a program that makes Energy Smart Leasing the standard practice in Denver by the end of 3 years.

The City and County of Denver has an ambitious climate goal to reduce greenhouse gas emissions city wide by 80% by 2050. Buildings are responsible for 57% of those emissions. Improving the energy efficiency of those buildings is a critical strategy to achieve our emission reduction goals. Our Energize Denver program aims to reduce the energy consumption of large buildings by 10 percent by 2020 and 30 percent by 2030. Achieving the overall 30 percent reduction goal in energy consumption by 2030 is possible if all buildings become as efficient as those currently performing at the 82nd percentile (as determined by energy use intensity) of the building type.

Improving building energy efficiency will also help protect Denver’s quality of life and strengthen the economy. Investing an estimated $340 million in improving building energy efficiency could result in 4,000 local jobs and $1.3 billion in energy savings over 10 years.

The Energize Denver benchmarking law requires owners of buildings over 25,000 square feet to annually benchmark and report their energy use. Benchmarking the energy performance of buildings is the first step to understanding and reducing energy consumption, because you can’t manage what you don’t measure. The City publishes building energy performance data each year at www.energizedenver.org to enable the market to better value energy efficiency, similar to the MPG ratings for cars or nutrition labels on food.

Why Energy Smart Leasing?
Higher ROI over the term of the lease for the owner and the tenant because the energy savings are shared. The owner gets an improved asset that rents at a premium. The tenant sees a portion of the reduced energy costs and increased productivity and sales – sufficient to cover any rent increase.

Lower Energy Costs: Tenants and owners can save the following on their energy costs:
- ~50 cents per square foot by Selecting an Energy Efficient Building
- ~15-60 cents per square foot by signing an Energy Efficient Lease and doing an Efficient Tenant Improvement

Increased Productivity and Sales:
- The greatest benefit to the tenant comes from higher employee productivity and satisfaction due to improved thermal comfort, natural daylight, and residing in a healthy building. A recent U.S. Department of Labor study showed that people (salaries) cost a company 100 times more than energy, so while a lower utility bill is great, increasing employee productivity makes residing in an efficient office building very compelling. A recent study by JLL showed efficient buildings increase productivity by 6–16 percent. A literature review of all studies on productivity gains from energy efficiency showed a wide range of possible gains, from 0.6–23%.
  - Even assuming the lowest amount found in any study of 0.6% productivity gains, tenants could see the equivalent of ~$1.50 per square foot of increased value. A 6% productivity gain would result in closer to $15 per square foot in increased value.
  - In addition, increased employee retention due to having employees in a healthy space, at a firm that shares their values of sustainability, could further help tenant bottom lines.
  - An analysis for a tech company that is leasing a space in Boulder Commons found that a mere 2 percent increase in productivity from residing in this building would offset its entire base rent cost.
- Retail tenants will see increased sales.
  - Walmart installed specially-designed skylights over just half the store, leaving the other side without daylighting. Managers using Wal-Mart’s real-time inventory system quickly
found that sales per square foot were significantly higher in the daylit half of the store, and higher than the same departments in other stores.

- A California Energy Commission study by Lisa Heschong of Heschong Mahone Group found that daylight can increase retail sales on average for the chain by up to 6%, or for individual stores by up to 40%, depending on the daylight design, parking lot size, and other store variables.

What is Energy Smart Leasing?

There are three main elements

1. **Space Selection:** A tenant can ask the right questions when selecting a new space to lease.
   - What is the building’s 1-100 ENERGY STAR score?
   - Does the landlord perform building commissioning or have in place a quality control process to monitor and ensure efficient, consistent operations of base building systems?
   - What has the building owner done to improve and maintain energy efficiency?

2. **Efficient Lease Clauses:** These leases promote energy efficiency by creating lease structures that equitably align the costs and benefits of efficiency investments between building owners and tenants. Lease clauses might include:
   - Submeter tenant energy usage: "Landlord shall install an electric meter/submeter to service the leased premises to measure the consumption of electricity in the leased premises. Tenant will pay for actual electricity used."
   - Pass-through clause: "Cost of any capital improvement to the building that reduces building operating costs, the costs of such improvements to be amortized over the minimum period acceptable for federal income tax purposes, and only the yearly amortized portion thereof shall be treated as building operation costs. In no event shall this charge for yearly amortization be more than the actual reduction in the building operation costs."
   - Efficient purchasing: "Landlord and tenant shall purchase highly energy efficient options when procuring fixtures, appliances and equipment when reasonably practical."
   - Fund tenant improvements related to energy efficiency.
   - What clauses currently get cut the most frequently in leases?

3. **Tenant Space:** Tenants can make their own space energy efficient by lowering plug load, or any device that is plugged into a building’s electrical system—think computers, printers and data servers.

Further Resources

This project can build upon and adapt energy smart leasing best practices from across the country including items in the following resources:

**Space Selection:**
- Green Lease Questionnaire for Tenants
- Sample Premises Questionnaire

**Efficient Lease Clauses:**
- Energy Efficiency Lease Guidance
- Green Leasing: An Effective Tenant/Landlord Strategy for Energy Efficiency
- High Performance Lease Criteria and Sample Lease Language
- Making Efficiency Work for You
- Retail Green Lease Primer
- Retail RTU Green Lease Language
- Selling Efficient Spaces: Brokers Bring Green in to the Equation
Program Design Elements of a Successful Proposal

Target Building Types and Classes
What building types and classes will be targeted to drive the greatest energy savings and greenhouse gas emission reductions?

In Denver building make-up and energy usage for buildings 50,000 sq ft and larger is as follows:

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Percent of Denver Building Energy Usage/Number of Buildings</th>
<th>Average ENERGY STAR® Score</th>
<th>Average Weather Normalized Site EUI</th>
<th>Weather Normalized Site EUI of ‘Efficient Buildings’ (82nd Percentile)</th>
<th>Potential Cost Savings if All Buildings Became as Efficient as the 82nd Percentile (%)</th>
<th>Potential Cost Savings if All Buildings Became as Efficient as the 82nd Percentile ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office</td>
<td>22%/200</td>
<td>77</td>
<td>74</td>
<td>51</td>
<td>19%</td>
<td>$13.1 million</td>
</tr>
<tr>
<td>Retail (Grocery store, wholesale club, retail store, mall/stripmall)</td>
<td>~8%/55</td>
<td>74</td>
<td>125</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Warehouse (unrefrigerated warehouse, distribution center)</td>
<td>6%/140</td>
<td>66</td>
<td>47</td>
<td>24</td>
<td>46%</td>
<td>$6.2 million</td>
</tr>
</tbody>
</table>

The two most energy intensive leased space sectors are office and retail, but proposals are welcome to include additional building types. Office buildings in Denver are 51% Class A, 41% Class B and 8% Class C by square footage according to CoStar.
**Target Market Actors**
What market actors are critical to target with this project and why?

The leased space market has many actors in it including the following:
- Tenants
- Tenant rep brokers
- Property Managers
- Professional development services (architects, designers, space planners)
- Project Managers
- Attorneys
- Building Owners and Developers

**Barriers**
What are the greatest barriers you will need to overcome to be successful in this project?
- Are leases predominantly triple net or gross today in your target building types and classes? What challenges, if any, will that present?
- Of the critical target market actors you have identified, who will be the most resistant to change? What will engage them and inspire them to change?
- Other Barriers?

**Engagement Plan**
The proposal should include a complete action plan for what work will be completed month by month over the 3 years of the project. Questions that should be answered include:
- What program will you create?
  - Training. How will you train each target market actor?
  - Tools. How will you create tools to help each target actor in the leasing market?
  - Engagement and Recognition. How will you reach, incent, celebrate target market actors?
  - Case studies. What role do you see case studies playing in the program?
  - Other

- What materials will be created to implement that program?
  - Website. The contractor will entirely revamp the current Lease for Efficiency Challenge website to meet your needs for this program. This page will be the long term home for this work. In addition, a separate micro-site off of denvergov.org might be considered, but would require approval from the City communications department – approval will not be something we can guarantee until work is underway. Please submit a proposal that can work within the constraints of the single denvergov.org page if necessary.
  - Guides, factsheets, hand-outs. (All materials will be branded as City and County of Denver materials and all work completed will be the intellectual property of the City.)
- How will you make this complicated topic simple and engaging? Where are there opportunities to have one tool, training, or material serve many actors and purposes?
- How will you refine the program and materials over time as you learn from surveys and stakeholder engagement?

**Communications Strategy**
The proposal should include a plan for how media and events will be used to showcase leaders and make them into models that everyone in the market wants to copy.
- What will your media strategy be? (Social, earned, and/or paid media.)
- What will your events schedule be?
- How will your communications plan deliver the result by the end of 3 years? We want all market actors to say energy smart leasing is simply the standard way leasing is done in Denver.
- How will you produce a final report in year 3 about the program? The final report should include details what the program did, how you did it, what change was seen in the market, and lessons learned. The target audience would be both program participants and the Denver community who want to understand what we accomplished as well as other Cities who might want to replicate the program in the future.

The contractor’s staff will be given City and County of Denver email addresses and will conduct all outreach on behalf of the City.

Staffing Plans and Existing Relationships with Market Actors
How will you reach all the critical target market actors?

Proposers should demonstrate they have the relationships to successfully execute their plan. City staff have contact information for the property managers at most buildings over 25,000 sq ft from the Energize Denver benchmarking requirement. They may be avenues to reach tenants if high performing buildings are given tools to brag to their tenant reps about performance. City staff also have a handful of contacts in each of the other categories to whom they can make introductions, but the contractor will ideally have well established relationships with many of the critical market actors.

Impact Measurement and Reporting Expectations
The proposal should include a complete plan for how success will be measured month by month over the 3 years of the project. Early in the project success may be measured in program design, material creation, media, meetings and events. By the end of the first year success should also be able to be measured in terms of the increase in the use of energy smart leasing practices in Denver. A baseline will also need to be established early regarding the current use of energy smart leasing practices in Denver so that market adoption can be measured over time.

A monthly progress report will be expected, along with monthly check in with City staff. At times during the project check-in’s and updates may need to be more frequent - such as during kick-off phases or times when any major shifts in strategy are being made.

- What are the handful of metrics that could be tracked easily to give a thorough but efficient regular update that is also useful for your program management?
- How will success be measured at the end of year 1, year 2 and year 3?
  - Would you conduct a market survey at the start of the project to understand current leasing practices? If so, how would the survey be done? And, how would the survey be updated to know if you are making progress at the end of each year? (The survey might be formal, or just an informal part of conversations with a representative set of market actors.)
  - If not through a survey how will you measure the current state and the adoption of energy smart leasing over time?
- The proposal shall include a pilot phase the first year. What will be the go/no go deciding factors for if the work should continue and be further scaled up after the first year? What target metrics will you achieve by the end of the pilot phase?
Timeline and Budget
Responses to this RFP will be accepted through October 19th, 2018. Succinct proposals are appreciated. Proposals should be submitted via email to katrina.managan@denvergov.org. The City's selection panel will review the responses and conduct interviews with the leading candidates. The winner of the contract will then work with City staff through the 6-8 week City contracting process. Our goal is to have the contract in place and work underway in January, 2019.

Budget
Year 1 Pilot (2019): $125,000
Year 2 Scale (2020): $100,000
Year 3 Scale (2021): $100,000
Total $325,000

Please provide a detailed budget for how you plan to spend the money. Funds can possibly be shifted between the years. Please state in your proposal if you believe the funding would best be spread differently over the three years. The proposal should spell out how much of the contract value will be spent doing outreach and engaging market actors vs time spent by staff planning and managing the outreach.

If you have ideas on how you would bring additional value to the project through sponsorships, pro-bono work, or your own funding please what those are and what additional value you believe they will bring.

Questions and Partnerships
Please submit any questions via email to katrina.managan@denvergov.org. All questions and answers will be made available for all to review in the following google doc:
https://docs.google.com/document/d/18_ClyL-61vwVRB6jSt9kAGjH8sURBN_NtjTVXt3sMVQ/edit?usp=sharing

Applications made by multiple entities in partnership are welcome. If you are possibly interested in making a proposal, but you are interested in finding a partner who can complement your own skill sets, please add yourself to the following Partnership Finder google sheet:
https://docs.google.com/spreadsheets/d/1H1hfE-9KMxNyxftNHxyP0cUz2YZtsglmDV3E5m0L8/edit?usp=sharing

Additional Requirements of the Department
1. A timely submitted proposal.
2. List of Qualifications and References
3. List of team members and “bios” of each member contributing to project.
4. Pricing Structure, including hourly rates for team members, an estimation of the number of hours required perform SOW.
5. If applicable – Proposer’s Questions, Issues, or Modifications Regarding Sample Agreement (attachment 1A).
6. Diversity Disclosure – complete/file the form found here:
7. Form W9 – (Request for Taxpayer Identification Number and Certification).
8. Verification that entity is registered and in good standing with the State of Colorado.

Attachments on Subsequent pages
AGREEMENT

THIS AGREEMENT is made between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the “City”) and ________________, a ________________, [with its principal place of business located at/ doing business at] ____________________________ (the “Contractor”), jointly “the parties”.

The parties agree as follows:

1. **COORDINATION AND LIAISON**: The Contractor shall fully coordinate all services under the Agreement with the Executive Director of the Department of Environmental Health, (“Executive Director”) or, the Executive Director’s Designee.

2. **SERVICES TO BE PERFORMED**:
   a. As the Executive Director directs, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on Exhibit A, the Scope of Work, to the City’s satisfaction.
   b. The Contractor is ready, willing, and able to provide the services required by this Agreement.
   c. The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

3. **TERM**: The Agreement will commence on ________, 20__ and will expire on ____________________ (the “Term”).

4. **COMPENSATION AND PAYMENT**:
   a. **Fee**: The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under the Agreement the amount of ____________ Dollars ($_________) for fees. Amounts billed may not exceed the rates set forth in Exhibit ___.
   b. **Reimbursable Expenses**: There are no reimbursable expenses allowed under the Agreement. All of the Contractor’s expenses are contained in the rates in Exhibit B.
   c. **Invoicing**: Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all supporting documentation
required by the City. The City’s Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

d. **Maximum Contract Amount:**

   (1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed __________________ ($_______) (the “Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in Exhibit A. Any services performed beyond those in Exhibit A are performed at Contractor’s risk and without authorization under the Agreement.

   (2) The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. **STATUS OF CONSULTANT:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

6. **TERMINATION:**

   a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Executive Director.

   b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor’s business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.
c. Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor’s possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination “DRAFT-INCOMPLETE”.

7. **EXAMINATION OF RECORDS**: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

8. **WHEN RIGHTS AND REMEDIES NOT WAIVED**: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

9. **INSURANCE**:  
a. **General Conditions**: Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies be canceled or
non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement and shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. **Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as Exhibit [___], preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. **Additional Insureds:** For Commercial General Liability, Auto Liability and Professional Liability, Contractor and subcontractor’s insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. **Waiver of Subrogation:** For all coverages required under this Agreement, Contractor’s insurer shall waive subrogation rights against the City.
e. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers’ Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

f. **Workers’ Compensation/Employer’s Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer’s Liability insurance with limits of $100,000 per occurrence for each bodily injury claim, $100,000 per occurrence for each bodily injury caused by disease claim, and $500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor’s officers or employees who may be eligible under any statute or law to reject Workers’ Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

g. **Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with limits of $1,000,000 for each occurrence, $1,000,000 for each personal and advertising injury claim, $2,000,000 products and completed operations aggregate, and $2,000,000 policy aggregate.

h. **Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with limits of $1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

i. **Professional Liability (Errors & Omissions):** Contractor shall maintain limits of $1,000,000 per claim and $1,000,000 policy aggregate limit. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

j. **Additional Provisions:**
(i) For Commercial General Liability, the policy must provide the following:
   (a) That this Agreement is an Insured Contract under the policy;
   (b) Defense costs are outside the limits of liability;
   (c) A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and
   (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(ii) For claims-made coverage:
   (a) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
   (b) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

10. **DEFENSE AND INDEMNIFICATION**

   a. Contractor agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

   b. Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.
c. Contractor shall defend any and all Claims which may be brought or threatened against City and shall pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City will be in addition to any other legal remedies available to City and will not be the City’s exclusive remedy.

d. Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

11. **TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City’s prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

12. **ASSIGNMENT; SUBCONTRACTING:** The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Executive Director’s prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

13. **INUREMENT:** The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.
14. **NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

15. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City’s Charter and the Denver Revised Municipal Code.

16. **SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

17. **CONFLICT OF INTEREST:**
   a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City’s Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.
   b. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor’s own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

18. **NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:
Executive Director of the Department of Public Health & Environmental or Designee
200 West 14th Avenue, Dept. 310
Denver, Colorado 80204

With a copy of any such notice to:
Denver City Attorney’s Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

19. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

b. The Contractor certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Contractor also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program.
(4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

20. DISPUTES: All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.

21. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of
Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

22. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

23. **COMPLIANCE WITH ALL LAWS**: Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

24. **LEGAL AUTHORITY**: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

25. **NO CONSTRUCTION AGAINST DRAFTING PARTY**: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

26. **ORDER OF PRECEDENCE**: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.
27. INTELLECTUAL PROPERTY RIGHTS: The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Contractor shall disclose all such items to the City unless the Executive Director directs otherwise in writing. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, et seq., the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

28. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor’s obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

29. ADVERTISING AND PUBLIC DISCLOSURE: The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor’s advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

30. CONFIDENTIAL INFORMATION:
a. **City Information:** Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent consultant would to protect its own proprietary or confidential data. “Proprietary Data” shall mean any materials or information which may be designated or marked “Proprietary” or “Confidential”, or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

31. **CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

32. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

33. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

34. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the
Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
EXHIBIT A
SCOPE OF WORK
EXHIBIT B
RATES [BUDGET]
EXHIBIT C
CERTIFICATE OF INSURANCE
City and County of Denver
Contractor
Certificate of Insurance

Contractors, please provide this sample certificate to your insurance agent or broker
Certificates must mirror this sample

Note the Additional Insured special instructions below

*The ‘description’ box must only contain project/contract detail such as the contract name and number and “As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insured” with regards to the appropriate policies ONLY.

QUALIFYING LANGUAGE SUCH AS “SUBJECT TO THE TERMS AND CONDITIONS OF THE POLICY” and “IF REQUIRED PER WRITTEN CONTRACT” CAN NOT BE ADDED.

DO NOT ATTACH ADDITIONAL INSURED ENDORSEMENTS OR POLICIES

If any additional language is added to this section, the certificate will be rejected. If the requirements can not be complied with, we reserve the option to move on to another contractor.
A completed copy of the “Diversity and Inclusiveness in City Solicitations Request Form” must be submitted electronically as part of your proposal. Failure to include this form will render your proposal non-responsive.

Definitions

**Diversity:** Diversity refers to the extent to which a contractor/consultant has people from diverse background or communities working in its organization at all levels, is committed to providing equal access to business opportunities and achieving diversity in procurement decisions for supplies, equipment, and services, or promotes training and technical assistance to diverse businesses and communities such as mentoring and outreach programs and business engagement opportunities.

**Inclusiveness:** Inclusiveness, for purposes of Executive Order No. 101, includes the extent to which a contractor/consultant invites values, perspectives and contributions of people from diverse backgrounds and integrates diversity into its hiring and retention policies, training opportunities, and business development methods to provide an equal opportunity for each person to participate, contribute and succeed within the organization’s workplace. Inclusiveness also includes the extent to which businesses have an equal opportunity to compete for new business opportunities and establish new business relationships in the private and public sector.

Requirements

Using the link provided below, please complete the “Diversity and Inclusiveness in City Solicitations Information Request Form”. The information provided on the Diversity and Inclusiveness in City Solicitations Request Form will provide an opportunity for City contractors/consultants to describe their own diversity and inclusiveness practices. Contractors/Consultants are not expected to conduct intrusive examinations of their employees, managers, or business partners in order to describe diversity and inclusiveness measures. Rather, the City simply seeks a description of the contractor/consultant’s current practices, if any.

Diversity and Inclusiveness information provided by City contractors/consultants in response to City solicitations for services or goods will be collated, analyzed, and made available in reports consistent with City Executive Order No. 101. However, no personally identifiable information provided by or obtained from contractors/consultants will be in such reports.

For additional questions or information, please email us at: XO101@denvergov.org (please indicate XO 101 in your subject line).

**NOTE:** This solicitation is being facilitated by the: “Department of Public Health and Environment”

Please use link below for filing:

“Diversity and Inclusiveness in City Solicitations Information Request Form” HERE
SMALL, MINORITY & WOMEN OWNED BUSINESS PARTICIPATION:

The Goods and/or Services being requested in this solicitation are covered under Article V of Chapter 28 of the Denver Revised Municipal Code, which is designed to increase opportunities for Small (SBE), Minority (MBE) and Women Owned (WBE) Business Enterprises in the business of the City. For this solicitation, the City encourages, but does not require, participation by or independent partnerships with currently certified SBEs, MBEs, and WBEs.

The City encourages the use of qualified small business concerns that are owned and controlled by economically or socially disadvantaged individuals, including but not limited to, African Americans, Hispanics, Native Americans (American Indians), Asians, and/or women. Proposers are encouraged, with respect to the goods or services to be provided under this procurement, to use a process that includes small business concerns, including minority and woman owned companies, when considering and selecting any subcontractors or suppliers.

Voluntary disclosure of participation by or independent partnerships with certified SBE, MBE and WBE firms in your proposal, using the attached Letter of Intent, (RFP Attachment No. _____ ) is encouraged, however, the City will not evaluate and score any response or lack of a response for contracting or purchase order award purposes.

All proposers that intend to use subcontractors, sub consultants, or suppliers with their proposals will also provide: 1) a list of all such subcontractors, sub consultants, and/or suppliers; 2) a separate listing of all subcontractors, subconsultants, or suppliers that identified themselves as being a member or members of the categories listed above, if such information is provided; 3) and a statement that the proposals of all identified subcontractors, sub consultants, and/or suppliers were fully reviewed in detail on the same basis as that of other subcontractors, sub consultants, and/or suppliers not falling within those categories.
**LETTER OF INTENT (LOI)**
**PURCHASING / GOODS & SERVICES**
**FOR GOALS & INDEPENDENT PARTNERSHIPS**

**INSTRUCTIONS FOR COMPLETION & SUBMISSION:**
- All lines must be completed or marked N/A for Not Applicable
- Submit the attached completed checklist with this letter
- Submit a copy of the certified firm current certification letter
- **RFPs:** LOIs must be submitted with Proposal.

### Bid/RFP No.:  
**Procurement Title:**

<table>
<thead>
<tr>
<th>A. The Following Section Is To Be Completed by the Bidder/Proposer</th>
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<tbody>
<tr>
<td>This Letter of Intent Must be Signed by the Bidder/Proposer and M/WBE or SBE.</td>
<td></td>
</tr>
<tr>
<td>Name of Bidder/Proposer:</td>
<td>Self-Performing (Certified Vendor Only)</td>
</tr>
<tr>
<td>☐ Yes ☐ No</td>
<td>Phone:</td>
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<tr>
<td>Contact Person:</td>
<td>Email:</td>
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<tr>
<td>Fax:</td>
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<tr>
<td>Address:</td>
<td>City:</td>
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<td>State: Zip:</td>
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</table>

| B. The Following Section is To Be Completed by the M/WBE or SBE, at any Tier |  |
| This Letter of Intent Must be Signed by the M/WBE or SBE and Bidder/Proposer |  |
| Name of Certified Firm: | Phone: |
| Contact Person: | Email: |
| Fax: |  |
| Address: | City: |
| State: Zip: |  |

Please check the designation(s) which apply to the certified firm.  
M/WBE ( ) SBE ( )

A Copy of the M/WBE or SBE Letter of Certification must be Attached

Identify the scope of the work to be performed or supply item that will be provided by the M/WBE or SBE. **On unit price bids only, identify which bid line items the M/WBE or SBE scope of work or supply corresponds to.**

Check one that applies to the M/WBE or SBE:

- [ ] Subcontractor
- [ ] Supplier
- [ ] Distributor
- [ ] Broker
- [ ] Packager
- [ ] Manufacturer
- [ ] Manufacturer’s Rep

**Bidder/Proposer** intends to utilize the aforementioned **M/WBE or SBE** for the Work/Material described above. The cost of the work/material and percentage of the total subcontractor **M/WBE or SBE** bid amount is:

$  

%  

Bidder/Proposer Signature:  
Date:  
Title:  

**M/WBE, SBE or Self-Performing**

Firm’s Signature:  
Date:  
Title:  

If the above named Bidder/Proposer is not determined to be the successful Bidder/Proposer, this **Letter of Intent** shall be null and void.

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Office of Economic Development  
Division of Small Business Opportunity  
Compliance Unit  
201 West Colfax Ave., Dept. 907  
Denver, CO 80202  
Phone: 720-913-1999

LETTER OF INTENT (LOI)  
**PURCHASING / GOODS & SERVICES**  
**FOR GOALS & INDEPENDENT PARTNERSHIPS**  

**INSTRUCTIONS FOR COMPLETION & SUBMISSION:**
- All lines must be completed or marked N/A for Not Applicable
- Submit the attached completed checklist with this letter
- Submit a copy of the certified firm current certification letter
- **RFPs:** LOIs must be submitted with Proposal.
**Letter of Intent (LOI) Checklist**

All lines must be completed or marked N/A for Not Applicable
Submit the attached completed checklist with this letter.

<table>
<thead>
<tr>
<th>Completed ✓</th>
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<tbody>
<tr>
<td>☐</td>
<td>Procurement Number &amp; Project Name</td>
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<tr>
<td>☐</td>
<td><strong>Section A</strong>: Name of Bidder/Proposer, Contact Person, Address, City, State, Zip, Phone, Email</td>
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<tr>
<td>☐</td>
<td><strong>Section B</strong>: Name of Certified Firm, Contact Person, Address, City, State, Zip, Phone, Email</td>
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<td>☐</td>
<td>Designation checked for M/WBE or SBE</td>
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<td><strong>Indirect Utilization</strong>: Name of subcontractor/subconsultant, supplier or broker is indicated if using the participation of a 2nd tier subcontractor/subconsultant, supplier or broker.</td>
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<td>☐</td>
<td>Scope of work performed or item supplied by M/WBE or SBE</td>
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<td>☐</td>
<td>Line items performed, if line-item bid.</td>
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<tr>
<td>☐</td>
<td>Copy of M/WBE, or SBE Letter of Certification Attached</td>
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<tr>
<td>☐</td>
<td>Designation checked for Subcontractor, Supplier, Distributor, Broker, Manufacturer, Manufacturer’s Representative, or Packager</td>
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<td>If project is a hard bid…</td>
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<tr>
<td>☐</td>
<td>Bidder has indicated dollar amount for value of work going to Subcontractor, Supplier, Distributor, Broker, Manufacturer, Manufacturer’s Representative, or Packager</td>
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<tr>
<td>☐</td>
<td>Bidder has indicated percentage for value of work going to Subcontractor, Supplier, Distributor, Broker, Manufacturer, Manufacturer’s Representative, or Packager</td>
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<td>If project is an RFP/RFQ…</td>
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<td>☐</td>
<td>Consultant has indicated percentage for value of work going to Subcontractor, Supplier, Distributor, Broker, Manufacturer, Manufacturer’s Representative, or Packager &amp; contact name for M/WBE or SBE.</td>
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<td>Fee amount if fee amount of work to be performed is requested.</td>
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<td>Bidder/Proposer’s Signature, Title &amp; Date</td>
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<tr>
<td>☐</td>
<td>M/WBE or SBE Firm’s Signature, Title and Date</td>
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**REMEMBER**  
Bidder/Proposer must include the LOI at within the Bid/Proposal when submitted to Purchasing.

The complete and accurate information that is required for the Letter of Intent is based on the following sections of the Ordinance:  Section 28-126 through -137 and Section 28-151.  Failure to complete this information on the Letter of Intent (LOI) may automatically deem a bid or proposal non-responsive.