

Maryland Department of Transportation
State Highway Administration



**REQUEST FOR PROPOSAL
(RFP)**

Prepared by:
Office of Consultant Services
State Highway Administration
April 2002

Maryland Department of Transportation
State Highway Administration

REQUEST FOR PROPOSAL
(RFP)

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Prepared by:
Office of Consultant Services
State Highway Administration

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The April 2002 updates to the State Highway Administration RFP include:

Page 21 - paragraph "2-c-(1)" and "2-c-(2)" - re principal rates

Page 22 - paragraph "2-c-(4)" - re principal rates

Page 22 - paragraph "2-d" - re maximum compensation

Page 22 - paragraph "d" - total revision

Page 23 - paragraph "3-a-(2)" and "3-a-(3)" - re maximum hourly rates

Page 26 - paragraph "3-d-(1)" - re mileage

Page 27 - paragraph "3-d-2-(b)" - re meals

Page 27 - paragraph "3-d-(2)-(d)" - re meals and lodging

Page 29 - paragraph "D-8" - re principal rates

Page 123 - Expansion of Addendum #1 to the General Conditions for Consulting Services, to include revisions to paragraphs "20" and "25", all in accordance with COMAR.

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State Highway Administration

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Office of Consultant Services

Introduction

This Request for Proposal (RFP) has been developed to set forth the guidelines and procedures used by the State Highway Administration and the Office of Consultant Services for those projects wherein the Transportation Professional Services Selection Board (TPSSB) Regulations will be used to procure a consultant to perform architectural and/or engineering services for a State Highway Administration project.

These guidelines and procedures may also be applicable, in an abbreviated form, for State Highway Administration projects which are not governed by the Transportation Professional Services Selection Board Regulations. That is, for a project where competitive procedures may be appropriate, even though the final selection will not be made by the TPSSB, or for a project under \$100,000, wherein the Highway Administration competitively selects a consultant to perform the required services.

All proposals submitted to the Highway Administration must be in accordance with the requirements and criteria of this RFP. Consultants are advised that subcontractor's proposals also must be in accordance with this document.

This RFP has been developed to comply with State Finance and Procurement Article, Title 13, Subtitle 3 of the Annotated Code of Maryland, and Title 21, Subtitle 12, Chapter 02 of the State Procurement Regulations. Additionally, this RFP is in conformity with the Architectural and Engineering Consultant Selection - Internal Guidelines - Revised March 1996 promulgated by the Maryland Department of Transportation. The TPSSB Regulations allow for the solicitation of competitive Technical Proposals, the Administration's rating and ranking of the Technical Proposals, and price negotiations with the firm or firms with the highest rated Technical Proposal(s).

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I. Pre-Proposal Conference

Technical Proposals

In accordance with the Regulations of the Transportation Professional Services Selection Board (TPSSB), a Pre-Proposal Conference may be held whereby the Highway Administration and the firms on the Reduced Candidate List (RCL) will meet and discuss the project being undertaken and the requirements for the submission of Technical Proposals. The RCL firms will be advised by letter of the date, time, and location of this conference. The consultants will also be furnished a copy of the Project Resume* and other material as appropriate. This will be done in order that the consultants can become familiar with the project requirements and can formulate any questions that they may wish to have answered at the Pre-Proposal Conference. Attendance at the Pre-Proposal Conference by consultants is not mandatory, but attendance is strongly urged to ensure that all firms are equally aware of project particulars and project requirements.

The Office of Consultant Services will moderate the Pre-Proposal Conference. The appropriate division(s) of the Highway Administration involved with the particular project will discuss the Project Resume, the desired scope of services, and any unique project features that must be addressed in the Technical Proposal. The Office of Consultant Services will discuss the format for the preparation of Technical Proposals including guidelines and any unique requirements of the project. Any questions that firms may have concerning any aspect of the project will be answered at this Conference. Additionally, consultants will be afforded the opportunity to submit written questions to the Consultants Services Division by a specific date. All questions and the Highway Administration's responses thereto will be sent to all firms being considered for the Project.

The deadline for Technical Proposal submission will be announced at the Pre-Proposal Conference. After the Pre-Proposal Conference, the only contact with the Highway Administration, with reference to the Project, will be through the Office of Consultant Services. Failure to comply with this requirement may result in a firm being disqualified from further consideration on a project.

*Note: Project Resume is in some instances referred to as Project Prospectus or Description of Project.

II. Project Resume

The Description of Project, Project Resume, and/or Project Prospectus (hereinafter referred to as the Resume) will be developed by the Highway Administration. Said Resume will be attached to, and become a part of any contract agreement prepared for a project. Specifically, it will become Section I of the "Specifications for Consulting Engineers' Services". This Section of the Specifications will describe in detail the scope of services required of the consultant and the procedures to be employed to carry out the project services. It will contain specific reference to other applicable Sections of the State Highway Administration's "Specifications for Consulting Engineers' Services - Volume II", dated April, 1986, and where pertinent, will specify any changes, deletions or waivers thereto. When applicable any other required criteria will be set forth.

In addition to the scope of services required of the consultant, the Resume will also specify those services and materials which will be supplied by the Highway Administration. Existing studies, plans, and data in the possession of the Highway Administration, if deemed appropriate by the Highway Administration, may be furnished. If pertinent information is in the possession of the Highway Administration, but not available for distribution, same may be made available for review by the consultants. Both of these latter sources of information, if available, will be discussed at the Pre-Proposal Conference.

All consultants should be thoroughly familiar with the Resume prior to the Pre-Proposal Conference. Any questions concerning any aspect of the Resume should be asked at the Pre-Proposal Conference. For questions not answered at the Pre-Proposal Conference, answers will be sent, in writing, to all participating consultants.

All Technical Proposals submitted by the consultants should make specific reference to the Resume, the scope of services contained therein, and the applicable Sections of the Specifications under which the required scope of services will be performed.

All Project Resumes shall include completion times in months for task functions as deemed appropriate. Consultants are expected to complete the various tasks within the times allotted unless delayed by events beyond their control. Additionally, all consultant agreements shall have a specific date set forth for the completion of the work covered by the agreement.

III. Submission Requirements

- Technical Proposals -

In response to the Highway Administration's request for competitive Technical Proposals, the consultants on the Reduced Candidate List for a project will submit the requested number of Technical Proposals. Technical Proposal requirements are further detailed in Subsection III.A and III.C of this document. All material is to be submitted in one (1) envelope.

Technical Proposals and all other required material must be submitted to the Office of Consultant Services prior to the deadline set forth in the Request for Proposal (RFP) and/or announced at the Pre-Proposal Conference. No Technical Proposal will be accepted after the deadline, regardless of how they are transmitted. Technical Proposals received by the Office of Consultant Services after the deadline time shall be returned unopened to the consultant. No Technical Proposal will be opened until after the passing of the deadline.

After review, rating, and ranking of the Technical Proposals by the Highway Administration, the highest technically ranked consultant may be requested to submit a Price Proposal. The TPSSB Regulations allow for multiple technical selections to be made from the same Reduced Candidate List for identical contracts.

- Price Proposals -

If a Price Proposal is solicited, the consultant shall submit the proposal documentation in three (3) separate envelopes, and specifically marked as follows:

- I. Price Proposal -
Further defined in Subsections III.B and III.C
- II. DBE/MBE Package - If required
Further defined in Subsection III.D
- III. Financial Statement and Data - As required
Further defined in Subsection III.E

If a Project involves multiple contracts, the Highway Administration may simultaneously request Price Proposals from the appropriate number of the highest ranked consultants.

- Technical and Price Proposals -

It shall be the consultant's responsibility to see that each envelope is marked on the outside with the consultant's name, proper project title, contract number, and brief project description. It shall also be the consultant's responsibility to ensure that the proper documentation is included within each envelope.

If a Technical Proposal or a Price Proposal is not accompanied by complete and accurate supporting data, i.e., DBE/MBE documentation, and financial statement and data, when and as applicable, then the Technical or the Price Proposal may be rejected from further consideration.

The consultant shall submit one (1) original Technical Proposal and, if requested, one (1) original Price Proposal, which shall contain original signatures. These "original" proposals shall be clearly identified on their cover as "Original Technical Proposal" and "Original Price Proposal" so that they can be easily distinguished from the copies. All other required copies of the proposals may be photocopies of the originals. Said proposals must be complete and understandable. In addition, the proposals shall include all required information, and be in the format, as specified elsewhere herein.

All proposals and accompanying material will be submitted to:

S. Donald Sherin, Director
Office of Consultant Services
Fourth Floor, C-405
707 North Calvert Street
Baltimore, Maryland 21202

Public Disclosure of Proposals
or
Public Information

All Technical Proposals will be confidential until after final approval of the project agreement and issuance of the Notice to Proceed, at which time the total Technical Proposals can be inspected by others, when requested in writing pursuant to the Maryland Public Information Act. Price Proposals will be deemed confidential and not released for inspection.

Subsection III.A - Technical Proposal
Subsection III.B - Price Proposal
Subsection III.C - Data Processing Services Criteria
Subsection III.D - DBE/MBE Package
Subsection III.E - Financial Statement and Data
Subsection III.F - Proposal Guaranty

III.A. Technical Proposal

A. General

The Technical Proposal submitted by a consultant shall deal specifically with the scope of services to be performed, the work plan to be used, the key staff to be assigned, an estimate of man hour distribution (expressed in percents) to perform all project services, a complete description of the proposed computer services, letters of commitment from subcontractors, minority participation, if required, and relevant financial and insurance information. Therefore, the Technical Proposal shall include, as a minimum, the following eight (8) distinct parts:

- I. Scope of Services - The consultant shall set forth their understanding of what work is to be accomplished. Specific reference must be made to the SHA resume, the Specifications applicable to the Project, and all other required criteria. The resume should be summarized sufficiently to demonstrate the consultant's understanding of the products expected. However, a recopying of the resume is neither necessary nor desirable. Special requirements of the project (e.g. hydraulics, maintenance of traffic, etc.) should be discussed and any unique circumstances or suggestions should be presented. The project should be reviewed in the field, and any resulting conclusions presented. The consultant shall set forth that any proposed subcontractor(s) has a clear understanding of that work which the subcontractor(s) will be performing.
- II. Work Plan - The consultant shall set forth how he proposes to accomplish the scope of services. Specifically, the consultant shall address the methodology, techniques and processes he proposes to use. This section shall contain work schedules and completion times. The consultant shall set forth any unique methodology, or any special innovations or concepts that the consultant is proposing for the project. The consultant shall document how computer services are to be used, if applicable, and list the advantage of said services. If a joint venture or multiple subcontractors are involved, the proposal should clearly set forth what work will be assigned to whom, what the lines of responsibility will be and who will have management authority.
- III. Key Staff - Key Staff is defined as the productive staff who have major project responsibilities. Unless otherwise directed by the Highway Administration, the total key staff proposed shall not exceed four (4) individuals for a project. On the first page of this

section the consultant shall indicate the key staff anticipated to be assigned to the project. Following each Key Staff individual listed, the consultant shall set forth the specific responsibilities of each individual within the Project. The consultant shall submit a one (1) page resume for each key staff individual, showing both general experience and specific experience related to the subject project.

The consultant may show an organization chart of proposed personnel in this Section. The consultant may also include in this Section a listing of support personnel proposed, including items such as names, degrees, registrations and expertise, limited to three (3) lines for each individual. Resumes of support personnel are not to be included.

On certain projects the Highway Administration will require that certain proposed key staff personnel must be assigned to the project. This requirement will be set forth in the Project Resume or at the Pre-Proposal Conference. In this instance, said key staff personnel will be identified in the Agreement. If one or more of the aforementioned personnel becomes unavailable for continuation of the work assignment, the consultant shall replace said individual(s) with personnel of substantially equal ability and qualifications. However, any changes to designated key staff personnel will require the prior written approval of the Highway Administration designated Liaison. If acceptable, changes shall be effected without additional cost to the Highway Administration and without formal modification of the Agreement.

IV. Time Estimate

A. For Project Specific Projects:

Using the applicable pages from the Man Hour Estimate Forms booklet or special forms developed for a specific project, the consultant shall set forth the percentages of time proposed per classification of employee, per task or per work function, etc., to the degree necessary to adequately respond to the RFP. Man-hours are not to be shown in the Technical Proposals.

B. For Open-End Projects:

The consultant shall include a one (1) page listing of those classifications proposed for the services and the percentage of time estimated for each classification as set forth in the project resume.

Total percentages shall add up to 100%. A column of percentages of time estimated for each classification are to be shown for the Prime Consultant, for each subcontractor proposed, and one (1) column showing totals of all firms which are to add up to 100%. When multiple firms are used, the total for each firm must add up to something less than 100%.

- V. Computer/CADD Section - In accordance with the computer/CADD requirements set forth in Section III.C of this RFP, the consultant shall document all proposed computer/CADD services for the proposed project.
- VI. Subcontractors - If the consultant proposes subcontractors to perform services, a clear statement of commitment from each proposed subcontractor to the consultant must be included in the Technical Proposal. The commitment shall include a definitive statement of the services to be performed.

Note: Subcontractors' involvement in a project is to be detailed in the aforesaid parts as appropriate.

- VII. DBE/MBE/WBE Compliance - If the Highway Administration includes a(n) DBE/MBE goal for a Project, the consultant shall address the methodology for compliance to this requirement in this Section of the Technical Proposal.

The consultant shall also include in this Section the completed DBE/MBE Utilization Affidavit and the Subcontractor Utilization Affidavit

As per the MDOT promulgated Maryland Minority Business Enterprise/Federal Disadvantaged Business Enterprise Program - Revised March 2000, the term Minority Business Enterprise (MBE) is used for state funded projects and the term Disadvantaged Business Enterprise (DBE) is used for federally funded projects.

- VIII. Financial Capacity and Insurance - In this Section, the consultant must include a letter addressed to the Highway Administration setting forth evidence, in the form of a declarative statement(s), that:

- 1) The consultant has the financial capacity to provide the services, and
- 2) the consultant has measures of protection for the State against errors and omissions.

The State Highway Administration has decided not, at the present time, to specify the dollar amounts required for each of the four (4) areas of insurance set forth in the General Conditions.

To be responsive to a Request for Proposal, and to be responsive to the insurance requirements, the amount of coverage carried or proposed to be carried by a firm for each of the four (4) areas of insurance required shall be clearly set forth on the insurance certificate(s) i.e. Comprehensive General Liability Insurance, Professional Liability Insurance, Workers Compensation Insurance, and Comprehensive Automobile Liability Insurance.

If a firm is technically selected for a project the amount(s) of insurance coverage may be the subject of negotiations.

Section VIII of the Technical Proposal must also include a copy of the consultant's current certificate(s) of insurance, which should contain, as a minimum, the following:

- 1) Carrier (Name and Address)
- 2) Type of Insurance (to address each of the four (4) required areas)
- 3) Amounts of Coverage (including Deductible(s))
- 4) Period(s) covered by Insurance
- 5) Any exclusions

Failure of the consultant to submit satisfactorily to these requirements and failure to address all four (4) areas of insurance required shall result in the Highway Administration rejecting the Technical Proposal.

IX. Other - The requirements for this Section and subsequent Sections, if required for a particular project, will be detailed in the Project Resume, or the letter requesting Technical Proposals.

B. Guidelines for Preparation of Technical Proposals

It is neither the intent nor desire of the Highway Administration to encourage unnecessarily large or voluminous Technical Proposals. The ideal Technical Proposal will be concise enough to be readily reviewed and comprehended, yet explicit enough to set forth the consultant's understanding

of desired services in a logical manner. Furthermore, proposals shall be explicit with respect to the relationship and divisions of work between all firms performing services.

From the technical standpoint, a consultant could be eliminated from further consideration on a project by deleting required work items, adding unnecessary work items, or by submitting a non-responsive or ambiguous Technical Proposal. A mere reference to the scope of services set forth in the resume, and a statement that all work will be performed in accordance with the Specifications (and other applicable criteria), is not considered an adequate Technical Proposal.

C. Specific Forms to be Completed

The Highway Administration has developed a Man Hour Estimate Forms booklet to be used in connection with specific types of work. Said booklet contains forms to be used by consultants to show proposed time estimates in the specific areas deemed appropriate.

1. Project Specific

For project specific oriented projects, the consultant shall complete and include the Section I Man Hour Estimate Forms with percentages of time proposed per functional area per classification. Percentages are to be calculated using total time proposed as the denominator, excluding additional study time, field survey time and redesign time (where applicable these hours will be fixed). Percentages are to be rounded to the nearest tenth of a percent.

A consultant shall give particular attention to the various classifications of employees proposed to perform services and the percentage of time allotted to each of the proposed classifications with respect to the total time proposed.

Man hours are not to be shown in the Technical Proposals. One (1) set of forms shall be completed for the total project and one (1) set of forms shall be completed for each individual firm involved in the submission. The summation of all percentages for the total project, for all work and all firms involved, shall total 100%. The forms for each firm shall total that firm's percent of the project services.

Survey time and additional study time are to be shown on the Section I Man Hour Estimate Forms, in hours; that is, the hours fixed in the project resume. Supervision for field survey time is to be included in

the line entry percentage for "highway" Phase IV. Redesign time is not to be shown in Technical Proposals.

2. Open-end Projects

For open-end type projects, the consultant shall complete and include a one (1) page form, listing classification(s) of personnel proposed to perform the services, by Phase where applicable, and the approximate percentage of time for each classification indicated. Percentages are to be calculated using total time proposed as the denominator. Percentages are to be rounded to the nearest tenth of a percent.

For open-end type projects, the Highway Administration will normally furnish the project personnel classifications required and the percent of time for each classification in the Project Resume. The consultant must comply with said distribution and failure to do so will result in the consultant being downgraded in the Highway Administration's rating of the Technical Proposal in this area.

D. Consistency with Letter of Interest

The Technical Proposal will be reviewed for consistency with the Letter of Interest statement submitted earlier by the consultant indicating the prime participant or participants, and the areas of involvement of each of the proposed subcontractors. Any substantial modification in either composition or areas of involvement from that shown in the consultant's earlier statement is grounds for disqualification of the proposal. However, upon a showing of compelling justification, the Highway Administration may accept the proposal as modified, if the reasons set forth for such modification are, at the Highway Administration's determination, adequate to properly justify the change. The justification shall be set forth in the Transmittal Letter for the Technical Proposal (i.e., "E", below).

If a consultant includes additional firms in the Technical Proposal that were not included in the Expression of Interest, the consultant must include a standard SF 254 Form for the added firm(s).

E. Transmittal Letter

The consultant shall prepare a letter of transmittal, as a part of the Technical Proposal, to transmit the Technical Proposal to the Highway Administration. This letter shall be signed by the person or persons required to legally bind the consultant to the proposal.

The Technical Proposal transmittal letter shall specifically state that the consultant shall complete all Project services, within the proposed time estimate, to the satisfaction of the Highway Administration. Also, any justification or explanatory material relevant to the Technical Proposal shall be set forth in this letter. The letter shall be concise and not repeat any of the detailed information found elsewhere in the Technical Proposal.

F. Technical Proposal Outline

The Technical Proposal shall be structured to the following outline:

Title Page

Transmittal Letter

Table of Contents

I. Scope of Services

- A. Prime
- B. Subcontractor(s)

II. Work Plan

- A. Prime
- B. Subcontractor(s)

III. Key Staff

IV. Time Estimate (Project specific)

- A. Total Man Hours proposed (in %'s) (i.e. Section I, page 5 of the Man Hour Estimate Forms)
- B. Section I Man Hour Estimate Forms (in %'s) (i.e. Section I, page 6 of the Man Hour Estimate Forms) for:
 - 1. Total Project
 - 2. Prime
 - 3. Subcontractor(s)

or

IV. Time Estimate (Open-end)

- A. A one (1) page summary of classifications and %s of time therefor for each firm, joint venture constituent and subcontractor proposed.

- V. Computer/CADD Section
 - A. Prime
 - B. Subcontractor(s)
- VI. Subcontractor(s) Commitment
- VII. MBE Compliance
 - A. DBE/MBE Utilization Affidavit (RFP pages 71 and 72)
 - B. Subcontractor Utilization Affidavit (RFP pages 73 and 74)
- VIII. Financial Capacity and Insurance
- IX. Other (As required by Project Resume)

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III.B. Price Proposal

A. General

If requested, the consultant shall submit a Price Proposal which covers the costs of all services proposed and detailed in the Technical Proposal. The consultant shall develop and present the Price Proposal in a format which will allow the State Highway Administration to perform an objective analysis of the cost elements and cost functions proposed for the entire project. No time, for any classification of personnel, shall be set forth in the Price Proposal unless the same time has been set forth in the Technical Proposal.

All Price Proposal submissions by consulting firms shall be in compliance with the procedures, definitions, and constraints set forth herein. These procedures, definitions, and constraints, when followed, will enable a firm to submit a Price Proposal in a format as generally presented by other consulting firms to the Highway Administration and which can most readily be interpreted by the Highway Administration during its cost review and auditing analysis.

B. Estimate of Man Hours

If a Price Proposal is requested, the consultant shall develop a time estimate required to perform the required services. The consultant shall exercise caution that the man hours proposed in the Price Proposal correspond and equate to the percentage distribution of man hours previously furnished in the Technical Proposal. The consultant shall prepare Price Proposals on a man hour basis. A conversion factor of 8 is to be used when converting man days to man hours.

1. Project Specific Projects

The consultant must clearly present the proposed time estimate in the Price Proposal. The consultant shall complete the SHA Section I and Section II Man Hour Estimate Forms in man hours proposed. One (1) set of forms shall be completed for the total project and one (1) set of forms shall be completed for each individual firm involved in the submission. When completing the Section II Man Hour Estimate Forms, the consultant may delete any shown item on said form, with explanation why the consultant does not think it is appropriate. In addition, the consultant may add any item deemed appropriate, under the "other" line item. If the "other" line item is used, it must be documented. In general, any deleted or added item must be fully documented in order to be acceptable. Appropriate forms must also be completed for each firm proposed.

A consultant shall give particular attention not only to the total amount of time proposed, but also to the various classifications of employee proposed to perform services and the time allotted to each of the proposed classifications with respect to the total time proposed.

2. Open-end Projects

The consultant shall include a one (1) page listing of those classifications proposed for the services and the time estimated for each classification for each individual firm involved in the submissions; consistent with the previous Technical Proposal submission. This shall include:

- a. One (1) page for the Total Project
- b. One (1) page for each firm involved in the submission

C. Guidelines for Preparation of Price Proposals

All Price Proposals shall be derived and submitted on a cost plus fixed fee basis unless otherwise specified by the Highway Administration. Any derivation other than that requested will be rejected.

To be in compliance with Code of Federal Regulations (CFR), Title 48 Federal Acquisition Regulations (FARs), consultants must maintain adequate cost accounting systems to be eligible for a cost plus fixed fee basis of payment Agreement.

The following definitions, cost functions, and constraints are set forth herein to serve as guidelines for the consultant in the preparation of a Price Proposal.

1. Definitions

- a. "Actual Salary Costs" is actual salaries paid to productive technical employees before tax and other deductions and does not include overhead expenses, principals' administrative time, payroll taxes, workers' compensation and/or other insurances paid on behalf of the employee, allowances for vacation, holidays, or sick leave, or bonuses or other incentives, or any other additives.
- b. A "Principal" is any individual owner, partner of a partnership, shareholder of a Sub-Chapter "S" Corporation, or an officer/director of any Corporation.

- c. A "Direct Cost" is any cost which can be identified specifically with a particular cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly thereto. Costs identified specifically with other contracts of the consultant are direct costs of that contract and are not to be charged to this contract directly or indirectly. When items ordinarily chargeable as indirect costs are charged to government contracts as direct costs, the cost of like items applicable to other contracts of the consultant must be eliminated from indirect costs allocated to government contracts. Clerical/secretarial/administrative costs will not be allowable as direct costs.
- d. "Indirect Costs" are as follows: After direct costs have been determined and charged directly to the contract or other work as appropriate, indirect costs are those remaining to be allocated to the Project on the basis of direct technical labor.
 - (1) "Payroll Burden" is the cost of the employees' fringe benefits such as employer paid payroll taxes, workers compensation and/or other insurance paid on behalf of the employee, vacations, holidays, and sick leave.
 - (2) "Overhead" is the remaining allowable indirect costs which are not defined as payroll burdens. All clerical/secretarial/administrative costs shall be included in overhead.

2. Allowability of Costs

- a. Allowable actual salary costs, payroll burdens, and indirect costs are to be determined in accordance with CFR Title 23 Highways Part 172; Title 48 FARs Part 31; and Title 49 Transportation Part 18; and with generally accepted accounting principles and practices, appropriate to the particular circumstances; except that State and local taxes (all states and all local jurisdictions) based on income and facilities capital cost of money, otherwise allowed under FARs, will not be an allowable direct or indirect cost under the terms of any contract agreement that is prepared with

the successful consultant firm who is awarded a project.

- b. The payroll burden and overhead rates are to be calculated on a company-wide basis by dividing the consultant's total payroll burden and overhead expenses by the consultant's total direct productive labor costs. At the time of proposal submission, the consultant must submit an itemized listing of payroll burden and overhead expenses, as incurred for a specific fiscal period, with each entry expressed in dollars and a separate listing with each entry expressed as a percent of actual technical salary costs. The rates as submitted by the consultant may be subjected to pre-contract audit investigations and verification by the Highway Administration. The Highway Administration will establish provisional rates, for purposes of payment, for payroll burdens and for overhead in the contract agreement for a project.

For all projects, there shall be a limitation of 130% for reimbursement for payroll burdens and overhead.

- c. Principals' productive technical time expended on a specific project shall be allowed as follows:
- (1) Corporations: On a cost plus fixed fee basis, with "actual salary cost" not to exceed Seventy Five Dollars (\$75) per hour per principal. In addition, payroll burden, overhead and profit will be allowed.
 - (2) Partnerships: On an hourly rate basis not to exceed Seventy Five Dollars (\$75) per partner. In addition, profit not to exceed 10% of the proposed hourly rate will be allowed as part of the overall fixed fee. No other payroll additives will be allowed.
 - (3) Sub-Chapter "S" Corporation: Same as Corporation, (see above), if the principals' hourly rate is based on market value, is relatively consistent over time and is not partially a return of equity. Otherwise, the entity may be treated as a partnership, i.e., no payroll additives allowed on principals' time.

- (4) Sole Proprietorships: On an hourly rate basis not to exceed Seventy Five Dollars (\$75) per owner. In addition, profit not to exceed 10% of the proposed hourly rate will be allowed as part of the overall fixed fee. No other payroll additives will be allowed.

The name(s) of the principals who are to expend productive technical time on a proposed project shall be set forth in the Technical Proposal. Any Agreement prepared may set forth the principals by name and the specific hourly rate for principals for Partnership, Sub-Chapter "S" Corporations and Sole Proprietorships.

- d. The Highway Administration has established \$156,000 as the maximum annual compensation per individual that will be recognized by the Highway Administration, either as a direct or indirect cost, in the determination of a consultant's indirect cost rate for any fiscal year. Said annual amount will be adjusted to conform to Highway Administration policy, if the policy is modified during the term of the Agreement, effective beginning with that fiscal year stipulated in the Highway Administration's policy change.

As used in this paragraph, compensation includes wages; salary; bonuses; and deferred compensation as stated in the Federal Acquisition Regulations (FARs), Title 48, Chapter 1, Part 31 - Contract Cost Principles and Procedures, Subpart 31.205-6(p)(2)(i), (January 19, 2001 Edition), whether paid; earned; or otherwise accruing, as recorded in the consultant's cost accounting records for a fiscal year, but does not include employer contributions to defined contribution pension plans, which is also included in the FARs definition. In addition, compensation includes directors' and executive committee members' fees; incentive awards; stock transfers (employee stock bonuses, stock options, stock appreciation rights, stock ownership plans) which result in current taxable income to the recipient; and contributions to management employee incentive contribution plans. Wages and salary include regular pay (including any elective contributions by the employee to a deferred compensation or qualified pension plan), overtime pay, incentive pay, and any other payments to an employee subject to current income tax, as shown on the employee's W-2 Statement.

Severance pay may be excluded from compensation only if the severance pay results from an involuntary termination of an employee. Severance pay may not be excluded from compensation if the purpose is to preserve continuity of employment, such as for relocations or transfers to affiliate firms.

- e. No overtime work, or payment therefor, shall be performed without prior authorization from the Highway Administration. When overtime is required and authorized, and payment therefor may involve premium costs, there shall be no payroll additives applied to the premium cost portion of the overtime payment cost.

Premium overtime costs are reimbursable as a direct cost when an employee works more than 40 hours per week on Highway Administration projects based upon the consultant's workweek. Regularly scheduled paid company holidays may be included in the calculation of "hours worked", but time off for any other leave (e.g. vacation, personal, compensatory or sick leave) is to be excluded from "hours worked" when calculating premium time reimbursement. The fact that an employee works more than 8 hours in a single day does not necessarily mean that premium overtime costs are allowable as a direct cost since reimbursement is determined on a weekly basis. Any premium overtime paid to employees, but not directly billable under this policy, may be allowed as an indirect cost.

- f. Allowability for costs for particular projects shall also be governed by the constraints set forth in paragraph 3 hereinafter.

3. Constraints

a. Salary Related Costs

- (1) To be in compliance with the Truth-In-Negotiation Certification, the average salary rates per classification proposed by a consultant shall be the average of those salary rates in effect as of the Price Proposal submission date; i.e., the date Price Proposals are due in the Office of Consultant Services.
- (2) Total compensation for actual salary for any one productive technical employee may not

exceed Seventy Five Dollars (\$75) per hour, which amount may be modified during the term of an Agreement.

- (3) Total compensation for principals of Partnerships, some Sub-Chapter "S" Corporations (see RFP page 21) and Sole Proprietorships shall not exceed a specific rate of Seventy Five Dollars (\$75) per hour per individual. There shall be no payroll additives applied to the proposed rate; however, the Highway Administration will allow a profit factor, not to exceed 10%, to be applied to the proposed specific hourly rate.
- (4) The Highway Administration acknowledges salary escalations and considers any rate up to 6% per year as reasonable. To effectively accomplish this, the consultant should propose and indicate in the Price Proposal an escalation percentage predicated on the length of time from Price Proposal submission date to the mid-point of the anticipated contract duration.
- (5) For some projects, a consultant may find it advantageous or necessary to utilize subcontractors who are individuals for specialized services or services requiring a specific expertise. In these instances, the Highway Administration may accept, dependent upon a consultant's submission and justification, a basis of payment wherein the individual subcontractor would be paid at an hourly rate. For each hour of productive time expended, the hourly rate would be inclusive of the actual salary cost and indirect cost rate associated therewith, if any, and profit, if applicable.

b. Certified Payroll Roster

- (1) To facilitate the pre-contract audit examination of the Price Proposals, certified payroll rosters are a required element of the financial package. Please note that this requirement extends to all subconsultants. The following defines the content and format of the payroll roster.
 - (a) The roster shall include all technical employees of the firm unless the firm is structured in such a way that divisional or geographic locations can be

considered as operating units, in which case a roster of all technical employees of that Department or Branch will be allowed in lieu of a total company roster.

(b) The roster should include each individual's name, employee number, classification, and actual hourly rate of pay as of the proposal submission date.

(c) The classifications shown on the roster must match the classifications on the second page of each Cost and Price Summary Form.

(2) The Highway Administration will compare the arithmetic average of all employees in each classification to the proposed rates, with consideration for the effects of key staff individuals and hours as identified elsewhere in the Price Proposal and the percentage of time set forth in the Technical Proposal.

c. Indirect Costs

(1) When the Price Proposal is on a cost plus fixed fee basis, the payroll burden and overhead rate submitted by a consultant shall be equal to or less than the most recent annual audit rate of the firm, but shall not exceed 130%. The proposed annual audit rate is acceptable only if the Highway Administration's pre-contract audit acknowledges and accepts that audit rate presented.

(2) When submitting a Price Proposal, the consultant shall provide the State Highway Administration with an overhead audit for a one (1) year period performed by an Independent CPA in accordance with CFR Title 48, FARs Chapter 1, Part 31 and applicable Maryland Department of Transportation guidelines for the consultant and for each subcontractor set forth in the Proposal. Said audit(s) shall be for the previous fiscal year of the firm(s), or if same is (are) not available an independent audit(s) for the preceding year will be acceptable. This material is to be enclosed with the "Financial Statement and Data" envelope submitted with the Price Proposal. (See RFP page 59).

- (3) The Highway Administration will not accept Price Proposals based on a cost of services derivation or accept derivations of cost with G & A factors included.
- (4) The Highway Administration when writing an agreement with the successful firm, if same is on a cost plus fixed fee basis of payment, shall establish a limitation of 130% in the agreement for payroll burdens and overhead. The percentage limitation shall be applicable to each and every fiscal period of a consultant covered by the contract agreement.
- (5) If a consultant proposes a payroll burden and overhead rate which is equivalent to the firm's latest documented audited rate, said rate will be established in the agreement as the provisional rate, but not to exceed 130%. Furthermore, the Highway Administration may consider raising the maximum amount(s) payable which are established in the agreement for services performed within the time period specified in the original contract because of a subsequent audited payroll burden and overhead rate higher than the established provisional rate in the agreement but which are within the constraints of the agreement.

Variances between the proposed and audited rates which are deemed significant will be disclosed to the SHA Negotiation Team and the Consultant Screening Committee and may impact selection.

- (6) In a competitive situation, the Highway Administration may encounter a consultant proposing a payroll burden and overhead rate which is below the firm's latest documented audited rate. If a contract agreement is written with a firm proposing in this manner, the payroll burden and overhead rate submitted will be established in the agreement as a provisional rate not to exceed 130%. Furthermore, if a firm proposes in this manner, neither the fixed fee(s) nor the maximum amount(s) payable which are established in the agreement will be adjusted for work performed within the time period specified in the original contract because of a subsequent payroll burden and overhead rate higher than that rate submitted and established provisionally in the agreement.

- (7) For new firms with no established overhead rate, the State Highway Administration will recognize any reasonable provisional rate up to 100%.

d. Direct Costs

The consultant must itemize direct costs proposed for the project. The allowability of specific direct non-salary costs will be determined by the requirements of the project, Federal Acquisition Regulations, and the adequacy of the consultant's accounting system. However, the following constraints shall be applicable if the items are necessitated by the performance of the required services. The contract agreement written with the successful consultant for a particular project shall indicate those items which are allowable.

- (1) Local Travel - Automobile travel reimbursement shall be at thirty two cents (\$0.32) per mile per vehicle, or any subsequent approved rate set forth in the Highway Administration Travel Regulations, and is allowable for official business mileage only.
- (2) Distance Travel - Allowability of the following items is dependent upon project site, consultant location and services being performed. In general, distance travel is defined as travel associated with an overnight stay required to perform a specific project task.
 - (a) Public transportation shall be at prevailing tourist class or coach rates.
 - (b) Meals shall be limited to Thirty Eight Dollars (\$38) per day per individual, or any subsequent approved rate set forth in the Highway Administration Travel Regulations. Receipts may be required for reimbursement.
 - (c) Lodging shall be reimbursed at reasonable lodging costs and shall be double occupancy when possible. Receipts will be required.
 - (d) Total reimbursement for lodging and meals shall be limited to One Hundred Dollars (\$100) per day per individual, or any subsequent approved rate.

- (3) Computer/CADD - Effective July 1, 1993 (Pursuant to TPSSB Policy adopted June 1993), Computer/CADD Costs are to be included in a consultant's overhead and are not considered allowable direct reimbursable costs. However, during the consultant selection process, a transportation agency may consider allowing costs for unique computer rental services, over and above industry standards, as a direct cost, based on technical and price negotiations. Computer/CADD requirements are further addressed in Section III. c, page 41 of this RFP.
- (4) Direct Cost estimates by the consultant shall be itemized in the Price Proposal.
- (5) If a consultant is awarded a project and the agreement provides for reimbursement for allowable direct non-salary costs incurred as an incident to and directly attributable to the project, reimbursement for same shall be at actual costs incurred by the consultant, within the aforesaid constraints.

The Highway Administration will not allow any additives or mark-up to any direct cost item.

D. Price Derivation

The consultant shall develop a price derivation for the total project, or portions thereof, as stipulated when a Price Proposal is requested. The derivation shall be comprised of the following cost elements and cost functions, but may not necessarily be limited to the following:

1. Hours of work proposed by several classifications of personnel times the average hourly salary rate of each proposed classification, with total salary cost indicated. The man hours set forth shall equate to the percents of those man hours set forth in the consultant's Technical Proposal.
2. An amount for reasonable escalation of salary cost, dependent on length of project services, predicated on a percentage of the proposed total actual salary cost.
3. An amount for indirect costs, i.e., payroll burden and overhead, predicated on the documented percentage therefor. **Note: The Financial Data envelope shall include documentation showing overhead calculations in dollars.**

The Price Proposal shall include an overhead documentation summary sheet for each firm involved, which documentation shall indicate each overhead entry and the percent therefor.

4. A subtotal of items 1 through 3.
5. An amount for profit or fixed fee which shall give due consideration to the consultant's financial and professional investments, the extent, scope, complexity, character and duration of the services to be furnished, the degree of responsibility to be assumed by the consultant, and other appropriate factors as contemplated by the consultant at the time of proposal submission. The proposed fee shall be indicated as a percentage of the summation of actual salary cost, escalation, if applicable, and payroll burden and overhead costs. Unless project conditions dictate otherwise, the aforesaid percentage shall not exceed 10%.
6. Estimate of Direct Costs proposed:
 - a. Direct Costs shall be itemized
 - b. Computer/CADD costs, only in those instances where specifically allowable. Subsection III.C page 41 of this RFP is devoted to Data Processing Services criteria.
 - c. Subtotal for all direct costs
7. Estimate of amount(s) proposed for each subcontractor.
8. Estimate of other costs - with justification and specifics indicated.

This item shall include productive technical time proposed by Partners of the Partnerships, Shareholders of some Sub-Chapter "S" Corporations (See RFP page 21) and Owners of Sole Proprietorships. The proposed costs shall not exceed Seventy Five Dollars (\$75) per hour per individual and the fixed fees thereon shall not exceed 10% of the proposed hourly rate. These items shall be shown as two (2) separate entries in Item #8, "Other", of the Cost and Price Summary Forms.

9. Total cost proposed for the total project or designated portions thereof.

E. Specific Forms to be Completed

The consultant shall complete the following cost form(s) accurately and with enough detail to set forth the proposed

cost functions and total costs. The completed form(s) shall be included within the consultant's Price Proposal in response to the Highway Administration's request for a Price Proposal.

1. Cost and Price Summary Form (See pages 35 and 36)

The consultant shall complete this form for each phase or task function as requested. Each form will specify the time and cost proposed for that particular phase or task function. Each summary form shall also enumerate the number of man hours allocated to each labor classification together with the average hourly rate per classification.

Separate Cost and Price Summary Forms shall also be submitted for each subcontractor, covering those services the subcontractor will perform. The consultant shall then include the total from same on the Cost and Price Summary Form under Item #7, "Subcontractor", with the reference to the specific subcontractor in the space provided.

Additionally, a total Cost and Price Summary Form (page 35 only) shall be included that will show the total time and cost proposed for the entire project services. This total cost form will be the summation of the individual summary forms.

2. Redesign (See page 37)

This form is to be completed only when it is set forth as one of the task functions specified in the project resume. The consultant shall complete this form predicated on those man hours furnished in the resume or at the Pre-Proposal Conference. The total cost for redesign shall be developed by the consultant using the standard form for Redesign shown on page 37 of this RFP. The total cost for this item shall then be shown as one (1) line item under Item #8, "Other", on the Cost and Price Summary Form for the total project.

3. Grand Total Cost Sheet (See page 39)

For the total project, the consultant must include a Grand Total Cost Sheet which clearly summarizes the total proposed fee and total cost in systematic, readily understandable format. Specifically, the consultant shall develop the summary sheet in a three-columnar format with a column for fixed fee proposed, maximum amount payable proposed, and if applicable, the lump sum proposed. A separate entry shall be made on this chart for each task for which a Cost and Price Summary Form has been requested. With respect to

redesign, the fixed fee column should be marked "N/A" and since a lump sum basis is not applicable the lump sum column should carry the same dollar figures as the maximum amount payable column. The total cost proposed by the consultant should be indicated for the complete project services. The sample format for the Grand Total Cost Sheet is shown on page 39 of this RFP.

F. Other Documentation

The consultant's Price Proposal shall be responsive to the requirements of this RFP and shall be in sufficient detail and clarity to allow the Highway Administration to perform a pre-contract audit without requesting additional information. If the Highway Administration requests, or the consultant submits, additional documentation in support of the proposed prices, same shall be submitted in single copy and included within the Financial Statement and Data envelope. (Subsection III.E)

G. Transmittal Letter

The consultant shall prepare a letter of transmittal, as a part of the Price Proposal, to transmit the Price Proposal to the Highway Administration. This letter shall be signed by the person or persons required to legally bind the consultant to the proposal.

The Price Proposal transmittal letter shall specifically state that the consultant shall complete all project services within the proposed dollar amount, to the satisfaction of the Highway Administration.

H. Price Proposal Outline

The Price Proposal shall be structured to the following outline:

Title Page

Transmittal Letter

Table of Contents

- I. Total Man Hours Proposed (in man hours) - Must include the total man hours proposed by each firm and total man hours proposed for the project.
- II. Grand Total Cost Summary Sheet (RFP, page 39)
- III. A Total Cost and Price Summary Form for the entire Project (RFP, page 35 only)

- IV. A Cost and Price Summary Form for the total cost proposed for each Phase or task function requested by the Highway Administration (RFP, pages 35 and 36)
If a Phase includes work by a subcontractor, that subcontractor's cost must be shown as a line entry in section 7. Immediately following the consultant's form shall be the Cost and Price Summary Form (RFP, pages 35 and 36) for each subcontractor(s) performing services within that Phase.
- V. Phase V - Redesign - Cost Derivation Form - (RFP, page 37, if applicable)
- VI. Consultant Organizational Information (RFP, page 33)
 - A. Prime
 - B. Subcontractor(s)
- VII. Payroll Burden and Overhead Itemization (in %s)
 - A. Prime
 - B. Subcontractor(s)
- VIII. Truth-In-Negotiation Certification (RFP pages 66 and 67)
 - A. Prime
 - B. Subcontractor(s)
- IX. Bid/Proposal Affidavit - (RFP, pages 75 through 82)
 - A. Prime
- X. Certification for Federal-Aid Projects (RFP, pages 88 and 89)
 - A. Prime
- XI. Computer/CADD Section, if applicable
 - A. Prime
 - B. Subcontractor(s)
- XII. Justification for being out of Category, if applicable.
- XIII. Section I, Page 6, and Section II Man Hour Estimate Forms - completed in man hours, if requested.
- XIV. Other

The Price Proposal envelope shall be accompanied by a "Financial Statement and Data" envelope. See RFP page 59 for the contents of this envelope.



**STATE HIGHWAY ADMINISTRATION
AUDITING DIVISION
CONSULTANT ORGANIZATIONAL INFORMATION**
Telephone 410-545-8700 Fax 410-209-5006

**CONSULTANT/
SUBCONSULTANT:** _____

CONTRACT # _____

**HOME OFFICE
ADDRESS:** _____

**BRANCH OFFICE
ADDRESS:** _____

TELEPHONE: _____

FAX: _____

1) **Type of Organization: (Check One)**

Federal I.D.# _____

Sole Proprietorship _____

"S" Corporation _____

Partnership _____

"C" Corporation _____

2) **Date Founded, Date of Registration, and State of Registration or Incorporation:**

3) **Areas of Specialization or Nature of Business:**

4) **Approximate Number of Employees:**

5) **Principals, Partners or Officers (List Job Titles), If Subchapter "S" Corporation, List Shareholders:**

6) **Financial Contact Person and Telephone Number:**

7) **Independent CPA Overhead Audit is Being Submitted for Fiscal Year:** _____, **Ending (Date):** _____

8) **Direct Non-Salary Expenses May be Proposed Only if a Consultant Consistently Charges all Clients Directly for These Expenses and Excludes all Such Costs From Overhead. Is Your Firm in Compliance With This Requirement for Each Proposed Direct Non-Salary Expense Item?**

YES _____ **NO** _____ (If "NO", please explain) **N/A** _____ (None proposed)

9) **If Local Travel Expenses are Being Proposed, Does This Include Company Vehicles, Employee Vehicles, or Both?**

10) **If Printing Costs are Being Proposed, Does This Include Internal Printing Costs, External Printing Costs, or Both?**

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MARYLAND DEPARTMENT OF TRANSPORTATION
 COST AND PRICE SUMMARY - CONSULTANT SERVICES CONTRACT

Administration _____
 Project _____ Consultant _____
 Contract No. _____ Subcontractor _____

Phase or Task function or Total Summary (if applicable) _____

1. Direct Labor: _____ Man Hours x _____ * Average Hourly Rate \$ _____
 (See Reverse)

2. Escalation: _____ % of Item 1 \$ _____

	Subtotal	\$ _____
3. <u>Payroll Additives</u> : P.B. and O.H.	_____ % of Item 1 & 2	
	Append Itemization	\$ _____

4. Total of Items 1, 2 and 3 above \$ _____

5. Fixed Fee: a. Dollar amount to cover Profit and other factors \$ _____
 b. Line 5a. represents _____ % of Line 4

6. Direct Expenses: Append justification as necessary

- a. Local Travel _____ miles at \$ per mile = \$ _____
- b. Long Distance Travel, if required _____
- c. Printing _____
- d. Other (Specify) _____
- e. " _____

Total Direct Costs \$ _____

7. Subcontractor: Separate Cost and Price Summary for each firm to be appended

Name	Amount
a. _____	\$ _____
b. _____	_____
c. _____	_____

Total Subcontractors \$ _____

8. Other (Specify)

- a. _____ \$ _____
- b. _____ _____
- c. _____ _____

Total \$ _____

9. Total Proposed Fee for this (Phase) (task) (Total Project)
 (Please Indicate) \$ _____

10. Will your firm accept this Portion on a lump sum basis? yes _____ no _____
 If yes, in what amount \$ _____

*AVERAGE HOURLY RATE

Classification	Average Hourly Salary	Hours	Extension
1. _____	_____	X _____	= _____
2. _____	_____	X _____	= _____
3. _____	_____	X _____	= _____
4. _____	_____	X _____	= _____
5. _____	_____	X _____	= _____
6. _____	_____	X _____	= _____
7. _____	_____	X _____	= _____
8. _____	_____	X _____	= _____
	Total	_____	= _____

Average Rate equals Extension divided by Hours \$ _____

MARYLAND DEPARTMENT OF TRANSPORTATION

COST AND PRICE SUMMARY

PHASE V - REDESIGN - COST DERIVATION

Project:

Contract Number:

Salary Cost:

Classification	Average Hourly Rate	Payroll Burden & Overhead*	Fee	All-Inclusive Hourly Rate
Supervisor	\$	\$	\$	\$
Engineer				
Draftsman				

*Payroll Burden and Overhead rate of _____% of actual salary cost.

Total Cost for Redesign

Classification	Hours**	All-Inclusive Hourly Rate	Total Cost
Supervisor			
Engineer			
Draftsman			

** Hours per SHA

Total \$ _____

Note:

1. The hours set forth on this sheet are not to be included any place else in either the Technical or Price Proposal.
2. The Total Cost set forth on this sheet is to be shown on the Cost and Price Summary Form developed for the total project. It should be entered as a line entry item "8-Other-Redesign".
3. See page 30 of this RFP for additional "Redesign" comments.

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MARYLAND DEPARTMENT OF TRANSPORTATION
 COST AND PRICE SUMMARY
 GRAND TOTAL COST SHEET

PROJECT: _____

 CONTRACT NO.: _____

Item**	Proposed Cost Plus Fixed Fee		Proposed Lump Sum Fee i.e. Line 10*
	Fixed Fee i.e. Line 5*	Maximum i.e. Line 9*	
(Item)			
(Item)			
(Item)			
(Item) Redesign (last entry)	N/A	Show total \$ _____ developed on Page 37 herein	L.S. N/A Show total \$ _____ developed on page 37 herein

Project Total \$ _____ \$ _____ \$ _____

*Refers to Line Number of individual COST AND PRICE SUMMARY FORM

**Item - Separate line entry is only to be made for each COST AND PRICE SUMMARY FORM requested at pre-proposal conference

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III.C. Data Processing Services Criteria

Effective June 3, 1993, the Transportation Professional Services Selection Board (TPSSB) raised the Maryland Department of Transportation limit on reimbursement for payroll burdens and overhead to 130% with the requirement that Computer/CADD Costs are to be included in the consultant's overhead and are not to be considered as allowable direct reimbursable costs. However, during the consultant selection process, a transportation agency may consider allowing costs for unique computer rental services, over and above industry standards, as a direct cost, based on technical and price negotiations.

When utilizing data processing services to perform project management, engineering computations, or CADD services for a project, the consultant will be required to perform same in accordance with the Highway Administration's standard appropriate and applicable procedures.

When data processing services (computer/CADD usage, data entry, etc.) are to be used on a Project, the consultant shall include a specific "Computer/CADD Section" within the Technical Proposal, which shall contain, as a minimum, the following information:

A. Technical Proposal

1. In the Computer/CADD Section of the Technical Proposal, all technical description and documentation required for the Project shall be presented. Specifically, the following must be addressed:
 - a. Whether the consultant is utilizing their own computer/CADD, and if not, whose.
 - b. The make and model number of the computer(s) and CADD systems to be used and the basic hardware configuration (number of processors, memory size, mass memory size, and number of tape units).
 - c. The application software to be utilized for the Project.
 - d. Concise definitive statement(s) of how the consultant will use Computer and CADD systems for the subject Project and the advantages of those systems to the Highway Administration and to the project.

2. The consultant may be required to complete the computer forms included in the Man Hour Estimate Forms booklet, or other forms furnished, for the application of computer time and estimated man hours required for various task functions enumerated under the services to be performed.

For open-end contract agreements, the consultant will not be required to complete the computer forms included in the Man Hour Forms booklet.

3. The Computer/CADD Section shall contain the computer/CADD documentation of the consultant, as well as all subcontractors, proposing to use computer/CADD services for the Project.

B. Price Proposal

If the consultant is required to address computer/CADD in the Price Proposal, specific instruction for same will be set forth in the correspondence requesting Price Proposals.

C. Computer/CADD Transfer

The Maryland Department of Transportation reserves the right, and the consultant is advised that all data processing services in connection with a project could at any time be shifted to a State designated data center using State equipment. In the event that the Highway Administration decides to shift the computer/CADD operation to another installation, the consultant will not be responsible for the programming or equipment used, but will be responsible for the firm's input into the State system on the forms furnished. The consultant will not be charged for the use of the State's computer/CADD.

III.D. Disadvantaged Business Enterprise/Minority Business Enterprise (DBE/MBE) Package - Price Proposals

The Maryland Department of Transportation has promulgated the Minority Business Enterprise/Federal Disadvantaged Business Enterprise Program - July 1995. It is the goal of the Maryland Department of Transportation that certified disadvantaged businesses participate in all projects. When the Highway Administration determines that the Program is applicable for a particular project, the Highway Administration will establish a specific percentage participation goal for Disadvantaged Business Enterprise/Minority Business Enterprise (DBE/MBE).

Disadvantaged Business Enterprise/Minority Business Enterprise percentage involvement and compliance to the DBE/MBE goal is to be based on dollars proposed and not on time involvement. A DBE/MBE responding as a prime consultant may accomplish the DBE/MBE goal attainment themselves and/or by the use of a subcontractor(s).

To comply with the DBE/MBE Program and to meet the DBE/MBE goal established for a particular project, a consultant must submit with the Price Proposal, a separate sealed envelope labeled "DBE/MBE Package", containing a(n) DBE/MBE participation program, complete and ready for evaluation. The DBE/MBE Package shall include:

1. A transmittal letter specifically stating what has been included by the consultant in the DBE/MBE Package and naming the employee designated as the consultant's liaison officer for minority affairs.
2. Schedule for Participation of Minority Business Enterprises (Form D-EEO-003) - The consultant shall complete one (1) form for the total project. When listing each Certified firm on the form, the consultant shall clearly indicate those firms that are DBE/MBE firms and those firms that are WBE firms. A copy of Form D-EEO-003 is included hereinafter.
3. Minority Contractor Project Disclosure and Participation Statement (Form D-EEO-004) - The consultant shall complete one (1) form for each Certified firm involved in the proposal. The consultant shall clearly indicate on that form whether the Certified firm is a(n) DBE/MBE firm or a WBE firm. A copy of Form D-EEO-004 is included hereinafter.
4. Minority Contractor Unavailability Certificate (Form D-EEO-005) - As applicable.
5. Joint Venture Disclosure Affidavit (Form D-EEO-006) - If applicable.

The consultant's DBE/MBE participation program will be evaluated on the basis of the goal which equals or exceeds the project goal. If the consultant fails to attain the project goal, sufficient documentation must be submitted to show why the project goal was not attained. If the consultant does not meet the goal, price alone will not be an acceptable basis for which the consultant may reject a(n) DBE/MBE unless the consultant can show to the satisfaction of the Maryland Department of Transportation that no reasonable price can be obtained from a(n) DBE/MBE. Substantial modification in either composition or areas of involvement from that shown in the consultant's expression of interest is grounds for disqualification of the Price Proposal. However, upon a showing of compelling justification, the Highway Administration may accept the proposal, as modified, if this is determined in the Highway Administration's discretion, as necessary. This determination shall be made as soon as practicable on the basis of the justification submitted by the consultant. Failure of the consultant or the consultant's subcontractor to provide information required may result in the disqualification of the consultant's Price Proposal. The Price Proposal will then be evaluated in accordance with standard Highway Administration proposal evaluation procedures.

Based on the Highway Administration's evaluation of the Price Proposal and the DBE/MBE goal attainment, along with documentation showing good faith if the goal is not attained, the contract may be awarded to the successful consultant in accordance with normal contract award procedures.

All DBE/MBE firms proposed to be used by a prime consultant must be certified as such by the Maryland Department of Transportation prior to the due date for Price Proposal submission for a particular project. It is the responsibility of the prime consultant and the involved DBE/MBE firms to obtain certification prior to the Price Proposal due date. Proposals involving non-certified firms may be rejected from further consideration for a project.

Reference: Minority Business Enterprise/Federal Disadvantaged
Business Enterprise Program - July 1995
SPECIAL PROVISIONS - AFFIRMATIVE ACTION REQUIREMENTS
ATTACHMENT 6 (a copy enclosed hereinafter)

Specifications for Consulting Engineers' Services

SPECIAL PROVISIONS
AFFIRMATIVE ACTION REQUIREMENTS
UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES
THE SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE
ACT
OF 1987 and ISTEA of 1991
FEDERAL-AID CONSULTANT AGREEMENTS

A. General Information

For the purpose of these requirements, the following items as defined below shall apply:

ADMINISTRATION - Any one of the Administrations within the Maryland Department of Transportation (Maryland Aviation Administration, Maryland State Highway Administration, Maryland Port Administration, Mass Transit Administration, Motor Vehicle Administration, Maryland Transportation Authority and the Office of the Secretary).

ADMINISTRATION REPRESENTATIVE - An employee of an Administration who deals with laws and regulations pertaining to disadvantaged and minority business enterprise.

ADMINISTRATOR - The chief executive of an Administration who is charged with the implementation of the DBE/MBE Program for their administration.

AFFIRMATIVE ACTIONS - Specific steps taken to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future and to involve disadvantaged and minority business enterprises fully in contracts and programs funded by the Department.

BUSINESS ENTERPRISE - Any legal entity which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.

CERTIFIED BUSINESS - A business which by order of the Chair/MBEAC or his/her designee, has been certified as a bona fide DBE/MBE. MDOT certification does not equate to a pre-qualification status.

CONTRACTOR/SUBCONTRACTOR - One who participates, through a contract, subcontract or lease agreement, in any manner covered by this Program. For the purposes of the MDOT DBE/MBE Program, a consultant will be defined as a contractor/subcontractor.

JOINT VENTURE - An association of two or more businesses formed to carry out a single business activity which is limited in scope and duration. A joint venture is not considered a disadvantaged or minority business enterprise regardless of the percentage of disadvantaged or minority business participation.

MDOT - Maryland Department of Transportation.

MDOT DIRECTOR, OFFICE OF MINORITY BUSINESS ENTERPRISE/EQUAL OPPORTUNITY - The individual designated by the Secretary of the Maryland Department of Transportation responsible for management of the Office of Minority Business Enterprise/Equal Opportunity, the certification process and the policy development of the Minority Business Program.

DBE/MBE DIRECTORY - A compilation of disadvantaged and/or minority businesses which have been certified by MDOT as bona fide disadvantaged businesses.

DBE/MBE Participation Program - Means the documents submitted by the bidder or proposer pursuant to the appropriate special bid provisions. The Minority Participation Program will consist of the MDOT Schedule for Participation of DBE/MBEs, the MDOT Minority Contract Project Disclosure and Participation Statement, and where appropriate, the MDOT DBE/MBE Disclosure Affidavit with documentation, the MDOT Joint Venture Disclosure Affidavit and the Minority Contractor Unavailability Certificate.

Disadvantaged Business Enterprise (DBE/MBE) - A small business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it.

SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS - Those individuals who are citizens or lawfully permanent residents of the United States and who are Black Americans, Women, Hispanic Americans, Native Americans, or Asian-Pacific Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. For convenience, these individuals and groups are referred to as "minorities" in this document and are defined as follows:

1. African American/Black American - A person having origins in any of the black racial groups of Africa and is regarded as such by the African American community of which the person claims to be a part.

2. Hispanic American - Which includes persons of Mexican, Puerto Rican, Cuban, Central and South American or other Spanish culture or origin, regardless of race.
3. Native American - Which includes persons who are American Indians, Eskimos or Aleuts, or Native Hawaiians.
4. Asian-Pacific Americans - Which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, India, Pakistan, Bangladesh, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific and the North Marianas.
5. Asian Indian Americans - Which includes persons whose origins are from India, Pakistan, and Bangladesh.
6. Women - Women shall include all women, regardless of race or ethnicity.

PROPOSER - One who submits an expression of interest or a proposal in response to a Request for Proposal (RFP).

REDUCED CANDIDATE LIST - A list of businesses from which technical and price proposals are requested, established by the Administration's Consultant Screening Committee, through screening and evaluation of candidate firms, pursuant to MDOT Consultant Selection Guidelines.

SMALL BUSINESS - A firm as defined pursuant to Section 8 of the Small Business Act and which meets the maximum employee work force total in accordance with the U.S. Small Business Administration size standards.

U.S. DOT - U.S. Department of Transportation.

U.S. SMALL BUSINESS ADMINISTRATION - An agency of the federal government responsible for, among other things, certifying a firm as being eligible to participate as a Section 8(a) firm.

B. DBE/MBE PARTICIPATION PROGRAM PROPOSALS

1. Administration Action - Project Goal

The DBE/MBE goal for each project shall be as set forth in the Legal Notice soliciting Expressions of Interest from consultants.

2. Proposer's Action - Expression of Interest

The proposer will seek commitments from DBE/MBEs by subcontract(s), the combined value of which equals or exceeds the goal established for a specific project.

- a. Proposers are to use DBE/MBEs from those certified by MDOT or who are 8(a) certified by the U.S. Small Business Administration. Furthermore, proposers are advised that if they are selected to submit technical proposals for a project, all DBE/MBEs included in their DBE/MBE Participation Program must have attained certification prior to the due date for price proposals to be acceptable to the goal attainment. The inclusion in price proposals of DBE/MBEs who are not certified will result in an Administration rejecting the proposal.
- b. A proposer may attain the appropriate goal for DBE/MBE participation by use of a joint venture as the proposer or as a subcontractor, with one (1) or more of joint venture constituents being a(n) DBE/MBE. The proposer must show the extent of DBE/MBE participation in said joint venture and only that extent shall apply towards the goal attainment.

Revision
6/8/00

- e. ~~A proposer who is a[n] MDOT certified DBE/MBE will qualify as meeting the project goal.~~

Revision
6/8/00

- c. **DBE/MBE proposers have to meet the established DBE/MBE goal by either their own forces or approved DBE/MBE subcontractor(s).**
- d. Proposers who submit expressions of interest must clearly set forth the DBE/MBE subcontractors (firms) proposal for goal attainment indicating the proposed work, percentage of total work, and MDOT certification number or certification status for each DBE/MBE. Said information shall be shown in either the letter portion of the expression of interest or Item 6 of the U.S. Government SF 255 form.

Proposers shall also set forth in the letter portion of the expression of interest their "Consultant Liaison Officer for Minority Affairs".

- e. Proposers are advised that Administrations will act on the good faith statements within letters of interest concerning DBE/MBE subcontractor(s) proposed. Accordingly, proposers are advised that the MDOT certification of proposed DBE/MBEs will not be required prior to the submission of expressions of interest nor prior to the Administration's review of same.

3. Administration Action - Expression of Interest

- a. The Administration Representative shall review the Minority Participation submittal for DBE/MBE certification by MDOT or U.S. Small Business Administration Section 8(a) certification to ascertain conformance with contract goal.
- b. Expressions of interest will be ranked on the basis of the DBE/MBE goals which equals or exceeds the contract goal. Proposers who have submitted expressions of interest will be ranked on the basis of the DBE/MBE goal to be attained, starting with the proposer who has proposed the goal which equals or exceeds the contract goal. An Administration, at their discretion, may rank all proposers who do not meet the DBE/MBE goal as non-responsive, provided sufficient proposers responded with DBE/MBE goal attainment.
- c. The Administration Representative will submit the ranking order of the proposers to the Consultant Screening Committee for further consideration in the development of a Reduced Candidate List.
- d. Expressions of interest will be evaluated in accordance with MDOT Consultant Selection Guidelines.
- e. The Consultant Screening Committee will develop a Reduced Candidate List from among those proposers who have been selected as eligible for placement thereon.

4. Proposers Action - Certification Requirements for DBE/MBEs

All DBE/MBEs included in a proposer's DBE/MBE Participation Program must have attained certification prior to the submittal date of the price proposal in order to be acceptable toward the goal attainment. Upon notification to a proposer of their placement on the Reduced Candidate List, the proposer shall immediately take action to have all non-certified firms submit a(n) MDOT DBE/MBE Disclosure Affidavit (Form D-EEO-001/029, as appropriate), with supporting documentation, to MDOT. All firms that sought certification under the Section 8(a) Programs and have not been certified at this time must submit a

certification request to MDOT in order to obtain certification prior to the submittal date of the price proposal.

5. Proposers Action - In Response to Request for Technical Proposals

a. The proposer who has been requested to submit technical proposals will be required to submit any additional DBE/MBE Participation Program documentation.

b. Any substantial modification in either composition or areas of involvement in the technical proposal from that shown in the proposer's expression of interest is grounds for disqualification of the technical proposal. However, upon a showing of compelling justification, the proposer may modify the composition for consideration by the Consultant Screening Committee.

c. Failure of the proposer or the proposer's subcontractor(s) to provide information required may result in the disqualification of the proposer.

6. Proposer's Action - In Response to Request for Price Proposal

a. The proposer who has been asked to submit a price proposal will be required to submit, in a separate sealed envelope, at the same time, a(n) DBE/MBE Participation Program.

b. If the proposer does not meet the DBE/MBE goal, price alone will not be an acceptable basis for which the proposer may reject a(n) DBE/MBE submittal unless the proposer can show to the satisfaction of MDOT that no reasonable price can be obtained from a(n) DBE/MBE.

c. Any substantial modification in either composition or areas of involvement in the price proposal from that shown in the proposer's expression of interest or technical proposal is grounds for disqualification of the price proposal.

However, upon a showing of compelling justification, Consultant Screening Committee may accept the price proposal, as modified,

if this is determined in the Committee's discretion, as necessary. This determination shall be made as soon as practical on the basis of the justification submitted by the proposer.

- d. Failure of the proposer or the proposer's sub-contractor(s) to provide information required may result in the disqualification of the proposer.

7. Administration Action - Proposals

- a. The Administration Representative will review the DBE/MBE Participation Programs.

- (1) The Administration Representative will evaluate the programs for certified DBE/MBEs attainment of contract goal, attempts to attain the contract goal, and when appropriate, documentation of good faith when contract goal is not attained.

- (2) The Administration Representative will advise the Consultant Screening Committee, if the proposers have an acceptable DBE/MBE Participation Program. The Consultant Screening Committee will give consideration to the proposers determined to have submitted an acceptable DBE/MBE Participation Program in accordance with these Special Provisions.

- b. Upon receipt of the DBE/MBE Participation Program evaluation advice from the Administration Representative, the Consultant Screening Committee will then proceed with the selection process consistent with the MDOT Consultant Selection Guidelines.

C. Contracts - DBE/MBE Provisions

The information contained in this section shall be included in all consultant contracts. All references to the contractor shall be interpreted to mean the consultant.

1. Contract Goal

For the purpose of this contract a goal, of _____% has been established for DBE/MBEs.

2. Substitution of DBE/MBE Subcontractors

As with any subcontract, substitution or modification of the contractor's DBE Participation Program can only be accomplished with the approval of the Administrator.

3. Use of DBE/MBE Banks

Contractors, shall consider, whenever possible, utilizing the services of minority-owned banks. Most minority banks are full-service corporations that can provide an array of financial services such as Treasury and Tax Loan Fund Accounts, Time and Demand Deposit Accounts, Payroll Services, and if needed, organization investment counseling. It is the policy of MDOT to encourage its contractors to utilize, on a continuing basis minority and female-controlled banks. Listed below are the names of the minority owned and controlled banks in the state of Maryland as identified through contact with the Maryland State Bank Commissioner Office.

1. FWB Bank
1800 Rockville Pike
P.O. Box 2022
Rockville, Maryland 20852
2. The Harbor Bank of Maryland
25 West Fayette Street
Baltimore, Maryland 21201

4. DBE/MBE Records and Reports

- a. The Contractor will keep such records as are required by the Administration to determine compliance with its disadvantaged business enterprise utilization obligations. These records, to be kept by the contractor, will be designed to indicate:
 - (1) The actual disadvantaged and non-minority contractors, the type of work being performed and actual values of work, services and procurement;
 - (2) Documentation of all correspondence, contacts, telephone calls, etc., to obtain services of DBE/MBE on this project;
 - (3) The progress and effects being made in seeking out DBE/MBEs for work on this project.

- b. The contractor will submit reports at least on a monthly basis of contracts and other business transactions executed with DBE/MBEs with respect to the records referred to above, in such form, manner and content as prescribed by the Administration Representative. These reports will be submitted within the first week of each reporting month. If the contractor cannot submit his report on time, he will notify the Representative and request additional time to submit the report. Failure of the contractor to report in a timely manner may result in a finding of non-compliance.
- c. All such records must be retained for a period of three years following completion of the contract work and will be available for inspection by the U.S. Department of Transportation, the Maryland Department of Transportation, the Modal Administration awarding the contract.

5. Administrative Procedures for DBE/MBE Enforcement

- a. The contractor will cooperate with the Administration Representative in any post award reviews of the contractor's procedures and practices with respect to DBE/MBEs which the Representative may from time to time conduct.
- b. Whenever the Administration believes the contractor or any subcontractor may not be operating in compliance with the terms of these provisions, the Administration Representative will conduct an investigation. If the Representative finds the proposer or any subcontractor not in compliance with these provisions, he/she will notify such contractors in writing of such steps as will, in the judgement of the Administration, bring such contractor into compliance. In the event that such contractor fails or refuses to perform fully such steps, the Representative will make a final report of non-compliance to the Administrator who may in accordance with COMAR regulations authorize the imposition of one or more of the sanctions listed below:
 - 1. Suspension of work on the project pending correction;
 - 2. Withholding payment or a percentage thereof;
 - 3. Referral of DBE/MBEs to MDOT Offices of MBE/EO for decertification;

4. Initiation of suspension and/or debarment proceedings in accordance with COMAR regulations;
 5. Referral to the Attorney General's Office for criminal prosecution through the MDOT Office of General Counsel;
 6. Any other action as appropriate.
- c. If the documents used to determine the status of a DBE contain false, misleading or misrepresenting information, the matter may be referred by the States Attorney for appropriate action. In addition, when directed by the Administrator, the contractor will terminate, without liability to the Administration, its contract with a disqualified DBE/MBE and promptly submit for approval, the contractor's plans for maintaining the appropriate DBE/MBE participation on the project.

Revised 6/8/00



**MARYLAND DEPARTMENT OF TRANSPORTATION
SCHEDULE FOR PARTICIPATION OF MINORITY BUSINESS ENTERPRISES**

1. PRIME CONTRACTOR — NAME OF FIRM — ADDRESS (Number, Street, City, State, Zip) TELEPHONE: Area Code ()

2. PROJECT LOCATION (Number, Street, City, State, Zip)

3. PROJECT NUMBER: _____ 4. TOTAL CONTRACT DOLLAR AMOUNT: \$ _____

5. LIST THE DATA REQUESTED FOR EACH MINORITY FIRM INVOLVED IN THIS PROJECT:

a. MINORITY FIRM: _____
(Name of Firm) (Number) (Street) (City) (State) (Zip)

Work or Service to be performed: _____

Project Commitment Date: _____ Project Completion Date: _____

Agreed Dollar Amount: \$ _____ Percentage of Total Contract: _____ %

b. MINORITY FIRM: _____
(Name of Firm) (Number) (Street) (City) (State) (Zip)

Work or Service to be performed: _____

Project Commitment Date: _____ Project Completion Date: _____

Agreed Dollar Amount: \$ _____ Percentage of Total Contract: _____ %

c. MINORITY FIRM: _____
(Name of Firm) (Number) (Street) (City) (State) (Zip)

Work or Service to be performed: _____

Project Commitment Date: _____ Project Completion Date: _____

Agreed Dollar Amount: \$ _____ Percentage of Total Contract: _____ %

d. MINORITY FIRM: _____
(Name of Firm) (Number) (Street) (City) (State) (Zip)

Work or Service to be performed: _____

Project Commitment Date: _____ Project Completion Date: _____

Agreed Dollar Amount: \$ _____ Percentage of Total Contract: _____ %

e. MINORITY FIRM: _____
(Name of Firm) (Number) (Street) (City) (State) (Zip)

Work or Service to be performed: _____

Project Commitment Date: _____ Project Completion Date: _____

Agreed Dollar Amount: \$ _____ Percentage of Total Contract: _____ %

6. MINORITY FIRMS TOTAL DOLLAR AMOUNT: \$ _____ MINORITY FIRMS TOTAL PERCENTAGE _____ %

7. REMARKS (Use Plain Bond for Additional Comments)

DO NOT WRITE BELOW THIS LINE — MBE MDOT USE ONLY

8. THIS FORM PREPARED BY: _____
(First) (Middle Initial) (Last) (Title)

9. APPROVED: YES NO

DATE _____ SIGNATURE — ADMINISTRATION — MINORITY BUSINESS ENTERPRISE OFFICER _____

NOTE: If the Minority Contractor Project Disclosure and Participation Statement is submitted after Bid opening, a copy of the conditional contract with each Minority Business Enterprise must be submitted with the statement and schedule for participation.

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RETURN TO:
 Minority Business Enterprise Office
 Maryland Department of Transportation
 P.O. Box 8788
 Baltimore-Washington Intl Airport, Md. 21240
 (410) 859-7327



**MARYLAND DEPARTMENT
 OF TRANSPORTATION**

If any item does not
 apply, please mark 'N/A'

MINORITY CONTRACTOR PROJECT DISCLOSURE AND PARTICIPATION STATEMENT

1. PRIME CONTRACTOR - NAME OF FIRM - COMPLETE ADDRESS	2. PROJECT NUMBER: _____
	3. PROJECT LOCATION (Number, Street, City, State, Zip)
	4. PROJECT COMMITMENT DATE:

5. SUBCONTRACTOR ENTERPRISE (Check one)
 Individual Partnership Corporation Joint Venture

6. THE UNDERSIGNED SUBCONTRACTOR IS PREPARED TO PERFORM THE WORK/SERVICE HEREIN DESCRIBED IN CONNECTION WITH THE PROJECT

WORK OR SERVICE	Commitment Date	Completion Date
This work/service will not be subcontracted to any non-minority firm. BID PRICE FOR THIS WORK/SERVICE: \$ _____		

7. SOURCE AND AMOUNT OF WORKING CAPITAL

SOURCE	AMOUNT	REMARKS

8. SUBCONTRACTOR'S SUPERVISION STAFF TO INCLUDE FOREMEN (Name, Address, Social Security Number, Title)

9. BONDS - AMOUNT AND TYPE REQUIRED BY PRIME CONTRACTOR	10. BONDING COMPANY - NAME AND ADDRESS
	IF YES - NAME AND ADDRESS

11. ARE BONDS GUARANTEED BY THIRD PARTY YES NO

12. DOLLAR AMOUNT OF THIS PROJECT ALLOCATED FOR MATERIAL PURCHASES. \$ _____	13. PERCENTAGE OF WORK PERFORMED BY OTHER THAN OWN WORK SOURCE (Include Name of Company and Address): _____% (Use back if necessary)
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14. STATE THE TERMS OF ANY ORAL OR WRITTEN AGREEMENT(S) OR UNDERSTANDING(S) WITH NON-MINORITY PERSONS OR FIRMS RELATING TO ASSISTANCE, FINANCIAL OR OTHERWISE, TO BE PROVIDED BY SAID PERSONS OR FIRMS.

THE UNDERSIGNED SUBCONTRACTOR WILL ENTER INTO A WRITTEN CONTRACT WITH: _____
 _____ FOR THE WORK/SERVICE INDICATED ABOVE UPON THE PRIME CONTRACTOR'S
 EXECUTION OF A CONTRACT WITH THE MARYLAND DEPARTMENT OF TRANSPORTATION. THE UNDERSIGNED SUBCONTRACTOR IS CERTIFIED
 BY THE MARYLAND DEPARTMENT OF TRANSPORTATION AS A MINORITY BUSINESS ENTERPRISE, AS OF (DATE) _____

 SIGNATURE SUBCONTRACTOR

 PRINT/TYPE NAME OF FIRM

NUMBER _____ STREET _____

CITY _____ STATE _____ ZIP _____ DATE _____

I AGREE TO THE TERMS AND CONDITIONS STATED ABOVE

 SIGNATURE PRIME CONTRACTOR

 PRINT/TYPE NAME OR FIRM

NUMBER _____ STREET _____

CITY _____ STATE _____ ZIP _____ DATE _____

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III.E Financial Statement and Data - Price Proposal

The consultant, joint venture firms, and each subcontractor proposed will be required to submit a Financial Statement, and other financial data requested or required, at the same time Price Proposals are submitted, in a separate sealed envelope labeled "Financial Statement and Data".

This envelope shall include:

Financial Statement: The Financial Statement is only required from those firms who have not submitted one to the Office of Consultant Services in the present calendar year. When Financial Statements are to be submitted, one copy of said statement is sufficient for each firm. The Financial Statement must be certified by the owner, partner or officer of the firm, or by a Certified Public Accountant.

Financial Statements will not normally be required from firms who are individuals, or from firms who are proposed for less than \$10,000 of services. However, the Highway Administration reserves the right to solicit this information at any time, if said information is deemed relevant to Price Proposal review and/or Pre-Audit Report preparation.

Certified Payroll Roster: The payroll roster information required by Section III.B., paragraph C-3-b herein shall be included. One (1) copy of this material is to be included and shall be certified by management as true and accurate.

Overhead Documentation: To facilitate pre-contract audit review, documentation shall be included in the Financial Package to support overhead entries in dollar amounts.

Independent Audit: The consultant shall furnish the State Highway Administration with an annual overhead audit performed by an Independent CPA in accordance with CFR Title 48, FARs Chapter 1, Part 31 and applicable Maryland Department of Transportation guidelines for the consultant and for each subcontractor set forth in the Proposal. Said audit(s) shall be for the previous fiscal year of the firm(s), or if same is (are) not available an independent audit(s) for the preceding year will be acceptable. One (1) copy of this material is to be included.

Overhead Audit Report Requirements:

The overhead audit report should express an opinion and contain a statement that the audit was conducted in compliance with CFR Title 48, FARs Chapter 1, Part 31 and applicable Maryland Department of Transportation guidelines. The overhead audit report should contain a Statement of Direct Labor, Fringe Benefits and General Overhead. The Statement of Direct Labor, Fringe Benefits and General

Overhead should include total costs, unallowable costs and allowable costs for each category and the calculated total overhead rate. The applicable FARs and MDOT guidelines should be cited for all unallowable costs. (An example of an acceptable audit report is enclosed hereinafter).

Other Financial Data: Any other financial data which is specifically requested by the Highway Administration, or deemed appropriate by the consultant, in support of the Price Proposal shall be submitted in single copy and included within the Financial Statement and Data envelope.

EXAMPLE OF OVERHEAD AUDIT REPORT
REPORT OF INDEPENDENT ACCOUNTANTS

April 15, 1997

To the Board of Directors of XYZ Company

We have audited the accompanying Statement of Direct Labor, Fringe Benefits and General Overhead of XYZ Company (the Company) for the year ended December 31, 1996. This statement is the responsibility of the Company's management. Our responsibility is to express an opinion on this statement based on our audit.

We conducted our audit in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting amounts and disclosures in the Statement of Direct Labor, Fringe Benefits and General Overhead. An audit also includes assessing the accounting principles used, and significant estimates made by management, as well as evaluating the overall statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying statement was prepared on a basis of accounting principles prescribed by the Maryland Department of Transportation - State Highway Administration, 48 CFR 1, Part 31 of the Federal Acquisition Regulations and certain other federal regulations which practices differ from generally accepted accounting principles. Accordingly, the accompanying statement is not intended to be a presentation in conformity with generally accepted accounting principles.

In our opinion, the Statement of Direct Labor, Fringe Benefits and General Overhead for the year ended December 31, 1996 presents fairly, in all material respects, the direct labor, fringe benefits and general overhead of XYZ Company for the year ended December 31, 1996.

This report is intended solely for the use of the Board of Directors and management of XYZ Company, the State of Maryland Department of Transportation and other government agencies with whom the Company is contracted to do business and should not be used for any other purpose.

Page 1 of 3

EXAMPLE OF OVERHEAD AUDIT REPORT

XYZ COMPANY

STATEMENT OF DIRECT LABOR, FRINGE BENEFITS AND GENERAL OVERHEAD

For Year Ended December 31, 1996

	<u>Total Costs</u>	<u>Unallowable Costs</u>	<u>Allowable Costs</u>	<u>Overhead Rates</u>
Direct Labor	\$2,000,000		\$2,000,000	
Fringe Benefits				
Paid Leave	300,000	\$ 5,000(a)	295,000	
Payroll Taxes	200,000	-	200,000	
Group Insurance	100,000	6,000(b)	94,000	
Workers Comp. Ins.	25,000	-	25,000	
Pension Plan Expense	25,000	1,000(c)	24,000	
Total Fringe Benefits	650,000	12,000	638,000	<u>31.90%</u>
General Overhead				
Accounting & Legal Fees	20,000	5,000(d)	15,000	
Advertising	15,000	15,000(e)	-	
Bad Debt Expense	10,000	10,000(f)	-	
Computer Expense	50,000	-	50,000	
Contributions	5,000	5,000(g)	-	
Depreciation	100,000	-	100,000	
Dues & Subscriptions	20,000	10,000(h)	10,000	
Employee Recruitment	10,000	-	10,000	
Facilities Capital Cost of Money	10,000	10,000(i)	-	
Indirect Labor	800,000	30,000(j)	770,000	
Insurance	60,000	-	60,000	
Interest Expense	15,000	15,000(k)	-	
Maintenance & Repairs	30,000	-	30,000	
Marketing	50,000	5,000(l)	45,000	
Meals and Entertainment	10,000	2,000(m)	8,000	
Miscellaneous	20,000	1,000(n)	19,000	
Office Rent	100,000	-	100,000	
Office Supplies	100,000	-	100,000	
Professional Fees	50,000	-	50,000	
Printing	50,000	-	50,000	
Taxes	100,000	90,000(o,p)	10,000	
Telephone	75,000	-	75,000	
Travel Expense	75,000	2,000(q)	73,000	
Utilities	25,000	-	25,000	
Total General Overhead	\$1,800,000	\$ 200,000	\$1,600,000	<u>80.00%</u>
Total Overhead Rate				<u>111.90%</u>

EXAMPLE OF OVERHEAD AUDIT REPORT

XYZ COMPANY

STATEMENT OF DIRECT LABOR, FRINGE BENEFITS AND GENERAL OVERHEAD

For Year Ended December 31, 1996

Unallowable Costs per FARS and MDOT Guidelines

- (a) Paid Leave -Excludes allocable portion of paid leave for wages in excess of (\$55) per hour or \$114,400 per year per MDOT regulations.
- (b) Group Insurance -Elimination of nonallowable costs of postretirement benefits other than pensions per FAR 31.205-6.
- (c) Pension Plan Expense -Exclude allocable portion of pension plan expense for wages in excess of \$55 per hour or \$114,400 per year per MDOT regulations.
- (d) Accounting and Legal Fees -Exclude fees related to collection matters per FAR 31.205-3.
- (e) Advertising -Exclude advertising and public relations expenses per FAR 31.205-1.
- (f) Bad Debt Expense -Exclude bad debt expense per FAR 31 .205-3.
- (g) Contributions -Exclude contributions per FAR 31 .205-8.
- (h) Dues and Subscriptions -Exclude Country Club dues per FAR 31.205-14.
- (i) Facilities Capital Cost of Money -Exclude facilities capital costs of money per MDOT regulations.
- (j) Indirect Labor -Exclude wages in excess of \$55 per hour or \$114,400 per year per MDOT regulations.
- (k) Interest -Exclude interest per FAR 31.205-20.
- (l) Marketing -Exclude entertainment costs per FAR 31.205-14.
- (m) Meals and Entertainment -Exclude entertainment costs per FAR 31.205-14.
- (n) Miscellaneous -Exclude cost of alcoholic beverages per FAR 31.205-14.
- (o) Taxes -Exclude federal income taxes and personal property taxes per FAR 31.20541.
- (p) Taxes -Exclude state and local income taxes per MDOT regulations.
- (q) Travel -Exclude personal use of company vehicles per FAR 31.205-6.

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III.F. Proposal Guaranty

In general, the Highway Administration will not require consultants to submit proposal guaranties in connection with consultant A/E projects.

However, the Highway Administration reserves the right to request proposal guaranties with Price Proposals or to require performance or payment bonds in connection with any particular project. If any of the aforesaid are required, the material will be requested in writing prior to request of Price Proposals.

IV. Truth-In-Negotiation Certification

The consultant and each subcontractor proposed, if any, will be required to execute and include a Truth-In-Negotiation Certification within each Price Proposal submission. This Certification states that the wage rates and other unit costs supporting the consultant's (or subcontractor's) proposed fees are accurate, complete, and current at the time of proposal submission; that is, the date the Price Proposal is due in the Office of Consultant Services.

Included hereinafter is a copy of the Truth-In-Negotiation Certification that is required and is to be used by the consultant.

Be advised that cost functions or rates set forth in the consultant's Price Proposal may not be increased as a result of the pre-contract audit.

Department of Transportation
Administration State Highway
State Contract No. _____
Federal-Aid Project _____
Route _____
State Maryland

TRUTH-IN-NEGOTIATION CERTIFICATION

I hereby certify that I am the _____ (title) and duly authorized representative of the firm of _____, whose address is _____

In connection with the firm's technical and price proposal for the above mentioned contract, as submitted to the Maryland Department of Transportation, I hereby certify, to the best of my knowledge, information and belief, that:

- (a) the wage rates and other factual unit costs supporting the firm's compensation, as set forth in the proposal, are accurate, complete and current as of the time of the contracting;
- (b) it is my understanding and the understanding of the firm I here represent that if any of the items of compensation under the above mentioned contract were increased due to the furnishing of inaccurate, incomplete or non-current wage rates or other units of costs, the Department is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. It is also my understanding and that of the firm I here represent that the Department's right of adjustment includes the right to a price adjustment for defects in cost or pricing data submitted by a prospective or actual subcontractor.
- (c) it is my understanding and the understanding of the firm I here represent that if additions are made to the original price of the contract, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or non-current wage rates and other factual costs.

(Date) (Signature)

Sworn to and subscribed to before me

this _____ day of _____, 20__

(Signature of Notary Public) _____
Notary Public Official seal must be affixed

My commission expires _____

V. Foreign Corporations

A foreign corporation is any corporation not incorporated under the Laws of the State of Maryland. All foreign corporations, prior to performing consultant services for the Maryland Department of Transportation, must register with the Maryland State Department of Assessments and Taxation in compliance with Article 23, Section 90, Annotated Code of Maryland. Compliance with this requirement is required of the successful consultant, as well as the proposed subcontractors.

The consultant will be responsible for documenting with the Office of Consultant Services compliance with the aforesaid. This documentation will be required prior to the execution of a contract agreement with the successful consultant for a project.

To accomplish registration, a foreign corporation must request and complete "Qualification Application Forms" from:

State Department of Assessments and Taxation
Room 809
State Office Building
301 West Preston Street
Baltimore, Maryland 21201

The Office of Consultant Services is to be notified when the required registration(s) has been completed.

VI. Affidavits

The Maryland Department of Transportation has issued four (4) Affidavits which are to be properly completed and executed by consultants for all consultant agreements. These documents are:

1. DBE/MBE UTILIZATION AFFIDAVIT -

This Affidavit is to be completed by all firms being considered for a specific project and is to be included within the Technical Proposal. Subcontractors are not required to complete this form. A copy of the DBE/MBE Utilization Affidavit is included hereinafter as Attachment No. I.

2. SUBCONTRACTOR UTILIZATION AFFIDAVIT -

This Affidavit is to be completed by all firms being considered for a specific project and is to be included within the Technical Proposal. Subcontractors are not required to complete this form. A copy of the Subcontractor Utilization Affidavit is included hereinafter as Attachment No. II.

Technical Proposal Requirements

Failure of a consultant to include an executed DBE/MBE Utilization Affidavit or a Subcontractor Utilization Affidavit in the Technical Proposal may result in a finding that the proposal is not responsive.

3. BID/PROPOSAL AFFIDAVIT -

This Affidavit is to be completed by all firms being considered for a specific project and is to be included within the Price Proposal. Subcontractors are not required to complete this form. A copy of the Bid/Proposal Affidavit is included hereinafter as Attachment No. III.

Price Proposal Requirement

Failure of a consultant to include an executed Bid/ Proposal Affidavit in the Price Proposal may result in a finding that the proposal is not responsive.

4. CONTRACT AFFIDAVIT -

This Affidavit is to be included in and made a part of all consultant agreements and is to be executed by a firm at that time a firm executes the contract agreement. Subcontractors are not required to complete this form. A copy of the Contract Affidavit is included hereinafter as Attachment No. IV.

Attachment No. I

DBE/MBE UTILIZATION AFFIDAVIT

State Of _____

County (City) of _____

In connection with:

Contract Number _____

Contract Title _____

A. AUTHORIZED REPRESENTATIVE

I HEREBY DECLARE AND AFFIRM THAT:

I am the _____

Title

and the duly authorized representative of _____

Name of Firm

whose address is _____

and that I possess the legal authority to make this Affidavit on behalf of myself and the firm for which I am acting.

B. I AFFIRM that _____

Name of Firm

as the Consultant, in performing the above-referenced Contract, we shall make every effort to achieve a minimum goal as specified in the Request for Proposals. The Disadvantaged Business Enterprise/ Minority Business Enterprise (DBE/MBE) participation goal is measured by the dollar value of the Contract.

C. IT IS ACKNOWLEDGED:

That all required documentation relative to affirmative action taken by the Consultant to seek out and consider the use of Minority Business Enterprise will be submitted to and/or made available for inspection by the Maryland Department of Transportation.

06/08/2000

D. I ACKNOWLEDGE:

That this Affidavit is to be furnished to the Secretary of the Maryland Department of Transportation and may be distributed to boards, commissions, administrations, departments and agencies of: (1) the State of Maryland; and (2) counties or other subdivisions of the State of Maryland; and (3) other states; and (4) the Federal Government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal, and civil, and that nothing in this Affidavit or the Contract shall be construed to supersede, amend, modify or waive, on behalf of the Maryland Department of Transportation, the Maryland Board of Public Works and any other office or agency of the State of Maryland having jurisdiction, and the exercise of any statutory right or remedy conferred by the Constitution and the Laws of Maryland in respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above firm in respect to (1) this Affidavit, (2) the Contract, and (3) other Affidavits comprising part of the proposal documents associated with the Contract.

IN MAKING THIS AFFIDAVIT, I represent that I have personal knowledge of the matters and facts herein stated.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

_____ Date

_____ Affiant

State of _____

County (City) of _____

On this _____ day of _____, 20____ before me,

_____, the undersigned officer, personally Notary

appeared _____, known to me to be the person Consultant

described in the foregoing Affidavit and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

_____ (Seal) My Commission Expires _____ Signature Date

06/08/2000

Attachment No. II

SUBCONTRACTOR UTILIZATION AFFIDAVIT

State Of _____

County (City) of _____

In connection with:

Contract Number _____

Contract Title _____

A. AUTHORIZED REPRESENTATIVE

I HEREBY DECLARE AND AFFIRM THAT:

I am the _____
Title
and the duly authorized representative of _____
Name of Firm

whose address is _____

and that I possess the legal authority to make this Affidavit on behalf of myself and the firm for which I am acting.

B. I FURTHER AFFIRM:

That in the solicitation of subcontract quotations or offers, Minority Business Enterprise (MBE) subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors, and that the solicitation process was conducted in such a manner as to otherwise not place MBE subcontractors at a competitive disadvantage to non-MBE subcontractors.

C. I ACKNOWLEDGE:

That this Affidavit is to be furnished to the Secretary of the Maryland Department of Transportation and may be distributed to boards, commissions, administrations, departments and agencies of: (1) the State of Maryland; and (2) counties or other subdivisions of the State of Maryland; and (3) other states; and (4) the Federal Government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal, and civil, and that nothing in this Affidavit or the

06/08/2000

Contract shall be construed to supersede, amend, modify or waive, on behalf of the Maryland Department of Transportation, the Maryland Board of Public Works and any other office or agency of the State of Maryland having jurisdiction, and the exercise of any statutory right or remedy conferred by the Constitution and the Laws of Maryland in respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above firm in respect to (1) this Affidavit, (2) the Contract, and (3) other Affidavits comprising part of the proposal documents associated with the Contract.

IN MAKING THIS AFFIDAVIT, I represent that I have personal knowledge of the matters and facts herein stated.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

_____ Date

_____ Affiant

State of _____

County (City) of _____

On this _____ day of _____, 20____ before me,

_____, the undersigned officer, personally
Notary

appeared _____, known to me to be the person
Consultant

described in the foregoing Affidavit and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

Signature

(Seal) My Commission Expires

Date

06/08/2000

ATTACHMENT NO. III

STATE CONTRACT NO. _____

BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____

and the duly authorized representative of (business) _____

_____ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Article 27, Section 641 of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

C. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has:

(a) been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;

(b) been convicted of any criminal violation of a state or federal antitrust statute;

(c) been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961, et seq., or the Mail Fraud Act, 18 U.S.C. § 1341, et seq., for acts arising out of the submission of bids or proposals for a public or private contract;

(d) been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(e) been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (a), (b), (c), or (d) above;

(f) been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(g) admitted in writing or under oath, during the course of an official investigation or other proceeding, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

D. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, **except as follows** (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds for the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds for the debarment or suspension):

E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

1. The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Section 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

2. The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, **except as follows** (indicate the reason(s) why the affirmations cannot be given without qualification):

F. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

G. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

1. Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

2. In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

H. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

I. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

J. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

1. Terms defined in COMAR 21.11.08 shall have the same meaning when used in this certification.

2. By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

(i) The dangers of drug and alcohol abuse in the workplace;

(ii) The business' policy of maintaining a drug and alcohol free workplace;

(iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by § J (2)(b), above;

(h) Notify its employees in the statement required by § J (2)(b), above, that as a condition of continued employment on the contract, the employee shall:

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under § J (2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under § J (2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

(i) Take appropriate personnel action against an employee, up to and including termination; or

(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of § J (2)(a)-(j), above.

3. If the business is an individual, the individual shall certify and agree as set forth in § J (4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

4. I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.06.

K. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

1. The business named above is a (domestic _____) (foreign _____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

(If not applicable, so state).

2. Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

L. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of the Contract.

M. REPEALED

N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the Federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____
(Authorized Representative
and Affiant)

06/08/2000

ATTACHMENT NO. IV

STATE CONTRACT NO. _____

CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____

and the duly authorized representative of (business) _____

and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic _____) (foreign _____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____
(Authorized Representative
and Affiant)

06/08/2000

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VII. Subcontract - EEO Certification

The Subcontract - EEO Certification shall be included and made a part of all State Highway Administration agreements. When an agreement sets forth designated subcontractors, the consultant shall execute the EEO Certification at the time the agreement is signed. **All subcontractors are to be set forth on this form.** If there are no subcontractors in the agreement this Certification does not have to be completed when the Agreement is executed by the consultant; however, in that event the Highway Administration would subsequently approve a subcontractor after the issuance of a Notice to Proceed, the consultant would have to complete the EEO Certification at that time.

The Subcontract - EEO Certification used by the State Highway Administration is included hereafter.

Department of Transportation
 Administration State Highway
 State Contract No. _____
 Federal Aid Project _____
 Route _____
 State Maryland

SUBCONTRACT - EEO CERTIFICATION

I hereby certify that I am the _____ (title)
 and duly authorized representative of the firm of _____
 _____ whose address is _____
 _____ and that the above firm I hereby
 represent has incorporated the "Non-Discrimination in Employment"
 provisions, as required by paragraph "20-G" - "Incorporation of
 Provisions" of the General Conditions for Consultant Contracts,
 within our firm's subcontract agreement(s) and same have been duly
 noted and accepted by said subcontractor(s):

- (1) _____
 Name of Subcontractor _____

 Services _____ (Address) _____
- (2) _____
 Name of Subcontractor _____

 Services _____ (Address) _____
- (3) _____
 Name of Subcontractor _____

 Services _____ (Address) _____

 (Date) _____ (Consultant Signature) _____

 (Title)

Sworn to and subscribed to before me
 this _____ day of _____, 20 _____ Official
 Seal must
 be affixed

Signature of Notary Public _____
 My commission expires _____

VIII. Other Certifications

At the prerogative of the Maryland Department of Transportation, the successful consultant for a particular project, and the proposed subcontractors, may be required to execute and/or furnish other Certifications and/or documentation.

Other Certifications, if requested, will be furnished to the consultant and will require execution at the time requested.

Documentation required may be requested at any time after the consultant submits a Technical or a Price Proposal to the Office of Consultant Services.

Federal-Aid Contracts

The following "Certification for Federal-Aid Contracts" shall be executed by all firms submitting Technical Proposals for a federally funded Project.

Department of Transportation
Administration State Highway
State Contract No. _____
Federal Aid Project _____
Route _____
State Maryland

Certification for Federal-Aid Contracts

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any 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 Form to Report Lobbying," in accordance with its instructions.

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 bid or 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.

Date: _____ By: _____
Title: _____
For: _____
(Firm)

IX. Subcontractors and/or Joint Venture Constituents

When the Office of Consultant Services requests proposals from consultants for a particular project all subcontractors proposed by a consultant will be required to comply with the requirements and procedures set forth in this RFP. Additionally, if a consultant is a Joint Venture, all of the Joint Venture constituents must comply with the requirements and procedures of this RFP.

X. Selection Review Procedures

A. Technical Proposals

The Highway Administration will conduct an in-depth review of all Technical Proposals received from the firms on the Reduced Candidate List for a particular project. Each consultant's Technical Proposal will be reviewed by the Highway Administration's appropriate and knowledgeable Division(s) with respect to work proposed, the consultant's methodology for accomplishing the scope of services, proposed Key Staff and support personnel, and man hour percentage distribution proposed and verification of a firm's comprehension of the scope of services.

The major factors/criteria to be used in evaluating Technical Proposals will be:

- Scope of Services
- Work Plan
- Key Staff
- Time Distribution
- Computer/CADD
- Concept of Project
- Consistency with Expression of Interest
- Financial Responsibility
- Measure of Protection for State against Errors and Omissions

Other criteria may be added dependent on the nature and complexity of a specific project. The consultants will be advised of any major criteria which are added at the time of the Pre-Proposal Conference.

After the Highway Administration rates the Technical Proposals, same will be ranked and the consultants shall be advised accordingly.

B. Price Proposals

At the direction of the State Highway Administrator, the Highway Administration may initiate contract and price negotiations with the highest technically ranked firm. In those cases where the Highway Administration desires to award two (2) or more identical contracts, negotiations may be conducted simultaneously with two (2) or more of the firms which have submitted the highest rated Technical Proposals.

C. Rejection of Proposals

Consultants are advised that the Highway Administration may not recommend a consultant firm to the TPSSB for selection if the firm has not resolved and finalized with the State Highway Administration their previous annual audit for the firm's last closed fiscal period, or has delayed the State Highway Administration annual audit process of previous closed fiscal periods, since either could result in the use of untimely information in the firm's Price Proposal.

Consultants are advised that if a pre-contract audit investigation determines substantial adjustments to their Price Proposal, including subcontractors' documentation, same could be considered justification for rejection of the consultant's Price Proposal. Consultants are also advised that the resulting price after pre-contract audit adjustments may be a factor in the State Highway Administration selection process.

The Highway Administration reserves the right to reject at any time any or all Technical or Price Proposals received for a particular project.

D. Negotiations

If the Highway Administration's negotiating team is unable to negotiate a satisfactory contract with the top-ranked firm at a price which it determines to be fair, competitive and reasonable, negotiations with that firm shall be terminated subject to the approval of the State Highway Administrator. The negotiating team then shall negotiate with the second-ranked firm in the same manner. If agreement cannot be reached with the second-ranked firm, the negotiating team shall negotiate with the other ranked firms, consecutively in their order of ranking, until a satisfactory agreement is reached.

In those cases where simultaneous negotiations are being conducted with two (2) or more firms for the awarding of identical open-end contracts, and the Highway Administrations' negotiating team is unable to negotiate a satisfactory contract with any of the highest ranked firms, the Highway Administration then shall negotiate with other ranked firms, consecutively in their order of ranking.

If the Highway Administration's negotiating team is unable to negotiate a satisfactory contract with any of the ranked firms, the negotiating team shall inform the Highway Administration Consultant Screening Committee, and request the State Highway Administrator to re-initiate the selection action beginning at that point deemed applicable.

Subsequent to the establishment of a negotiated price, the negotiating team shall submit for concurrence by the State Highway Administrator, this price, including supporting material. If the State Highway Administrator does not concur with the recommendation of the negotiating team, he shall document the reasons for nonconcurrence and request the negotiating team to continue the negotiation process.

Upon the State Highway Administrator's concurrence with the negotiating team's recommendation, the Highway Administration shall take necessary action to make a selection recommendation to the TPSSB.

E. Approvals

The State Highway Administration's designated Temporary Member to the TPSSB shall present the Highway Administration's selection recommendation for a Project to the TPSSB at a meeting advertised in public documents and open to the public.

The TPSSB shall review the Highway Administration's recommendation and render a decision to select the recommended consultant, postpone for cause, or reject the recommendation and indicate remedial action.

After approval of the TPSSB, the Highway Administration shall take necessary action to present the consultant agreement for the Project to the State Board of Public Works for approval.

F. Notice to Proceed

After the State Board of Public Works approval of a consultant agreement, the Highway Administration may issue a Notice to Proceed to the consultant. The Notice to Proceed shall designate the Highway Administration's designated liaison for the Project services.

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XI. General Conditions

Included hereinafter are the General Conditions for Consulting Services - January 1998, and Addendum #1, revised November 23, 1999 and April 2, 2002, promulgated by the Maryland Department of Transportation, which General Conditions will be made a part of the Specifications for Consulting Engineers' Services for contract agreements executed with the successful consultant for a particular project. The consultant will be required to comply with these Specifications during the performance of services for a particular project.

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GENERAL CONDITIONS FOR
CONSULTING SERVICES
JANUARY 1998

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MARYLAND DEPARTMENT OF TRANSPORTATION
GENERAL CONDITIONS FOR CONSULTANT CONTRACTS

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**MARYLAND DEPARTMENT OF TRANSPORTATION
GENERAL CONDITIONS
CONSULTANT CONTRACTS**

1. Definitions

A. Wherever in these General Provisions or in other contract documents the following terms or abbreviations are used, the meaning shall be as follows:

B. Organizational Structure

The Maryland Department of Transportation is composed of the following jurisdictions:

- (i) Maryland Port Administration
- (ii) Mass Transit Administration
- (iii) State Highway Administration
- (iv) Maryland Aviation Administration
- (v) Motor Vehicle Administration
- (vi) Maryland Transportation Authority
- (vii) The Secretary's Office

C. Organizational Definitions

Jurisdiction - Any one of the above Administrations or Authorities within the Maryland Department of Transportation.

Administration - Any one of the five Administration units listed in B. above.

Department - The Maryland Department of Transportation (MDOT).

Procurement Officer - Any person authorized by a State agency in accordance with law or regulations to formulate, enter into, or administer contracts or make written determinations and findings with respect to them. The term also includes an authorized representative acting within the limits of authority.

Secretary - The Chief Executive Officer of the Maryland Department of Transportation.

D. General Definitions

Agreement - Contract.

Architectural Services - Any professional or creative work that is performed in connection with the design and supervision of construction or landscaping, and that requires architectural education, training and experience. Architectural services includes consultation, research, investigation, evaluation, planning, architectural design and preparation of related documents, and coordination of services furnished by structural, civil, mechanical, and

electrical engineers and other consultants. Architectural services does not include construction inspection services or services provided in connection with an energy performance contract.

Award - The decision by a procurement agency to execute a purchase agreement or contract after all necessary approvals have been obtained.

Bid/Offer - A statement of price, terms of sale, and description of the supplies, services, construction or construction related services offered by a vendor to the State, in response to an invitation for bids or offers under procurement by competitive sealed bidding or comparable small procurement procedures.

Board - The Board of Public Works of the State of Maryland.

Business - Any corporation, partnership, individual, sole proprietorship, joint venture, or any other legal entity through which commercial activity is conducted.

Change Order - A written order signed by the responsible Procurement Officer, directing a Consultant to make changes which the changes clause of a contract authorizes the Procurement Officer to order with or without the consent of the Consultant.

Code - The Annotated Code of Maryland.

COMAR - Code of Maryland Regulations.

Construction - The process of building, adding, altering, converting, relocating, renovating, replacing, repairing, improving, demolishing or restoring of real property in which the State has an interest.

Consultant - Any person, firm or business having a consulting contract with a State agency or seeking to perform consulting services for a State agency.

Contract - Any agreement entered into by a State agency for the procurement of supplies, services, construction, or any other item and includes:

- (1) Awards and notices of award;
- (2) Contracts of a fixed-price, cost-reimbursement, cost-plus-fixed-fee, fixed-price incentive, or cost-plus incentive fee type;
- (3) Contracts providing for the issuance of job or task orders;
- (4) Leases;
- (5) Letter contracts;

- (6) Purchase orders;
- (7) Supplemental agreements with respect to any of these;
- (8) Orders; and
- (9) Grants.

Contract does not include:

- (1) Collective bargaining agreements with employee organizations; or
- (2) Medicaid, Medicare, Judicare, or similar reimbursement contracts for which user eligibility and cost are set by law or regulation.

Contract Modification - Any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of any existing contract, whether accomplished in accordance with a contract provision, or by mutual action of the parties to the Contract. It includes change orders, extra work orders, supplemental agreements, contract amendments, reinstatements, or options/renewals.

Contractor - Any person having a contract with a State agency. Contractor does not include employees with labor contracts (collective bargaining agreements).

Day - Calendar day unless otherwise designated.

Engineering Services - Any professional or creative work that is performed in connection with utilities, structures, buildings, machines, equipment, and processes, and that requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences. Engineering services includes consultation, investigation, evaluation, planning, design, and inspection of construction for the purpose of interpreting and assuring compliance with specifications and design within the scope of inspection services. Engineering services does not include the inspection of construction not requiring engineering training or services provided in connection with an energy performance contract.

Extension - As applied to contracts for the performance of architect/engineer services, means a change in the scope of the services to be performed by the architect/engineer by including in the Contract a requirement for the performance of phases of services not previously included.

Extra Work Order - Change order.

Firm - Business

Invitation for Bids - Any document, whether attached or incorporated by reference, used for soliciting bids under

procurement by competitive sealed bidding and small procurement procedures including requests for quotations.

Minority Business Enterprise - Any legal entity, other than a joint venture, organized to engage in commercial transactions, which is at least 51 percent owned and controlled by one or more minority persons, or a nonprofit entity organized to promote the interests of the physically or mentally disabled and is "Certified" by the MDOT. Certified means that the Department of Transportation, through established procedures, has determined that a legal entity is a minority business enterprise.

Minority Person - A member of a socially or economically disadvantaged minority group, including African American/Black (not of Hispanic origin), Hispanic American, Asian American, Native American, Alaska natives, Asians, Pacific Islanders, Women, and the Physically or Mentally Disabled.

Notice to Proceed - A written notice to the Consultant of the date on or before which he/she shall begin the prosecution of the work to be done under the Contract.

Offeror - Means a person or entity that desires to enter into a Contract with the State.

Person - Means any individual or a corporation, partnership, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club or other organization or legal entity.

Price Proposal - A consultant written price derivation response, with required support documentation and affidavits, to a MDOT request for price from a Consultant technically selected for a specific Project. The Price Proposal shall be signed by the person(s) required to legally bind the Consultant to the Proposal.

Procurement - Includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Agency - Any State agency which is authorized by law or regulations to procure or contract.

Proposal - The response by an offeror to a solicitation of the State for a supply or service. The response may include but is not limited to an offeror's price and terms for the proposed Contract, a description of technical expertise, work experience and other information as requested in the solicitation.

Public Improvement - The construction, maintenance and repair of any building, structure or other public work now

or hereafter constructed or acquired by the State or any State agency.

Quotation - Bid.

Request for Proposals - Any document, whether attached or incorporated by reference, used for soliciting proposals under procurement by competitive sealed proposals, noncompetitive negotiations, multi-step and comparable small procurement procedures.

Resident Business - A resident business is defined as a business enterprise that has a Maryland address, is registered to do business in the State of Maryland, employs Maryland residents, and regularly conducts business within the State. The term includes subsidiaries, divisions and branches of business headquartered outside of the State of Maryland.

Responsible Bidder or Offeror - A person who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability which will assure good faith performance.

Services - The rendering of a person's time, effort or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance of services. It includes but is not limited to the professional, personal and/or contractual services provided by attorneys, architects, engineers, accountants, physicians, consultants, appraisers, land surveyors, and property management, where the service is associated with the provision of expertise and/or labor. "Services" does not include the work normally associated with the repair and/or maintenance of facilities, structures, or building systems defined as "maintenance."

Solicitation - Invitation for bids, request for quotations, request for proposals, or any other method or instrument used to provide public notice and advertisement of a State agency's intent to procure supplies, services, and construction.

State - The State of Maryland acting through its authorized representative.

State Agency - Any administration, agency, association, authority, board, bureau, college, commission, committee, council, foundations, fund, department, institute, institution, public corporation, service, trust, university, or other unit of the Executive Branch of the State Government and includes any subunit within any of these units.

Supplemental Agreement - Any contract modification which is accomplished by the mutual action of the parties.

Technical Proposal - A consultant written technical response to a MDOT Request for Proposals for a specific Project. The Technical Proposal shall be signed by the person(s) required to legally bind the Consultant to the Proposal.

Transportation Board - The Transportation Professional Services Selection Board (TPSSB).

Using Agency - Any State agency which uses any supplies, services, or construction procured under the Maryland procurement law or regulations.

Work - Work shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed by the contract.

2. Proposal Guaranty

- A. If required for a procurement in excess of \$100,000 a proposal will not be considered unless accompanied by proposal security in an amount not less than 5% of the amount proposed, and made payable to the State of Maryland.
- B. Acceptable security for proposal guaranty shall be as stated in COMAR 21.06.07.01.

3. Public Information Act Notice

Consultants offering proposals should give specific attention to the identification of those portions of their proposals which they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Maryland Public Information Act, State Government Article, Title 10, Subtitle 6 of the Annotated Code of Maryland.

4. Contract Administration

This agreement will be administered on behalf of the Department or Administration as the case may be, by the Procurement Officer.

5. Authority of the Procurement Officer

- A. The Procurement Officer shall decide all questions which may arise as to the quality and acceptability of work performed and as to the rate of progress of said work; all questions which may arise as to the interpretation of any or all plans and/or specifications; and all questions as to the acceptable fulfillment of the Contract on the part of the Consultant.
- B. The Procurement Officer shall determine the amount of work performed to be paid for under the Contract.
- C. The Procurement Officer may authorize progress payments for work satisfactorily completed, subject to such retainage that the Procurement Officer deems appropriate.

6. Initiation of Work

The Consultant shall not commence performance of the services until the Consultant receives a formal written Notice to Proceed from the Department or Administration.

7. Indemnification and Insurance

A. Responsibility for Claims and Liability

The Consultant(s) shall indemnify and save harmless the Department of Transportation, the Administration, their Officers, agents, and employees from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description arising out of or resulting from errors, omissions, negligent acts, negligent performance or non-performance of the services of the Consultant or those of his subcontractors, agents or employees under this Contract, or arising from or based on the violation of applicable federal, state or local law, ordinance, regulations, order or decree, whether by himself or his employees or subcontractors.

Further, the Consultant shall pay any claims for personal injury, bodily injury or property damage which the Consultant is legally obligated to pay and shall indemnify the State against such claims. The Consultant shall undertake to defend any third party claim seeking such damages.

B. Insurance Requirements

The Consultant shall carry and maintain in full force and effect for the duration of this Contract, and any supplement or extension thereto, the insurance coverage specified below, and any other coverage specified by the Department or Administration, in the amounts specified elsewhere in the Contract documents. The Consultant shall submit to the Department or Administration a certificate of insurance indicating the existence of coverage required by this provision. Policies shall be issued by an insurance company authorized to do business in the State of Maryland and approved by the Department or Administration.

(1) Comprehensive General Liability Insurance

Occurrence form of Comprehensive General Liability Insurance with Comprehensive Broad Form endorsement including, but not limited to, coverage for damage to persons or property arising out of or relating to the performance of work under this Contract by the Consultant, its subcontractors, employees and agents.

(2) Professional Liability Insurance

Professional Liability Insurance Policy which covers the Indemnification Clause of this Contract (paragraph 7.A above) as it relates to errors, omissions, negligent acts or negligent performance in the work

performed under this Contract by the Consultant, its subcontractors, employees and agents.

(3) Workers' Compensation Insurance

Workers' Compensation as required by the laws of the State of Maryland, including Employer's Liability Coverage and coverage for the benefits set forth under the US Longshoremen and Harbor Workers Compensation Act, the Jones Act and other federal laws where applicable.

(4) Comprehensive Automobile Liability Insurance

Comprehensive Business Automobile Liability covering use of any motor vehicle to be used in conjunction with this Contract, including hire automobiles and non-owned automobiles. Loading and unloading of any motor vehicle must be covered by endorsement to the automobile liability policy or policies.

8. Assignment and Subcontracting

The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors, provided any such successor to the Consultant, whether such successor be an individual, a partnership, a corporation or other business entity, is acceptable to the Department or Administration, and neither this Contract nor the services to be performed thereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the Department or Administration.

9. Changes, Alterations or Modifications in the Services

The Department or Administration shall have the unilateral right, at its discretion, to change, alter or modify in writing the services provided for in this Contract, and such changes, alterations or modifications may be made even though it will result in an increase or decrease in the services of the Consultant or in the Contract cost thereof.

Contract modifications are effective only when approved by the Board or consistent with COMAR 21.02.01.04.

10. Delays and Extensions of Time

The Consultant agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by the Consultant for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the

State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Consultant or the subcontractors or suppliers.

11. Remedies and Termination

A. Correction of Errors, Defects and Omissions

The Consultant agrees to perform work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, including subcontracting services, without undue delays and without cost to the Department or Administration. The acceptance of the work set forth herein by the Department or Administration shall not relieve the Consultant of the responsibility of subsequent correction of such errors.

B. Set-Off

The Department or Administration may deduct from and set-off against any amounts due and payable to the Consultant any back-charges or damages sustained by the Department or Administration by virtue of any breach of this Contract by the Consultant or by virtue of the failure or refusal of the Consultant to perform the services or any part of the services required under this Contract in a satisfactory manner. Nothing herein shall be construed to relieve the Consultant of liability for additional construction costs resulting from a failure to satisfactorily perform the services.

C. Termination of Contract by Board of Public Works

- (1) The Board of Public Works may terminate without liability any Contract, including architectural or engineering services, and may deduct from the Contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this condition, if:
 - a. There has been any conviction of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the Contract; or
 - b. There has been any breach or violation of any provision of Title 18 of State Finance and Procurement Article; or the Contract provision against contingent fees required by §13-319 of State Finance and Procurement Article of the Annotated Code of Maryland.
- (2) Payments on termination of Contract. If the Contract is terminated under this general condition, after the State deducts any amount under Subsection C (1) above, the Consultant:

- a. May be paid only the earned value of the work done to the date of termination, plus termination costs;
- b. Shall refund all profits or fixed fees realized under the Contract; and
- c. Is liable for any costs incurred over the maximum amount payable to the Consultant under the Contract for the State to complete the work undertaken.

D. Termination for Default

If the Consultant fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Consultant. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished supplies and services provided by the Consultant shall, at the State's option, become the State's property. The State shall pay the Consultant fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Consultant's breach. If the damages are more than the compensation payable to the Consultant, the Consultant will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties shall be governed by the provisions of COMAR 21.07.01.11B.

E. Termination for Convenience of the State

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Consultant has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Consultant shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties shall be governed by the provisions of COMAR 21.07.01.12A(2).

F. Obligations of Consultant Upon Termination

Upon notice of termination as provided in Paragraphs C. D. and E. above, the Consultant shall:

- (1) Take immediate action to achieve orderly discontinuation of its work and demobilize its work force to minimize the incurrence of costs.

- (2) Take such action as may be necessary to protect the property of the State of Maryland, place no further orders or subcontracts, assign to the Department or Administration in the manner and to the extent directed by the Department or Administration all of the right, title and, if ordered by the Department or Administration, possession and interest of Consultant under the orders or subcontracts terminated.
- (3) Transfer title to the Department or Administration of all materials, equipment, data, drawings, specifications, reports, estimates and such other information accumulated by the Consultant in performing this Contract, for the cost of which the Consultant has been or will be reimbursed under this Contract.

G. Remedies Not Exclusive

The rights and remedies contained in this General Condition are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

12. Responsibility of Consultant

- A. The Consultant shall perform the services with that standard of care, skill, and diligence normally provided by a consultant, architect or engineer in the performance of services similar to the services hereunder.
- B. Notwithstanding any review, approval, acceptance or payment for the services by the Department or Administration, the Consultant shall be responsible for professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by the Consultant under this agreement.
- C. If the Consultant fails to perform the services, or any part of the services, in conformance with the standard set forth in Paragraph A. above, and such failure is made known to the Consultant within two years after expiration of this Contract, or within the specified warranty period, whichever is greater, the Consultant shall, if required by the Department or Administration, perform at its own expense and without additional cost to the Department or Administration, those services necessary for the correction of any deficiencies or failure. This obligation is in addition to and not in substitution for any other remedy available to the Department or Administration under Section 11 of these General Conditions.
- D. The Consultant shall furnish proof that he/she has the financial capacity to provide the services and that he/she is financially able, through his/her own resources or through a qualified surety, to protect the Department or Administration from errors and omissions that might arise from the direct performance of the services or the

performance of the services by third parties relying on the completed design or work product.

- E. Consultant agrees to include, on the face of all invoices billed to the Department or Administration, his/her Federal Tax Identification or Social Security Number.

13. Disputes

- A. This Contract is subject to the provisions of Title 15, Subtitle 2, State Finance and Procurement Article (Dispute Resolution) of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies).
- B. Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this Contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.
- C. As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this Contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed either as to liability or amount, it may be converted to a claim for the purpose of this clause.
- D. A claim shall be made in writing and submitted to the Procurement Officer for decision in consultation with the Office of the Attorney General. Unless a lesser period is provided by applicable statute, regulation, or this contract, the Consultant must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been know, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Consultant must submit to the procurement officer its written claim containing the information specified in COMAR 21.10.04.02.
- E. When a claim cannot be resolved by mutual agreement, the Consultant shall submit a written request for final decision to the Procurement Officer. The written request shall set forth all the facts surrounding the controversy.
- F. The Consultant, at the discretion of the Procurement Officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.
- G. The Procurement Officer shall render a written decision on all claims within 180 days of receipt of the Consultant's written claim, unless the Procurement Officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the Procurement Officer shall notify the Consultant of the time within which a decision shall be rendered and the reasons for such time extension. The decision

shall be furnished to the Consultant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Procurement Officer's decision shall be deemed the final action of the State.

- H. The Procurement Officer's decision shall be final and conclusive unless the Consultant mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.
- I. Pending resolution of a claim, the Consultant shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.

14. Professional Registration

If the services covered by this Contract include the preparation of contract plans and documents for construction or maintenance contracts, the plans and documents prepared shall be reviewed and approved by architects or engineers registered to practice in the particular professional field in the State of Maryland.

15. Availability of Data

Each party hereto shall make available to the other party, without cost, all non-proprietary technical data under its control reasonably necessary to the performance of the services required under this Contract.

16. Ownership of Documents

The Consultant agrees that all data including, but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, computations, and customized computer software prepared by or for him under the terms of this Contract shall at any time during the performance of the services be made available to the Department or Administration upon request by the Department or Administration and shall become and remain the property of the Department or Administration upon termination or completion of the services. The Department or Administration shall have the right to use same at any time without restriction or limitation and without compensation to the Consultant other than that provided in the Contract.

17. Retention of Records

The Consultant shall retain and maintain all records and documents relating to this Contract for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit in accordance with COMAR 21.06.05 by authorized representatives of the State, including the procurement officer or his designee, or by the U.S. Department of Transportation and any other appropriate federal agency, at all reasonable times. The accounting records and all supportive documentation shall be maintained in such a manner that will provide for a separation between direct and

indirect costs. A similar provision shall be included in all subcontracts.

18. Data Processing Services

The Department or Administration shall review and approve the use of data processing in connection with the services under this Contract and may require that such services be provided by the Department or Administration. In the event that the Department or Administration allows the Consultant to provide these services, it will approve the computer installation to be utilized, the hardware configuration, the operating system, and the software package. The Department or Administration reserves the right to shift the site of such operations upon giving 15 days prior written notice, and the amount payable to the Consultant may be adjusted to reflect any change in cost which may result from such a site shift.

19. Dissemination of Information

During the term of this Contract, the Consultant shall not release any information related to the services or performance of the services under this Contract nor publish any final reports or documents without the prior written approval of the Department or Administration.

20. Nondiscrimination in Employment

A. Compliance with State Law and Regulations

The Consultant agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a) above, and in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

B. Compliance with Federal Law

The Consultant will comply with the regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of said Department of Transportation (Title 49, Code of Federal Regulations, Part 21, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

Consultants providing services to the State under this Contract herewith assure the State that they are conforming to the provision of the Civil Rights Act of 1964, and Section 202 of the Executive Order 11246 of the President of the United States of America as amended by Executive Order 11375, as applicable.

C. Nondiscrimination in Selection of Subcontractors

The Consultant, with regard to the work performed by it after award and prior to completion of the agreement, will not discriminate on the grounds race, color, age, sex, religion or national origin in the selection and retention of subcontractors, including the procurement of materials 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.

D. Solicitations for Subcontractors, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this agreement and the Regulations relative to non-discrimination on the grounds of race, color, age, sex, religion or national origin.

E. Information and Reports

The Consultant will provide all information and reports required by the Regulations, or orders and instructions 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 Department or Administration or the federal agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refused to furnish this information, the Consultant shall so certify to the Department or Administration or the federal agency as appropriate and shall set forth what efforts it has made to obtain the information.

F. Sanctions for Non-Compliance

In the event of the Consultant's non-compliance with the nondiscrimination provisions of this Contract, the Department or Administration shall impose such sanctions as it may determine to be appropriate, including but not limited to:

- a. Withholding of payment to the Consultant under the Contract until the Consultant complies, and/or
- b. Cancellation, termination or suspension of the Contract in whole or in part.

G. Incorporation of Provisions

The Consultant will include the provisions of Paragraphs A. through F. in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The Consultant will take such actions with respect to any subcontract or procurement as the Department or Administration or the U.S. Government may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the 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 State to enter into such litigation to protect the interests of the State and, in addition, the Consultant may request the U.S. to enter into such litigation to protect the interest of the government.

H. Nondiscrimination - Subcontractors

Prior to the Department's or Administration's issuance of written approval for the subcontracting of any portion of the services covered by this Contract, the Consultant must submit certification to the Department or Administration that the required Equal Employment Opportunity provisions, as set forth hereinbefore in this Section, are actually incorporated into the subcontract(s). Failure on the part of the Consultant to submit said certification shall be construed as non-compliance on the part of the Consultant and justification for the Department or Administration to impose such sanctions as set forth in Paragraph F. above.

21. Financial Disclosure

The Consultant shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

22. Political Contribution Disclosure

The Consultant shall comply with the provisions of Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year under which the person receives in the aggregate \$10,000 or more, shall on or before February 1 of the following year file with the Secretary of the State of Maryland certain specified information to include disclosure of political

contributions in excess of \$100 to a candidate for elective office in any primary or general election.

23. Personal Liability of Public Officials

In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Department or Administration, Procurement Officer or other authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

24. Minority Business Enterprise and Affirmative Action

A. This Contract is subject to Executive Order 01.01.1970.15, December 9, 1970; amended by Order 01.01.1976.05, July 9, 1976 (Code of Fair Practices), and COMAR 21.11.04 Consultant's Affirmative Action Plan Review/Approval and Compliance Monitoring Process - DOT. This Contract is also subject to the applicable provisions of Title 14, Subtitle 3 of State Finance and Procurement Article of the Annotated Code of Maryland; COMAR 21.11.03 Minority Business Enterprise Policies; and the provisions of COMAR 11.01.10 which incorporates by reference the current revision of the Minority Business Enterprise Program. Copies of the Minority Business Enterprise Program may be obtained from the Department of Transportation Fair Practices Officer, P.O. Box 8755, BWI Airport, Maryland 21240. This Contract is also subject to all applicable federal and State law and regulations pertaining to Minority Business Enterprise and Affirmative Action.

B. To the extent any of the above laws or regulations are applicable to this Contract they are specifically incorporated herein.

25. Non-Hiring of Employees

No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland, or any unit thereof.

Unless waived in writing by both the Department or Administration and appropriate federal agencies prior to award of the Contract, no member, officer, or employee of the Maryland Department of Transportation or of a local public body, whether elected or appointed, during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof. In this paragraph, local public body means the State of Maryland, any political sub-division of the State, or any agency of the State or political sub-division.

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract to any benefit arising therefrom.

26. Contingent Fee Prohibition

- A. The consultant, architect, or engineer warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the consultant, architect, or engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this Contract.
- B. For breach or violation of the above warranty, the Department or Administration shall have the right to terminate this Contract without liability, or at Department or Administration discretion, to deduct from the Contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

27. Conflict of Interest Law

It is unlawful for any State officer, employee, or agent to participate personally in his/her official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any contract or other matter in which he/she, his/her spouse, parent, minor child, brother or sister, has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he/she is serving as an officer, director, trustee, partner, or employee is a party, or to which any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment is a party, unless such officer, employee, or agent has previously complied with the provisions of Article 40A, Section 3-101 et seq. of the Annotated Code of Maryland.

28. Sanctions Upon Improper Acts

In the event the Consultant or any of its officers, partners, principals or employees, is convicted of a crime arising out of, or in connection with, the procurement of work to be done or payment to be made under this Contract, the Contract may, in the discretion of the Department or Administration, be terminated.

Section 16-203 of State Finance and Procurement Article of the Annotated Code, and COMAR 21.08.01, which relate to contracts with persons convicted of bribery, attempted bribery or conspiracy to bribe are incorporated in this Contract by reference.

Section 11-205 of State Finance and Procurement Article and COMAR 21.08.03 relating to collusion for purposes of defrauding the State are incorporated into this Contract by reference.

Subtitle 08 of Title 21 of COMAR, "Disqualification, Suspension, Debarment, Reinstatement and Sanctions" is incorporated into this Contract by reference.

29. **Corporate Registration and Tax Payment Certification**

Corporations are required to execute a Certification of Corporation Registration and Tax Payment.

30. **Multi-Year Contracts Contingent Upon Appropriations**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Consultant's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Consultant and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Consultant shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The State shall notify the Consultant as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

31. **Cost and Price Certification (Applicable to Non-Architectural and Non-Engineering Services)**

- A. The Consultant by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
- (1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the Procurement Officer; or
 - (2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.
- B. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increase occurring because the Consultant furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

32. **Truth-In-Negotiation Certification (Applicable to Architectural and Engineering Services Contracts)**

The Consultant, by submitting cost or price information, including wage rates or other factual unit costs, certifies to the best of its knowledge, information and belief, that:

- A. The wage rates and other factual unit costs supporting the firm's compensation, as set forth in the proposal, are accurate, complete and current as of the Contract date;

- B. If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete or noncurrent wage rates or other units of costs, the State is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The State's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor; and
- C. If additions are made to the original price of the Contract, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs.

33. Patents and Copyrights

A. Patent Rights

Any patentable result arising out of this Contract, as well as all information, designs, specifications, know-how, data, and findings shall be made available to the United States Government for public use, unless the U.S. Government, in a specific case, where it is legally permissible, determines that it is in the public interest that it not be so made available.

B. Patent and Copyright Indemnity

The Consultant shall indemnify, protect and save harmless the State, its officers, agents and employees from all claims, arising out of any patent or copyright infringements or claims thereof pertaining to any design, drawings, specifications, computer software development or other patentable or copyrighted items used by the Consultant.

34. Compliance with Laws

The Consultant hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and

- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance to its obligations under this Contract.

35. Maryland Law Prevails

The parties hereby agree that:

- A. This Contract was made and entered into in the State of Maryland, and under the laws of the State of Maryland.
- B. The law of the State of Maryland shall govern the resolution of any issue arising in connection with this Contract, including, but not limited to, all questions concerning the validity of this Contract, the capacity of the parties to enter therein, any modification or amendment thereto and the rights and obligations of the parties hereunder.

36. Conflicts Between Federal Regulations and These General Conditions

All requirements set forth in federal assistance instruments applicable to contracts let by the State under a federal assistance program shall be satisfied. Therefore, to the extent that the requirements which are specified in the federal assistance instrument conflict with regulations adopted under Title 21 of COMAR, the former shall control.

37. General Conditions Controlling

In event of a conflict between these General Conditions and any other provision of the Contract documents, these General Conditions shall prevail unless such other provision expressly provides to the contrary.

38. Bid Award - For Competitively Bid Contracts - Resident Business

- A. When awarding a contract by competitive bidding, the Department or Administration may give a preference to the lowest responsive and responsible bid from a Maryland firm over that of a non-resident firm if the State in which the non-resident firm is located gives a resident business preference.
- B. The percentage of preference given under this section shall be identical to the preference given to its residents by the State in which the nonresident firm is located.
- C. This provision shall not apply if it conflicts with any federal grant or regulation affecting this Contract.

39. Payment of State Obligations

- A. Payments to the Consultant pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Consultant. Charges for late payment of invoices, other than as prescribed by Title 15,

Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

- B. A proper invoice shall include a description of the items or services provided; the date the goods were received or the inclusive dates the services were rendered; the Contract price(s); retention, if any; the basis for the billing; the Contract or purchase order number; the Consultant's Federal Tax Identification Number or Social Security Number; the valid Contract charge number, and the name and address of the proper invoice recipient.
- C. In order to receive payment of interest, the Consultant must submit a proper invoice for accrued interest within 30 calendar days after the payment date of the amount on which the interest is claimed to have accrued. Interest may not be claimed if it accrues more than one year following the 31st calendar day after the date that a proper invoice was received, or on amounts representing unpaid interest, or if a claim has been filed under State Finance and Procurement Article Section Title 15, Subtitle 2 of the Code.
- D. For the purposes of this Contract an amount will not be deemed due and payable if:
 - (1) The amount invoiced is inconsistent with the Contract.
 - (2) The proper invoice has not been received by the party or office specified in the Contract.
 - (3) The invoice or performance under the Contract is in dispute or the Consultant has failed to otherwise comply with the provisions of the Contract.
 - (4) The item or services have not been accepted.
 - (5) The quantity of items delivered is less than the quantity ordered.
 - (6) The items or services do not meet the quality requirements of the Contract.
 - (7) If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule contained in the agreement.
 - (8) If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met.
 - (9) The Consultant has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the contract concerning performance under the Contract and compliance with its provisions.

40. Suspension of Work

The Procurement Officer unilaterally may order the Consultant in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the State.

41. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

42. Insolvency

If the Consultant becomes insolvent, files a bankruptcy petition in any court, becomes the subject of an involuntary bankruptcy petition, makes a general assignment for the benefit of creditors, has a receiver appointed for assets, or ceases to conduct business, the Consultant shall be considered in default of the Contract. If any of these events occurs, the Consultant must immediately notify the Procurement Officer or designee.

Addendum #1
to
General Conditions for
Consulting Services
dated January 1998

The General Conditions for Consulting Services - 1998, Section II of the Specifications for Consulting Engineers' Services, is modified to include the following:

Paragraph 22, Political Contribution Disclosure is deleted and replaced with the following:

"22 Political Contribution Disclosure

The Consultant shall comply with Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31."

The following paragraph is made a part of the General Conditions.

"44 Surety Bond Assistance Program

Assistance in obtaining bid, performance, and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDFA). MSBDFA can directly issue bid, performance, or payment bonds up to \$750,000.

Questions regarding the bonding assistance program should be referred to:

Maryland Department of Business and Economic
Development
Maryland Small Business Development Financing
Authority
217 E. Redwood Street, 22nd Floor
Baltimore, Maryland 21202
410-767-6359"

7/1/98
Revised 11/23/99

Paragraph 20, Non-discrimination in Employment, Sub-Paragraph A Compliance with State Law and Regulations, is deleted and replaced with the following:

"20 Non-discrimination Employment

A. Compliance with State Law and Regulations

The Consultant agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause."

Paragraph 25, Non-hiring of Employees is deleted and replaced with the following:

"25 Non-hiring of Employees

No official or employee of the State of Maryland, as defined under State Government Article, §15-202, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this

Contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the Consultant or any entity that is a subcontractor on this contract.

"Unless waived in writing by both the Department or Administration and appropriate federal agencies prior to award of the Contract, no member, officer, or employee of the Maryland Department of Transportation or of a local public body, whether elected or appointed, during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof. In this paragraph, local public body means the State of Maryland, any political subdivision of the State, or any agency of the State or political sub-division.

"No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract to any benefit arising therefrom."

Revised 4/2/02

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XII. Post Award Contract Administration

A. General

This chapter sets forth the guidelines and procedures adopted by the Highway Administration for the administration of consultant agreements and specifically covers those areas which consultants should be advised of at the time of initial proposal submissions and contract negotiations.

B. Notice to Proceed

After award of a consultant agreement, the Highway Administration shall issue a Notice to Proceed to the successful consultant which shall name the office which will act as liaison office or executing responsibility for the Project. Prior to initiating any work on the Project the consultant shall contact the liaison office for further instructions and shall advise the liaison office of the consultant's project manager.

After receipt of a Notice to Proceed and prior to initiating any services, the consultant shall complete the detailed man hour forms for the project, as set forth in the resume or at the pre-proposal conference. In addition, the consultant shall prepare milestone charts and/or progress report formats, as required.

C. Specifications

The consultant shall perform all work covered by an agreement in accordance with the terms, conditions, and covenants set forth in those sections of the SPECIFICATIONS FOR CONSULTING ENGINEERS' SERVICES, dated April, 1986, which are incorporated by reference and made a part of the consultant agreement.

The consultant shall comply with the SPECIAL PROVISIONS - AFFIRMATIVE ACTION REQUIREMENTS UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES, THE SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE ACT OF 1987 AND ISTEA OF 1991 FEDERAL-AID CONSULTANT AGREEMENTS, which Special Provisions are included herein.

D. Time of Completion

All consultant agreements shall include completion times in months for task functions as deemed appropriate. Consultants are expected to complete the various tasks within the times specified and allotted unless delayed by events beyond their control. The consultant is expected to have the necessary expertise to perform all services and requirements of the project resume in the time stipulated.

Additionally, all consultant agreements shall have a specific date set forth for the completion of the term of the contract. This completion date shall be established by the Highway Administration's appropriate Deputy Administrator. The establishment of this date shall take into consideration the completion times for the work involved plus a reasonable amount of contingency time as appropriate to the project circumstances.

E. Control of Salaries and Overhead

Consultants should be made aware that if a contract is performed within the time frame and conditions set forth within a contract agreement, that increases of salary costs and overhead within the constraints of the agreement would not be sole justification for an increase in the maximum amount(s) payable. It is the responsibility of the consultant to exercise cost management and control of the project to stay within the stated maximum amount(s).

F. Independent Audit

The consultant shall provide the Highway Administration Office of Audits with an annual overhead audit performed by an Independent CPA in accordance with CFR Title 48, FARs Chapter 1, Part 31 and applicable Maryland Department of Transportation guidelines within six (6) months after the closure of each consultant Fiscal Year covered by an Agreement. Additionally, the consultant shall provide or require each subcontractor set forth in an Agreement to provide the Office of Audits with an annual overhead audit performed by an Independent CPA in accordance with CFR Title 48, FARs Chapter 1, Part 31 and applicable Maryland Department of Transportation guidelines within six (6) months after the closure of each subcontractor's Fiscal Year covered by an Agreement. The independent audit shall only be required for those subcontractors which are set forth on a cost plus fixed fee basis of payment in an Agreement.

G. Payment

The Highway Administration shall pay the consultant monthly, on the basis of certified invoices accompanied by supporting documents and affidavits as required by the Highway Administration, and the Office of Audits Directive entitled "Required Standards for Consultant Invoices", dated June 12, 1997, and all subsequent modifications thereto, but only if the Highway Administration finds that progress for the month is satisfactory and that during the month work of sufficient quantity and quality has been accomplished.

Payments for redesign under construction services will be made monthly as the work is performed.

In order to receive payment for work subcontracted to others, the consultant shall submit, with the monthly invoices, copies of the subcontractors' approved invoices as well as certification that the consultant has paid the subcontractors for the subcontractors' preceding month's invoiced services.

The fees for authorized extra or additional work will be paid monthly, following approval of the work by the Highway Administration.

At the time of final settlement, if under-payments or over-payments have, at any time, been made to the consultant in connection with the Project, appropriate adjustments will be made.

The consultant agrees that the Highway Administration is entitled to an adjustment, and has the authority to decrease any cost functions or amounts set forth in an Agreement, due to the furnishing of inaccurate, incomplete, or non-current wage rates or other unit costs at the time of the proposal submission. The authority for the Highway Administration to receive the aforesaid adjustment is set forth in the Truth-In-Negotiation Certification, signed by the consultant and made a part of the price proposal. To this end, the consultant acknowledges that the Highway Administration will perform a post-audit for the project at the completion of the consultant's performance of services. If the audit reveals that over-payments have, at any time, been made to the consultant in connection with the project, the consultant shall reimburse the Highway Administration.

The consultant shall cooperate with the Highway Administration's Office of Audits in their performance of invoice, annual and post contract audits of the consultant and project.

H. Post Award - Reports/Compliance

After receipt of a Notice to Proceed, the consultant shall submit monthly invoices with narrative progress reports for all work performed by the consultant, and each designated subcontractor, to the Highway Administration designated liaison office.

To comply with COMAR 21.11.03 requirements, after receipt of a Notice to Proceed, the consultant shall submit monthly to the Highway Administration, Office of Equal Opportunity (OEO), 707 North Calvert Street, C-406, Baltimore, Maryland 21202, a report listing unpaid invoices over thirty (30) days old received from a certified DBE/MBE subcontractor and the

eason payment has not been made. The information shall be reported on the "Prime Contractor Unpaid MBE Invoice Report", included as Exhibit A in Section XII, Page 135, of this RFP.

To comply with COMAR 21.11.03 requirements, the consultant shall include in its agreements with its certified DBE/MBE subcontractor(s) a requirement that each certified DBE/MBE subcontractor submit monthly to the Highway Administration OEO Office, address above, a report identifying the prime contract and listing:

- a. Payments received from the consultant in the preceding thirty (30) days. And,
- b. Invoices for which the subcontractor has not been paid.

The information shall be reported on the "MBE Report of Payments Received", included as Exhibit B in Section XII, Page 137, of this RFP.

The consultant shall comply with any other reporting requirements established by the Highway Administration.

I. Extra Work Versus Additional Work

Extra or additional work may be authorized only when a change occurs in the scope, magnitude or complexity of the project set forth in the consultant agreement. Extra work and additional work are defined as follows:

1. Extra Work -

Any services or actions required of the consultant, above and beyond the scope of work set forth in the original agreement, including services requested by the Highway Administration which are beyond the Project limits (i.e., location limits) set forth in the Agreement, specific definable tasks which are not set forth in the scope of work, or tasks specifically deleted from the scope of work.

2. Additional Work -

Any services or actions required of the consultant, which are quantitatively more of the same task functions or services set forth in the original agreement and which are within the Projects limits (i.e., location limits).

For extra work additional fee is usually allowed. For additional work additional fee is not usually allowed unless extenuating circumstances are considered valid for allowing same. In general, no additional fixed fee is deserved by a consultant for their accomplishment of the same work contracted for just because additional time is needed to complete the required services. However, extenuating circumstances such as very lengthy time delays, promulgation of new State or Federal requirements, or a much more detailed work involvement of the previously defined tasks, etc., could override the position. Every request for a contract adjustment will be reviewed in detail with respect to consideration of additional fee; the additional fee will not just be arbitrarily allowed.

J. Extra or Additional Work Without Extension of Time

When extra or additional work is required to be performed within the original contract time period, the consultant shall be reimbursed in accordance with the terms of the original agreement.

K. Extensions of Time, With and Without Extra or Additional Work

In the event that delays with or without extra work occur through no fault of the consultant, the contract period may be extended by the appropriate liaison office with the approval of the appropriate Highway Administration's office director. Such an extension of time is not a reason by itself for contract modification.

When work set forth in the original contract is performed significantly beyond the term of the contract or when extra or additional work is performed beyond the term of the contract, the consultant shall be reimbursed in accordance with the terms of the contract, except for the following. For agreements executed after December 1, 1995, the Highway Administration may establish a limitation for payroll burdens and overhead which is either 130%, or fifteen percentage points over the provisional rate established in the agreement, or the consultant's latest documented audited payroll burden and overhead rate, whichever is less. The upset limit and, in the case of substantial time extensions, the fixed fee(s), shall be adjusted accordingly, and as necessary.

L. Extra Work Order Requests

When a consultant submits an extra or additional work order request to the Highway Administration, the request shall include the following:

1. A detailed Technical Proposal and detailed Price Proposal

2. Consultant Organizational Form (Prime and Sub-contractor(s), when involved)
3. Certified Payroll Roster showing employee name, job classification, hourly wage rate and average hourly rate for each job classification. (Prime and Sub-contractor(s), when involved)
4. Overhead Documentation - Presentation is to be for the most recent fiscal year, audited by a CPA, in accordance with CFR Title 48, FARs Chapter 1, Part 31 and applicable MDOT guidelines. (Include Highway Administration Office of Audits' acceptance letter, if available). (Prime and Subcontractor(s), when involved)

M. Undesignated Subcontractor Request

After issuance of a Notice to Proceed, a consultant may find it necessary to propose additional subcontractor(s) that are not set forth in an agreement. This includes, but is not limited to, the use of undesignated funds set forth in some agreements.

In accordance with the General Conditions for Consulting Services, the inclusion of an additional subcontractor(s) to a specific agreement must be approved by the Highway Administration prior to said subcontractor(s) performance of the services. The State Highway Administration Deputy Administrator has the sole authority to approve additional subcontractor(s).

The consultant shall comply, and require each proposed subcontractor to comply, with the requirements set forth in this Request for Proposal (RFP). This includes submission of the following documentation by the proposed subcontractor(s) to the consultant:

1. A detailed Technical Proposal and detailed Price Proposal.
2. Consultant Organizational Form.
3. Standard Federal Government SF 254 Form.
4. Certified Payroll Roster showing employee name, job classification, hourly wage rate and average hourly rate for each job classification.

5. Overhead Documentation - Presentation is to be for the most recent fiscal year, audited by a CPA, in accordance with CFR Title 48, FARs Chapter 1, Part 31 and applicable MDOT guidelines. (Include Highway Administration Office of Audits' acceptance letter, if available)

The consultant shall submit the proposed subcontractor request to the designated SHA liaison office which shall include the following:

1. Subcontractor(s) proposal submission.
2. A statement that the consultant has reviewed the scope of work and cost proposal submitted by the subcontractor and found same acceptable.
3. A statement of why the proposed subcontractor is needed or required.
4. A standard Federal Government SF 254 Form or other company profile information for the proposed subcontractor.
5. A proposed basis of payment for the proposed subcontractor.
6. A statement as to the source of the funds for the proposed work, e.g. undesignated subcontractor, direct costs, consultant labor, or other.

N. Processing Extra Work Order Requests/Undesignated Subcontractor Requests

After the Highway Administration liaison Office reviews and finds acceptable any Extra Work Order request or undesignated subcontractor request, the liaison office shall request that the External Audits Team perform a pre-contract audit or audit investigation of the proposed proposal. It is helpful to reference in the request to External Audits any other existing State Highway Administration contracts that involve the proposed subcontractor. After the audit is completed, negotiations completed as applicable, and all issues resolved, the liaison office shall:

- 1) For Extra Work Authorizations - process the necessary Extra Work Authorization Form through standard Highway Administration procedures.

Extra Work Orders in excess of 10% of an original Contract Agreement require approval by the State Board of Public Works. Neither the consultant nor any subcontractor shall perform any services set forth in an Extra Work Authorization until the State Board of Public Works has approved the Extra Work Authorization when same is required.

or

- 2) For undesignated subcontractor(s) - submit the request to Office of Consultant Services with the accepted proposal and pre-contract audit. The liaison office transmittal letter to Office of Consultant Services should state that the subcontractor is qualified and the time and cost proposed is acceptable to the Highway Administration. The liaison office should also indicate the basis of payment (hourly rates, CPFF, etc.) to be used; and, if the undesignated funds set forth in the Agreement are not being utilized, the source of funds to pay for the proposed work.

The Office of Consultant Services will review the Liaison Office's request and if complete and acceptable, solicit the Deputy Administrator's approval to add the proposed subcontractor to the Agreement. The Office of Consultant Services shall notify the Liaison Office and the External Audits Team of the Deputy Administrator's action.

The use of undesignated subcontractor monies, and the request to use new subcontractor(s) therefor, does not require State Board of Public Works' approval. The proposed subcontractor(s) to be used for undesignated subcontractor funds shall not perform any of the proposed work services until the liaison Office receives approval of same from the State Highway Administration Deputy Administrator. Repeat use of the same subcontractor will not require the Deputy Highway Administrator's approval, but can be authorized by the liaison office once all issues are resolved.

MARYLAND DEPARTMENT OF TRANSPORTATION
 STATE HIGHWAY ADMINISTRATION
 MINORITY BUSINESS ENTERPRISE PARTICIPATION
Prime Contractor Unpaid MBE Invoice Report
 To be Completed Monthly by Prime Contractor

Report # _____ Month/Year _____ Report due by 15 th of following month.
--

Contract # _____ Contract Amount _____ MBE Sub Amt. _____ Contract Begin Date _____ Contract End Date _____ Service Provided _____

Prime Contractor Name _____	Contact Person _____
Address _____	
City _____	State _____ Zip _____
Phone _____	Fax _____
<hr style="border: 2px solid black;"/>	
Subcontractor Name _____	Contact Person _____
Address _____	
City _____	State _____ Zip _____
Phone _____	Fax _____
Subcontractor Service Provided _____	

List any unpaid invoices over 30 days old received from this vendor and reason for non-payment.	
1. _____	
2. _____	
3. _____	
Total Amount Unpaid \$ _____	

**If more than one MBE subcontractor is used for this contract, please use separate forms.
 Return this form to the following address:

Signature _____
 Date _____

Maryland State Highway Administration
 Office of Equal Opportunity
 707 North Calvert Street, C-406
 Baltimore, Maryland 21202
 ATTN: Ms. Brenda J. Hall

06/08/2000

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Maryland Department of Transportation
State Highway Administration

**MBE REPORT OF
PAYMENTS RECEIVED**

MBE SUBCONTRACTOR NAME _____

PRIME CONTRACTOR _____

PROJECT NUMBER/TITLE _____

PROJECT LOCATION _____

MBE SUBCONTRACT AMOUNT \$ _____

PLEASE READ CAREFULLY BEFORE SIGNING

This certifies that for the month of _____, my company received \$ _____
for work performed, services rendered and/or materials supplied on the above contract.

TOTAL RECEIVED TO DATE \$ _____

Are you experiencing any problems with the prime contractor and/or the project? YES NO

Comments: _____

Please list the date, number and amount of outstanding invoices.

DATE	NUMBER	\$ AMOUNT
_____	_____	_____
_____	_____	_____
_____	_____	_____

I Certify that the above information is true and accurate to the best of my record documentation and knowledge.

(Typed/Printed Name of Company Officer)

(Title)

(Signature of Company Official)

(Date)

(Telephone)
06/08/2000

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**MARYLAND STATE HIGHWAY ADMINISTRATION DIRECTIVE
POLICY FOR CONSULTANT CONFLICT OF INTEREST**

PURPOSE AND APPLICABILITY

A. Purpose:

To provide a mechanism whereby the State Highway Administration will be made aware of potential conflict of interest situations.

B. Applicability:

This directive is applicable to Project Planning, Traffic Forecasting & Traffic Engineering, and Preliminary and Final Design (Phase II, III, IV & V) activities of the State Highway Administration.

This directive is applicable to all consultants, and to those subconsultants proposed by the consultant to perform Traffic Forecasting & Traffic Engineering services. At this time the directive is not applicable to subconsultants proposed for performing other services.

DIRECTIVE STATEMENT

The Administrator directs that:

- A. A Disclosure Statement must be provided by all consultants prior to providing Project Planning, Traffic Forecasting & Traffic Engineering, Preliminary Design and/or Final Design services, excluding surveying, soil borings, geotechnical engineering, and/or construction inspection services on State Highway Administration contracts. This Disclosure Statement must list:

Approved by TPSSB - February 1, 1990

ATTACHMENT NO. I

1. All current private sector (non-governmental) clients from whom the consultant has received a fee in connection with planning or engineering on a project that could be directly affected by the State Highway Administration project or is functionally related to a State Highway Administration project. **A planning or engineering project is generally defined as being "directly affected" by an SHA project if it is adjacent to or within a study corridor for a project planning project, or adjacent to the right-of-way of a proposed highway design project, or in close proximity to the proposed project, for example-within one (1) mile. A planning or engineering project is generally defined as being "functionally related" to the SHA project if it would adversely impact the proposed SHA project with respect to increased traffic or with respect to proposed alignments, typical sections, interchanges or intersection locations under consideration or determined by the public hearing and planning process.** The providing of surveying, geotechnical and/or construction inspection services are not considered as potentially conflicting services.
2. Name of client's project.
3. Location of the client's project in relation to the State Highway Administration project (including map).
4. General nature of the work performed for each client.
5. A listing of any subconsultants performing Traffic Forecasting and Traffic Engineering services accompanied by a separate Disclosure Statement covering the first four (4) items above, for each subconsultant.

This Disclosure Statement must be signed by an authorized representative of the consulting firm. If a Disclosure Statement is submitted for a subconsultant, the statement must be signed by an authorized representative of the subconsultant.

- B. This Disclosure Statement must be submitted as follows:
1. On project specific State Highway Administration contracts, this Disclosure Statement must be submitted with the consultant's Expression of Interest.
 2. On open-end State Highway Administration contracts, this Disclosure Statement must be submitted as soon as a firm is notified of a particular assignment.

- C. Upon receipt of this Disclosure Statement, the State Highway Administration will evaluate its content and make a determination as to whether there is a possible conflict of interest and:
1. On project specific State Highway Administration contracts:
 - a. If a potential conflict of interest exists, this will disqualify the firm from further consideration for that project unless the State Highway Administration decides that, **with certain conditions imposed**, disqualification is not in the best interest of the State.
 - b. If the Administration disqualifies a firm and the firm disagrees, the firm may pursue their disagreement in accordance with the debriefing process set forth in the Transportation Professional Services Selection Board (TPSSB) Regulations. That is, a firm may request an informational meeting with a designated representative of the Consultant Screening Committee. If a firm is still dissatisfied after meeting with the Consultant Screening Committee, the firm may pre-file a brief with the TPSSB presenting the basis for its position that the firm should be considered for the Reduced Candidate List. In such a case, the Administrator will issue a written response which will be filed, along with the firm's brief, with the TPSSB.
 - c. If the Administration qualifies a firm for further consideration in the development of the Reduced Candidate List, and there is a possible conflict of interest, the Administrator shall issue a written decision which will be included in the Project TPSSB presentation for the final selection. The written decision should include:
 1. explanation of the possible conflict,
 2. why it's in the public interest to use this consultant despite the possible conflict, and
 3. safeguards that will be imposed.
 2. On open-end State Highway Administration contracts:
 - a. If a potential conflict of interest exists, this will disqualify the firm from that particular project assignment unless the State Highway Administration decides that, **with certain conditions imposed**, disqualification is not in the best interest of the State.

- b. If the Administration disqualifies a firm and the firm disagrees, the firm may present the reason for its position in writing to the Administrator. The Administrator will issue a final written decision.
 - c. If the Administration qualifies a firm for a particular assignment and there is a possible conflict of interest, the Administrator shall issue a written decision, a copy of which will be forwarded to the Secretary of Transportation. The written decision should include:
 - 1. explanation of the possible conflict,
 - 2. why it's in the public interest to use this consultant despite the possible conflict, and
 - 3. safeguards that will be imposed.
- D. Responsibility for implementing this directive is assigned to:
- 1. The Office of Consultant Services on project specific contracts.
 - 2. All Planning and Design Divisions and District Offices who utilize consultant services on an open-end basis for all open-end project assignments.

XIV. Expressions of Interest

Included hereinafter is correspondence issued to consultants advising firms of State Highway Administration concerns on responses to advertisements. This material is included herewith for your assistance in responding to future A/E advertisements soliciting Expressions of Interest.

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June 25, 1992
Reissued April 12, 2002

Re: Expressions of Interest

CONSULTANTS:

Your firm has either responded to a State Highway Administration (SHA) advertisement soliciting Expressions of Interest for an A/E Project or we anticipate that your firm may be responding to future advertisements.

The SHA has been concerned about the quality and responsiveness of some of the responses we have been receiving. The purpose of this correspondence is to alert your firm to some of the flaws and errors of recent submissions, which have included, but not necessarily been limited to items such as the following:

5. Failure to include an SF 255 Form for the Prime Consultant or failure to properly complete the SF 255 Form.
6. Failure to include SF 254 Form(s) for the Prime Consultant and for proposed subcontractor(s) or failure to properly complete the SF 254 Form(s).
7. Failure to address Key Staff requirements set forth in the advertisement.
 - Some Key Staff individuals are required to be employees of the Prime Consultant responding, other Key Staff individuals may be employees of the Prime or of a proposed subcontractor.
 - When Maryland Registrations are required, the Consultant must include on line "f" of Item #7 of the SF 255 Form the words "Maryland Registered" and the Maryland License Registration Certificate Number for the individual proposed.
 - Line "g" of Item #7 of the SF 255 Form should be addressed "other experience and qualifications relevant to the proposed project".

- SHA advertisements normally limit the Key Staff responses in Item #7 of the SF 255 Form to one-half (1/2) page per each individual.
- Failure to limit Item #8 of the SF 255 Form, "Similar Projects", to five (5) entries and on one (1) page in total length as required by most SHA advertisements soliciting Expressions of Interest.
 - There may be Projects where firms will be allowed to submit more entries or use more pages, but this will be clearly set forth in the Advertisement when applicable.
- Failure to include a Conflict of Interest Disclosure Statement for the Prime Consultant when required by the advertisement for project specific Projects. Also failure to include Disclosure Statement for proposed subcontractors, as applicable.
 - Conflict of Interest Disclosure Statements are to be separate documents attached to the letter portion of the Expression of Interest.
- Failure to note that firms who submit as Primes can not also submit as part of a joint venture or be included as a subcontractor to other firms responding as Primes.
 - Multiple responses under any of the aforementioned situations will result in a rejection of all responses of all the firms involved.
- Failure to properly respond to DBE/MBE requirements or the DBE/MBE goal established
 - In Item #6 of the SF 255 Form, the Consultant must set forth the name of the DBE/MBE Prime Firm (2) or DBE/MBE subcontractor(s) proposed for the goal attainment and indicate the work proposed, the percent of the total proposed work, and the MDOT Certification Number for each DBE/MBE proposed.
 - If a DBE/MBE firm has not been certified by MDOT, the State Highway Administration will accept certification status in lieu of the MDOT Certification Number. That is, the Consultant may indicate the DBE/MBE has submitted, or will submit, to MDOT for DBE/MBE Certification.

- For Federally funded projects, a DBE/MBE firm(s) responding as a Prime can meet the DBE/MBE goal. However, the Prime responding must then show their firm in Item #6 of the SF 255 Form as meeting the DBE/MBE goals. Also as above, the work of the Prime, the percent of the total proposed work and MDOT Certification Number is to be shown in Item #6 of the SF 255 Form.
 - For State funded projects, DBE/MBE firm(s) responding as a Prime must meet the DBE/MBE goals with an approved DBE/MBE subcontractor(s).
 - The "Consultant Liaison Officer for minority affairs" is to be set forth in the letter portion of the Expressions of Interest.
 - Consultants are not to just acknowledge the established MBE goal but are to indicate the actual percent of work proposed to be performed by each MBE firm or subcontractor.
- Failure to submit "standard" forms.
- Firms are to use the standard U.S. Government SF 255 and SF 254 Forms. These forms are to be completed with a standard type and are not to be photo reduced. Computer generated forms are acceptable; however, the format and spacing is to be identical to that of the standard SF 255 and SF 254 forms. Any steps taken to increase the amount of information submitted over and above that allowed by the "standard" forms are not acceptable.
- Failure to be consistent in submissions.
- We have experienced inconsistent submissions from some firms. The problem appears that different individuals within a company are preparing responses differently. The SHA recommends that you develop a quality review to ensure that all of your submissions are responsive to all of the advertisement requirements.

This correspondence is not intended to be critical of your firm or any other firm. Nor is the correspondence intended to supersede anything requested in an advertisement or clarification of an advertisement. We are merely trying to advise you of some of the problems we have encountered. We hope that this may assist you in future responses to advertisements soliciting Expressions of Interest for State Highway Administration projects. Our comments are limited to SHA projects and SHA advertisements but they may also aid you in preparing responses to advertisement for other Administrations of MDOT. All advertisements stand on their own merit with the specifics required clearly set forth. Your responsibility is to respond to the advertisement.

We have no desire to reject submission received but feel we must do so when firms are not responsive to the advertisement requirements. We assure you that all firms are considered equally and that all firms are rated on what is submitted. Therefore as a final word we would also like to suggest you develop quality control within your firm so as to assure that we received the best that your firm has to offer.

Sincerely,

Original Signed by
S. Donald Sherin, Director
Office of Consultant Services

SDS:jpw

cc: Mr. R. Smith
CEC of Maryland