

**TOWN OF LADY LAKE  
CONSTRUCTION ENGINEERING AND INSPECTION SERVICES  
(CEI) QUALIFICATIONS REQUEST  
RFQ #2013-0001**

**Project Title:** Local Agency Program (LAP) Sidewalk Improvement Project (Rolling Acres RD. Griffin Ave. C.R. 25, Clay Ave., First Street., Second St., Third St., Fourth St. and Lemon Street)

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Department:	Parks and Recreation
Contact Person:	Mike Burske, Parks and Recreation Director
Address:	409 Fennell Boulevard
Telephone:	352-430-0451
Fax:	352-751-1510
Submittal Date:	<b>Friday, April 5, 2013</b>
Submittal Time:	<b>9:00 a.m.</b>

**I. GENERAL INFORMATION**

The Town of Lady Lake is advertising this **CEI Qualifications Request** for interested parties that are qualified and experienced to provide Construction Engineering and Inspection Services for the Local Agency Program (LAP) Sidewalk Improvement Project (Rolling Acres Rd., Griffin Ave., C.R. 25, Clay Ave., First St., Second St., Third St., Fourth St. and Lemon Street)

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This **CEI Qualifications Request** is for the purpose of selecting a firm to oversee the construction and complete all of the F.D.O.T. paperwork associated with the sidewalks to be constructed on Rolling Acres Rd., Griffin Ave., C.R. 25, Clay Ave., First St., Second St., Third St., Fourth St. and Lemon Street. The firm will work closely with the Florida Department of Transportation District 5 and the Town of Lady Lake.

Interested firms may secure a copy of the documents through DemandStar or copies are available from Nancy Slaton, Deputy Town Clerk, at 409 Fennell Blvd., Lady Lake, FL 32159; phone number 352-751-1502. Copies via e-mail are also available by contacting Nancy Slaton at [nslaton@ladylake.org](mailto:nslaton@ladylake.org).

To ensure fair consideration for all respondents to this RFQ, firms interested in providing the required services may be disqualified if they have contacts during the submission or selection process with the Mayor, Town Commissioners, or any Town staff. Only the Town Clerk or Deputy Town Clerk, who acts as the Town's Purchasing Manager, may be contacted during the submission or selection process.

## II. REQUEST FOR QUALIFICATIONS

All proposals must be in a sealed envelope/box and clearly marked in the lower left corner: **“RFQ #2013-0001: Local Agency Program (LAP) Sidewalk Improvement Project (Rolling Acres Rd., Griffin Ave., C.R. 25, Clay Ave., First St., Second St., Third St., Fourth St. and Lemon Street)”** and shall be sent to or delivered to the following address only:

**Nancy Slaton, Deputy Town Clerk**  
**409 Fennell Boulevard**  
**Lady Lake, Florida 32159**

All proposals must be received in the office of the Town Clerk by **9:00 a.m. (EST) on Friday, April 5, 2013**. Proposals will be publicly opened immediately afterwards and read in the Town of Lady Lake Commission Chambers located at 409 Fennell Blvd, Lady Lake, Florida. Proposals will not be accepted after that date and time under **any** circumstances. **One (1) original and seven (7) copies of the Proposal must be submitted.** The Proposer shall mark the appropriate ORIGINAL as such. Proposal openings are open to the public. All Proposers and their representatives are invited to be present. Any responses received by the Purchasing Agent after the due date and time specified in this Request For Construction, Engineering and Inspection Services (hereafter “CEI”) will not be considered. Any Proposal or copies that are sent to any other address may be refused and sent back to the Proposer unopened. Proposals must be typed or printed in ink. Use of erasable ink is not permitted. All Proposals must contain a manual signature of the authorized representative.

The Town of Lady Lake will not be liable for any cost incurred in the preparation of these Proposals. All Proposals received from Proposers in response to this RFQ will become property of the Town and will not be returned to the Proposer. In the event of a Contract Award, all documentation produced as part of the Contract shall become the exclusive property of the Town. Responses to this RFQ upon receipt by the Town will become a public record subject to the provisions of Chapter 119 F.S., Florida Public Records Law.

## III. SCOPE OF SERVICES - SEE ATTACHED EXHIBIT “A”

**A non-mandatory pre-bid meeting will be held at the Lady Lake Town Hall Commission Chambers located at 409 Fennell Blvd., Lady Lake, Florida on Friday, March 15, 2013 at 10:00 a.m.**

## IV. SELECTION PROCESS

The responses will be evaluated in accordance with Florida Statute Section 287.055. This section is known as the Consultants Competitive Negotiation Act (CCNA).

Selection is based solely on the firms' qualifications. The responding firms will be evaluated and ranked by the evaluation committee members. The Town will then negotiate an agreement starting with the number one ranked respondent.

The evaluation points will assign as follows:

**MANDATORY ELEMENTS**

**0-25 points**

1. Must be licensed to practice in Florida
2. The firm's professional personnel have received adequate continuing professional education
3. The firm has no conflict of interest with regard to any other work performed by the firm for the Town.
4. The firm adheres to the instructions in this Request for qualifications on preparing and submitting the proposal.
5. Affidavit of Public Entity Crimes

**Any proposal that does not contain each of the mandatory elements will be rejected.**

**ABILITY OF PERSONNEL**

**0-25 points**

The quality of the firm's professional personnel to be assigned to this project and the quality of the firm's management

**EXPERIENCE**

**0-25 points**

The firm's experience in similar projects in Florida and quality of work performed

**ABILITY TO FURNISH REQUIRES SERVICES**

**0-25 points**

Current workload, general approach to Safe Routes to School and Local Agency Program projects

**Total points available**

**100 points**

If deemed necessary by the Evaluation Committee, the Town reserves the right to request the top three ranked firms to make a presentation of their qualifications, approach to the projects, and ability to furnish the required services. This presentation will be open to the public as well as other respondents as detailed in Florida Statute Section 287.055(4)(a). Should a public presentation be necessary, each respondent will be notified in writing as to the date and time, as well as the presentation guidelines.

**Prospective Proposers shall submit the following information with their Proposal:**

All proposals submitted should contain the following information:

**TITLE PAGE**

Information should include the subject of the RFQ, the firm's name, the name of a contact person along with an address and phone number, and the date of the proposal.

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**TRANSMITTAL LETTER**

A letter of interest and general information about the firm and its principals, i.e., location of headquarters, size, length of time in business, length of tenure, and names of key personnel who will be assigned to the projects.

**PROFESSIONAL QUALIFICATIONS**

Evidence that the proposer is properly licensed to practice in Florida. A detailed qualifications statement, including short resumes, professional and business licenses, and credentials of proposer and key personnel that may be assigned to the projects.

**SIMILAR PROJECTS**

List all projects of similar nature within the past five years. A brief description of each project should include the title of project and client, year project completed, and nature of work involved in each project.

**SUBCONTRACTORS**

Firms that anticipate subcontracting portions of the services must state this fact in their proposal and clearly identify the subcontracting firm(s). Following the award of the contract, no additional subcontracting will be allowed without the prior consent of the Town and F.D.O.T. District 5.

**WORKLOADS**

Recent, current and projected workloads of the proposer must be listed.

**CONFLICT OF INTEREST**

Disclosure of any conflict of interest due to any other clients, contracts or property interests for this project only. Include a signed statement certifying that no member of your firm - ownership management, or staff has vested interest in any aspect or department of the Town of Lady Lake.

## **PUBLIC ENTITY CRIMES**

Per Section 287.133(2)(a) of the Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

Any firm submitting a proposal in response to this RFQ must indicate it has not been placed on the convicted vendor list following a conviction of public entity crimes.

## **V. GENERAL TERMS AND CONDITIONS OF PROPOSAL PROCESS**

The Town reserves the right to reject any or all Proposals. The Town also reserves the right in its sole discretion to waive minor errors or irregularities in the Proposals or in the Proposal solicitation procedures, or submissions. The Town additionally reserves the right to negotiate a change in the planned scope of services so as to increase or decrease same. The Town shall not be contractually or otherwise bound to any Proposer until a Contract has been executed by the Town and F.D.O.T. District 5.

The Town reserves the right to reject the Proposal of any proposer if Town believes that it would not be in the best interest of the Town to make an award to that offer, whether because the proposal is not responsive, or the proposer is unqualified, or of doubtful financial ability, or fails to meet any other pertinent standard or criteria established by Town, or for no reason at all. The Town reserves the right to request clarification of information submitted and to request additional information of one or more Proposers.

It is clearly understood by both parties, upon submission of a proposal from proposer, that no representation, authorization, communication or understanding will be valid unless said representation, validation or authorization or other clarifications are submitted to the Town, in writing, and are responded to by a representative of the Town in writing. All information requests and responses must be sent to the Town Clerk of Lady Lake.

**EXHIBIT "A"**

**CONSTRUCTION ENGINEERING AND INSPECTION**

**SCOPE OF SERVICES**

**FOR**

**LOCAL AGENCY PROGRAM (LAP)**

**SIDEWALK IMPROVEMENT PROJECT**

**(ROLLING ACRES RD. GRIFFIN AVE. C.R.25, CLAY AVE., FIRST ST., SECOND ST., THIRD ST., FOURTH ST. AND LEMON ST.)**

**FPN: 427855-1-58-01**

**FAN: SRTS-232-A**

**Date: February 8, 201**

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**SCOPE OF SERVICES**  
**CONSTRUCTION ENGINEERING AND INSPECTION**

**1.0 PURPOSE:**

This scope of services describes and defines the Construction Engineering and Inspection (CEI) services which are required for contract administration, inspection, and materials sampling and testing for the construction projects listed below.

**2.0 SCOPE:**

Provide services as defined in this Scope of Services, the referenced FDOT D5 Department manuals, and procedures.

The projects for which the services are required are:

Financial Project IDs:	Descriptions:	County:
237592-2	Sidewalk Improvements: Rolling Acres Road, Griffin Ave, CR 25 and Clay Ave.	Lake

Exercise independent professional judgment in performing obligations and responsibilities under this Agreement. Pursuant to Section 4.1.4 of the Construction Project Administration Manual (CPAM), the authority of the Consultant's lead person, such as the Senior Project Engineer, and the Consultant's Project Administrator shall be identical to the City's and the FDOT D5 Department's Resident Engineer and Project Administrator respectively and shall be interpreted as such.

Services provided by the Consultant shall comply with FDOT D5 Department manuals, procedures, and memorandums in effect as of the date of execution of the Agreement unless otherwise directed in writing by the City/Department. Such FDOT D% Department manuals, procedures, and memorandums are found at the State Construction Office's website.

On a single Construction Contract, it is a conflict of interest for a professional firm to receive compensation from both the FDOT Department and the Contractor either directly or indirectly.

Other projects developing within the geographical area of Lake, Seminole, Osceola, Brevard and Volusia counties may be added at the FDOT D5 Department's discretion. The Consultant must perform to the satisfaction of the FDOT D5 Department's representatives for consideration of additional CEI services.

**3.0 LENGTH OF SERVICE:**

The services for each Construction Contract shall begin upon written notification to proceed by the City of Lady Lake.

Track the execution of the Construction Contract such that the Consultant is given timely authorization to begin work. While no personnel shall be assigned until written notification by the Department has been issued, the Consultant shall be ready to assign personnel within two weeks of notification. For the duration of the project, coordinate closely with the Department and

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Contractor to minimize rescheduling of Consultant activities due to construction delays or changes in scheduling of Contractor activities.

For estimating purposes, the Consultant will be allowed an accumulation of thirty (30) calendar days to perform preliminary administrative services prior to the issuance of the Contractor's notice to proceed on the first project and thirty (30) calendar days to demobilize after final acceptance of the last Construction Contract.

The anticipated letting schedules and construction times for the projects are tabulated below:

Construction Contract Estimate			
Project #	Letting Date (Mo/Day/Yr)	Start Date (Mo/Day/Yr)	Duration (Days)
NS.08306.001	03/05/2013	04/05/2013	120

4.0 **DEFINITIONS:**

- A. Agreement: The Professional Services Agreement between the City of Lady Lake and the Consultant setting forth the obligations of the parties thereto, including but not limited to the performance of the work, furnishing of services, and the basis of payment.
- B. Contractor: The individual, firm, or company contracting with the City of Lady Lake for performance of work or furnishing of materials.
- C. Construction Contract: The written agreement between the City of Lady Lake and the Contractor setting forth the obligations of the parties thereto, including but not limited to the performance of the work, furnishing of labor and materials, and the basis of payment.
- D. Construction Project Manager: The City of Lady Lake will assigned city staff to manage the Construction Engineering and Inspection Contract and represent the city during the performance of the services covered under this Agreement.
- E. Construction Training/Qualification Program (CTQP): The City/FDOT Department program for training and qualifying technicians in Aggregates, Asphalt, Concrete, Earthwork, and Final Estimates Administration. Program information is available at CTQP website.
- F. Consultant: The Consulting firm under contract to the City of Lady Lake for administration of Construction Engineering and Inspection services.
- G. Consultant Project Administrator: The employee assigned by the Consultant to be in charge of providing Construction Contract administration services for one or more Construction Projects.
- H. Consultant Senior Project Engineer: The Engineer assigned by the Consultant to be in charge of providing Construction Contract administration for one or more Construction Projects. This person may supervise other Consultant employees and act as the lead Engineer for the Consultant.
- I. City: The City is the City of Lady Lake for which this contract is administered.

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- J. Department: The Department is the FDOT D5 Department.
- K. District Construction Engineer: The administrative head of the FDOT D5 District's Construction Offices.
- L. District Contract Compliance Manager: The administrative head of the FDOT D5 District Contract Compliance Office.
- M. District Consultant CEI Manager: The city employee assigned to administer the Consultant Construction Engineering and Inspection (CCEI) Program in the District.
- N. District Director of Transportation Operations: The FDOT D5 Director of Construction, Maintenance, Traffic Operations, Materials, and Safety.
- O. District Final Estimates Manager: The administrative head of the FDOT D5 District Final Estimates Office.
- P. District Professional Services Administrator: The FDOT D5 Administrative Head of the Professional Services Office.
- Q. District Secretary: The Chief Executive Officer in each of the FDOT Department's eight (8) Districts.
- R. Engineer of Record: The Engineer noted on the Construction plans (Neel-Schaffer, Inc.) as the responsible person for the design and preparation of the plans.
- S. Operations Engineer: The Engineer assigned to a particular County or area to administer Construction and Maintenance Contracts for the FDOT D5 Department.
- T. Public Information Office: The FDOT Department's office assigned to manage the Public Information Program.
- U. Resident Compliance Specialist: The employee assigned by the Consultant to oversee project specific compliance functions.
- V. Resident Engineer: The Engineer assigned to a particular County or area to administer Construction Contracts for the FDOT D5 Department.

**5.0 ITEMS TO BE FURNISHED BY THE DEPARTMENT TO THE CONSULTANT:**

- A. The City of Lady Lake, on an as needed basis, will furnish the following Construction Contract documents for each project. These documents may be provided in either paper or electronic format.
  - 1. Construction Plans,
  - 2. Specification Package,
  - 3. Copy of the Executed Construction Contract, and
  - 4. Utility Agency's Approved Material List (if applicable).

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- B. The FDOT D5 Department will allow connection to the FDOT Network by the Consultant through either dialup communications, authorized Virtual Private Network (VPN) or approved leased lines. Appropriate approvals must be received from the Department prior to their use.
- C. The FDOT D5 Department will furnish and support the software packages for SiteManager.

**6.0 ITEMS FURNISHED BY THE CONSULTANT:**

**6.1 Department Documents:**

All applicable FDOT D5 Department documents referenced herein shall be a condition of this Agreement. All FDOT D5 Department documents, directives, procedures, and standard forms are available through the Department's Internet website. Most items can be purchased through the following address. All others can be acquired through the District Office or on-line at the FDOT D5 Department's website.

Florida Department of Transportation  
Maps and Publication Sales  
605 Suwannee Street, MS 12  
Tallahassee, Florida 32399-0450  
Telephone No. (850) 488-9220

<http://www.dot.state.fl.us/construction/>

**6.2 Office Automation:(Optional)**

Provide all software and hardware necessary to efficiently and effectively carry out the responsibilities under this Agreement.

Provide each inspection staff with a laptop computer running SiteManager application through Citrix connection using a mobile broadband connection at the jobsite.

All computer coding shall be input by Consultant personnel using equipment furnished by them.

Ownership and possession of computer equipment and related software, which is provided by the Consultant, shall remain at all times with the Consultant. The Consultant shall retain responsibility for risk of loss or damage to said equipment during performance of this Agreement. Field office equipment should be maintained and operational at all times.

Current technical specifications for office automation can be viewed at:  
<http://www.dot.state.fl.us/Construction/DesignBuild/ConsultantCEI/OfficeAutomation.shtm>

**6.3 Vehicles:**

Vehicles will be equipped with appropriate safety equipment and must be able to effectively carry out requirements of this Agreement. Vehicles shall have the name and phone number of the consulting firm visibly displayed on both sides of the vehicle.

**6.4 Field Equipment:**

Supply survey, inspection, and testing equipment essential to perform services under this Agreement; such equipment includes non-consumable and non-expendable items.

Hard hats shall have the name of the consulting firm visibly displayed.

Equipment described herein and expendable materials under this Agreement will remain the property of the Consultant and shall be removed at completion of the work.

Handling of nuclear density gauges shall be in compliance with their license.

Retain responsibility for risk of loss or damage to said equipment during performance of this Agreement. Field office equipment shall be maintained and in operational condition at all times.

**6.5 Licensing for Equipment Operations:**

Obtain proper licenses for equipment and personnel operating equipment when licenses are required. The license and supporting documents shall be available for verification by the Department, upon request.

Radioactive Materials License for use of Surface Moisture Density Gauges shall be obtained through the State of Florida Department of Health.

**7.0 LIAISON RESPONSIBILITY OF THE CONSULTANT:**

For the duration of the Agreement, keep the City's Construction Project Manager in Responsible Charge informed of all significant activities, decisions, correspondence, reports, and other communications related to its responsibilities under this Agreement.

Facilitate communications between all parties (i.e. architectural, mechanical, materials, landscaping, local agencies, etc.) ensuring responses and resolutions are provided in a timely manner. Maintain accurate records to document the communication process.

Submit all administrative items relating to Invoice Approval, Personnel Approval, User IDs, Time Extensions, and Supplemental Amendments to the Construction Project Manager for review and approval.

**8.0 PERFORMANCE OF THE CONSULTANT:**

During the term of this Agreement and all Supplemental Amendments thereof, the City will review various phases of Consultant operations, such as construction inspection, materials sampling and testing, and administrative activities, to determine compliance with this Agreement. Cooperate and assist the City and FDOT Department representatives in conducting the reviews. If deficiencies are indicated, remedial action shall be implemented immediately. The city recommendations and Consultant responses/actions are to be properly documented by the Consultant. No additional compensation shall be allowed for remedial action taken by the Consultant to correct deficiencies. Remedial actions and required response times may include but are not necessarily limited to the following:

- A. Further subdivide assigned inspection responsibilities, reassign inspection personnel, or assign additional inspection personnel, within one week of notification.

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- B. Immediately replace personnel whose performance has been determined by the Consultant and/or the City to be inadequate.
- C. Immediately increase the frequency of monitoring and inspection activities in phases of work that are the Consultant's responsibility.
- D. Increase the scope and frequency of training of the Consultant personnel.

## 9.0 **REQUIREMENTS OF THE CONSULTANT:**

### 9.1 **General:**

It shall be the responsibility of the Consultant to administer, monitor, and inspect the Construction Contract such that the project is constructed in reasonable conformity with the plans, specifications, and special provisions for the Construction Contract.

Observe the Contractor's work to determine the progress and quality of work. Identify discrepancies, report significant discrepancies to the City, and direct the Contractor to correct such observed discrepancies.

Pursuant to Section 337.11(9)(a), Florida Statutes, the Consultant is hereby designated by the Secretary of the FDOT Department to negotiate and approve Supplemental Agreements within the thresholds established in the CPAM. Seek input from the Construction Project Manager relating to all Supplemental Agreement requests. Supplemental Agreements must be determined to be in accordance with Florida law by the FDOT Department prior to approval by the Consultant. For any Supplemental Agreement which exceeds the thresholds, prepare the Supplemental Agreement as a recommendation to the Department, which the Department may accept, modify or reject upon review. Consult with the Construction Project Manager as necessary and direct all issues, which exceed delegated authority to the Construction Project Manager for City action or direction.

Inform the Construction Project Manager of any significant omissions, substitutions, defects, and deficiencies noted in the work of the Contractor and the corrective action that has been directed to be performed by the Contractor.

### 9.2 **Survey Control:**

Check or establish the survey control baseline(s) along with sufficient baseline control points and bench marks at appropriate intervals along the project in order to: (1) make and record measurements necessary to calculate and document quantities for pay items, (2) make and record pre-construction and final cross section surveys of the project site in those areas where earthwork (i.e., embankment, excavation, subsoil excavation, etc.) is part of the construction project, and (3) perform incidental engineering surveys. All construction surveying needed for staking and construction shall be at the contractors expense with no additional payment.

Any questions or requests for "Waiver of Survey" should be directed to the City and District Final Estimates Manager.

**9.3 On-site Inspection:**

Monitor the Contractor's on-site construction activities and inspect materials entering into the work in accordance with the plans, specifications, and special provisions for the Construction Contract to determine that the projects are constructed in reasonable conformity with such documents. Maintain detailed accurate records of the Contractor's daily operations and of significant events that affect the work. The City will monitor off-site activities and fabrication unless otherwise stipulated by this Agreement.

Monitor and inspect Contractor's Work Zone Traffic Control Plan and review modifications to the Work Zone Traffic Control Plan, including Alternate Work Zone Traffic Control Plan, in accordance with the FDOT D5 Department's procedures. Consultant employees performing such services shall be qualified in accordance with the Department's procedures.

**9.4 Sampling and Testing:**

Perform sampling and testing of component materials and completed work in accordance with the Construction Contract documents. The minimum sampling frequencies set out in the FDOT Department's Materials Sampling, Testing and Reporting Guide shall be met. In complying with the aforementioned guide, provide daily surveillance of the Contractor's Quality Control activities and perform the sampling and testing of materials and completed work items for verification and acceptance.

The CEI firm will hand all inspections, testing and sampling of materials and components at locations remote from the project site and the CEI firm will perform testing of materials normally done in a laboratory remote from the project site.

Determine the acceptability of all materials and completed work items on the basis of either test results or verification of a certification, certified mill analysis, DOT label, DOT stamp, etc.

The City will monitor the effectiveness of the Consultant's testing procedures through observation and independent assurance testing.

Sampling, testing and laboratory methods shall be as required by the City/Department's Standard Specifications, Supplemental Specifications or as modified by the Special Provisions of the Construction Contract.

Documentation reports on sampling and testing performed by the Consultant shall be submitted during the same week that the construction work is done.

Transport samples to be tested in a FDOT Department laboratory to the appropriate laboratory or appropriate local FDOT facility.

Input verification testing information and data into the FDOT Department's database using written instructions provided by the Department.

**9.5 Engineering Services:**

Coordinate the Construction Contract administration activities of all parties other than the Contractor involved in completing the construction project. Notwithstanding the above,

the Consultant is not liable to the Department for failure of such parties to follow written direction issued by the Consultant.

Services shall include maintaining the required level of surveillance of Contractor activities, interpreting plans, specifications, and special provisions for the Construction Contract. Maintain complete, accurate records of all activities and events relating to the project and properly document all project changes. The following services shall be performed:

- (1) Attend a pre-service meeting for the Agreement in accordance with CPAM. Provide appropriate staff to attend and participate in the pre-service meeting. At the time of this meeting submit the FDOT Computer Security Access Request for use of FDOT Data Center Facilities and access to the Department's computer systems to the Construction Project Manager for approval.
- (2) Schedule and attend a Final Estimate informational meeting with the District Construction Final Estimates Office. Provide appropriate staff to attend and participate in this meeting.
- (3) Schedule and attend Site Manager/EDMS informational meeting with the District Construction Office. Provide appropriate staff to attend and participate in this meeting.

Provide personnel proficient in the use of computers and scanner operation to input construction documents into an EDMS. This will require familiarity with the documents and guidelines posted on the Department's website for EDMS. Duties will include scanning, attributing and retrieving documents that are to be archived electronically.

- (4) Schedule and conduct a meeting with the District Construction Environmental Liaison prior to the Pre-construction conference and another meeting prior to project final acceptance. The purpose of these meetings is to discuss the required documentation, including as-builts, necessary for permit(s) compliance.
- (5) Verify that the Contractor is conducting inspections, preparing reports and monitoring all storm water pollution prevention measures associated with the project. For each project that requires the use of the NPDES General Permit, provide at least one inspector who has successfully completed the "Florida Stormwater, Erosion, and Sedimentation Control Training and Certification Program for Inspectors and Contractors". The Consultant's inspector will be familiar with the requirements set forth in the FEDERAL REGISTER, Vol. 57, No. 187, Friday, September 5, 1992, pages 4412 to 4435 "Final NPDES General Permits for Storm Water Discharges from Construction Sites" and the FDOT Department's guidelines.
- (6) Analyze the Contractor's schedule(s) (i.e. baseline(s), revised baseline(s), updates, as-built, etc.) for compliance with the contract documents. Elements including, but not limited to, completeness, logic, durations, activity, flow, milestone dates, concurrency, resource allotment, and delays will be reviewed. Verify the schedule conforms with the construction phasing and MOT sequences, including all contract modifications. Provide a written review of the schedule

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identifying significant omissions, improbable or unreasonable activity durations, errors in logic, and any other concerns as detailed in CPAM.

- (7) Analyze problems that arise on a project and proposals submitted by the Contractor; work to resolve such issues, and process the necessary paperwork.
- (8) Monitor, inspect and document utility construction for conformance with Utility Agency's Standards and the Utility Agency's Approved Materials List. Facilitate coordination and communication between Utility Agency's representatives, Department's staff and Contractors executing the work. Identify potential utility conflicts and assist in the resolution of utility issues including City and any local owned facilities.

Identify, review, and track progress of Joint Project Agreements, and/or other Department and utility agreements. Address work progress, track reimbursement activities, and address betterment and salvage determination. Prepare all necessary documentation to support reimbursement activities and betterment and salvage determination.

- (9) Produce reports, verify quantity calculations and field measure for payment purposes as needed to prevent delays in Contractor operations and to facilitate prompt processing of such information in order for the City to make timely payment to the Contractor.
- (10) Prepare and make presentations for meetings and hearings before the Dispute Review Boards in connection with the project covered by this Agreement.
- (11) The City will provide the functions of the Resident Compliance Specialist. The Consultant shall perform the field interviews, provide work space and supplies for project compliance files.
- (12) The FDOT D5 Department will provide Public Information Services.
- (13) Prepare and submit to the Construction Project Manager monthly, a Construction Status Reporting System (CSRS) report, in a format to be provided by the Department.
- (14) Video tape the pre-construction conditions throughout the project limits. Provide a digital photo log or video of project activities, with heavy emphasis on potential claim items/issues and on areas of real/potential public controversy.
- (15) Provide a digital camera for photographic documentation of pre-construction state and of noteworthy incidents or events during construction.

These photographs will be filed and maintained on the Consultant's computer using a Digital Photo Management system.

Photographs shall be taken the day prior to the start of construction and continue as needed throughout the project. Photographs shall be taken the days of Conditional, Partial and Final Acceptance.

**9.6 Geotechnical Engineering:**

Become familiar with the existing site conditions and the contract documents. Observe and record the progress and quality of foundation work to determine that the foundations are constructed at the correct location and elevation, identify discrepancies, submit monthly progress reports to the District Geotechnical Engineer (DGE), and direct the Contractor to correct such observed discrepancies. Attend the Preconstruction Conference and/or special geotechnical meeting for the Construction Contract. All services under this section will be performed in accordance to FDOT Specification Section 455.

**10.0 PERSONNEL:**

**10.1 General Requirements:**

Provide qualified personnel necessary to efficiently and effectively carry out its responsibilities under this Agreement. Method of compensation for personnel assigned to this project is outlined in Exhibit "B."

**Unless otherwise agreed to by the City, the City will not compensate straight overtime or premium overtime for the positions of Senior Project Engineer, Project Administrator/Project Engineer, Contract Support Specialist and Assistant or Associate to any of these positions.**

**10.2 Personnel Qualifications:**

Provide competent personnel qualified by experience and education. Submit in writing to the Construction Project Manager the names of personnel proposed for assignment to the project, including a detailed resume for each containing at a minimum: salary, education, and experience. The Consultant Action Request form for personnel approval shall be submitted to the Construction Project Manager at least two weeks prior to the date an individual is to report to work.

Personnel identified in the Consultant technical proposal are to be assigned as proposed and are committed to performing services under this Agreement. Personnel changes will require written approval from the City. Staff that has been removed shall be replaced by the Consultant within one week of notification.

Before the project begins, all project staff shall have a working knowledge of the current CPAM and must possess all the necessary qualifications/certifications for fulfilling the duties of the position they hold. Cross training of the Consultant's project staff is highly recommended to achieve a knowledgeable and versatile project inspection team but shall not be at any additional cost to the City and should occur as workload permits. Visit the training page on the State Construction Office website for training dates.

Minimum qualifications for the Consultant personnel are set forth as follows. Exceptions to these minimum qualifications will be considered on an individual basis. However, a Project Administrator working under the supervision and direction of a Senior Project Engineer or an Inspector working under the supervision and direction of a Senior

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Inspector shall have six months from the date of hire to obtain the necessary qualifications/certifications provided all other requirements for such positions are met and the Consultant submits a training plan detailing when such qualifications/certifications and other training relative to the FDOT D5 Department's procedures, Specifications and Design Standards will be obtained. The District Construction Engineer or designee will have the final approval authority on such exceptions.

**CEI SENIOR PROJECT ENGINEER** - A Civil Engineering degree and registered in the State of Florida as a Professional Engineer (or if registered in another state, the ability to obtain registration in the State of Florida within six months) and six (6) years of engineering experience [(two (2) years of which are in major road or bridge construction)] or [(five (5) of which are in major bridge construction) - for Complex Bridge Projects with the exception of PTS projects which require two (2) years of major bridge construction], or for non-degreed personnel the aforementioned registration and ten (10) years of engineering experience (two (2) years of which are in major road or bridge construction). Qualifications include the ability to communicate effectively in English (verbally and in writing); direct highly complex and specialized construction engineering administration and inspection program; plans and organizes the work of subordinate and staff members; develops and/or reviews policies, methods, practices, and procedures; and reviews programs for conformance with Department standards. Also must have the following:

**QUALIFICATIONS:**

FDOT Advanced MOT

Attend the CTQP Quality Control Manager course and pass the examination.

**CERTIFICATIONS:**

None

**OTHER:**

Complete the Critical Structures Construction Issues, Self Study Course, and submit the mandatory Certification of Course Completion form (for structures projects).

A Master's Degree in Engineering may be substituted for one (1) year engineering experience.

**CEI PROJECT ADMINISTRATOR/PROJECT ENGINEER** - A Civil Engineering degree plus two (2) years of engineering experience in construction of major road or bridge structures, or for non-degreed personnel eight (8) years of responsible and related engineering experience, two (2) years of which involved construction of major road or structures.

Receives general instructions regarding assignments and is expected to exercise initiative and independent judgment in the solution of work problems. Directs and assigns specific tasks to inspectors and assists in all phases of the construction project. Will be responsible for the progress and final estimates throughout the construction project duration. Must have the following:

**QUALIFICATIONS:**

FDOT Advanced MOT

CTQP Final Estimates Level II

CERTIFICATIONS:

None

OTHER:

Attend CTQP Quality Control Manager Course and pass the examination.

A Master's Degree in Engineering may be substituted for one (1) year of engineering experience

**CEI ASSISTANT PROJECT ADMINISTRATOR/PROJECT ENGINEER (OPTIONAL) –**

A Civil Engineering degree plus one (1) year of engineering experience in construction of major road or bridge structures, or for non-degreed personnel six (6) years of responsible and related engineering experience, two (2) years of which involved construction of major road or bridge structures with the exception of Complex Category 2 (CC2) bridge structures.

QUALIFICATIONS:

FDOT Intermediate MOT  
CTQP Final Estimates Level II

**CEI CONTRACT SUPPORT SPECIALIST (OPTIONAL)** - A High School diploma or equivalent and four (4) years of road & bridge construction engineering inspection (CEI) experience having performed/assisted in project related duties (i.e., LIMS, progress and final estimates, EEO compliance, processing Construction Contract changes, etc.) or a Civil Engineering Degree. Should exercise independent judgment in planning work details and making technical decisions related to the office aspects of the project. Should be familiar with the Department's Procedures covering the project related duties as stated above and be proficient in the computer programs necessary to perform these duties. Shall become proficient in Multi-Line and Engineering Menu.

QUALIFICATIONS:

CTQP Final Estimates Level II

**CEI ASSOCIATE CONTRACT SUPPORT SPECIALIST (OPTIONAL)** - High school graduate or equivalent plus three (3) years of secretarial and/or clerical experience including two (2) years experience in construction office management having performed project related duties (i.e., LIMS, progress and final estimates, EEO compliance, processing Construction Contract changes, etc.). Experienced in the use of standard word processing software. Should exercise independent initiative to help relieve the supervisor of clerical detail. Assists the Project Administrator in office related duties (i.e., CQR, progress, and final estimates, EEO compliance, Processing Construction Contract changes, etc.) Project specific. Work under the general supervision of the Senior Project Engineer and staff.

**CEI RESIDENT COMPLIANCE SPECIALIST (OPTIONAL)** - Graduation from an accredited high school or equivalent with one (1) year of experience as a resident compliance officer on a construction project or two (2) years of assisting the compliance officer in monitoring the project. Should have prior experience in both State funded and Federal Aid funded construction projects with FDOT and knowledge of EEO/AA laws and FDOT's DBE and OJT programs. Ability to analyze, collect, evaluate data, and take

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appropriate action when necessary. Must attend all training workshops or meetings for Resident Compliance Specialists as determined necessary.

**CEI INSPECTOR/ENGINEER INTERN** - High school graduate or equivalent plus two (2) years experience in construction inspection, one (1) year of which shall have been in bridge and/or roadway construction inspection, plus the following:

Must have the following as required by the scope of work of the project:

**QUALIFICATIONS:**

CTQP Concrete Field Inspector Level I  
CTQP Asphalt Roadway Level I  
CTQP Earthwork Construction Inspection Level I  
CTQP Final Estimates Level I  
FDOT Intermediate MOT

**CERTIFICATIONS:**

Nuclear Radiation Safety  
Florida Stormwater, Erosion, and Sedimentation Control Training and Certification Program for Inspectors and Contractors

**OTHER:**

Complete the Critical Structures Construction Issues, Self Study Course, and submit the mandatory Certification of Course Completion form (for structures projects).

Or a Civil Engineering degree with the ability to earn additional required qualifications within one year. (Note: Engineer Intern classification requires E.I.T. certificate.)

Responsible for performing assignments in assisting Senior Inspector in the performance of their duties. Receive general supervision from the Senior Inspector who reviews work while in progress. Civil Engineering graduates must obtain certifications within the first year of working as an inspector or Engineer Intern. Exceptions will be permitted on a case-by-case basis so long as qualifications and certifications are appropriate for specific inspection duties.

**CEI INSPECTORS AIDE (OPTIONAL)** - High School graduate or equivalent and able to perform basic mathematical calculation and follow simple technical instructions. Duties are to assist higher-level inspectors. Must obtain FDOT Intermediate MOT within the first six months of the assignment.

**CEI SURVEY PARTY CHIEF** - High School graduate plus four years of experience in construction surveying (including two (2) years as Party Chief). Experienced in field engineering and construction layout, making and checking survey computations and supervising a survey party. Work is performed under general supervision of Project Administrator.

**CEI INSTRUMENT PERSON** - High school graduate plus three (3) years of experience in construction surveying one (1) year of which shall have been as instrument-man. Responsible for performing assignments in assisting Party Chief in the performance of their duties. Receives general supervision from Party Chief who reviews work while in progress.

**CEI ROD-MAN/CHAIN PERSON** - High school graduate with some survey experience or training preferred. Receives supervision from and assists Party Chief who reviews work while in progress.

**CEI SECRETARY/CLERK TYPIST (OPTIONAL)** - High school graduate or equivalent plus two (2) years of secretarial and/or clerical experience. Ability to type at a rate of 35 correct words per minute. Experienced in the use of standard word processing software. Should exercise independent initiative to help relieve the supervisor of clerical detail. Work under general supervision of the Senior Project Engineer and staff.

**CEI UTILITY COORDINATOR (OPTIONAL)**- High School Graduate or equivalent and be knowledgeable of Department's Standards, policies, procedures, and agreements and shall have a minimum of four (4) years of experience performing utility coordination in accordance with Department's Standards, policies, procedures and agreements.

**10.3 Staffing:**

Once authorized, the Consultant shall establish and maintain appropriate staffing throughout the duration of construction and completion of the final estimate. Responsible personnel, thoroughly familiar with all aspects of construction and final measurements of the various pay items, shall be available to resolve disputed final pay quantities until the City has received a regular acceptance letter.

Construction engineering and inspection forces will be required of the Consultant while the Contractor is working. If Contractor operations are substantially reduced or suspended, the Consultant will reduce its staff appropriately.

In the event that the suspension of Contractor operations requires the removal of Consultant forces from the project, the Consultant will be allowed ten (10) days maximum to demobilize, relocate, or terminate such forces.

**11.0 QUALITY ASSURANCE (QA) PROGRAM:**

**11.1 Quality Assurance Plan:**

Within thirty (30) days after receiving award of an Agreement, furnish a QA Plan to the Construction Project Manager. The QA Plan shall detail the procedures, evaluation criteria, and instructions of the Consultant's organization for providing services pursuant to this Agreement. Unless specifically waived, no payment shall be made until the City approves the Consultant QA Plan.

Significant changes to the work requirements may require the Consultant to revise the QA Plan. It shall be the responsibility of the Consultant to keep the plan current with the work requirements. The Plan shall include, but not be limited to, the following areas:

**A. Organization:**

A description is required of the Consultant QA Organization and its functional relationship to the part of the organization performing the work under the Agreement. The authority, responsibilities and autonomy of the QA organization

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shall be detailed as well as the names and qualifications of personnel in the quality control organization.

**B. Quality Assurance Reviews:**

Detail the methods used to monitor and achieve organization compliance with Agreement requirements for services and products.

**C. Quality Assurance Records:**

Outline the types of records which will be generated and maintained during the execution of the QA program.

**D. Control of Subconsultants and Vendors:**

Detail the methods used to control subconsultant and vendor quality.

**E. Quality Assurance Certification:**

An officer of the Consultant firm shall certify that the inspection and documentation was done in accordance with FDOT specifications, plans, standard indexes, and FDOT D5 Department procedures.

**11.2 Quality Assurance Reviews:**

Conduct semi-annual Quality Assurance Reviews to ensure compliance with the requirements of the Agreement. Quality Assurance Reviews shall be conducted to evaluate the adequacy of materials, processes, documentation, procedures, training, guidance, and staffing included in the execution of this Agreement. Quality Assurance Reviews shall also be developed and performed to achieve compliance with specific QA provisions contained in this Agreement. The semi-annual reviews shall be submitted to the Construction Project Manager in written form no later than one (1) month after the review.

On short duration CCEI projects (nine (9) months or less), the CCEI shall perform an initial QA review within the first two (2) months of the start of construction.

On asphalt projects, the CCEI shall perform an initial QA review on its asphalt inspection staff after the Contractor has completed ten (10) full work days of mainline asphalt paving operations, or 25% of the asphalt pay item amount (whichever is less) to validate that all sampling, testing, inspection, and documentation are occurring as required of the CCEI staff.

**11.3 Quality Records:**

Maintain adequate records of the quality assurance actions performed by the organization (including subcontractors and vendors) in providing services and products under this Agreement. All records shall indicate the nature and number of observations made, the number and type of deficiencies found, and the corrective actions taken. All records shall be available to the City/Department, upon request, during the Agreement term. All records shall be kept at the primary job site and shall be subject to audit review.

**12.0 CERTIFICATION OF FINAL ESTIMATES:**

**12.1 Final Estimate and As-Built Plans Submittal:**

Prepare documentation and records in compliance with the Agreement, Statewide Quality Control (QC) Plan, or Consultant's approved QC Plan and the FDOT D5 Department's Procedures as required by Section 4.1.4 of Review and Administration Manual.

Submit the Final Estimate(s) and one (1) set of final "as-built plans" documenting the Contractor's work in accordance with the Review and Administration Manual.

Revisions to the Certified Final Estimate will be made at no additional cost to the Department.

**12.2 Certification:**

Consultant personnel preparing the Certified Final Estimate Package shall be CTQP Final Estimates Level II.

Duly authorized representative of the Consultant firm will provide a notarized certification on a form pursuant to Department's procedures.

**12.3 Offer of Final Payment:**

Prepare the Offer of Final Payment package as outlined in Chapter 14 of the Review and Administration Manual. The package shall accompany the Certified Final Estimates Package submitted to the District Final Estimates Office for review. The Consultant shall be responsible for forwarding the Offer of Final Payment Package to the Contractor

**13.0 AGREEMENT MANAGEMENT:**

**13.1 General:**

- (1) With each monthly invoice submittal, the Consultant will provide a Status Report for the Agreement. This report will provide the an accounting of the additional Agreement calendar days allowed to date, an estimate of the additional calendar days anticipated to be added to the original schedule time, an estimate of the Agreement completion date, and an estimate of the Consultant funds expiration date per the Agreement schedule for the prime Consultant and for each subconsultant. The Consultant will provide a printout from the Equal

Opportunity Reporting System showing the previous month's payments made to subconsultants. Invoices not including this required information may be rejected.

- (2) When the Consultant identifies a condition that will require an amendment to the Agreement, the Consultant will communicate this need to the Construction Project Manager for acceptance. Upon acceptance, prepare and submit an Amendment Request (AR), and all accompanying documentation to the Construction Project Manager for approval and further processing. The AR is to be submitted at such time to allow the Department 12 weeks to process, approve, and execute the AR. The content and format of the AR and accompanying documentation shall be in accordance with the instructions and format to be provided by the FDOT D5 Department.
- (3) The Consultant is responsible for performing follow-up activities to determine the status of each Amendment Request submitted to the City.

### **13.2 Invoicing Instructions:**

Monthly invoices shall be submitted to the Department in a format and distribution schedule defined by the City, no later than the 20th day of the following month.

If the monthly invoice cannot be submitted on time, notify the City prior to the due date stating the reason for the delay and the planned submittal date. Once submitted, the Consultant Project Principal or Senior Project Engineer shall notify the Construction Project Manager via e-mail of the total delay in calendar days and the reason(s) for the delay(s).

All invoices shall be submitted to the City/Department in electronic and hard copy formats in accordance with District Construction and Consultant Invoice Transmittal System (CITS) procedures. The Construction Project Manager must receive hard copy documentation within three (3) workdays of electronic submittal or the electronic submittal will be rejected. (Saturday, Sunday, and City holidays are not considered workdays).

All charges to the individual project will end no later than thirty (30) calendar days following final acceptance; or where all items of work are complete and conditional/partial acceptance is issued; unless authorized in writing by the City.

A Final Invoice will be submitted to the City no later than the 60<sup>th</sup> day following Final Acceptance of the individual project or as requested by the City.

### **14.0 OTHER SERVICES:**

Upon written authorization by the District Construction Engineer or designee, the Consultant will perform additional services in connection with the project not otherwise identified in this Agreement. The following items are not included as part of this Agreement, but may be required by the City/FDOT Department to supplement the Consultant services under this Agreement.

- A. Assist in preparing for arbitration hearings or litigation that occurs during the Agreement time in connection with the construction project covered by this Agreement.
- B. Provide qualified engineering witnesses and exhibits for arbitration hearings or litigation in connection with the Agreement.

- C. Provide inspection services in addition to those provided for in this Agreement.
- D. Provide services determined necessary for the successful completion and closure of the Construction Contract.

**15.0 POST CONSTRUCTION CLAIMS REVIEW:**

In the event the Contractor submits a claim for additional compensation and/or time after the Consultant has completed this Agreement, analyze the claim, engage in negotiations leading to settlement of the claim, and prepare and process the required documentation to close out the claim. Compensation for such services will be negotiated and effected through a Supplemental Amendment to this Agreement.

**16.0 CONTRADICTIONS:**

In the event of a contradiction between the provisions of this Scope of Services and the Consultant's proposal as made a part of their Agreement, the provisions of the Scope of Services shall apply.

**17.0 THIRD PARTY BENEFICIARY**

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a claim, cause of action, lien or any other damages or any relief of any kind pursuant to the terms or provisions of this Agreement.

**18.0 CITY AUTHORITY**

The City shall be the final authority in considering modifications to the Construction Contract for time, money or any other consideration except matters agreed to by the Contractor through contract changes negotiated by the Consultant, as authorized in Section 9.1 herein.

**NEGOTIATION HANDBOOK**  
*PROFESSIONAL SERVICES CONTRACTS*  
*FLORIDA DEPARTMENT OF TRANSPORTATION*



**Updates:**

Date of Update	Section Changed	Page Numbers
2/14/11	Updated Identification of the basis for proposed rates on page 4; Updated Direct Expense information, pages 5-6; Updated Sub costs information on page 6; Updated Operating Margin Section, pages 7- 11; Updated Standard Classes in Attachment B; Updated averages for Overhead, Exp, & FCCM in Attachment D; Updated Self-Certification Form in Attachment E; Updated Attachment F; Updated Vehicle Expense Guidelines in Attachment J; Added Certification of Use of Lower Tier Subs in Attachment K.	1- 14; Attachments B, D, E, F, J, K
6/13/11	Expanded guidance related to compensation, Section 4a(2).	5
7/24/12	Updated averages for Overhead, Exp, & FCCM in Attachment D; Updated Vehicle Expense Guidelines in Attachment J	Attachments D, J
9/18/12	Contract Modifications- Rate Adjustments to Professional Services Consultant Contracts	Page 13
9/18/12	Added Policy Statement on Use of Field Office Rates for On-Premises Consultant Employees	Attachment L

**NEGOTIATION HANDBOOK  
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**NEGOTIATION GUIDELINES  
PROFESSIONAL SERVICES CONTRACTS  
FLORIDA DEPARTMENT OF TRANSPORTATION**

**Introduction**

Florida law requires state agencies to acquire Professional Services by competitive negotiation. The process mandated by statute (287.055, 337.107 and 337.1075, Florida Statutes), Administrative Rule (14-75, Florida Administrative Code), and departmental procedures (FDOT 375-030-002) requires a competitive selection of the consultants based on qualifications, followed by a competitive negotiation process to establish a fee for the desired services. The objective of the total consultant acquisition process is the selection of a well-qualified firm at a fee that is fair, competitive and reasonable to both the state agency and the consultant. Negotiations should be conducted in good faith, recognizing that compromise may be required to achieve an equitable contract. The Department's negotiators must recognize the legitimate interest of the consultant industry in recovering their costs and making a reasonable profit when performing work for the Department. Conversely, the consultants must recognize the legitimate interest of the Department in receiving quality work at a fair, competitive and reasonable cost, to accomplish the work program while maximizing the use of taxpayers' dollars. A contract that is beneficial to both parties is the desired outcome of a successful negotiation.

The negotiation portion of the consultant acquisition process consists of establishing agreement between the Department and the Consultant on the following major points:

1. Scope of services to be performed
2. Work effort required (both quantity and level of personnel required)
3. Cost of services
  - a. Wage rates (or billing rates for some services)
  - b. Overhead cost
  - c. Direct expenses and subconsultant costs
  - d. Operating margin
4. Method of compensation

The following information provides general guidelines for the negotiation process. Although the various components are described separately, the negotiation process should be approached from a holistic perspective since scope, work effort and cost are interrelated. The negotiation of one of these variables might have a significant impact on the other two. Both project management personnel and professional services staff should be involved in negotiating the contract terms for the Department. Typically, the project management personnel would assume the lead role in negotiating the scope of services and staff hour requirements, while professional services would assume the lead with costs and method of compensation. However, it is strongly recommended that one person have primary responsibility for the negotiation and participate in all phases of the process.

## Negotiation Procedures

### 1. Fee Proposals

At the completion of final selection, the number one ranked firm should be requested to provide comments on the scope of services, as well as a detailed staff hour estimate where appropriate, a fee proposal in standard format, and support for all costs contained in the fee proposal. Task assignment type projects would not require a staff hour estimate. Attachment A provides the Department's Automated Fee Proposal Guidelines.

Florida Statutes specifically require the Department to conduct a detailed analysis of costs for contracts acquired under the Consultants Competitive Negotiation Act, and the fee proposal must provide sufficient information to allow this. The fee proposal should be reviewed as well as supporting information. Any errors, deficiencies, omissions, etc., noted during the review of the fee proposal should be immediately brought to the attention of the selected Consultant, and corrective data requested.

### 2. Negotiation of Scope of Services

The final negotiated scope of services should be tailored to ensure a mutual understanding of the project. During this negotiation process each work activity or milestone should be discussed to determine how it is to be accomplished, the nature of the deliverable, and its format. If the consultant's understanding is not in accord with that of the Department, discussions should be conducted to arrive at a mutual understanding of the services to be accomplished, the method by which it will be accomplished, and the nature of the final product. Either party to the negotiations should feel free to request written confirmation in the form of modification of the scope to reflect agreed-to terms.

The scope of services is one of the major factors affecting the fee for consultant services since it defines the nature and volume of work to be performed. A well written scope of services establishes the tasks to be performed, materials to be delivered, meetings to be attended, schedule to be met, equipment that will be used, standards that will be followed, and responsibilities of both the consultant and the Department.

The detail established in the scope of services sets the stage for subsequent negotiations. A detailed and thorough scope of services leads to an understanding of the services needed to complete the assigned project as well as an understanding of the sequence of tasks to be accomplished. This allows for informed development of the staff-hour estimates and project fee.

The scope of services should be prepared in standard Department format. A standard scope of services is available on the Department's web site for project development & environmental studies (PD&E), highway and bridge/structural design and construction engineering & inspection (CEI) projects. The standard scope of services should be used, where practical, however, modifications should be made to reflect the actual agreed-to terms and requirements for the specific project. This will facilitate preparation and evaluation of staff hour estimates, and any desired modification of the scope during the negotiation process.

Following are typical major items within the scope of services requiring negotiation:

- a. Work activities
- b. Deliverables
- c. Numbers of and types of meetings, presentations, etc. to be attended or provided
- d. Schedule for project services
- e. Division of responsibilities and relationship between Consultant and Department

### 3. Negotiation of Work Effort

The objective of this process is to ensure that the proposed staff hours are reasonable for the specific project. It is also critical to determine if a reasonable distribution of work among various levels of staff is proposed to ensure the most economical staffing commensurate with the complexity of the project.

Upon receipt by the Department of the Consultant's staff hour estimate, the Department's estimate shall be provided to the consultant. The Consultant's staff hour estimate should be compared with the Department's and the differences evaluated. Discussions will be conducted with the Consultant to resolve differences between the Department and consultant staff hour estimates. As with the entire negotiations process, a record should be kept of the key points discussed and the resulting resolution.

The basis for an accurate staff hour estimate is a well-developed scope of services. With such a basis, a series of work activities may be readily identified as staffing elements. Those elements should be used for both the Department and consultant estimates for ease of reconciliation. The estimates by both parties should be made in the same standard format. Standard Staff Hour Estimation forms are available in Excel format for PD&E, highway and bridge/structural design projects on the Department's Project Management/Production Support Office website. For PD&E, highway and bridge/structural design, the Department's Staff Hour Estimating spreadsheet forms must be used by both the Department's project manager and the selected consultant in preparing the staff hour estimate to facilitate the negotiation process.

The published typical ranges of staff hour effort should be treated as only a beginning point. Each project must be independently evaluated to determine a fair estimate of required staff hours. The basis for the estimate should be the specific requirements for the project under consideration together with a history of actual staff requirements for past projects with similar requirements. Where specific requirements cannot be identified during the negotiation phase, a limiting amount will be made to serve as the basis of the contract.

Following are the major items relating to work effort requiring negotiation:

- a. Staff hours, overtime, survey crew days, etc.
- b. Levels of personnel required
- c. Distribution of work among levels of personnel
- d. Subconsultants (Quantity of work effort, personnel)

- e. Delineation of work to be provided by consultant, the Department, or others
4. Negotiation of Cost of Services
- a. Wage or billing rates:
    - (1) Identification of the basis for proposed rates
      - (a) The proposed wage rates must be certified in writing to be current and accurate by a responsible company official. The Department may require a payroll register to confirm the accuracy of the proposed wage rates.
      - (b) If averages for select employees are used, payroll information and an explanation of how the average wage rate was computed (i.e., straight average, weighted average, etc.) must be provided. When job class averages are used, care should be taken that only employees actually committed to and needed for the project are used in the average.
      - (c) If the Consultant's average rates for specified job classes are used, appropriate company records that identify employees within the classes and their respective wage rates should be submitted.
      - (d) If the Consultant is performing a special service, such as surveying, for which standard billing rates are normally charged, the cost basis for these rates must be identified (i.e. certified wage rates, overhead factors, operating margin, etc.)
      - (e) Consultants (geotechnical, aerial photography, etc.) that normally work on a unit price basis will be required to provide a copy of their standard fee schedule and attest that the fees contained therein are their normal fees for such services (whether performed for private or governmental clients). In addition, identification of the cost basis for such rates (i.e. labor hours and wage rates, overhead and operating margin, equipment use rates verified by audit, etc.) should be required where practical. Firms who are compensated in whole or in part using fee schedule rates will be required to complete a certification statement during contract negotiations, attesting to full disclosure of intended use of lower tier subconsultants/subcontractors/sub-vendors, including use of drilling subs.
    - (2) Negotiation of proposed salary or billing rates

A comparison of the proposed salary or billing rates with prevailing rates for the class of personnel should be performed. The on-line Consultant Wage Rate Averages Report provides wage rate statistics for various consultant staff classifications by district. The Consultant Wage Rate Averages Report can be accessed at the following link:

[http://www2.dot.state.fl.us/procurement/ProfessionalServices/lppc/afp\\_jobclass\\_wage\\_rate.asp](http://www2.dot.state.fl.us/procurement/ProfessionalServices/lppc/afp_jobclass_wage_rate.asp)

If personnel with unusually high salaries are proposed, the negotiators must determine whether there is sufficient need for that individual to justify their work on the project at that rate. If there is not a legitimate need for their expertise, they should not be allowed to bill time on the project. The Department may negotiate contract rates as averages for employee classifications.

Arbitrary or across the board limitations on direct salary/wage rates which do not consider the factors prescribed in the Federal Acquisition Regulations (FAR) cost principles are contrary to the requirements of the Brooks Act (40 U.S.C. §1104(a)), which requires fair and reasonable compensation considering the scope, complexity, professional nature, and value of the services to be rendered (as required in 23 U.S.C. §112(b)(2)). Additionally, if limitations or benchmarks on direct salary rates and total compensation are too low, it could limit the number of firms and the qualifications of the firms which submit proposals to perform work on projects. Furthermore, direct labor limitations or benchmarks not supported by the cost principles create associated disallowed indirect costs which effectively limits the calculated indirect cost rate, contrary to 23 U.S.C. §112(b)(2)(D) and 23 CFR §172.7(b).

b. Overhead:

- (1) If the Consultant is prequalified with the Department, a copy of the Procurement Office's letter of approval of the overhead rate should be included in the fee proposal. The Department's policy is that overhead rates are not negotiated. The consultant's actual approved overhead rate as reflected in the letter of approval or in the Professional Services Information System should be used. If the consultant voluntarily proposes to use a lower overhead rate than the current audit in order to keep overall project costs competitive, the Department may accept the lower overhead. The use of a lower overhead rate should not be made a requirement of contracting. For contracts with fees less than \$250,000, the Department is authorized to contract with firms without an audited overhead rate. For such occasions, however, the Consultant should provide a self-certified overhead determination, in the standard format provided in Attachment E. The average overhead rates for both home office and field office overhead are included in Attachment D. These rates are provided for comparison purposes. They are one of the tools the Department's negotiators can use to determine the competitiveness of the overall costs proposed.
- (2) If the proposed project requires the establishment of a field office, a separate overhead rate for the field office must be submitted. If the Consultant does not have an approved field office overhead rate which has been established through the prequalification process, a field office overhead rate should be prepared by the Consultant in accordance with the instructions contained in Chapter 5.6 of the AASHTO Uniform Audit & Accounting Guide (see Table 5-6, page 39).

- (3) If the proposed project involves the use of DOT office space or equipment by consultants, the Department's policies provided as Attachments H and L, should be observed.

c. Direct expenses:

Direct project expenses will be compensated using the direct expense rate which is required as a part of annual overhead audits performed for fiscal years ending December 31, 2002 and after. All professional services contracts negotiated since October 1, 2003 have included reimbursement of direct expenses by application of a direct expense rate based on the audit listing of direct costs in relation to the direct labor base. Separate audited rates are required for home office expenses and field office expenses. These rates represent the ratio of direct expenses to actual direct labor excluding premium overtime. There should normally be no other direct expense compensation. The only exceptions to this would be unusual and infrequently occurring items that cost in excess of \$10,000. When such items are compensated separately from the direct expense rate, they must be excluded from the direct expense pool used to calculate the direct expense rate. When consultants propose such items, the negotiator should discuss this with the Central Office Procurement prior to accepting it.

If the consultant does not have a current approved audit that includes a direct expense rate, an expense rate may be negotiated on the basis of the average expense rate data available in the Negotiation Handbook, Attachment D. If this method of determining the compensation for expenses is not used, then sufficient documentation must be provided to support the basis for all expenses contained in the price proposal. Written quotes from vendors, invoices reflecting prices paid on previous purchases, copies of catalog pages, etc., may be used as support for the proposed prices.

As a general rule, the method of acquisition for any capital asset (item costing \$1,000 or more and having a life expectancy of 1 year or more) shall be determined through the use of a lease versus purchase analysis. A copy of the analysis shall be included with the fee proposal. A reasonable allowance for salvage value of the items, based on the term of the project, must be provided for the purchase of such items. Attachment G provides the Department's equipment acquisition policy for capital assets.

Unit rates used to compute travel costs may not exceed those authorized for State employee travel in accordance with Florida Statutes Section 112.061. Airfare must be based on coach rates and costs for rental cars must be based on the use of compact cars, unless otherwise justified and approved by the Department. Mileage for private vehicles must be at the state rate.

d. Subconsultant/subcontractor/sub-vendor costs:

Subconsultant/subcontractor/sub-vendor costs must be specifically identified in the price proposal and supported in a manner that will allow the Contracting Office to make a determination that the proposed costs are fair, reasonable and competitive. Intended use of

all lower tier subs, must be disclosed during contract negotiations, regardless of tier level. Unauthorized subs are not in accordance with the FDOT Standard Professional Services Agreement, Section 7A, which states: "The Consultant...will not sublet, assign, or transfer any work under this Agreement to other than subconsultants specified in the Agreement without the written consent of the Department." Typically, this will require submission of the same type of data as required for the Prime Consultant. This includes support for wage rates, loaded billing rates, rates per unit of work, direct expense rates and overhead rates. Subconsultants technically qualified with the Department must submit an overhead audit prepared by an independent CPA if the anticipated subconsultant fee is in excess of \$250,000. If the subconsultant fee is \$250,000 or less, an overhead statement certified by a principal of the consultant firm may be accepted. Copies of overhead statements received from non-prequalified subconsultants will be provided to the Procurement Office for maintenance in a central file. The requirement for an overhead statement may be waived at the discretion of the district office for non-prequalified firms performing specialty services who do not have overhead information and who typically charge on a loaded billing rate basis.

The prime consultant should not receive overhead and operating margin for subconsultant/subcontractor/sub-vendor services. Subconsultant/subcontractor/sub-vendor fees are pass-through costs, and should not include administrative mark-up. See Attachment I for guidance on this issue.

#### 5. Negotiation of Operating Margin

The operating margin paid in a Consultant contract does *not* represent net profit to the Consultant. Consultants have normal business expenses that are excluded from allowable overhead by Federal Regulations (e.g., interest, advertising, bad debts, unrecovered direct costs, etc.). These legitimate costs cannot be recovered on FDOT contracts except through operating margin. Operating margin compensates the Consultant with a reasonable fee. Consultant operating margin also absorbs the loss when the reimbursed salary is less than the actual salary for a given project.

Operating margin in FDOT contracts is calculated as a percentage of direct salaries. The percentage is negotiated within a range of 12 to 42 percent. The resulting dollar amount is the "fixed fee" portion of a cost plus fixed fee type contract or becomes part of the total fixed price in a lump sum agreement. The negotiation of operating margin as a fixed fee provides an incentive for the Consultant to efficiently complete the contract requirements. Completing the contract with less than the estimated costs (excluding the fixed fee) benefits both the Department (lower overall contract cost) and the Consultant (higher profit margin). FHWA will not participate in cost plus percentage of fee for operating margin unless the Consultant's operating margin is established as a fixed fee.

The operating margin is negotiated based on the complexity of the project, the degree of financial risk assumed by the Consultant, the project schedule and Consultant cost controls. The following table provides a guideline on how these factors should be weighted and considered.

The table is only a guide, **NOT A FIXED FORMULA**, for negotiating operating margin. There is a large variation in operating margins within the range to account for the wide spectrum of cost

control by various Consultants that conduct business with FDOT. There will be significant variation in operating margin from contract to contract. Negotiators *SHALL NOT* use a standard operating margin for all contracts.

The table summarizes how these factors should be weighted and considered in developing the cost control portion of the operating margin for each individual contract. For cost control efforts, a formula *SHALL NOT* be used to calculate the percentage to be applied.

**The factors to be considered in negotiating the cost control efforts percentage shall include:**

- Burdened salary rates by classification, inclusive of overhead, expense percentage and Facilities Capital Cost of Money (FCCM) only;
- Specific services requiring specialized staff, qualifications of proposed team;
- Reasonableness of the proposed distribution of staffing for the project;
- Burdened salaries by geographic region;
- For CEI contracts, if the firm has Overhead or Direct Expense percentages that include Premium Overtime (reimbursed) or firms where the Premium Overtime is reimbursed directly on the contract (excluded);
- Other items specific to the contract being negotiated.

It is possible for negotiators to negotiate operating margins outside of the range for special circumstances on a contract. For example, if overhead rates, direct expense rates or salaries are significantly above (or below) the normal range, operating margins below (or above) the ranges may be negotiated. Other factors that impact the cost/benefit to the Department and/or Consultant may also be considered.

The operating margin, overhead rate and direct expense rate may not be applied to the premium portion of overtime costs.

Operating margin and overhead are not allowed on direct expenses or subconsultant expenses.

The fee proposal must include a justification for the proposed operating margin.

The table below summarizes the ranges that are to be used as a guide in negotiating the operating margin for each contract.

**Operating Margin Percentage Calculation for Direct Salaries**

Criteria	Range of Percentage
Project Complexity	5% to 7%
Degree of Risk	3% to 5%
Project Schedule	1% to 3%
Cost Control Efforts	3% to 27%
<b>TOTAL</b>	<b>12% to 42%</b>

The following table summarizes the definition, suggested standards, and representative project types for each of the criteria in the operating margin.

<b>Operating Margin Guidelines Table</b>			
(This table is intended as a guideline, not a fixed formula.)			
Criteria	% Range	Suggested Standards	Typical Project Type
<p><b>Complexity of Project:</b> The degree of difficulty associated with the project. Are there unique aspects to the project?</p> <p>Degree of coordination with others outside FDOT should be considered. This includes other agencies, municipalities, etc., Multiple Districts, multimodal projects.</p>	5% - 7%	<p><b>Low</b> - Simple Straight forward projects. Small and specific scope of services, very minor issues/improvements</p>	<p><b>Bridge Inspection:</b> bridge inspection except scour: All; <b>CEI:</b> 3R Rural, Painting, CEI signalization, simple and straight forward projects; <b>Design:</b> Simple 3R-Rural; 3R Urban ride only; <b>Geotechnical:</b> standard; <b>PD&amp;E:</b> Small simple projects with specific scopes; <b>Planning:</b> Data/traffic Counts; <b>Survey:</b> Resurfacing 3R rural/urban; <b>Traffic Operations:</b> turn-lane projects (design)</p>
		<p><b>Medium</b> - Projects with some specialized areas requiring some specialized skills. Moderate improvements on a project</p>	<p><b>Bridge Inspection:</b> generally not applicable; <b>CEI:</b> CEI resurfacing with some improvements; <b>Design:</b> 3R Urban with some improvements, intersection improvements with safety, Category 1 bridges; <b>PD&amp;E:</b> widening with limited issues and bridge replacement with limited impacts; <b>Railroads:</b> All; <b>Survey:</b> survey in water areas; <b>Traffic Operations:</b> traffic operations studies and signal design projects</p>
		<p><b>High</b> - Complex multi-disciplined projects requiring specialized skills with significant management issues. Major improvements on a project</p>	<p><b>Bridge Inspection:</b> bridge scour; <b>CEI:</b> CEI for multisections in a corridor, MOT Issues, specialized skills, ITS, construction on new alignments, and signal system timing, development and implementation; <b>Design:</b> new alignments, major widening, major reconstruction; railroad bridge design; Segmental/Class 2 bridges, Movable Bridges, <b>PD&amp;E:</b> PD&amp;E with Feasibility study, multiple disciplines, significant issues; <b>Planning:</b> large planning (multimodal); <b>Survey:</b> pilings and bridges; <b>Traffic Operations:</b> ITS</p>
<p><b>Degree of Risk:</b> The amount of financial risk assumed by the consultant in relation to the project.</p>	3% - 5%	<p><b>Low</b> - Contracts with well defined and specific scopes, minimal probability of cost overruns and low financial risk exposure. Scope clarification meeting held, if applicable</p>	<p><b>Bridge Inspection:</b> bridge inspections; <b>CEI:</b> CEI subconsultants providing support personnel, ITS, maximum limiting amount contracts; <b>Design:</b> Simple 3R Rural, 3R urban ride only; <b>Geotechnical:</b> All; <b>PD&amp;E:</b> accurate and specific scope &amp; pre-negotiation meetings; <b>Planning:</b> Most Planning; <b>Survey:</b> all, including SUE; <b>Traffic Operations:</b> traffic operations studies; traffic counts</p>
		<p><b>Medium</b> - Projects with potential for additional coordination efforts with outside agencies/parties; coordination with several Districts, multiple municipalities, etc.</p>	<p><b>Bridge Inspection:</b> bridge scour; <b>CEI:</b> Standard CEI; <b>Design:</b> design for new alignments, major reconstruction, and widening; <b>PD&amp;E:</b> experimental design and broad scopes; <b>Planning:</b> some planning; <b>Railroads:</b> All; <b>Traffic Operations:</b> traffic signal projects, ITS design</p>
		<p><b>High</b> - lump sum contracts with possibility of overrunning costs; experimental design; projects involving significant financial risk, hazardous</p>	<p><b>CEI:</b> high visibility, lump sum contracts, multiple projects; <b>Design:</b> projects with multiple bridges; <b>PD&amp;E:</b> multiple alternatives, multiple agency approval required; <b>Planning:</b> large multimodal projects (airports, seaports, railroads, transit)</p>

		materials, potential for significant unknown issues.	
<b>Project Schedule</b>	1% - 3%	<p><b>Low</b> - no critical short term deadlines or requirements for large staffing concentrations, unfunded projects to go on the shelf</p> <p><b>Medium</b> - Standard schedule</p> <p><b>High</b> - High visibility projects with short durations and aggressive schedules requiring large commitment of staff. Fast track projects with high profile and quick implementation schedule</p>	<p><b>Bridge Inspection:</b> Bridge Inspection; Bridge Scour; <b>CEI:</b> ITS; stand alone resurfacing; ride only, support services; <b>Design:</b> all 3R projects, standard schedule; <b>PD&amp;E:</b> no design phase scheduled in Work Program; <b>Planning:</b> All; <b>Railroads:</b> All; <b>Traffic Operations:</b> ITS; <b>Survey:</b> all 3R projects;</p> <p><b>Bridge Inspection:</b> generally not applicable; <b>CEI:</b> push button construction; <b>Design:</b> standard design; bridges, large corridors; <b>Traffic Operations:</b> traffic counts; <b>Survey:</b> increased number of crews needed</p> <p><b>Bridge Inspection:</b> generally not applicable; <b>CEI:</b> multiprojects, construction bonus, CEI Urban (day &amp; night), high visibility; short duration, utility reallocation by others; <b>Design:</b> Mobility/ Economic Stimulus; <b>PD&amp;E:</b> design phase funded in the work program, bridge replacements</p>
<b>Cost Control Efforts:</b> The degree to which the Consultant controls its costs for wage rates (by region), overhead, expenses and FCCM.	3% - 27%	<p><b>Low (3% - 6%)</b> - Lower or minimal cost control efforts</p> <p><b>Medium (7% to 15%)</b> - Moderate cost control efforts</p> <p><b>High (16% - 27%)</b> - Substantial cost control efforts</p>	The cost control is not generally dependent upon the type of project. Factors to be considered in negotiating this criteria: burdened salary rates (by region) by classification, specialized services requiring specialized staff, reasonableness of the proposed distribution of staffing for the project, reimbursed or excluded premium overtime, and other project specific items
<b>Total</b>	12% - 42%		

### Operating Margin Dos and Don'ts

The following additional guidance is provided for negotiation of operating margin:

#### Dos

- a) Every consultant firm should be considered separately on a given contract when negotiating operating margin.
- b) Mitigating circumstances or other factors that affect the project may be considered when awarding operating margin.
- c) Remember to practice mutual gains and consider value.
- d) Remember that negotiation is not personal.
- e) Be flexible and open to considering the other side's point of view.
- f) If the conditions warrant, the maximum in operating margin can be awarded.
- g) Look at each element separately.
- h) Be fair.
- i) Parties to the negotiation should share their rationale for proposed operating margin with the other party. Listen to counter-points of view.
- j) Operating margin can be an incentive.

- k) All parties to the contract should have a role in establishing operating margin.
- l) The same cost principles which are used in negotiating the prime consultant's fee should also be applied to the subs.
- m) Operating Margin can be different for the prime and subs, depending on the degree of risk and complexity of the services performed by the firm.

### Don'ts

- a) Operating margin determination should not be fixed formula.
- b) Fixed values should not be assigned on the basis of work discipline or project type (i.e., design, CEI, planning, etc.)
- c) Subconsultants should not be capped at the prime's multiplier (note: multiplier is inclusive of overhead, direct expense, FCCM, and operating margin).
- d) The operating margin awarded to a consultant firm on a previous contract should not be a factor in the current negotiation effort.
- e) Operating margin awarded to a given consultant should not be a fixed amount based solely on audited overhead data (i.e., for every contract Consultant Firm XYZ gets this year, they will get X% for cost control or XX% for operating margin)
- f) Don't let a small variance in operating margin between negotiating parties cause a breakdown in the negotiations process.
- g) Don't paint yourself into a corner with absolutes. Don't hold positions based on "that's the way it's always been done".
- h) Don't employ a "Take it or Leave it" strategy. Rigid positions damage relationships.
- i) Operating margin is negotiated within a range of 12 to 42%, without an arbitrary cap within a district.
- j) Don't exclude important information. Listen and be willing to consider other opinions.
- k) Don't negotiate raw labor rates. Consider the fully loaded rates, since this will determine the real cost of services on the project.

### 6. Negotiation of Method of Compensation

Discussions should be conducted with the selected consultant regarding the Method of Compensation. To some extent, the selection of whether the compensation element is to be lump sum or cost plus is a negotiable item. Under Departmental procedures, lump sum compensation elements may be used where the scope of services is well defined and the level of effort can be reasonably predicted. In addition, consideration must be given to requirements imposed by Federal Highway Administration (FHWA) for federally funded projects. The following standard methods of compensation will be used.

**LUMP SUM:** A firm fixed price not subject to adjustment due to the actual cost experience of the Consultant in the performance of the contract. This places the maximum risk on the Consultant and provides motivation for efficient cost management to maximize profits. It also minimizes the Department's time in contract administration. It is the recommended method of compensation when the scope of services is well defined and the level of effort can be reasonably predicted. Federal Aid Policy Guidelines prohibit the use of lump sum contracts for CEI work unless the "extent, scope, complexity, character and duration of the work" have been

established.

**COST REIMBURSEMENT:** The Consultant is reimbursed the actual costs incurred in the performance of the contract. A "maximum limiting amount" is normally established to cap the amount the Department will pay for the services. This method is used when the services are so vague or complex that the level of effort or expenditure cannot be estimated with reasonable accuracy. This provides minimal incentive to the Consultant to control costs and is time consuming to administer. FHWA only participates in cost reimbursement contracts in which the Consultant's operating margin is a lump sum or "fixed fee."

**COST PER UNIT OF WORK:** A negotiated unit rate for a repetitive task or deliverable product is established and paid for each unit produced. The unit rate is not subject to adjustment. A maximum limiting amount is normally established based on the estimated number of units required. This method is frequently used for geotechnical services, lab tests, soil explorations, traffic counts, bridge inspections, etc.

**SPECIFIC RATES OF COMPENSATION:** Billing rates are established for units of time, usually per hour. These rates normally include wages, overhead, estimated expenses and operating margin but can also be average hourly raw salary rates established for the contract. A maximum limiting amount is normally established. This method is frequently used for surveying, legal services and expert witness services.

7. Documentation of Negotiations

During the entire negotiation process, a record should be kept of all issues raised and their resolution.

8. Termination of Negotiations

Compensation should be negotiated within prescribed limits and should be fair, competitive, and reasonable considering the scope and complexity of the project. Should a fair and reasonable fee, as determined by the Department, not be obtained by this process, the Department will terminate negotiations with the selected consultant and provide written notice of termination to the selected consultant. The Department will then initiate negotiations with the second ranked consultant. The decision to terminate negotiations is a business decision and should not cause the consultant to be viewed negatively or in any way impact their opportunity for future selections.

9. Contract Modifications

a. Amendments:

Contract Amendments may be used to increase or decrease total contract fees, where warranted by scope changes. When this occurs, a negotiation process very similar to that involved with the original agreement is required. The Department prepares a scope of services and an independent staff hour estimate; a staff hour estimate and fee proposal is requested from the Consultant; and negotiations are conducted to establish a fair and

competitive fee. For most supplemental amendments, the wage rates and multipliers have been established in the original agreement. Therefore, negotiations are usually limited to establishing staff hour quantities and direct expenses. Guidelines for the negotiation of original agreements should be applied to supplemental agreements.

b. Rate Adjustments to Professional Services Consultant Contracts

Wage rate adjustments are appropriate for the following scenarios on consultant contracts:

- Pulling plans off the shelf to revisit and revise or take to completion/plans update amendment (Rate adjustments are only applicable to contract services beyond the fifth year).
- Changing from design to post design (Rate adjustments are only applicable to contract services beyond the fifth year).
- Time extensions that extend contracts beyond the fifth year (Five years is the typical service term of a professional services contract. Rate adjustments are only applicable to contract services beyond the fifth year).
- Additional services added to a contract (Rate adjustments only applicable to contract services beyond the fifth year).

To address the aforementioned scenarios, rate adjustments may occur, but shall comport to the following:

If it is known that the contract time will extend beyond five years, the contract services projected beyond the fifth year are eligible for rate adjustment. The consultant firm would be allowed to submit new certified rate information as of the timeframe when the contract supplemental (or future time extension) is drafted, to update wage rates for the services projected beyond the fifth year. Contract multipliers may also be adjusted for the aforementioned services beyond the fifth year, including overhead rate, Facilities Capital Cost of Money (FCCM), direct expense rate, and operating margin. The contract multipliers would reflect the audit package information available at the time the contract supplemental (or future time extension) is drafted.

When new staff are added on a contract to perform different services due to phase changes within the same contract (from Project Development & Environmental Studies to Design), it is appropriate to for the consultant firm to utilize current wage rate information for consultant staff performing services under the new phase.

c. Task Work Orders:

For task assignment type contracts, the original agreement typically establishes unit wage rates. As each work assignment is developed, a fee for that assignment is negotiated. Therefore, procedures identical to those for supplemental amendments are followed for task work orders.

d. Work Stoppages:

In the event that a project is stopped or suspended by the Department, a reasonable period should be allowed for the Consultant to close out the project. Costs associated with such a close out should be negotiated with the Consultant when warranted.

## **Attachments**

- A. Automated Fee Proposal Guidelines
- B. FDOT Standard Work Classes
- C. Average Salary Rates Proposed and Average Negotiated Rates
- D. Current Averages for Audited Overhead, Expense, and FCCM Rates
- E. Self Certification of Accounting System and Overhead Rates
- F. Overhead Rates for Subconsultants on Construction Engineering & Inspection (CEI.) Projects
- G. Capital Equipment Acquisition Policy
- H. Policy on Use of Department Space and Equipment by Consultants and Other Service Providers
- I. Administrative Add-ons for Subconsultant Costs
- J. Vehicle Expense Guidelines
- K. Certification of Use of Lower Tier Subs

**Attachment A**  
**Automated Fee Proposal Guidelines**

The most up-to-date Automated Fee Proposal and guidelines for its use can be found at:  
<http://www.dot.state.fl.us/procurement/forms/formmenu.shtm>

## Attachment B

### **FDOT Standard Work Classes**

The following Job Classes are to be used for CATEGORIZING personnel on FDOT professional services consultant proposals. With the exception of where unusual project requirements exist, every effort should be made to list all personnel using these classes. These general classes are not intended to be interpreted as Position Descriptions, but as a means of classifying personnel for proposals. **Personnel should be classified based on their FUNCTION on the project, not based on the position title they hold within their firm.** The qualifications are not intended as minimum requirements, but rather general guidelines defining the personnel to whom the classes should apply. It is recognized that exceptions will need to be made in consideration of commensurate experience and education.

Class	Typical Qualifications
Acquisition Agent	real estate sales license & 3+ years experience in Acquisition
Appraisal Research Assistant	
Appraiser	registered and licensed appraiser
Archaeologist	
Architect	registered w/ 1+ years post registration experience
Architect Intern	entry level w/ degree and intern registration or equivalent
Associate Appraiser	registered or licensed appraiser
CADD/Computer Technician	
CEI Architect	Registered Architect, with 4 yrs as registered architect. Please refer to CEI Scope of Services for additional information.
CEI Assist Project Administrator/Project Engineer	A C.E. degree plus 1 yr of engring exp. in constr. of major road or bridge; or for non-degreed personnel 6 years of engr exp. Please refer to CEI Scope of Services for additional details.
CEI Assoc Contract Support Spec	HS grad plus 3 years of clerical exp. including 2 years exp. in constr. office mgmnt. Please refer to CEI Scope of Services for additional details.
CEI Asphalt Plant Inspector	HS grad or equiv, plus 1 yr of experience in surveillance & insp. of hot mix asphalt plant operations. Please refer to CEI Scope of Services for additional details.
CEI Bridge Inspector	NACE Level I or BCI Level I; SSPC C-3 Lead Paint Removal; AWS Certified Welding Inspector. Please refer to CEI Scope of Services for additional details.
CEI Bridge Project Administrator	NACE Level III Certified or BCI Level II Certified; SSPC C-3 Lead Paint Removal; AWS Certified Welding Inspector. Please refer to CEI Scope of Services for additional details.
CEI Bridge Senior Inspector	NACE Level III Certified or BCI Level II Certified; SSPC C-3 Lead Paint Removal; AWS Certified Welding Inspector. Please refer to CEI Scope of Services for additional details.
CEI Building Inspector/Electrical	HS grad + 5 years exp. as building inspector or general contractor. Please refer to CEI Scope of Services for additional details.
CEI Casting Yard Engineer/Manager	P.E. in Fla.w/ 1 yr. of exp.; or non-registered with min. 3 years exp. Please refer to CEI Scope of Services for additional information.
CEI Communications Engineer	Elect. Engr. degree plus registr. as P.E. & 10 yrs exp. involving computer controlled systems for computerized traffic signal systems. Please refer to CEI Scope of Services for additional details.
CEI Contract Support Specialist	HS diploma plus 4 years of road and bridge CEI exp. or a C.E, degree, Please refer to CEI Scope of Services for additional details.
CEI Environmental Specialist	B.S. degree in Environmental Science w/ 3 year's exp. Please refer to CEI Scope of Services for additional details.
CEI Geotech Engr- Cat I Bridge Pile	P.E. + 4 yrs exp. as Geotechnical Engineer including at least two Cat I bridges w/ pile foundations. Please refer to CEI Scope of Services for additional details.
CEI Geotech Engr- Cat I Bridge DSF (Drilled Shaft Foundations)	P.E. + 4 yrs exp as Geotechnical Engineer, including at least two Cat I bridges w/ drilled shaft foundations. Please refer to CEI Scope of Services for additional details.
CEI Geotech Engr- Cat II Bridge Pile	P.E. + 5 yrs exp as Geotechnical Engineer, including at least one Cat II

Class	Typical Qualifications
	bridge w/ pile foundations. Please refer to CEI Scope of Services for additional details.
CEI Geotech Engr- Cat II Bridge DSF (Drilled Shaft Foundations)	P.E. + 5 yrs exp as Geotechnical Engineer including at least one Cat II bridge w/ drilled shaft foundations. Please refer to CEI Scope of Services for additional details.
CEI Geotechnical Technician- DSF (Drilled Shaft Foundation)	CTQP Drilled Shaft Inspector w/ 3+ years exp. Please refer to CEI Scope of Services for additional details.
CEI Geotechnical Technician- Pile Foundation	CTQP Pile Driving Inspector w/ 3+ years exp. Please refer to CEI Scope of Services for additional details.
CEI Inspector/Engineer Intern	HS degree plus 2 yrs exp. in constr. inspection, or C.E. degree. Please refer to CEI Scope of Services for additional information.
CEI Inspector's Aide	HS degree or equivalent. Please refer to CEI Scope of Services for additional details.
CEI Instrument-Person	HS grad plus 3 yrs experience in construction surveying. Please refer to CEI Scope of Services for additional details.
CEI ITS Inspector	H.S. graduate or equiv. +2 years exp. in constr. inspection, one year of which was ITS const. inspection. Please refer to CEI Scope of Services for additional details.
CEI Landscape Inspector	H.S. graduate + 5 yrs commercial or roadway landscape construction exp. Please refer to CEI Scope of Services for additional details.
CEI Project Administrator/CEI Project Engineer	C.E. degree plus 2 years of engring experience in constr. of major road & bridge, or for non-degreeed personnel 8 yrs of engring exp. If registered P.E., uses Project Engineer title. If non-registered, uses Project Administrator title. Please refer to CEI Scope of Services for additional details.
CEI Public Information Officer	H.S. graduate or equiv., and 3+ yrs of public information experience. Please refer to CEI Scope of Services for additional details.
CEI Res Compliance Specialist	HS grad with 1yr. experience. Please refer to CEI Scope of Services for additional details.
CEI Rod-Person/Chain-Person	HS grad with some survey exp. preferred. Please refer to CEI Scope of Services for additional details.
CEI Secretary/Clerk Typist	HS grad or equivalent plus 2 yrs clerical exp. Please refer to CEI Scope of Services for additional details.
CEI Senior Environmental Specialist	M.S. Degree in Physical or Natural Science & 7 yrs exp. Please refer to CEI Scope of Services for additional details.
CEI Senior Inspector/Senior Engineer Intern	HS grad plus 4 years exp. in constr. inspection, or C.E. degree & 1 year of road & bridge CEI experience. Please refer to CEI Scope of Services for additional details.
CEI Senior Inspector- Bldg Struct.	HS grad plus 8 yrs exp. in construction inspection. Please refer to CEI Scope of Services for additional details.
CEI Senior ITS Inspector	H.S. graduate or equiv. +4 years exp. in constr. inspection, two years of which were ITS construction inspection. Please refer to CEI Scope of Services for additional details.
CEI Senior Project Engineer	C.E. degree, & registered in the State of Florida as a P.E. (or if registered in another state, the ability to obtain registration in the State of Florida within six months) and 6 years of engineering experience. Please refer to CEI Scope of Services for additional details.
CEI Software Engineer	Elect. Engr. degree & 5 yrs exp. in traffic signal design, analysis, and implementation. Please refer to CEI Scope of Services for additional details.
CEI Survey Party Chief	High School graduate +4 years of experience in construction surveying. Please refer to the CEI Scope of Services for additional details.
CEI Systems Technician	H.S. graduate + 5 yrs exp. in electronic systems and/or traffic engineering technician level work. Please refer to CEI Scope of Services for additional details.
CEI Utility Coordinator	H.S. graduate or equivalent with 4+ years exp. in utility coordination. Please refer to CEI Scope of Services for additional details.

Class	Typical Qualifications
Certified Bridge Inspector	FHWA bridge inspection course graduate
Chief Archaeologist	
Chief Engineer	PE w/ 20+ years of post registration experience
Chief Planner	AICP, MS in planning or equivalent, with 20+ years exp.
Chief Scientist	
Chief Utility Coordinator	
Claims Analyst	
Computer Programmer	
Contract Coordinator	
CPA/CFE	Licensed Certified Public Accountant
Designer	5+ years of design experience, non-registered, non-degreed
Engineer	entry level PE
Engineering Intern	entry level w/ engineering degree; EIT
Engineering Technician	A.S. Degree w/ 1+ years of experience
Environmental Specialist	B.S. degree in physical or natural sciences or engineering w/ 2+ year's exp.
Field Crew Supervisor	PSM (Professional Surveyor & Mapper) w/ 8+ years experience Certification in Work Zone Traffic Control
Geotechnical Engineer	P.E. with 5+ yrs exp. in geotechnical foundation construction engineering
Geotechnical Technician	3+ years exp.
GIS Specialist	
Instrument Person	HS grad plus 3 yrs experience in construction surveying
Inspector	H.S. graduate or equivalent +2 years experience in inspection
ITS Inspector	H.S. graduate or equivalent +2 years experience in inspection, one year of which is ITS construction inspection
Land Planner	
Landscape Architect	registered w/ 5+ years of experience
Landscape Architect Intern	entry level w/ BS degree or equivalent
Landscape Designer	
Office Manager/EEO/RCS	3+ years of clerical experience (for use in CEI contracts only)
Party Chief	High School graduate and 4+ years of experience in construction surveying
Planner	BS degree in planning or equivalent/ 1+ years of experience
Project Architect	registered w/ 5+ years post registration experience
Project Engineer	PE w/ 2+ years of post-registration experience
Project Manager	PE (where appropriate) w/ 5+ years of post registration experience
Project Planner	AICP, BS degree in planning or equivalent/ 5+ years of experience
Public Information Officer	H.S. graduate or equivalent, and 3+ years of public information experience
Rod Person/Chain Person	HS grad with some survey exp. preferred
Scientist	
Secretary/Clerical	entry level w/ HS degree or equivalent
Senior Accountant	
Senior Archaeologist	
Senior Architect	registered w/ 10+ years of post-registration experience
Senior Designer	10 + years of design experience, non-registered, non-degreed
Senior Engineer	PE w/ 10+ years of post-registration experience
Senior Engineering Technician	8+ years of experience
Senior Inspector	HS degree + 4 years of experience
Senior ITS Inspector	H.S. graduate or equivalent +4 years experience in inspection, two years of which is ITS construction inspection
Senior Landscape Architect	registered w/ 10+ years of post-registration experience
Senior Planner	AICP, MS in planning or equivalent w/ 10+ years of experience
Senior Project Engineer	C.E. degree, registered in the State of Florida (or if registered in another state, the ability to obtain registration in the State of Florida within six months) and 6 years of engineering experience

Class	Typical Qualifications
Senior Scientist	
Senior Specialist	
Senior Surveyor & Mapper	PSM w/ 10+ years of post-registration experience
Senior Utility Coordinator	
Specialist	
Survey Technician	
Surveying Intern	entry level w/ degree and LSIT or equivalent
Surveyor & Mapper	entry level PSM
Technician Aid	
Utility Coordinator	H.S. graduate or equivalent with 4+ years experience in utility coordination
Utility Locator	
Utility Technician	

**Attachment C**

**Average Salary Rates Proposed and Average Negotiated Rates**

Current Wage Rate Data can be found with the attached link:

[http://www2.dot.state.fl.us/procurement/ProfessionalServices/lppc/afp\\_jobclass\\_wage\\_rate.asp](http://www2.dot.state.fl.us/procurement/ProfessionalServices/lppc/afp_jobclass_wage_rate.asp)

Attachment D

**Current Averages for Audited Overhead, Expense and Facilities Capital Cost of Money (FCCM) Rates**

Updated: July 24, 2012

<u>RATE</u>	<u># OBS.</u>	<u>HIGH</u>	<u>LOW</u>	<u>MEAN</u>
Home Office Overhead	978	254.95%	112.69%	172.64%
Field Office Overhead	432	189.92%	81.97%	124.62%
Home Office Expense	934	38.29%	0.88%	10.26%
Field Office Expense	389	44.24%	0.61%	15.63%
FCCM	877	4.271%	0.045%	0.845%

The averages were calculated using three years worth of audit data, after eliminating the highest and lowest 5%. Self-certified rates, interim rates, and rates determined from job cost accounting system reviews were also eliminated from the calculations, since they are unaudited rates.

The average overhead, expense, and FCCM rates are to be used for comparatively assessing consultant cost control efforts, in accordance with Section 5.0, Negotiation of Operating Margin.

The averages will be used as caps on maximum awarded overhead (indirect costs) rates for firms who submit unaudited rates, including interim reimbursement rates, self-certified reimbursement rates, and job cost accounting system review reimbursement rates for use on professional services contracts.

Date: July 24, 2012  
Subject: Department Limits on Consultant Overhead, Direct Expense, and FCCM for unaudited rates, including interim, self-certified, and job cost accounting system review rates

The Department will cap unaudited, rates, including interim reimbursement rates, self-certified reimbursement rates, and job cost accounting system review reimbursement rates submitted by consultant firms for use on professional services contracts.

Based on the latest review of three previous years of overhead audit statements submitted by qualified professional services consultants, the resulting limits are established as follows:

Home Office Overhead (Home Office Indirect Rate)	172.64%
Field Office Overhead (Field Office Indirect Rate)	124.62%
FCCM (Facilities Capital Cost of Money Rate)	0.845%
Home Office Direct Expense Rate	10.26%
Field Office Direct Expense Rate	15.63%

# Attachment E

## Self Certification of Accounting System and Reimbursement Rates

### Instructions

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**SELF-CERTIFICATION OF ACCOUNTING SYSTEM AND  
 REIMBURSEMENT RATES**

375 98951  
 PROCUREMENT  
 02/11  
 Page 1 of 2

Consultant Name: \_\_\_\_\_ Federal ID Number: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 E-Mail: \_\_\_\_\_  
 Qualifying For: Minor Projects (Under \$250,000)   
 Or: Work Group 20 or 22

Accounting Questionnaire

**1. General**

What Fiscal Year is used by your firm? \_\_\_\_\_  
 Statements on cash or accrual basis? \_\_\_\_\_  
 Do you use a Published Fee Schedule for all clients? If so, please provide. \_\_\_\_\_

**2. Labor Costs (Time Sheets)**

Yes or No  
 Response

Do all employees keep time sheets? \_\_\_\_\_  
 Do time sheets indicate project and overhead accounts? \_\_\_\_\_  
 Do employees sign time sheets? \_\_\_\_\_  
 Are time sheets reviewed and signed by supervisors? \_\_\_\_\_  
 Are payroll expenditures distributed to appropriate accounts based on time sheets? \_\_\_\_\_  
 Is a payroll register prepared for every pay period? \_\_\_\_\_

**3. Work Logs (For work billed as cost per unit of work)**

Do work logs identify the project? \_\_\_\_\_  
 Are work logs maintained for all projects? \_\_\_\_\_

**4. Expenditures**

Are all expenditures identified and recorded in the General Ledger as overhead or direct costs? \_\_\_\_\_  
 Are direct costs identified as direct charges to projects regardless of eligibility for reimbursement? \_\_\_\_\_  
 Are costs associated with the fee schedule excluded from the indirect and the direct cost pools? \_\_\_\_\_

**5. Accounting for Costs and Expenses**

Does the General Ledger separate direct cost from indirect (overhead)? \_\_\_\_\_  
 Is a job cost ledger or cost report maintained for every project? \_\_\_\_\_  
 Is the amount of premium overtime included in the direct or indirect expense rates? \_\_\_\_\_

**6. Estimating Costs for Price Proposals**

Is the method of estimating costs for pricing purposes consistent with the accumulation and reporting of costs under your job cost system? \_\_\_\_\_

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**SELF-CERTIFICATION OF ACCOUNTING SYSTEM AND  
 REIMBURSEMENT RATES**

375-030-01  
 PROCUREMENT  
 02/11  
 Page 2 of 2

**SELF-CERTIFICATION OF ACCOUNTING SYSTEM AND REIMBURSEMENT RATES**

**RATE SUMMARY FOR YEAR ENDING: \_\_\_\_\_**

Reimbursement rates are calculated by dividing total allowable costs by total direct labor costs. For these calculations, certain direct or indirect expenses, such as travel, mileage, interest, certain advertising costs, etc., must be limited or excluded in accordance with Florida Statute 112.061 or Federal Acquisition Regulations, sub Part 31.2. These regulations may be viewed on the Internet at [www.arnet.gov/far/](http://www.arnet.gov/far/). If a field office is needed, a separate determination should be performed.

<u>Description</u>	<u>Home Office</u>	<u>Field Office</u>
Direct Labor Base	\$ _____	\$ _____
Fringe Benefit Rate	_____ %	_____ %
General Overhead Rate	_____ %	_____ %
Combined Overhead Rate	_____ %	_____ %
Direct Expense Rate	_____ %	_____ %

A listing of the fringe benefits and general overhead costs utilized in calculating the overhead rates shown above and a listing of the direct expenses utilized in calculating the direct expense rate shown above must be attached to this certification with any excluded items identified.

**COMPUTATION OF FACILITIES CAPITAL COST OF MONEY (FCCM)- OPTIONAL**

	<u>Balance Start of FY</u>	<u>Balance End of FY</u>
Net Capital Assets	\$ _____	\$ _____
<u>Average Net Book Value</u> (required)	\$ _____	_____
Average US Treasury Rate	_____ %	_____
Facilities capital Cost (Average x Rate)	\$ _____	_____
Direct Labor Base for Fiscal Year	\$ _____	_____
FCCM Rate (Cost/Direct Labor)	_____ %	_____

**CERTIFICATION**

It is hereby certified that the accounting system for this firm meets the minimum requirements set forth in Department Guidelines and that all information contained hereon, including attachments, is true and correct.

_____	_____
(Signature)	(Date)
_____	_____
(Name and Title)	(Company Name)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**SELF-CERTIFICATION OF ACCOUNTING SYSTEM AND  
REIMBURSEMENT RATES  
INSTRUCTIONS**

375-040-51  
PROCUREMENT  
9/2/11

Self-Certifications for Minor Project Work

Consultants requesting qualification for minor projects only, subconsultants with contract fees under \$250,000, or consultants qualifying solely to perform appraisal services or to prepare or review business damage estimates under Work Groups 20 or 22, are not required to submit an audit report or to request an accounting system review. Each District Professional Services Unit (PSU) within the Department may negotiate reimbursement rates appropriate for the specific contract being negotiated in these instances.

Consultants performing work less than \$250,000 who desire to pre-establish reimbursement rates for presentation to the Department during contract negotiations may, as an option, submit a self-certified reimbursement rate request to Central Office Procurement. This request must contain the same cost information presented in a Reimbursement Rate Audit Report, but may be certified by a principal of the firm rather than a certified public accountant. Overhead, FCCM and direct expense rates established following review of a self-certified reimbursement rate request are subject to the currently established maximum caps based on the Department's review of average audited reimbursement rates. Current maximum caps for the Department's reimbursement rates are found on the Procurement Office website at <http://www.dot.state.fl.us/procurement/news.shtml>. Self-certified reimbursement rate requests should be forwarded to Central Office Procurement for review.

If the consultant performing minor services has not acted to pre-establish reimbursement rates prior to entering contract negotiations with the District PSU, the PSU may require the consultant to complete and submit a self-certified reimbursement rate request. The PSU should forward the report to Central Office Procurement for review. Central Office Procurement will prepare a report of the reimbursement rates supported by the financial information included with the self-certified reimbursement rate request. The Procurement Office report will be distributed to the consultant and the requesting PSU. Reimbursement rates established will be entered in the Professional Services Information System (PSI) database, and made available for use by all Department PSUs.

Self-Certification of Accounting System and Reimbursement Rates

Self-certified reimbursement rate requests are to be prepared accordance with this form. Page 1 of the form is a questionnaire concerning the consultant's accounting system and related information. Page 2 allows the consultant to list their proposed reimbursement rates, including: a declaration of a period ending date within 16 months of the certification date; the direct labor base for that period; the consultant's proposed fringe benefit rate, general overhead rate, and combined overhead rate; the proposed direct expense rate; and the average net book value of capitalized assets. Page 2 also requires certification of the information submitted by a principal of the firm.

Additional sheets must be attached listing the indirect and direct expenses supporting the consultant's rate calculations.

**Attachment F**  
**Overhead Rates for Subconsultants on Construction Engineering & Inspection (CEI) Projects**

## MEMORANDUM

DATE: November 1, 1991

TO: Professional Services Administrators

FROM: Terry J. Cappellini, Manager, Contractual Services Office

SUBJECT: Overhead Rates for Subconsultants on Construction Engineering & Inspection (CEI.) Projects

There have been some questions regarding the appropriate overhead rate which should be allowed for subconsultants who are working on CEI. projects. Currently, some negotiators are allowing the subconsultant (who may be furnishing administrative personnel for the field office and/or technical personnel for field operations) to charge an audited or negotiated field office overhead rate whereas other negotiators are restricting the subconsultant to fringe benefits and minimal general overhead. The differences in methodology have created problems for the subconsultants, especially when they move from District to District or even from job to job within the same District.

Although I believe the District should have the flexibility to negotiate in a manner that affords them a fair, reasonable and competitive price, I also believe that consistency in our negotiations- is important. The contractual arrangements between the prime consultant and the subconsultant are the responsibility of the prime; however, their arrangement does impact on the cost of our project and it is up to us to determine an acceptable price.

The same cost principles which are used in negotiating the prime consultant's fee should also be applied to the subconsultant. If the subconsultant is providing personnel which would otherwise be provided by the prime and for which the prime would be allowed to charge a full field office overhead rate, then the subconsultant should also be allowed a field office overhead rate which is computed on a comparable basis. The- subconsultant's overhead rate is computed on a direct labor basis just the same as the prime consultant and to not allow him to recover his allowable overhead would unjustly penalize him.

There may be instances where the subconsultant's overhead should be restricted. For example, assume that the subconsultant proposes to provide a secretary for a field office, but in lieu of assigning one of his employees to the job, he hires a temporary person on a contractual arrangement for the job. Since the person is not a bonafide employee of the subconsultant, he would not be entitled to any overhead for the employee.

We generally have an audited overhead rate and verification of the adequacy of the prime consultant's accounting system prior to selection, for a particular project. This information is-used during the negotiations process to help us obtain a fair, reasonable and competitive price; however, this same information may not be available for the subconsultant due to the lack of prequalification requirements. Subconsultants should be handled in the following manner:

1. Proposed costs of \$250,000 or less: The negotiating officer should require that the subconsultant provide documentation which will support all costs which are proposed. An independent overhead audit is not required, unless desired by the negotiating officer; however, the subconsultant should be required to provide some type of documentation, i.e., a trial balance, self-certification statement, etc, which will support the reasonableness of the proposed overhead rate.

The purpose of this memorandum is to provide additional guidance in the above areas; however, if you should have any questions, please contact the Procurement Office.

**Attachment G**  
**Capital Equipment Acquisition Policy**

## MEMORANDUM

DATE: November 30, 1987

TO: Deputy Assistant Secretaries, Division Directors,  
Bureau Chiefs, and Office Heads

FROM: Kaye N. Henderson, P.E., Secretary

COPIES: Thomas H. Bateman, III; District General Counsels

SUBJECT: Equipment Acquisition Policy

Funds provided in the General Appropriations Act must be expended only for the purpose for which appropriated. It is the policy of the Department to comply with the appropriations process. Any attempt to circumvent or evade the normal budgeting process will not be tolerated.

The Legislature by statute has promulgated the process by which the Department acquires operating capital outlay items. Operating capital outlay (OCO) is defined by statute as "equipment, fixtures, and other tangible personal property of a non-consumable and expendable nature, the value or cost of which is \$2.00 or more and the normal expected life of which is one year or more, and hardback covered bound books, the value or cost of which is \$25 or more. Computer hardware and office furniture and equipment are just a few examples which would be included within this definition. All OCO purchases in excess of \$3000 are to be acquired by competitive bidding.

It is not proper to lease or purchase OCO items through construction, consultant or other contracts unless that item is an integral part of the contract and essential for the performance of the work.

Generally, Department contracts should not include provisions requiring the contractor or consultant to purchase equipment, furniture, computers or other equipment, furniture, computers, or other personal property and furnish these items to the Department during or at the completion of the project. In exercising good business judgment, the following criteria should be considered before including such items in the contract:

- 1) Whether the item is essential to completion of the project;
- 2) The cost effectiveness of acquisition of the item versus payment for the use of the item over the life of the contract;
- 3) Taking title to items should not be an issue. If the item is to become DOT property, then it should receive property tags and be placed on property records at the time of payment. Generally, this means early in the contract stage since these type items are mobilization or required to begin the project. Note then, that we will have DOT property at consultant or contractor locations and it becomes the responsibility of the project manager to protect and safeguard our property. This includes placing it on annual inventories and seeing it is properly insured. It therefore does not appear to be a good practice for the Department to take title to many of these items due to the responsibility and liability involved. If you want to take title, please note the responsibility you are accepting.

When the contract document is forwarded for legal review, it should be clearly noted if it includes the purchase of equipment and proper justification should be attached to assure compliance with this policy and applicable statutes.

KNH/tkb

## SALVAGE VALUE

(Excerpted from Florida Department of Transportation Overhead Audit Guidelines, 1995)

For items purchased for use on FDOT projects and paid for by FDOT, an equitable salvage value should be recognized. A salvage value is required for all capitalized assets costing more than \$500. Exceptions may be made on a case-by-case basis subject to approval by the Contracting Officer and the Office of Inspector General.

For items fully depreciated down to salvage value, a further salvage credit to the Department is not required on subsequent projects. However, the contracting officer may negotiate a user charge for such fully depreciated items in accordance with FAR 31.205-11, Paragraph 3, Subpart 1.

**Attachment H**  
**Policy Statement (000-375-025-a)**  
**Use of Department Space and Equipment**  
**by Consultants and Other Service Providers**

**POLICY STATEMENT**

Effective: March 30, 1995  
Office: Contractual Services  
Topic No.: 000-375-025-a

**USE OF DEPARTMENT SPACE AND EQUIPMENT  
BY CONSULTANTS AND OTHERS  
SERVICE PROVIDERS**

It is the objective of the Florida Department of Transportation to enhance productivity by making the most cost-effective use of its resources. Professional Consultants and other service providers are a significant resource to the Department and it is the policy of the Department to be innovative in the use of this resource to increase effectiveness while controlling costs.

As part of the effort to achieve this objective, the Department may consider allowing consultants and other service providers to share Department office space for the contract duration. Before allowing such use, the following conditions must exist:

It must clearly enhance the productivity of the consultant in performing the scope of services required. This would not usually be true of consultants working on a phase of a transportation project (Planning, Design, Right of Way, Construction, Maintenance). It may be true of consultants performing management or administrative support functions such as general consultants, systems consultants, or accounting and auditing consultants who require daily interaction with Department staff to effectively perform their duties.

The decision to provide Department space to the consultant should be made prior to contracting so that consideration may be given to offsetting the cost of the consultant services with the value of the space provided. This would occur during the competitive negotiations of a professional services contract. For services acquired pursuant to sealed competitive bids or proposals, the request for proposal or invitation to bid should clearly identify the availability of Department space so that it may be factored into the bid price by the proposer. Consultants housed in DOT space may only work on the DOT project requiring their presence. Other non-project activities, such as marketing, are prohibited.

Consultant staff working in Department space should, whenever possible, use available Department office equipment (furniture, computer hardware and software, copiers, etc.). Department equipment which will be made available for consultant use on the project should be identified prior to contracting, to allow the Department to realize maximum cost benefit in negotiated or bid prices.

When Department equipment is not available, consideration may be given to allowing the consultant to bring their own equipment into Department space for use on the project, if it is essential to the effective performance of the contracted services. All applicable Department policies, procedures standards and guidelines concerning any such equipment, including data processing equipment and software, must be adhered to by the consultant.

Ben G. Watts, P.E.  
Secretary

**Attachment I**  
**Administrative Add Ons for Subconsultant Costs**

## MEMORANDUM

DATE: February 19, 1993

To: Terry Cappellini, Manager, Contractual Services, MS 20  
Woody Lawson, Turnpike Production, MS 98  
Professional Services Administrators, Districts 1 - 7

From: Lowell R. Clary, Chief Internal Auditor

Copies: Buddy Marcoux, Frank Carlile, Tom Barry, Tereasa Stewart,  
District Secretaries, Districts 1 - 7, Jim Ely

Subject: Administrative Add On Charges to Consultant Contracts

There have been past contracts between the Department and consultants which have allowed an administrative add on charge for the handling of subconsultants by the prime contractor in addition to the overhead, labor, and operating margin which are a normal part of the contract. These administrative fees, or whatever name they are proposed under, are charges which the consultant is already being reimbursed for through his overhead and operating margin portion of the contract.

When the Department enters into a contract with a consultant, we agree to pay the consultant for his labor, administrative overhead (which includes the operation cost of his home, branch, or field offices) plus an operating margin on his labor and overhead costs. In addition we also reimburse the consultant for any out of pocket expenses on a dollar for dollar basis. These additional expenses includes subconsultants. When the Department allows the consultant to include an additional administrative add on for the handling of subconsultants, we are actually allowing the consultant to bill us twice for what we are already paying him for in our reimbursement for labor, overhead, and operating margin. The same people who process the subconsultant paper work for the prime consultant are either being directly reimbursed as part of the direct labor, or their salary and expense cost are part of their overhead.

In order to prevent this from continuing, we suggest that any additional administrative add ons contained in a contract over and above the overhead, operating margin, and facilities capital cost of money be disallowed.

**Attachment J**  
**Vehicle Expense Guidelines**



*Florida Department of Transportation*

RICK SCOTT  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

ANANTH PRASAD, P.E.  
SECRETARY

**MEMORANDUM**

**To:** *District Professional Services Administrators*

**From:** *Carla Perry*  
*Manager, Procurement Office*

**Date:** *February 2, 2012*

**Subject:** *Vehicle Expense Allowance Guidelines*

Attached for your use are guidelines for vehicle expenses for CEI contracts revised to reflect published 2012 list prices. These vehicle expense guidelines should be used when supplementing contracts selected prior to October, 2003.

Please note that under these guidelines, the vehicle expense should be shown as a separate line item in the method of compensation to facilitate the identification of these expenses for offset entries in the consultant's accounting records. Also, it is stressed that the allowance should be based on the most economical vehicle class meeting the needs of the project. Higher cost vehicles should not be used unless necessary.

This information will also be available in the Negotiations Handbook, which is available on the Procurement Office's Internet and Intranet web sites.

Please let us know of any questions regarding the attachment.

Enclosure

## VEHICLE EXPENSE ALLOWANCE GUIDELINES

### *CEI Contracts*

Vehicles approved for use for direct expense associated with CEI contracts should be from the categories listed in Table 1, except for extraordinary circumstances. The appropriate category of vehicle should be selected based on the requirements of the projects.

The average monthly ownership costs, as listed, have been derived for the current model year for each category based on published vehicle price guides. The new costs are based on the published list price, and current Florida tax and title rates. The average monthly cost is based on straight-line depreciation of the new vehicle cost, less 20% trade in value, over a 4-year period. Data used for deriving the average ownership costs for each category are provided in on pages J-5 through J-8.

The operating and maintenance allowance was developed by an analysis of current costs for service normally associated with the operation and maintenance of a vehicle. The basis for this allowance is provided on page J-9. The allowance is based on vehicle usage of 1,000 miles per month. The allowance should be proportionally increased or decreased to allow for mileage estimated for the project by the Department's Construction Project Manager.

The vehicle insurance allowance is based on sampling of vehicle insurance rates across the state.

An analysis should be made of the vehicle requirements over the term of the project to allow assessment of the vehicle months needed for the project. In all cases, the most economical vehicle meeting the actual needs of the position(s) to be using the vehicle should be selected. After the number of vehicle months for the various categories of vehicles needed for the project are determined, the vehicle expense allowance may be determined by adding the allowance for ownership, operation and maintenance, and licensing and insurance from Page J-4 and multiplying the resulting sum by the number of vehicle months for each category. For example, for a 2012 economy pickup truck, the monthly allowance for 1000 miles would be  $\$345 + \$219.50 + \$163.31 = \$727.81$ .

This allowance is considered a direct cost. If any element of vehicle costs is included in overhead by the consultant, then no allowance for that element should be provided unless appropriate expense offset entries are reflected in the consultant's ledgers. To facilitate this, the vehicle allowance will be shown as a separate expense line item in the method of compensation for the consultant contract. Adjustments for personal use of vehicles should also be reflected as offset entries in the consultant's ledgers.

## VEHICLE EXPENSE ALLOWANCE

*Table 1*

<b>MONTHLY VEHICLE OWNERSHIP ALLOWANCE</b>		
<i>Model Year 2012</i>		
<b>Vehicle Category</b>	<b>Approved Use</b>	<b>Amount</b>
Economy Pickup <i>(2DR,2WD,SB,4 CY,AT,AC)*</i>	Basic vehicle for all functions and projects	\$345
4X4 Economy Pickup <i>(2DR,4WD,SB,AT,AC)*</i>	Basic vehicle where off road travel is required.	\$433
Full Size Pickup <i>(AT,AC)*</i>	Basic vehicle for new construction.	\$418
Midsize Utility Vehicle <i>(4 DR,4 CY,AT,AC)</i>	When necessary to transport equipment in covered space.	\$395
4X4 Midsize Utility Vehicle <i>(4 DR,4 CY,AT,AC)</i>	When necessary to transport equipment in covered space off road.	\$465
Midsize 4 Dr Sedan <i>(4 CY,AT,AC)</i>	When necessary to transport official visitors on project.	\$384
Minivan <i>(4DR,AT,AC)</i>	When necessary to transport several official visitors on project.	\$427
Full Sized Cargo Van <i>(3 DR,AT,AC)</i>	When necessary to transport equipment in covered space.	\$493

\*Topper may be added, at cost, when covered bed required.

**MONTHLY OPERATION & MAINTENANCE ALLOWANCE                      \$219.50**

The operation and maintenance allowance is based on vehicle usage of 1,000 miles per month. The allowance should be proportionally increased or decreased for the estimated mileage anticipated for the project.

**MONTHLY LICENSING & INSURANCE ALLOWANCE**

Insurance (\$1902.54/yr/12mo)	\$158.55
Licensing (\$ 57.15/yr/12mo)	<u>4.76</u>
<b>Total</b>	<b>\$163.31</b>

If insurance cost is normally included in overhead by the consultant, then no insurance allowance should be provided.

## 2012 Economy Pickup

(2DR, 2WD, SB, 4 CY, AT, AC)

### PURCHASE COST

	<i>GMC Canyon</i>	<i>Toyota Tacoma</i>	<i>Chevrolet Colorado</i>	
<b>Base List</b>	17,490.00	17,775.00	17,475.00	
<b>Freight</b>	810.00	810.00	810.00	
<b>AT</b>	1,095.00	-	1,095.00	
<b>AC</b>	-	-	-	
<b>Tax &amp; Title</b>	1,626.10	1,577.50	1,625.20	<i>AVERAGE</i>
<b>NEW COST</b>	\$ 21,021.10	\$ 20,162.50	\$ 21,005.20	\$ 20,729.60

**Average Monthly Ownership Cost**

List less 20% salvage depreciated over 4 years: **\$345.49**

## 2012 4X4 Economy Pickup

(2DR, 4WD, SB, AT, AC)

### PURCHASE COST

	<i>Chevrolet Colorado (4 cy)</i>	<i>GMC Sierra (6 cy)</i>	<i>GMC Canyon (4 cy)</i>	
<b>Base List</b>	20,980.00	25,185.00	22,385.00	
<b>Freight</b>	810.00	995.00	810.00	
<b>AT</b>	1,095.00	-	-	
<b>AC</b>	-	-	-	
<b>Tax &amp; Title</b>	1,835.50	2,033.20	1,854.10	<i>AVERAGE</i>
<b>NEW COST</b>	\$ 24,720.50	\$ 28,213.20	\$ 25,049.10	\$ 25,994.27

**Average Monthly Ownership Cost**

List less 20% salvage depreciated over 4 years: **\$433.24**

\*Data Source: Edmunds, New Truck Prices & Reviews, 2012

## 2012 Full Size Pickup

(AT,AC)

### PURCHASE COST

	<i>Chevrolet Silverado</i>	<i>Ford F-150</i>	<i>Dodge Ram</i>	
<b>Base List</b>	21,945.00	22,990.00	21,820.00	
<b>Freight</b>	995.00	995.00	995.00	
<b>AT</b>	-	-	-	
<b>AC</b>	-	-	-	
<b>Tax &amp; Title</b>	1,838.80	1,901.50	1,831.30	<i>AVERAGE</i>
<b>NEW COST</b>	\$ 24,778.80	\$ 25,886.50	\$ 24,646.30	\$ 25,103.87

**Average Monthly Ownership Cost**

*List less 20% salvage depreciated over 4 years:*

**\$418.40**

## 2012 Midsize Utility Vehicle

(4DR,4CY,AT,AC)

### PURCHASE COST

	<i>Dodge Journey</i>	<i>Mitsubishi Outlander</i>	<i>Nissan Rogue</i>	
<b>Base List</b>	18,995.00	22,345.00	21,840.00	
<b>Freight</b>	900.00	810.00	825.00	
<b>AT</b>	-	-	-	
<b>AC</b>	-	-	-	
<b>Tax &amp; Title</b>	1,656.10	1,851.70	1,822.30	<i>AVERAGE</i>
<b>NEW COST</b>	\$ 21,551.10	\$ 25,006.70	\$ 24,487.30	\$ 23,681.70

**Average Monthly Ownership Cost**

*List less 20% salvage depreciated over 4 years:*

**\$394.70**

\*Data Source: Edmunds, New Truck Prices & Reviews, 2012

## 2012 4X4 Midsize Utility Vehicle

(4DR,4CY,AT,AC)

### PURCHASE COST

	<i>Toyota FJ Cruiser(6cy)</i>	<i>Toyota RAV4</i>	<i>Chevy Equinox</i>	
<b>Base List</b>	27,705.00	24,050.00	23,530.00	
<b>Freight</b>	810.00	810.00	810.00	
<b>AT</b>	-	-	-	
<b>AC</b>	-	-	-	
<b>Tax &amp; Title</b>	2,173.30	1,954.00	1,922.80	<i>AVERAGE</i>
<b>NEW COST</b>	\$ 30,688.30	\$ 26,814.00	\$ 26,262.80	\$ 27,921.70

**Average Monthly Ownership Cost**

List less 20% salvage depreciated over 4 years: **\$465.36**

## 2012 Midsize 4 Dr. Sedan

(4DR,4CY, AT,AC)

### PURCHASE COST

	<i>Chevrolet Malibu</i>	<i>Nissan Altima</i>	<i>Dodge Avenger</i>	
<b>Base List</b>	21,995.00	20,550.00	18,995.00	
<b>Freight</b>	760.00	780.00	850.00	
<b>AT</b>	-	-	-	
<b>AC</b>	-	-	-	
<b>Tax &amp; Title</b>	1,827.70	1,742.20	1,653.10	<i>AVERAGE</i>
<b>NEW COST</b>	\$ 24,582.70	\$ 23,072.20	\$ 21,498.10	\$ 23,051.00

**Average Monthly Ownership Cost**

List less 20% salvage depreciated over 4 years: **\$384.18**

\*Data Source:

Edmunds, New Truck Prices & Reviews, 2012

## 2012 Minivan

(4DR,AT,AC)

### PURCHASE COST

	<i>Mazda Mazda5</i>	<i>Volkswagen Routan</i>	<i>Dodge Caravan</i>	
<b>Base List</b>	20,625.00	27,020.00	20,995.00	
<b>Freight</b>	795.00	820.00	935.00	
<b>AT</b>	-	-	-	
<b>AC</b>	-	-	-	
<b>Tax &amp; Title</b>	1,747.60	2,132.80	1,778.20	<i>AVERAGE</i>
<b>NEW COST</b>	\$ 23,167.60	\$ 29,972.80	\$ 23,708.20	\$ 25,616.20

**Average Monthly Ownership Cost**

List less 20% salvage depreciated over 4 years:

**\$426.94**

## 2012 Full Size Cargo Van

(3DR,AT,AC)

### PURCHASE COST

	<i>Chevrolet Express</i>	-	<i>GMC Savana</i>	
<b>Base List</b>	26,490.00	-	26,490.00	
<b>Freight</b>	980.00	-	995.00	
<b>AT</b>		-		
<b>AC</b>				
<b>Tax &amp; Title</b>	2,110.60		2,111.50	<i>AVERAGE</i>
<b>NEW COST</b>	\$ 29,580.60	\$ -	\$ 29,596.50	\$ 29,588.55

**Average Monthly Ownership Cost**

List less 20% salvage depreciated over 4 years:

**\$493.14**

\*Data Source: Edmunds, New Truck Prices & Reviews, 2012

**ANALYSIS  
OF  
TYPICAL OPERATION & MAINTENANCE COST  
2012**

ITEM	COST/ MILE	ASSUMPTION
<i>Fuel</i>	<b>\$ 0.1667</b>	<i>21.48 mpg with price of \$3.58/gal. (based on U.S. Energy Information Administration statistics)</i>
<i>Service</i>	<b>0.0100</b>	<i>Service at 4,000 mile intervals at cost of \$40</i>
<i>Tuneup</i>	<b>0.0117</b>	<i>at 60,000 mile intervals at cost of \$700</i>
<i>Tires</i>	<b>0.0133</b>	<i>Replacement at 30,000 miles at cost of \$400</i>
<i>Brakes</i>	<b>0.0078</b>	<i>Replace pads at 40,000 at cost of \$313</i>
<i>Other</i>	<b><u>0.0100</u></b>	<i>Allow \$100 per 10,000 miles</i>
<b>Total</b>	<b>\$ <u>0.2195</u></b>	

*Monthly Operation & Maintenance Allowance = \$ 0.2195*

**Attachment K**  
**Certification of Use of Lower Tier Subs**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**CERTIFICATION OF USE OF LOWER TIER SUBS**

375-020-40  
PROCUREMENT  
01/11

Financial Project No.: \_\_\_\_\_  
Project Description: \_\_\_\_\_

I, the undersigned, certify that I have disclosed all lower tier subconsultants/sub-vendors proposed to be used by my firm to perform services on the subject FDOT contract.  
In accordance with Section 7A of the Standard Professional Services Contract, I understand that: "The Consultant will not sublet, assign or transfer any work under this Agreement to other than subconsultants specified in the Agreement without the written consent of the Department."  
I will comply with the aforementioned FDOT contractual requirement.  
Additionally, I certify that all rates proposed by my firm in the fee proposal do not reflect blending of costs with lower tier subconsultants/sub-vendors.

I further certify that either:  
*(Indicate choice by checking box)*

There are no lower tier subconsultants/sub-vendors to my consultant firm on this contract.

Or

I have disclosed all lower tier subconsultants/sub-vendors to my firm, and the full list of lower tier subconsultants/sub-vendors who may be utilized by my firm on this contract is provided below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

Firm Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Certifying Official (Print): \_\_\_\_\_

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

Date of Certification: \_\_\_\_\_

**From:** Blanchard, Brian  
**Sent:** Monday, November 22, 2010

**Subject:** FDOT REQUIREMENT FOR DISCLOSURE OF LOWER TIER SUBS

In light of recent attention from Federal Highway Administration regarding contractor certification of costs, the Department feels it is necessary to re-emphasize a contractual requirement which was first disseminated to all FDOT prequalified geotechnical firms in 2007.

All professional services consultant firms, including geotechnical firms, are required to disclose the intended use of lower tier subs during contract negotiations. Lower tier subs, including drilling firms, must be authorized in the FDOT contract prior to services being rendered. It is not appropriate for geotech firms to certify rates as their own that are attributable to lower tier subs, or reflect a blending of the geotech firm's rates with lower tier drilling sub rates. Subconsultant/subcontractor rates are stand-alone, and each subconsultant/subcontractor should be separately authorized in the contract, regardless of tiered status. Unauthorized subs are not in accordance with FDOT Standard Professional Services Agreement, Section 7A, which states: "The Consultant... will not sublet, assign, or transfer any work under this Agreement to other than subconsultants specified in the Agreement without the written consent of the Department."

If uncovered in a contract audit, costs associated with unauthorized subconsultants/subcontractors would constitute an audit finding, and may ultimately be disallowed.

In order to ensure compliance with this disclosure requirement, the FDOT district Professional Services Offices will begin use of a certification statement, attesting to disclosure of all lower tier subs.

This certification will be required for geotechnical firms and surveying & mapping firms who are compensated in whole or part using fee schedule rates on FDOT contracts, whether at a prime or subconsultant level. The certification form will be completed and submitted during contract negotiations.

Please contact the Procurement Office, 414-4484, if there are any questions.

Brian A. Blanchard, P.E.  
Assistant Secretary for Engineering & Operations

**Attachment L**  
**Policy Statement on Use of Field Office Rates for On-Premises Consultant Employees**

## MEMORANDUM

DATE: 9-17-12

**Subject: Use of Field Office Rate for On-premises Consultant Employees**

**Projects involving consultant staff housed in FDOT facilities for an uninterrupted on-site project duration of 6 months or greater will utilize the field office overhead rate.**

### **Field Office Overhead Rate:**

Field office is defined as any office that the consultant or contractor specifically establishes or has furnished to them at or near the project site to be used exclusively for project purposes. The office may be a trailer, building, room or series of rooms, or workspace (cubicle, office, etc.) within any DOT owned or leased building, for the use of consultant personnel. If the proposed project requires the establishment of a field office, a separate overhead rate for the field office must be submitted. If the Consultant does not have an approved field office overhead rate which has been established through the prequalification process, a field office overhead rate should be prepared by the Consultant in accordance with the instructions contained in Chapter 5.6 of the AASHTO Uniform Audit & Accounting Guide (see Table 5-6, page 39).

Use of Field Office for non-CEI type projects: For contract negotiation purposes, a field office rate (labor and expenses) shall be applied when consultant staff is assigned in Department space for a minimum of six consecutive months. If the proposed project involves the use of DOT office space or equipment by consultants, the Department's policy on this issue, which is included as Attachment H, should be observed.

Please contact the Procurement Office, 414-4484, if there are any questions.

Brian A. Blanchard, P.E.  
Assistant Secretary for Engineering & Operations

**E-VERIFY**

Contract No: \_\_\_\_\_

Financial Project No(s): \_\_\_\_\_

Project Description: \_\_\_\_\_

Vendor/Consultant acknowledges and agrees to the following:

Vendor/Consultant :

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Consultant during the term of the contract; and
2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

Company/Firm: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
AND VOLUNTARY EXCLUSION FOR FEDERAL AID CONTRACTS**  
(Compliance with 49CFR, Section 29.510)  
(Appendix B Certification]

It is certified that neither the below identified firm nor its principals are presently suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Name of Consultant:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Authorized Signature

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

Instructions for Certification

1. By signing and submitting this certification with the proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted. If at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms 'covered transaction', 'debarred', 'suspended', 'ineligible', 'lower tier covered transaction', 'participant', 'person', 'primary covered transaction', 'principal', 'proposal', and 'voluntarily excluded', as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Appendix B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant are not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may pursue available remedies, including suspension and/or debarment.

**CERTIFICATION FOR DISCLOSURE OF LOBBYING ACTIVITIES  
ON FEDERAL-AID CONTRACTS  
(Compliance with 49CFR, Section 20.100 (b))**

The prospective participant certifies, by signing this certification, that to the best of his or her knowledge and belief:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions. (Standard Form-LLL can be obtained from the Florida Department of Transportation's Professional Services Administrator or Procurement Office.)

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

The prospective participant also agrees by submitting his or her proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Name of Consultant:

By: \_\_\_\_\_ Date: \_\_\_\_\_ Authorized Signature

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

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

## 2. Withholding

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

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\*\*\*\*\*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STANDARD PROFESSIONAL SERVICES AGREEMENT  
FOR PROJECTS FUNDED BY THE AMERICAN RECOVERY &  
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Contract No. \_\_\_\_\_  
FDOT Financial ID No.(s) \_\_\_\_\_

F.A.P. No. \_\_\_\_\_

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the  
(This date to be entered by DOT only)  
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter called the  
Department and \_\_\_\_\_  
(F.E.I.D. No. \_\_\_\_\_) of \_\_\_\_\_

authorized to conduct business in the State of Florida, hereinafter called the Consultant, agree as follows:

The Consultant and the Department mutually agree to abide by the Department's **Standard Professional Services Agreement Terms for American Recovery & Reinvestment Act Projects**, dated May, 2009 which are provided as an attachment to this form. The **Standard Professional Services Agreement Terms for American Recovery & Reinvestment Act Projects**, with the exception of the following non-applicable sections:

\_\_\_\_\_ are incorporated by reference and made a part of this Agreement.

**1. SERVICES AND PERFORMANCE**

A. The Department does hereby retain the Consultant to furnish certain services as described in Exhibit "A", attached hereto and made a part hereof, in connection with

B. Unless changed by written agreement, the site for inspection of work referenced in Section 1.I of the **Standard Professional Services Terms for American Recovery & Reinvestment Act Projects**, will be

**2. TERM**

A. Unless otherwise provided herein or by Supplemental Agreement or Amendment, the provisions of this Agreement will remain in full force and effect through completion of all services required of the Consultant or a \_\_\_\_\_ year term from the date of execution of this Agreement, whichever occurs first.

B. Check applicable terms

The scheduled project services to be rendered by the Consultant will commence, subsequent to execution of this Agreement, on the date specified in the written notice to proceed from the Department's \_\_\_\_\_ which notice to proceed will become part of this Agreement. The Consultant will complete scheduled project services within \_\_\_\_\_ months of the commencement date specified in the notice to proceed or as modified by subsequent Amendment or Supplemental Agreement.

The project services to be rendered by the Consultant for each task assignment will commence, upon written notice from the Department's \_\_\_\_\_, and will be completed within the time period specified in each task assignment. All services performed under this contract will be completed within \_\_\_\_\_ months from the date of this Agreement. The total fee for all accumulated task assignments may not exceed \_\_\_\_\_.

The scheduled project services to be rendered by the Consultant will commence, subsequent to execution of this Agreement, on the date specified in the written notice to proceed from the Department's \_\_\_\_\_ which notice to proceed will become part of this Agreement. The Consultant will complete scheduled project services within \_\_\_\_\_ calendar days following completion of the construction contract(s) with which consultant services are associated. The anticipated length of the consultant services is \_\_\_\_\_ months.

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3. **INSURANCE**

The amount of liability insurance to be maintained by the Consultant in accordance with Section 4.B of the **Standard Professional Services Agreement Terms for American Recovery & Reinvestment Act Projects** is \_\_\_\_\_.

4. **SUBCONTRACTS**

The following subconsultants are authorized under this Agreement in accordance with Section 7.A. of the **Standard Professional Services Agreement Terms for American Recovery & Reinvestment Act Projects**:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. **COMPENSATION**

The Department agrees to pay the Consultant compensation as detailed in Exhibit "B", attached hereto and made a part hereof.

6. **MISCELLANEOUS**

- A. Reference in this Agreement to Director will mean the \_\_\_\_\_.
- B. The services provided herein do involve the expenditure of federal funds. Section 9 of the **Standard Professional Services Agreement Terms for American Recovery & Reinvestment Act Projects** is incorporated by reference.
- C. The following attachments are hereby incorporated into this Agreement as part hereof as though fully set forth herein.

Standard Professional Services Agreement Terms for American Recovery & Reinvestment Act Projects  
Page A-1 through Page A- \_\_\_\_\_; Exhibit "A", Scope of Services  
Page B-1 through Page B- \_\_\_\_\_; Exhibit "B", Method of Compensation

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month and year set forth above.

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Name of Consultant

BY: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
(Print/Type)

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

BY: \_\_\_\_\_

\_\_\_\_\_  
(Print/Type)

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

FOR DEPARTMENT USE ONLY

APPROVED:

LEGAL REVIEW:

\_\_\_\_\_  
Professional Services Unit  
PROCUREMENT

\_\_\_\_\_  
General Counsel Office

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
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**1. SERVICES AND PERFORMANCE**

- A. Before making any additions or deletions to the work described in the Agreement, and before undertaking any changes or revisions to such work, the parties will negotiate any necessary cost changes and will enter into a Supplemental Agreement covering such work and compensation. Reference herein to the Agreement will be considered to include any Supplemental Agreement.
- B. In the performance of professional services, the Consultant will use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The Consultant will use due care in performing its services and will have due regard for acceptable engineering standards and principles. Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.
- C. The Consultant agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of work being done by the Consultant and of the details thereof. Coordination will be maintained by the Consultant with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to the Agreement may request and be granted a conference.
- D. All services will be performed by the Consultant to the satisfaction of the Director who will decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of the Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof; and the decision upon all claims, questions and disputes will be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses will be subject to mutual agreement of the parties, and Supplemental Agreement(s) of such a nature as required will be entered into by the parties in accordance herewith.

In the event that the Consultant and the Department are not able to reach an agreement as to the amount of compensation to be paid to the Consultant for supplemental work desired by the Department, the Consultant will be obligated to proceed with the supplemental work in a timely manner for the amount determined by the Department to be reasonable. In such event, the Consultant will have the right to file a claim with the Department for such additional amounts as the consultant deems reasonable; however, in no event will the filing of the claim or the resolution or litigation thereof through administrative procedures or the courts relieve the Consultant from the obligation to timely perform the supplemental work.

- E. In the event the work covered by this Agreement includes the preparation of construction plans, it is understood that the work may be divided into two or more construction projects by the Director and that, if this is done, the Consultant will supply construction plans for each project.
- F. The Consultant is authorized to use the Department's computer facilities utilizing Department programs required for the performance of the services herein. The Consultant will identify the programs required and submit a written request to the Department's Project Manager for approval.
- G. All design work performed by the Consultant for projects where anticipated construction cost is one million dollars (\$1,000,000) or more will be subject to Value Engineering. The Department further reserves the right to subject projects of lesser construction cost to Value Engineering should the Department deem circumstances are present that warrant such a decision. Value Engineering may be performed at any stage of the design process. Unless specifically identified in the Agreement, the Consultant will not be required to perform the Value Engineering analysis.
- H. The Consultant will not be liable for use by the Department of plans, documents, studies or other data for any purpose other than intended by the terms of this Consultant Agreement.
- I. All tracings, plans, specifications, maps, computer files and/or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, will be

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considered works made for hire and will become the property of the Department upon completion or termination without restriction or limitation on their use and will be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department will become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Consultant will not copyright any material and products or patent any invention developed under this agreement. The Department will have the right to visit the site for inspection of the work and the products of the Consultant at any time.

**2. TERM**

- A. Services required after completion of scheduled project services, including, but not limited to, design assistance, construction assistance, and litigation assistance, will be completed within the term of this Agreement at written direction of the department. Supplemental agreements may be negotiated for any post project schedule services needed by the Department after scheduled project services.

In the event it becomes impracticable or impossible for the Consultant to complete the expected services within the term of this Agreement due to delays on the part of the department or circumstances beyond the control of the Consultant, the Agreement may be extended. An extension of the Agreement must be in writing.

- B. In the event there are delays caused by the Department in approval of any of the materials submitted by the Consultant or if there are delays occasioned by circumstances beyond the control and without fault or negligence of the Consultant which delay the scheduled project completion date, the Department may grant an extension of time equal to the aforementioned project schedule delay, as a minimum and not to exceed the Agreement term, by issuance of a Time Extension Letter. This letter will be for time only and does not include any additional compensation.

It will be the responsibility of the Consultant to ensure at all times that sufficient time remains in the Project Schedule within which to complete the services on the project. In the event there have been delays which would affect the project completion date, the Consultant will submit a written request to the Department which identifies the reason(s) for the delay, the amount of time related to each reason and specific indication as to whether or not the delays were concurrent with one another. The Department will review the request and make a determination as to granting all or part of the requested extension.

In the event time for performance of the scheduled project services expires and the Consultant has not requested, or if the Department has denied, an extension of the Project Schedule completion date; partial progress payments will be stopped on the date time expires. No payment shall be made for work performed after the Project Schedule completion date until a time extension is granted or all work has been completed and accepted by the Department if the Agreement term has not expired.

**3. COMPENSATION**

- A. Bills for fees or other compensation for services or expenses will be submitted to the Department in detail sufficient for a proper preaudit and postaudit thereof. The Department will render approval or disapproval of services within five working days of the receipt of a written progress report unless otherwise stated in the Agreement. The progress report will be accompanied by an appropriate invoice.
- B. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, will be submitted in accordance with Section 112.061, Florida Statutes.
- C. Records of costs incurred under terms of this Agreement will be maintained and made available upon request to the Department at all times during the period of this Agreement and for three years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records will be furnished to the Department upon request.
- D. Records of costs incurred will include the Consultant's general accounting records and the project records, together with supporting documents and records, of the Consultant and all subconsultants

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performing work on the project, and all other records of the Consultant and subconsultants considered necessary by the Department for a proper audit of project costs.

- E. The general cost principles and procedures for the negotiation and administration, and the determination or allowance of costs under this Agreement will be as set forth in the Code of Federal Regulations, Titles 23, 48, 49, Rule Chapter 14-75, Florida Administrative Code, and other pertinent Federal and State Regulations, as applicable, with the understanding that there is no conflict between State regulations and Federal regulations in that the more restrictive of the applicable regulations will govern.
- F. The Consultant should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- G. If a payment is not available within 40 days, a separate interest penalty at a rate established pursuant to Section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the Consultant. Interest penalties of less than one dollar will not be paid unless the Consultant requests payment. Invoices which have to be returned to a Consultant because of Consultant preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- H. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Department of Financial Services Hotline at (877)693-5236.
- I. Except for issues arising from contract indemnification provisions, the Department will have the right to retain out of any payment due the Consultant under this Agreement an amount sufficient to satisfy any amount due and owing to the Department by the Consultant on any other Agreement between the Consultant and the Department. The Department may withhold payment on any invoice in the event that the Consultant is in default under any provision of this Agreement or any other Agreement between the Consultant and the Department as of the time of processing the invoice or as of the time payment is made available on the invoice. This right to withhold will continue until such time as the default has been cured, and, upon cure, the Department will have the right to retain an amount equal to the damages suffered as a result of the default.
- J. It is mutually agreed and understood that the following provision will be applicable to this Agreement if the compensation to be paid to the Consultant, whether by lump sum or cost-plus-a-fixed-fee, will exceed the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY FOUR.

The Consultant hereby certifies, covenants and warrants that wage rates and other factual unit costs provided the Department to support the compensation are accurate, complete and current as of the date of this Agreement. It is further agreed that the Agreement price will be adjusted to exclude any significant sums by which the Department determines the Agreement price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such Agreement adjustments must be made within one year following the end of the Agreement. For this purpose, the end of the Agreement is the date of final billing or acceptance of the work by the Department, whichever is later.

- K. The Department, during any fiscal year, will not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department will require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained will prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the

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Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

**4. INDEMNITY AND INSURANCE**

- A. The Consultant will indemnify, defend, and hold harmless the Department and all of its officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any act, error, omission or negligent act by the Consultant, its agents, employees, or subcontractors during the performance of the Agreement, except that neither the Consultant, its agents, employees nor any of its subconsultants will be liable under this paragraph for any claim, loss, damage, cost, charge or expense arising out of any act, error, omission or negligent act by the Department or any of its officers, agents or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by the Consultant in the performance of services required by the Consultant under this agreement, the Department will immediately forward the claim to the Consultant. The Consultant and the Department will evaluate the claim and report their findings to each other within seven working days. The Department and the Consultant will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the Consultant in the defense of the claim or to require that the Consultant defend the Department in such claim as described in this section. The Department's failure to notify the Consultant of a claim within seven days will not release the Consultant from any of the requirements of this section upon subsequent notification by the Department to the Consultant of the claim. The Department and the Consultant will pay their own cost for the evaluation, settlement negotiations and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs, but if the verdict determines that there is joint responsibility the costs and liability for damages will be shared in the same percentage as that judicially established.

The parties agree that 1% of the total compensation to the Consultant for performance of this Agreement is the specific consideration from the Department to the Consultant for the consultant's indemnity agreement.

- B. The Consultant will have and maintain during the term of this Agreement, a professional liability insurance policy or policies, or an irrevocable letter of credit established pursuant to Chapter 675 and Section 337.106, Florida Statutes, with a company or companies authorized to do business in the State of Florida, affording professional liability coverage for the professional services to be rendered in accordance with this Agreement in the amount specified in the Agreement.

**5. COMPLIANCE WITH LAWS**

- A. All final plans, documents, reports, studies and other data prepared by the Consultant shall bear the professional's seal/signature, in accordance with the applicable Florida Statute that governs and Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the Statute or Rules create a conflict with the requirements of the published guidelines, requirements of the Statute and/or Rules shall take precedence.
- B. Chapter 337.162 Florida Statutes applies as follows:
- (1) If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it will submit a complaint about the violations to the Department of Business and Professional Regulation. The complaint will be confidential.
  - (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of his employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules will submit a complaint about the violations to the Department of Business and

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Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455 and the state licensing law applicable to that licensee. The complaint will be confidential.

- (3) Any confidential information submitted to the Department of Business and Professional Regulation will remain confidential pursuant to Chapter 455 and applicable state law.
- C. The Consultant will comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the performance of work under this Agreement.
- D. The Consultant warrants that the Consultant has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted. For the breach or violation of this Paragraph, the Department shall have the right to terminate this Agreement without liability, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
- E. The Consultant shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department.
- F. The Consultant agrees that it will make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department and securing its consent in writing. The Consultant also agrees that it will not publish, copyright or patent any of the data developed under this Agreement, it being understood that such data or information is the property of the Department.
- G. Consultant covenants and agrees that it and its employees will be bound by the standards of conduct provided in applicable Florida Statutes and applicable rules of the Department of Business and Professional Regulation as they relate to work performed under this Agreement. Consultant further covenants and agrees that when a former state employee is employed by the Consultant, the Consultant will require that strict adherence by the former state employee to Florida Statutes 112.313(9) and 112.3185 is a condition of employment of said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- H. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- I. The Department will consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation will be cause for unilateral cancellation of this Agreement, by the Department, if the Consultant knowingly employs unauthorized aliens.

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- J. **DISCRIMINATION:** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

**6. TERMINATION AND DEFAULT**

- A. The Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination, as follows:
- (1) If the Department determines that the performance of the Consultant is not satisfactory, the Department may notify the Consultant of the deficiency with the requirement that the deficiency be corrected within a specified time; but not less than 10 days. Otherwise the Agreement will be terminated at the end of such time or thirty (30) days whichever is sooner.
  - (2) If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Consultant, the Department will notify the Consultant of such termination, with instructions as to the effective date of work stoppage or specify the stage of work at which the Agreement is to be terminated.
  - (3) If the Agreement is terminated before performance is completed, the Consultant will be paid for the work satisfactorily performed. Payment is to be on the basis of substantiated costs, not to exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by the Agreement.
- B. The Department reserves the right to cancel and terminate this Agreement in the event the Consultant or any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the consultant for or on behalf of the Department, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans, specifications, computer files, maps, and data prepared or obtained under this Agreement will immediately be turned over to the Department. The Department reserves the right to terminate or cancel this Agreement in the event the Consultant will be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors. The Department further reserves the right to suspend the qualifications of the Consultant to do business with the Department upon any such conviction.

**7. ASSIGNMENT AND SUBCONTRACTORS**

- A. The Consultant will maintain an adequate and competent professional staff so as to enable Consultant to timely perform under this Agreement and must be authorized to do business within the State of Florida and may associate with it such subconsultants, for the purpose of its services hereunder, without additional cost to the Department, other than those costs negotiated within the limits and terms of this Agreement. The Consultant is fully responsible for satisfactory completion of all subcontracted work. The Consultant, however, will not sublet, assign or transfer any work under this Agreement to other than subconsultants specified in the Agreement without the written consent of the Department.
- B. The Consultant must state in all subcontracts that services performed by any such subconsultant will be subject to the Professional Consultant Work Performance Evaluation System as defined in Chapter 14-75, Florida Administrative Code.

**8. MISCELLANEOUS**

- A. All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.

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- B. In the event that a court of valid jurisdiction finally determines that any provision of this Agreement is illegal or unenforceable, this Agreement will be construed as not containing such provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.
- C. There are no understandings or agreements except as herein expressly stated.
- D. This Agreement will be governed by and construed in accordance with the laws of the State of Florida.
- E. In any legal action related to this Agreement, instituted by either party, Consultant hereby waives any and all privileges and rights it may have under chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in any county chosen by the Department and in the event that any such legal action is filed by Consultant, Consultant hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.

**9. FEDERAL REQUIREMENTS**

The following terms apply to this Agreement which involves the expenditure of American Recovery & Reinvestment Act funds:

- A. It is understood and agreed that all rights of the Department relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of the U.S. Department of Transportation, anything to the contrary in this Agreement notwithstanding.
- C. Compliance with Regulations: The Consultant shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- D. Nondiscrimination: The Consultant, with regard to the work performed during the contract, will not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by the Consultant, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- F. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration to be pertinent to ascertain

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- compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall certify to the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to,
- (1) withholding of payments to the Consultant under the contract until the Consultant complies and/or
  - (2) cancellation, termination or suspension of the contract, in whole or in part.
- H. Incorporation of Provisions: The Consultant will include the provisions of Paragraphs C through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the Florida Department of Transportation to enter into such litigation to protect the interests of the Florida Department of Transportation, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.
- I. Interest of Members of Congress: No member of or delegate to the Congress of the United States will be admitted to any share or part of this contract or to any benefit arising therefrom.
- J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.
- K. Participation by Disadvantaged Business Enterprises: The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). This statement shall be included in all subsequent agreements between the Consultant and any subconsultant or contractor.
- The Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT- assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
- L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.
- M. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Department in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the Department. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49

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CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.

N. The Department hereby certifies that neither the consultant nor the consultant's representative has been required by the Department, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

- (1) employ or retain, or agree to employ or retain, any firm or person, or
- (2) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The Department further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

O. The Consultant hereby certifies that it has not:

- (1) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above Consultant) to solicit or secure this contract;
- (2) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or
- (3) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above Consultant) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

The Consultant further acknowledges that this agreement will be furnished to the State of Florida Department of Transportation and a federal agency in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

P. This Agreement is subject to the requirements and conditions of the American Recovery & Reinvestment Act of 2009.

- (1) Consultant agrees to comply with applicable Buy America requirements in 49 U.S.C. 5323(j) and 49 C.F.R. Part 661.
- (2) Consultant will comply with all American Recovery and Reinvestment Act employment reporting requirements in accordance with Sections 1201 and 1512 of the Act. The Reporting Guidelines are referenced on the Department's website, at:  
<http://www.dot.state.fl.us/planning/economicstimulus/>  
The Consultant will provide the initial employment reporting information within five calendar days after the notice to proceed is issued by the Department. Thereafter, the reporting information will be due on a monthly basis on or before the 10<sup>th</sup> of each month until completion of the contract. The Consultant must provide the required information for their own workforce as well as the workforce of all subconsultants that are active on the contract for the reporting month. The required monthly employment reporting information will be submitted through the Department's automated employment reporting application, available at the following website:  
<http://www2.dot.state.fl.us/ARRAEmploymentReporting>  
Failure to timely report the required information may be cause for rejection of the monthly invoice for contract payment.
- (3) It will be the responsibility of the Consultant to monitor and ensure that prime contractors on the construction project associated with the contract timely report all contractor employment information as required by the Reporting Guidelines. The prime contractor will submit the initial

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employment report at the pre-construction conference, and thereafter on a monthly basis by the 10<sup>th</sup> day of the month. The prime contractor's reporting information shall also include subcontractors working on the project.

- (4) The Consultant will comply with requirements of Code of Federal Regulations, Titles 29, 41, and 49 where applicable, when acquiring supplies and services using American Recovery and Reinvestment Act funds.

- (5) Section 902 of the American Recovery and Reinvestment Act of 2009 provides the U.S. Comptroller General and his representatives the authority:

- a. to examine any records of the Consultant or any of its subconsultants, or any State or Local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- b. to interview any officer or employee of the Consultant or any of its subconsultants, or of any State or Local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the American Recovery and Reinvestment Act with respect to this contract, which is funded with funds made available under the American Recovery and Reinvestment Act. Section 902 further states that nothing in this Section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

- (6) Section 1515(a) of the American Recovery and Reinvestment Act provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this contract. The Consultant is advised that representatives of the United States Inspector General have the authority to examine any record and interview any employee or officer of the Consultant, its subconconsultants or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an United States Inspector General.