

City of Aurora

Internal Services Department
Purchasing Services, Suite 4400
15151 E. Alameda Parkway
Aurora, Colorado 80012
Phone: 303-739-7100
Fax: 303-739-7509
www.auroragov.org



Request for Proposal: R-1456
Class/Item: 906-27, 906-28, 910-16, 918-41, 925-34, 961-31
Date: May 25, 2010

Proposal Deadline: 3:00 P.M., June 11, 2010, in the Office of Purchasing Services

REQUEST FOR PROPOSALS

The City of Aurora, Colorado is seeking written proposals from qualified consultants to complete an Energy Assurance Plan. This project is funded by a grant from the American Recovery and Reinvestment Act. Consultants should have considerable experience in developing energy assurance plans for state and local governments.

Five (5) copies of the proposals and one complete electronic copy (in Microsoft Word 2007 or Adobe Acrobat reader format) on compact disk or flash drive will be required. The proposals shall be retained by the City of Aurora and cannot be returned.

Proposals will be accepted at the Office of Purchasing Services, 15151 East Alameda Parkway, Suite 4400, Aurora, Colorado 80012, until 3:00 p.m., June 11, 2010. No late proposals will be considered.

Proposals shall consist of:

ENERGY ASSURANCE PLAN Including Services Required Under The American Recovery and Reinvestment Act (ARRA) of 2009

Pre-Proposal Conference

A pre-proposal conference is scheduled for **June 3, 2010 at 10:00 a.m.** in the Aurora Municipal Building, 15151 E. Alameda Parkway in Aurora, Colorado. Please check in with the Office of Purchasing Services in Suite 4400 and you will be directed to the location of the Pre-Proposal Conference. The purpose of the pre-proposal conference is to provide assistance to interested consultants in the interpretation of the Request for Proposal (RFP), Scope of Services, Sample Contract, and other technical and contractual matters. Attendance at the pre-proposal conference is not mandatory, but is highly recommended.

Tentative RFP Schedule

May 25, 2010	RFP advertised
June 3, 2010	Pre-proposal conference at 10:00 a.m.
June 4, 2010	Deadline for receipt of questions, 5:00 p.m.
June 11, 2010	Proposals due to the Office of Purchasing Services, 3:00 p.m.
June 18, 2010	Notification of short listed firms
Week of June 21, 2010	Discussions with top ranked consultants
June 25, 2010	Request for Best and Final Offers
July 1, 2020	Best and Final Offers Due
July 2, 2010	Selection of top-ranked consultant
July 9, 2010	Council Approval
July 16, 2010	Award Actions Complete

Selection Process

This Request for Proposal is being solicited under a multi-step procurement procedure consisting of three phases. The first step requires all firms to submit proposals addressing only those items cited in Section II, Proposal Submittal Requirements, of this Request for Proposals. Proposals will be evaluated and ranked based on the evaluation criteria outlined in Section III, Proposal Evaluation to select a short list of consultants for further evaluation. Only those firms who are placed on the short list on the basis of the evaluation criteria will be considered for the second phase.

During the second phase, discussions may be held with each of the short list of firms regarding any aspect of the firm's proposal. If discussions are held, at the end of the discussion process, the City shall request the submission of a sealed Best and Final Offer (BAFO) from each of the short-listed firms. The Selection Committee will then reevaluate the proposals based on the evaluation criteria outlined in Section III, Proposal Evaluation, taking into consideration the information provided in the BAFOs, to select the top ranked firm.

The staff's recommendation for contract award will be sent to Council for approval. Upon Council approval of the award, the contract is signed and work may begin.

Project Funding

This project will be funded from the American Recovery and Reinvestment Act of 2009 through a grant from the U.S. Department of Energy as part of Aurora's allocation under the Energy Efficiency and Conservation Block Grant. The cost of the services is expected to be within the range of \$70,000.00 to \$88,000.000, inclusive of all expenses. Federal grant requirements are included in later Sections and Attachments of this RFP and the Sample Professional Service Agreement. Federal requirements shall also include any recent stipulations regarding ARRA funding.

Confidentiality

Proposals submitted to the City for consideration shall be subject to the Colorado Open Records Law, Section 24-72-201, et seq., C.R.S. Any confidential information in the firm's proposal shall be identified as such. If any information is considered to be confidential, the firm shall agree to indemnify the City of Aurora for any and all attorney fees that the City may incur in defending the withholding of such information by signing and returning the letter found in Section VII of this Request for Proposal. Should the City receive a request for the release of any information in the firm's proposal in accordance with the open records law, the City will release only that information which has not been identified as confidential

so long as Section VII has been signed and returned by the firm along with the proposal. Should the firm choose not to sign and return Section VI, all information in the firm's proposal shall be considered releasable by the City. Firms will be notified of any open records requests prior to the release of such information. If, in the opinion of City's legal counsel, the City is nonetheless compelled to disclose any portion of such information to anyone or else stand liable for contempt or suffer censure or penalty, the City may disclose such information without liability.

Licenses

The successful consultant, without additional expense to the City, shall be responsible for obtaining any necessary licenses and for complying with any applicable federal, state, and municipal laws, codes and regulations in connection with the prosecution of the services. The successful consultant and any subcontractors, if applicable, will be required to obtain an Aurora Business License. The successful consultant shall provide the Aurora Business License number(s) to Bryn Fillinger, Contract Administrator, within thirty (30) days of contract award.

Addenda to the Request for Proposal

The City of Aurora reserves the right to amend this Request for Proposal by an addendum at any time prior to the date set for receipt of proposals. Addenda will be posted on the Rocky Mountain E-Purchasing System web site as soon as available and **shall be the responsibility of the consultant to obtain all addenda**. Consultants registered for the paid notification service on the Rocky Mountain E-Purchasing System shall be notified of addenda either by fax or email depending on the service that they have subscribed to. It shall be the responsibility of consultants registered for the no charge, no notification service on the Rocky Mountain E-Purchasing System to monitor the Rocky Mountain E-Purchasing System for any addenda. If revisions are of such magnitude to warrant, in the City of Aurora's opinion, the postponement of the date for receipt of proposals, an addendum will be issued announcing the new date.

Additional Information

Proposals will be considered only from consultants or individuals that are soundly established in an appropriate business, who are financially responsible, and who have the resources and ability to offer services in a professional and expedient manner. The City may request additional information as deemed necessary. Failure to provide such information may result in the proposal being considered non-responsive.

The City of Aurora reserves the right to reject any and all proposals, to waive any informalities in the proposals received, and to accept the proposals deemed most advantageous and in the best interests of the City.

Questions

Written questions regarding this Request for Proposals shall be submitted to Porter Ingram, Porter Ingram, by e-mail to pingrum@auroragov.org and to Bryn Fillinger, Purchasing Services, at bfilling@auroragov.org. **Questions will not be accepted after 5:00 p.m. on June 4, 2010.** To assure equitable treatment of all interested consultants, telephone inquiries about the project are not allowed. Answers to all questions will be provided in a written addendum to this RFP.

CONSULTANT ACCEPTANCE OF THE REQUEST FOR PROPOSALS

By submitting a proposal in response to this Request for Proposals, the Consultant accepts all of the conditions described in this Request for Proposals, including the Professional Services Agreement, unless otherwise noted in the Consultant's proposal, and agrees to abide by all final decisions made by the City.

Bryn Fillinger
Contracts Administrator
Office of Purchasing Services
Ph: (303) 739-7501

**Request for Proposal – R-1456
Energy Assurance Plan**

Attachments:	Section I	Scope of Services
	Section II	Proposal Submittal Requirements
	Section III	Proposal Evaluation
	Section IV	Special Conditions
	Section V	Sample Professional Services Agreement including the Special Provisions from the City of Aurora's Recovery Act Grant for an Energy Assurance Plan
	Section VI	Request for Business Size Status
	Section VII	Letter of Indemnification for Withholding Confidential Information
	Section VIII	W-9 Request for Tax Payer Identification

SECTION I

SCOPE OF SERVICES

ENERGY ASSURANCE PLAN Including Services Required Under The American Reinvestment and Recovery Act (ARRA) of 2009

Project Description

The contractor/consultant shall provide contract services to develop an Energy Assurance Plan (EAP) for the City of Aurora, Colorado. This EAP is the deliverable that the city shall provide to the US Department of Energy as a result of being a recipient of a Local Energy Assurance Planning (LEAP) Grant. The EAP shall be developed in accordance with the Local Government Energy Assurance Guidelines developed by the Public Technology Institute. Contractor must have demonstrated experience in developing energy assurance plans for state and local governments. Contractor/Consultant must also have expertise in Smart Grid technology and implementation of low/no cost techniques related to Smart Grid technology and energy assurance planning. The Contractor shall provide all necessary services, qualified personnel, equipment and supplies to manage all aspects of the project.

The contractor shall perform work under this Scope in conformance with all applicable local, state and federal laws and regulations. Tasks and deliverables to be performed include the following:

Task #1: Review the city's critical operations (consisting of its facilities, systems and components) and identify potential human and natural threats to these operations. The 10 components of critical infrastructure protection from the National Association of State Energy Officials' *State Energy Assurance Guidelines* should be used to complete this task. They are:

1. Critical (physical) Assets
2. Threat Environment;
3. Policies and Procedures;
4. Physical and Cyber Security;
5. Operations Security;
6. Information System Network Architecture and Penetration Testing;
7. Consequence Analysis;
8. Risk Characterization;
9. Protection of Sensitive Information; and
10. Alternative Energy Sources.

This task will also include interviewing key city staff, developing an inventory of the city's facilities and analyzing these facilities for improved energy assurance potential. The consultant will coordinate the effort to prepare the city's EAP by collaborating with a wide range of local, state and federal entities.

Another component of this task will involve identifying potential options for increasing the use of low cost/no cost renewable energy and Smart Grid technologies and equipment within the city. Power purchase agreements, partnerships with other jurisdictions and the electric utility, using Energy Service Companies and similar alternatives should be explored.

Deliverable #1a: Prepare a draft document that provides the results of Task #1. This deliverable is a draft of the city’s EAP. The selected contractor may be asked to support staff presentations at one city policy committee meeting for a total of 3 hours. For the purposes of estimating, the selected contractor will also support a presentation at one public workshop for a total of 3 hours.

Deliverable #1b: City staff’s internal review process may result in multiple reviews of the draft EAP before it is sent to higher levels of city management. This deliverable involves making changes to the draft EAP based on this internal review process. Estimated time for this deliverable is 10 hours. City staff may provide some of the edits to reduce consultant expenses.

Task #2 Review and incorporate comments from city staff, management and elected officials to prepare the Draft Final EAP, For the purposes of estimating, the selected consultant may be asked to support city staff presentations at one city policy committee meetings and one city council study session, for a total of 5 hours.

Deliverable #2: Deliver a Draft Final EAP to the city.

Task #3 Incorporate any comments received through the City Council approval process and submit Draft Final EAP to city staff for review. Selected contractor may be asked to support staff presentations at two City Council meetings for a total of 6 hours.

Deliverable #3: Deliver a final EAP to the city.

Task #4 Prepare a plan and budget for executing the two required emergency exercises outlined in the Statement of Project Objectives. For the purposes of estimating, assume one of these exercises is a table top exercise and one is a larger city-wide exercise involving the coordination of multiple city, state and federal departments and agencies. The city-wide exercise may be coordinated with a planned exercise of the city’s Office of Emergency Management to reduce consultant expenses and stay within the grant’s budget for this task. The contractor will be responsible for ensuring the success of the two required emergency exercises and will serve as the lead coordinator during the implementation of these exercises.

Deliverable #4: The contractor will provide a summary report including a description of the exercises and any outcomes or other relevant and appropriate information.

Invoicing

Due to the reporting requirements of the grant, invoices shall be submitted to the City seven days after the close of each month.”

Grant Administration

FUNDED BY THE AMERICAN RECOVERY & REINVESTMENT ACT OF 2009



The City of Aurora (the City) is receiving funding for this project through The American Recovery and Reinvestment Act (ARRA). ARRA requires greater accountability and transparency for grant financial and performance reporting. Therefore the City requires the consultant to review and recommend contractor provided information including but not limited to (in hard copy and electronic format):

1. Whistleblowers (Section 1511)
 - a. Must post notice of this portion of act at all project location funded by ARRA
2. ARRA Reporting (Section 1512) which requires timely reporting of:
 - a. Performance
 - b. Financial
 - c. Job Creation
 - d. Vender DUNS number or Name, and zip code of Headquarters if a DUNS number is not available;
 - e. Expenditure amount:
 - f. Expenditure description; and
 - g. Jobs Created and Retained
3. Buy American provision (Section 1605): DOE Exemptions
4. Davis-Bacon prevailing wage provisions (Section 1606):
5. Employ American Workers (Section 1611):

State of Colorado Supplemental Provisions for Contracts, Grants, and Purchase Orders Using Funds Provided under the American Recovery and Reinvestment Act of 2009 as of 8-21-09: see attached Transparency and Accountability reporting (Section 1512).

The City will be required to report these and possibly additional items monthly and quarterly to the Prime Recipient or directly to the Federal Government. In order to assist with this reporting the vendor will be required to submit information on a timely basis to avoid non-compliance. Specific ARRA requirements will be addressed in the final contract.

SECTION II PROPOSAL SUBMITTAL REQUIREMENTS

The main body of the proposal shall include responses to the following submittal requirements:

- ✓ General Information
- ✓ Team Organization
- ✓ Key Project Personnel (including résumés)
- ✓ Past Record of Performance and Experience on Similar Projects
- ✓ Project Management
- ✓ Project Understanding
- ✓ Scope of Services and Schedule
- ✓ Financial Information

The City shall be the sole judge of whether or not a Consultant demonstrates the necessary organization and personnel, management, and technical understanding to successfully complete all elements related to this RFP.

Additional information regarding the submittal requirements is provided below. The main body of the qualifications shall be kept to a maximum of 20 single-sided pages, minimum 11 point font, not including résumés, exhibits, or other extraneous information. Up to 2 of the 20 pages may be 11 x 17 inches in size; the remainder must be no larger than 8.5 x 11 inches in size. Submittals that exceed the 20-page maximum shall deem the consultant nonresponsive.

Information included in addition to the main body of the proposals shall be identified as such and may include résumés, exhibits, or other extraneous information. Résumés and project descriptions shall be printed on 8.5" x 11" paper, kept to a maximum of 2 pages each, single-sided, minimum 10-point font. The Project Manager's résumé may be up to 5 single-sided pages, on 8.5" x 11" paper, minimum 10-point font.

Project Team Organization

Provide an organizational chart showing the proposed team staffing structure for this project. Designate the lead firm and Project Manager. Include disciplines anticipated to be required or any key personnel believed to demonstrate the ability to complete the scope of services for this project. Show percentage of time each proposed team member would have available for this project.

Key Project Personnel

Proposals shall include a detailed résumé for the Project Team's *Project Manager* that includes, as a minimum, the information specified below. For projects listed, include owner's name, contact reference name and phone, original schedule and budget, schedule and budget at completion. For other *Key Project Personnel* to be assigned to this project, provide summary résumés.

Past Record of Performance and Experience on Similar Projects

Provide a discussion regarding completed or current projects and a brief written description for projects demonstrating that the project team has worked on projects similar to this one. Written descriptions of projects should include the owner's name, owner contact, contact phone number. Projects should include those managed by the *Team* that best demonstrate an understanding and familiarity with projects that are of similar scope and size to this project.

Project Management

Provide information summarizing the management team's experience in the following areas:

- Approach. Briefly describe your approach to preparing an EAP.

- **Scheduling.** Briefly describe your work scheduling capabilities, policies, and systems.
- **Cost Management.** Briefly describe your cost tracking capabilities, policies, and system.
- **Quality Control/Quality Assurance.** Describe your approach to project quality control and quality assurance construction.
- **Project Management/Executives.** Describe the duties and levels of project management experience existent within your firm. Attach résumés of project personnel you will assign to the project. In addition, please provide the name and attach the résumé of the Project Executive you would assign to the project. One key point of contact is critical to the success of this project.
- **Conflicts of Interest.** Are there any potential conflicts of interest with this proposed scope of work?

References

A list of three (3) client references shall be provided for similar professional services. References shall include descriptions of previous work and names and telephone numbers for contact persons from the owner and the team on each project. The references should include evidence of energy audit/renewable energy experience and experience with negotiated lump-sum contracts or other projects where price/scope negotiation has taken place as part of the project. **The City shall be the sole judge of whether or not the team demonstrates the necessary abilities and experience.**

Project Understanding

Provide a description of your team's general approach to the successful completion of an EAP. Please state your understanding of the project and identify any issues you believe to be "critical" to the timely (on-budget) success of the project.

Scope of Services and Schedule

Provide a scope of services as outlined in Section 1. Provide a schedule in bar chart or other suitable form clearly indicating work to be performed and completion dates.

Price

Detailed price proposal to perform tasks outlined in the proposed Scope of Work (this is not included in the page limit). Costs shall be presented in tabular format and must match the scope, broken down into the individual tasks defined within the scope. Provide appropriate labor rate categories and cost/rate category and expense table(s).

**Request for Proposal – R-1456
Energy Assurance Plan**

The undersigned further states that this proposal is made in good faith and is not founded on, or in consequence of, any collusion, agreement or understanding between oneself or any other interested party.

OFFICIAL ADDRESS:

(FIRM NAME)

(TYPE OR PRINT PRINCIPAL'S NAME)

(SIGNATURE OF PRINCIPAL)

PHONE: _____

(TITLE)

(DATE)

(PHONE)

(EMAIL)

NOTE:

IF REMITTANCE ADDRESS IS OTHER THAN THAT STATED ABOVE, PLEASE FURNISH THE REMITTANCE ADDRESS:

SECTION III PROPOSAL EVALUATION

Interested firms will be evaluated on the criteria listed below.

Firms will be evaluated based on their exhibited understanding and familiarity with the project issues as demonstrated by the firm's unique perspective and presentation on the proposed strategies, approach, team structure, experience/expertise, and schedule. The selection committee will evaluate the proposals based on the following criteria.

1. Firm Information: Exhibited strength of firm to complete this project based on the information provided in the proposal. (15 points)
2. Project Understanding: Project approach and scope of work, including demonstrated understanding of technical and non-technical issues associated with the study, understanding of City policies and procedures, and value added by the firm's proposed approach. (20 points)
3. Strength of Project Team, including Project Manager; project management structure; QA/QC support; technical discipline leads, including support project engineers and other professional staff; subconsultants; and location(s) of key personnel, including subconsultants. (20 points)
4. Similar/pertinent project experience and references. (20 points)
5. Proposed schedule. (15 points)
6. Overall quality, readability and responsiveness of the proposal. (10 points)
7. Price (15 points)

The team presented in the proposal shall work on the project until completion. Any substitute of personnel shall require the approval, in writing, of the City. Personnel changes shall only be considered for valid reasons such as an employee leaving the firm, major illness or accident. Only persons as well qualified as the proposed individual shall be approved.

SECTION IV

SPECIAL CONDITIONS

GENERAL INFORMATION

Reimbursement will not be made for costs incurred prior to a formal award. The proposal must be comprehensive and specify how the consultant would complete all of the elements of the “Scope of Services”.

SAMPLE SERVICES AGREEMENT

Included in this package is a sample of the standard “Professional Services Agreement”, used by the City. Prospective consultants are requested to review this document and comment on any areas of objections in their technical proposals.

INSURANCE REQUIREMENTS

Attached to the sample “Professional Services Agreement” is a copy of the City’s current insurance requirements (Form 410-33).

INDEPENDENT CONTRACTOR AFFIDAVIT

The successful consultant is required to sign and notarize an affidavit stating that they are an independent contractor. A sample affidavit is attached for your review. **THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKERS’ COMPENSATION BENEFITS. AN INDEPENDENT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP. ADDITIONALLY, IT IS UNDERSTOOD THAT THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY THE INDEPENDENT CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY OF AURORA, COLORADO.**

SUBLETTING OF CONTRACT

The consulting firm will agree not to assign or sublet the whole or any part of the contract without the prior written consent of the City.

CHANGES IN SCOPE OF SERVICES

The City Project Manager will agree that any change of scope in the work to be performed after the original contract has been signed shall be documented as a written change order, be accepted by all parties, and made a part of the original contract by addendum.

CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN’S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS - CFR 600.236 (e)

1. Consultant and subconsultants will take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps shall include:
 - (i) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
 - (ii) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
 - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises;
 - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises;

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- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- (vi) Requiring the prime contractor, if subcontractors are to be let, to take affirmative steps listed in paragraphs (e)(2) through (v) of this section.

SECTION V

SAMPLE PROFESSIONAL SERVICES AGREEMENT

Version PCS 04-08-09

PROFESSIONAL SERVICES AGREEMENT



PROFESSIONAL SERVICES AGREEMENT

CITY OF AURORA
AURORA, COLORADO

TITLE: _____

FILE NO.: _____

P.O. NO.: _____

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Attachments

Attachment 1:	Scope of Work
Attachment 2:	Milestone Schedule
Attachment 3:	Compensation
Attachment 4:	Certificates of Insurance
Attachment 5:	Special Provisions from the City of Aurora's Recovery Act Grant for An Energy Assurance Plan

AGREEMENT

This Agreement is made as of the _____ day of _____, 2010, by and between the City of Aurora, Colorado ("City"), and _____ ("Consultant"), a _____ Corporation with a principal place of business at _____.

Whereas, the City intends that Consultant shall perform professional services for the City; and

Whereas, Consultant represents that it has the present capacity, is experienced and qualified to perform professional services for the City as provided hereinafter provided in this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants and obligations set forth herein, the Parties mutually agree as follows:

Section 1 – Scope of Work

A. Consultant agrees to provide professional services as stated in the scope of work ("Work") specified in **Attachment 1**, attached hereto and incorporated into this Agreement.

B. The City shall have the right to disapprove any portion of Consultant's Work on the Project which does not comply with the requirements of this Agreement. If any portion of the Work is not approved by the City, Consultant shall proceed when requested by the City with revisions to the Work to attempt to satisfy the City's objections. If said revised Work is acceptable, the City will provide prompt written approval. Correction or completion of Work which does not comply with the requirements of this Agreement shall be made without adjustments to the compensation for Consultant's services provided for hereunder unless the revisions are made to Work previously approved for previous tasks, in which case, Consultant's compensation shall be adjusted. It is the intent of the parties that Consultant shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, services or other work, without additional cost to the City. The acceptance of Consultant's services by the City shall not relieve Consultant from the obligation to correct subsequently discovered defects, inaccuracies or incompleteness resulting from Consultant's negligent acts, errors or omissions.

C. Nothing in this Agreement shall be construed as placing any obligation on the City to proceed with any tasks beyond those which have been specifically authorized in writing by the City.

D. The City may, from time to time and in its sole discretion, require changes in the scope of the services of the Consultant to be performed herein. Changes made by the City may include, but not be limited to, the type and scope of services provided by Consultant and the quantity or quality of Consultant's staffing for required services. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are either unilaterally made by the City or mutually agreed upon between the City and Consultant, shall be incorporated in written change orders, amendments or extensions to this Agreement.

Section 2 - Authority

A. [REDACTED] ("Project Manager") is the City's Project Manager and the City's authorized representative. The Project Manager is responsible for authorizing and approving all Work performed under this Agreement. All Work to be performed by Consultant shall be authorized in writing by the Project Manager as provided by this Agreement. All communications related to the Project shall be with the Project Manager and, in his absence, a person to be designated by him. The Project Manager is authorized to make decisions on behalf of the City related to the Work. The Project Manager shall be responsible for the day-to-day administration, coordination and approval of Work performed by Consultant, except for approvals which are specifically identified in this Agreement as requiring the approval of City of Aurora's City Council.

B. [REDACTED] ("Consultant's Representative") is Consultant's representative for the Work. Consultant's Representative shall have sufficient authority to represent and bind Consultant in those instances when such authority is necessary to carry out Consultant's responsibilities and obligations under the terms of this Agreement.

Section 3 - Schedule

A. In performing professional services pursuant to this Agreement, Consultant acknowledges that timely completion of the Work is critical and time is of the essence. Accordingly, all services to be performed under this Agreement shall be commenced immediately upon execution of this Agreement by the parties hereto, approval by the City as required by applicable law, issuance of a Purchase Order from the City, and in accordance with the milestone schedule set forth in **Attachment 2**, attached hereto and incorporated into this Agreement.

B. The initial term of this Agreement shall run from the date of approval by the Aurora City Council and issuance of a notice to proceed until [REDACTED], 20[REDACTED]. Subject to the availability of appropriated funds, as provided elsewhere in this Agreement, and agreement between the City and Consultant concerning additional and/or continuing Work, as reflected in additional or revised scope(s) of work, this Agreement may be extended on an annual basis by the City by a written notice to Consultant after approval by the City Council.

Section 4 - Compensation

A. The compensation to be paid Consultant under this Agreement, as provided hereinafter, is intended to cover the entire cost of the professional services under this Agreement. The initial compensation of this Agreement shall not exceed [REDACTED] 00/100 dollars (\$ [REDACTED]) as more fully set forth in **Attachment 3**, attached hereto and incorporated into this Agreement. Consultant agrees to cooperate fully with the City to keep the total compensation within this limit. The City has appropriated money at least equal to the foregoing compensation ("Price") for this work. The City may, from time to time and in its sole discretion, appropriate additional amounts to reflect annual extensions of this Agreement and additional and/or continuing scope(s) of work. Notwithstanding any other language in this Agreement, City shall issue no Change Order or

other form of order or directive requiring additional compensable work that will cause the Price to exceed the amount appropriated unless City gives Consultant written assurance that City has made lawful appropriations to cover the costs of the additional work. Nothing in this Agreement is a pledge of the City's credit, or a payment guarantee by the City to Consultant. The obligation of the City to make payments hereunder shall constitute a currently budgeted expense of the City, and nothing contained herein shall constitute a mandatory liability, charge, or requirement of or against the City in any ensuing fiscal year beyond the then current fiscal year. This Agreement shall never constitute a general obligation or other indebtedness of the City, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of the Constitution and laws of the State of Colorado or of the Charter and ordinances of the City. In the event of a default by the City of any of its obligations under this Agreement, the Contractor shall have no recourse against any revenues of the City. Notwithstanding any language herein to the contrary, nothing in this Agreement shall be construed as creating a lien against any revenues of the City.

B. The City shall pay Consultant in accordance with the terms of this Agreement as reflected in the Fee Schedule set forth in **Attachment 3**.

C. Consultant shall submit monthly invoices to be approved by the City's Project Manager. Consultant shall submit its monthly invoices no later than close of business on the fourteenth (14th) calendar day of the month after which the work was performed; provided, however, that if that day falls on a weekend or holiday, then monthly invoices shall be submitted no later than close of business on the next regular business day of the month. Upon submission of an approved Consultant invoice, in the proper form, to the City, payment shall be issued. It is to be understood and agreed that the City may require up to twenty-one (21) days to process payment after date of receipt of invoicing.

Section 5 - Staffing

A. The Consultant personnel listed below are essential to the proper performance of the services under this Agreement:

Name	Title
-------------	--------------

The above-identified individuals are key persons and will be available to perform the Work. Consultant agrees to make key personnel available as required to perform the Work as long as such persons are employed by Consultant. Consultant shall obtain the prior written approval of the City before appointing other Consultant personnel as a substitute(s) for the above-named key personnel. The City reserves the right to reject proposed replacement personnel, or require the replacement of any Consultant personnel, however such City action shall not subject the City to any liability to Consultant nor be used by Consultant as an excuse for failure to meet the requirements of this Agreement.

B. Consultant shall insure the quality, timeliness, and continuity of services are maintained through the duration of the project. Consultant shall avoid changes to the key personnel to the extent possible.

C. Consultant shall inform the City in writing of any non-employee persons or firms it intends to hire to perform any Work required by this Agreement and shall keep the City informed of any changes or additions to this information. The City shall approve in writing any additional firms prior to commencement of Work. Consultant shall be responsible for any Work performed under this Agreement, including that portion of the Work performed by other individuals or firms. Nothing contained herein shall create any contractual relationship between any additional persons and/or firm(s) and the City.

Section 6 - Insurance

A. Consultant shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in **Attachment 4**. The Consultant further agrees and understands that they are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

B. Consultant shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Consultant, its agents and employees. If Consultant knows of the damage Consultant shall immediately notify the City. If the City discovers the damage, City will notify Consultant immediately. Repair shall be accomplished under City direction and to City specifications so property is in as good or better condition than before damage. Consultant shall provide the City with a certificate of liability coverage in accordance per the attached form 410-33, **Attachment 4**.

Section 7 - The City's Responsibilities

A. The City shall:

1. Provide necessary information to Consultant to facilitate Consultant in performing the Work;
2. Give prompt notice to Consultant whenever the City observes or otherwise becomes aware of any deficiencies or discrepancies in the services provided;
3. Furnish, or direct Consultant to provide, at the City's expense, any necessary additional services;
4. Examine all documents submitted by Consultant, and, if requested by Consultant, provide comments and decisions in a timely manner in order to allow the Consultant's work to proceed.

B. Consultant shall not be liable for delays in performing the Work which are caused by the City, the City's other Consultants, or events which are outside the control of the Parties and could not be avoided by the exercise of due care.

Section 8 - Mutual Obligations

- A. This Agreement does not guarantee to Consultant any additional or future work except as expressly authorized herein.
- B. This Agreement does not create or imply an exclusive agreement between Consultant and the City.
- C. The services and any and all interests contemplated under this Agreement shall not be assigned or otherwise transferred except with the written consent of the City.
- D. All documents of any nature prepared by Consultant in connection with the services provided by Consultant under the terms of this Agreement shall become the property of the City.
- E. Consultant shall not utilize work product, data, information, results, and materials produced as part of its efforts under this Agreement for any promotional or public relations purposes whatsoever without the express, prior, written consent of the City.
- F. Unless expressly required by the terms of this Agreement, Consultant shall treat all of its efforts under this Agreement as confidential and shall not disclose in any manner the nature of its efforts to any person or entity without the express, prior, written consent of the City. Any information or data identified by the City as confidential shall be kept confidential by Consultant.

Section 9 - Termination

- A. Termination for Cause - In the event a material breach of this Agreement remains uncured following written notice of said breach by City, the City may immediately terminate this Agreement upon written notice specifying the effective date thereof; provided however, the City may, in its discretion and for good cause, allow Designer to cure any breach or submit an acceptable plan to cure such breach within ten (10) days of such written notice.
- B. Termination for Convenience
1. Change in City Policy. The City may terminate this Agreement at any time upon thirty (30) days notice specifying the date thereof, provided Consultant shall be compensated in accordance with this Agreement for all work performed up to the effective date of termination.
 2. Non-Appropriation of Funds. This Agreement is subject to annual appropriation by the Aurora City Council and, in the absence of appropriate funds, the City may terminate this Agreement.
 3. The City's total liability for termination of this Agreement shall not exceed the lesser of total amount of this Agreement or the total amount of funds which have been appropriated specifically for this Agreement.
 4. Consultant shall be entitled to reasonable incurred costs for terminating its activities under this Agreement, including those of its sub-consultants, if this Agreement is terminated for the City's convenience; provided however, in no event shall the

City's total liability to Consultant exceed the total amount of funds which have been appropriated specifically for this agreement.

C. Effect of Termination

1. Termination Costs. After receipt of written notification that this Agreement has been terminated under this section, Consultant shall incur no further costs other than reasonable termination costs associated with current activities.

2. Ownership of Work Product. In the event of termination, all finished and unfinished Project deliverables prepared by Consultant pursuant to this Agreement shall become the sole property of the City, provided Consultant is compensated in accordance with this Agreement for all work performed in accordance with this Agreement up to the effective date of termination. Consultant shall not be liable with respect to the City's subsequent use of any incomplete work product, provided Consultant has notified the City in writing of the incomplete status of such work product.

3. City's Right to Set-Off and other Remedies. Termination shall not relieve Consultant from liability to the City for damages sustained as the result of Consultant's breach of this Agreement; and the City may withhold funds otherwise due under this Agreement in lieu of such damages, until such time as the exact amount of damages, if any, has been determined.

4. If this Agreement terminated for cause as provided in this section and it is subsequently determined that the City's termination of this Agreement for cause was improper, then the termination for cause shall be considered to be a termination for convenience and the procedures in this section related to a termination for convenience shall apply.

Section 10 - Miscellaneous Provisions

A. Consultant, at all times, agrees to observe all applicable Federal and State of Colorado laws, Ordinances and Charter Provisions of the City of Aurora, and all rules and regulations issued pursuant thereto, which in any manner affect or govern the services contemplated under this Agreement.

B. Consultant shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, age, sex (gender), religion, creed, or physical or mental disability. Consultant:

1. Shall adhere to lawful equal opportunity guidelines in selecting employees, provided that no person is illegally discriminated against on any of the preceding bases. This provision shall govern, but shall not be limited to, recruitment, employment, promotion, demotion, and transfer, and advertising therefor; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship;

2. Shall post, in all places conspicuous to employees and applicants for employment, notices provided by the State of Colorado setting forth the provisions of this nondiscrimination clause. All solicitations and advertisements for employees placed by or on behalf of the Consultant, shall state that Consultant is an equal opportunity employer;

3. Shall cause the foregoing provisions to be inserted in all subcontracts for any work contemplated by this Agreement or deemed necessary by Consultant, so that such provisions are binding upon each sub-consultant;

4. Shall keep such records and submit such reports concerning the racial and ethnic origin of employees and of applicants for employment as the United States, the State of Colorado, the City of Aurora, or their respective agencies may require; and,

5. Shall comply with such rules, regulations and guidelines as the United States, the State of Colorado, the City of Aurora, or their respective agencies may issue to implement these requirements.

C. Consultant agrees that it shall not hire or make an offer of employment to a Key City employee as an independent contractor or employee during the term of this agreement. "Key" City employees include those City employees who are in management or other senior positions who have responsibility for reviewing, awarding or making recommendations on contract proposals, and making recommendations to change any existing City of Aurora contract. This prohibition concerning Key City employees shall continue for the first 6 months following a Key City employee's termination of employment with the City. The terms specified in this section shall apply to all sub-consultants hired by Consultant for the performance of this Agreement.

D. By executing this agreement, Consultant acknowledges an understanding of and expressly agrees that all work performed under this Agreement is that of an independent contractor. An independent contractor is not a City of Aurora employee and as such is not entitled to Workers' Compensation benefits. Consultant is obligated to pay Federal and state income tax on any monies earned pursuant to the contractual relationship. It is expressly understood between the City of Aurora and Consultant that Consultant, as an independent contractor, is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Consultant or some entity other than the City of Aurora, Colorado.

E. All notices, demands, or other documents or instruments required or permitted to be served upon either Party hereto shall be in writing and shall be deemed duly served when delivered in person to an officer or partner of the Party being served, by facsimile transmission or when mailed certified or registered mail, return receipt requested, postage prepaid addressed to parties at the addresses stated below:

City: Office of the City Attorney
15151 East Alameda Parkway
5th Floor
Aurora, Colorado 80012

Consultant Representative:

[Redacted signature area]

F. The Special Provisions from the City of Aurora's Recovery Act Grant for an Energy Assurance Plan, Attachment 5, are incorporated into this Agreement.

Section 11 - Examination of Records (This section applies if this Agreement exceeds \$10,000.00.)

- A. The Internal Auditor of the City of Aurora, or a duly authorized representative from the City of Aurora shall, until three (3) years after final payment under this Agreement, have access to and the right to examine any of the Consultant's directly pertinent books, documents, papers, or other records involving transactions related to this Agreement.
- B. Consultant agrees to include in first-tier sub-consultants under this Agreement a clause to the effect that the City's Internal Auditor, or a duly authorized representative from the City of Aurora shall, until three (3) years after final payment under the subcontract have access to and the right to examine any of the Consultant's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders from public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.
- C. The periods of access and examination as noted above for records relating to (1) litigation or settlement of claims arising from the performance of this Agreement, or (2) costs and expenses of this Agreement to which the City, acting through its duly authorized designee, has taken exception, shall continue until such appeals, litigation, claims, or exceptions are finally resolved.

Section 12 - Illegal Alien

A. **UNLAWFUL EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS:** Consultant shall not knowingly employ or contract with illegal aliens to perform work under this Contract. Consultant shall not knowingly contract with a subcontractor that (a) knowingly employs or contracts with illegal aliens to perform work under this Contract and (b) fails to certify to the Consultant that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Contract.

B. **VERIFICATION REGARDING ILLEGAL ALIENS:** By executing this contract, Consultant confirms the employment eligibility of all employees who are newly hired for employment to perform work for this project through participation in either the Federal E-Verify program or the Colorado Department of Labor Department Program.

C. **LIMITATIONS:** Consultant shall be prohibited from using either the Federal E-Verify Program or the Colorado Department of Labor Department Program procedures to undertake pre-employment screening of job applicants.

D. **DUTIES OF CONSULTANT:** If Consultant obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Consultant shall be required to:

1. Notify the subcontractor and the City within three days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

2. Terminate the subcontract with the subcontractor if, within three days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the subcontractor if the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

E. DUTY TO COMPLY WITH STATE INVESTIGATION: Consultant shall comply with any request made by the Colorado Department of Labor or the City in the course of an investigation that the Department or the City is undertaking

F. DAMAGES: Notwithstanding any other provisions within this contract, if the Consultant violates any of the above provisions regarding illegal aliens the City may terminate this contract for cause and the Consultant may be liable for consequential damages.

Section 13 - Indemnification

A. Consultant shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from and against all claims, damages, liabilities, and court awards, including expenses, and reasonable attorney fees, to the extent caused by the negligence or any wrongful act, error, or omission of Consultant, its officers, agents, and employees. Consultant shall provide the City with prompt notice of any claim for which Consultant may be liable. Likewise, the City agrees to provide Consultant with prompt notice of any claim for which indemnification may be sought hereunder and, further, to cooperate with Consultant in the resolution of such claim. Nothing herein is intended to be or shall be construed to be a waiver of the City's governmental immunity under C.R.S. Section 24-10-101, *et seq*, as amended.

In WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF AURORA, COLORADO

By: _____

Title: _____

Date: _____, 20____

ATTEST:

City Clerk

RISK MANAGEMENT: _____
Risk Manager

APPROVED AS TO FORM: _____
Assistant City Attorney

CONSULTANT

By: _____
(Signature)

Name: _____
(Type or Print)

Date: _____, 20____

Attachment 4

INSURANCE REQUIREMENTS

The consultant providing services under this Agreement will be required to procure and maintain, at their own expense and without cost to the City of Aurora, until final acceptance by the City of all work covered by the Purchase Order or contract the following types of insurance. The policy limits required are to be considered minimum amounts:

Commercial General Liability Insurance policy with minimum limits of **\$1,000,000** combined single limit for each occurrence. This policy should have a Broad Form Endorsement and include the following coverages: Blanket Contractual Liability, Broad Form Property Damage, Completed Operations and Personal Injury.

Comprehensive Automobile Liability Insurance which includes coverage for all owned, non-owned and rented vehicles with a minimum limit of **\$600,000** combined single limit for each occurrence.

Worker Compensation and Employers Liability Insurance shall cover the obligations of the vendor/contractor accordance with the provisions of the Workers Compensation Act, as amended, by the State of Colorado.

Subconsultant's Insurance shall be the responsibility of the Consultant to ensure that subconsultants are properly insured to meet the above requirements before they are permitted to commence work on the project.

In the event that the Agreement involves professional or consulting services, in addition to the aforementioned insurance requirements, the Consultant shall also be protected by a Professional Liability Insurance policy. The following policy limit is to be considered a minimum amount.

Professional Liability Insurance policy with a minimum limit of **\$1,000,000** per claim. The policy shall provide coverage to protect the contractor against liability incurred as a result of the professional services performed under this Agreement.

Consultant shall provide Certificates of Insurance to the City of Aurora demonstrating that the referenced insurance requirements have been met prior to the commencement of work under this Agreement. The Comprehensive General Liability and Automobile Liability Certificates of Insurance shall name the City of Aurora, its elected and appointed officials, officers, employees, agents, representatives and the title of the Agreement as additional insured. These Certificates of Insurance shall also contain a valid provision or endorsement that these policies may not be canceled, terminated, changed or modified to the extent such change or modification would cause the City's mandatory coverage requirements as stated herein to be violated without a **forty-five (45) day written notice** prior to expiration of same to the City of Aurora. Such notice to be forwarded to the Purchasing Services Division of the City of Aurora, 15151 East Alameda Parkway, Aurora, Colorado. The insurance coverages enumerated above constitute the minimum requirements and said enumerations shall in no way lessen or limit the liability of Consultant under the terms of the Agreement. Consultant may procure and maintain at its own expense, any additional kinds and amounts of insurance, that in its own judgment, may be necessary for their proper protection in the performance of the work. Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City of Aurora in response to the particular circumstances giving rise to the Agreement.

Attachment 5

**Special Provisions from the City of Aurora’s Recovery Act Grant
for an Energy Assurance Plan**

The attached Special Provisions from the City of Aurora’s Recovery Act Grant for an Energy Assurance Plan are incorporated into this Agreement.

SECTION VI
REQUEST FOR BUSINESS STATUS
RFP R-1456 ENERGY ASSURANCE PLAN

Please provide the information requested below.

The North American Industry Classification System (NAICS) code for this award is **541690**.

The small business size standard the City of Aurora designates for this award is **\$3.5 Million**

U.S. dollars Employees

Identify the business size status of your firm based on the above small business size standard:

- Large Business
- Small Business Enterprise

If your business is a Small Business Enterprise, please identify if your firm is in one of the following categories

- Minority-owned vendor
- Woman-owned vendor
- Minority/woman-owned vendor
- Veteran
- Disabled Veteran
- Other

From what source did you learn about his solicitation to which you are now responding?

- Website;
- Newspaper (please name the paper);
- Fax;
- Automatic notice by E-mail;
- Telephone call from buyer;
- Other (please describe):

Name, address, phone #, e-mail of business, and point of contact preparing this information.

SECTION VII

City of Aurora

Purchasing Services, Suite 4400
15151 E. Alameda Parkway
Aurora, Colorado 80012
Phone: 303-739-7100
Fax: 303-739-7509
www.auroragov.org



Re: **Request under the Colorado Open Records Act**
Request for Proposal Number R-1456 – Energy Assurance Plan

Proposals submitted by consultants in response to the City of Aurora’s Request for Proposal R-1456 are subject to the Colorado Open Records Act. The City agrees not to release any information that is clearly marked as confidential and/or proprietary in your proposal pursuant to C.R.S. 24-72-201.

By having an authorized officer of the company sign below, consultant agrees to indemnify the City of Aurora for any and all attorney fees that the City may incur in defending the withholding of such information.

Consultant

By: _____
Signature

Name (Type or Print)

Title

Date

SECTION VIII

W-9

**REQUEST FOR TAX PAYER IDENTIFICATION NUMBER
AND CERTIFICATION**

Form (Rev. November 2005) Department of the Treasury Internal Revenue Service	<h2 style="margin: 0;">Request for Taxpayer Identification Number and Certification</h2>	Give form to the requester. Do not send to the IRS.
Print or type See specific instructions on page 2	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ <input type="checkbox"/> Exempt from backup withholding	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3. Note, if the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
or								
Employer identification number								

Part II Certification

Under penalties of perjury, I certify that:

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

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

Sign Here	Signature of U.S. person ▶	Date ▶
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Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules regarding partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

Exempt payees. Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt recipients 1 through 7 ²

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.socialsecurity.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer ID Numbers under Related Topics. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ³
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ³
5. Sole proprietorship or single-owner LLC	The owner ³
For this type of account:	Give name and EIN of:
6. Sole proprietorship or single-owner LLC	The owner ³
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one). If you are a sole proprietor, IRS encourages you to use your SSN.

⁴ List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see Special rules regarding partnerships on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

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

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

