Arizona Department of Transportation

ENGINEERING CONSULTANT SERVICES CONTRACT

Lump Sum – Multi-Phase

Contract Number: _____

Project Description: _____

SAMPLE

Agreement Between

The

Arizona Department of Transportation

And

(Firm Name)

ENGINEERING CONSULTANT SERVICES CONTRACT

TABLE OF CONTENTS

		PAGE
SECTION 1.0 CONTRACT INFORMATION		1
SECTION 2.0 SCOPE OF WORK		
2.01	CONTRACT SCHEDULE AND COMPLETION DATE	2
2.02	SCOPE OF WORK (WITH STANDARDIZED DICTIONARY OF WORK TASKS) (APPENDIX A)	2
SECTION 3.0 CONSULTANT'S COMPENSATION		
3.01	CONSULTANT'S COMPENSATION – LUMP SUM MULTI-PHASE	2
3.02	APPROVED COST PROPOSAL SUMMARY (APPENDIX B)	4
SECTION 4.0 UNIFORM TERMS AND CONDITIONS		
4.01	GENERAL COMPLIANCE WITH LAWS	4
4.02	GOVERNING LAW - ARIZONA	4
4.03	MONTHLY PROGRESS AND WORK-HOUR REPORTS	4
4.04	PAYMENT REPORTS/INVOICES	5
4.05	LATE SUBMITTAL OF PAYMENT REPORTS	5
4.06	PROMPT PAY LEGISLATION (A.R.S. §28-411)	5
4.07	CONTRACT MODIFICATIONS	6
4.08	CONTRACT TIME EXTENSIONS	6
4.09	DISPUTE ESCALATION	6
4.10	FORCE MAJEURE	7
4.11	ELECTRONIC PLAN DOCUMENTATION	7
4.12	ERRORS AND OMISSIONS	7
4.13	CONSULTANT OR SUBCONSULANT ENDORSEMENT OF PLANS	9
4.14	ARBITRATION	9
4.15	LITIGATION	9

SAMPLE

ENGINEERING CONSULTANT SERVICES CONTRACT

TABLE OF CONTENTS

		PAGE
4.16	SUSPENSION OF WORK	9
4.17	PROJECT DELAYS, POSTPONEMENTS AND EXTENSIONS	9
4.18	TERMINATION FOR DEFAULT OR CONVENIENCE	10
4.19	CANCELLATION	10
4.20	INSURANCE	11
4.21	INDEMNIFICATION (RESPONSIBILITY FOR CLAIMS AND LIABILITIES)	14
4.22	PERMITS FOR WORK ON ADOT RIGHT-OF-WAY	15
4.23	ANTI-TRUST VIOLATIONS	15
4.24	CONSULTANT'S RESPONSIBILITY FOR PLANS AND DATA	15
4.25	PROFESSIONAL CONDUCT AND PROFESSIONAL REGISTRATION	15
4.26	IMPROPER EXERCISE OF AUTHORITY	15
4.27	CONFLICTS OF INTEREST	15
4.28	CONSULTANT/CONTRACTOR CONFLICTS OF INTEREST	16
4.29	ORGANIZATION EMPLOYMENT DISCLAIMER	16
4.30	FEDERAL DEBARMENT AND SUSPENSION	16
4.31	CONTINGENT FEES	17
4.32	SUBLETTING, ASSIGNMENTS AND TRANSFERS	17
4.33	SUBCONTRACTS	17
4.34	KEY PERSONNEL	18
4.35	EMPLOYMENT OF PERSONNEL OF PUBLIC AGENCIES	18
4.36	SUCCESSORS AND ASSIGNS	18
4.37	CONTINUING OBLIGATION	19
4.38	NAME CHANGE, MERGER AND ACQUISITIONS	19
4.39	ANTI-LOBBYING	20

SAMPLE

ENGINEERING CONSULTANT SERVICES CONTRACT

TABLE OF CONTENTS

		PAGE
4.40	ADOT PRODUCTS	21
4.41	RECORDS RETENTION, MAINTENANCE AND AUDIT	21
4.42	FINAL/INCURRED COST AUDIT	22
4.43	REVIEWS AND INSPECTIONS	22
4.44	PROPERTY OR EQUIPMENT	22
4.45	NONDISCRIMINATION	22
4.46	AFFIRMATIVE ACTION (FOR FEDERAL-AID CONTRACTS)	24
4.47	PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES – COMMITMENT, COMPLIANCE AND REPORTING	24
4.48	COUNTING DBE PARTICIPATION	27
4.49	ENVIRONMENTAL PROTECTION	27
4.50	ENERGY CONSERVATION	28
4.51	PUBLICITY AND ENDORSEMENTS	28
4.52	OWNERSHIP OF DATA	28
4.53	PATENTS AND COPYRIGHTS	28
4.54	FRAUD AND FALSE STATEMENTS	29
4.55	FEDERAL IMMIGRATION AND NATIONALITY ACT	29
4.56	SCRUTINIZED BUSINESS OPERATIONS	31
4.57	PANDEMIC CONRACTUAL PERFORMANCE	31
4.58	PERFORMANCE EVALUATIONS	31
4.59	CONTRACT COMPLETION	31

SECTION 5.0 SIGNATURE PAGE 32

SECTION 6.0 APPENDICES 33

A SCOPE OF WORK (WITH STANDARDIZED DICTIONARY OF WORK TASKS)
B APPROVED COST PROPOSAL SUMMARY
C PART 26 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS
D ECS CONSULTANT EVALUATION PROGRAM GUIDELINES

SAMPLE

SECTION 1.0 CONTRACT INFORMATION

STATE OF ARIZONA
ARIZONA DEPARTMENT OF TRANSPORTATION
ENGINEERING CONSULTANT SERVICES CONTRACT

Contract No.:	_____	Compensation Type:	_____
Effective Date:	_____	Item Number:	_____
Project/TRACS No.:	_____	Federal ID No.:	_____

1. **CONTRACTING PARTIES:** This contract is between the Arizona Department of Transportation (ADOT), also referred to as the DEPARTMENT, STATE or ADOT (administered by ADOT Engineering Consultants Section [ECS]) and,

   Consultant
   Address
   City, State, Zip

   Referred to as the CONSULTANT.

2. **CONTRACT DESCRIPTION:** The Description and Location of the Contract and related project(s) are as follows.

3. **PROJECT/CONTRACT PERIOD:** The project/contract will terminate on (**Date**), unless otherwise extended or canceled in accordance with the terms and conditions of this CONTRACT.

4. **CONTRACT COST:** The CONSULTANT shall be paid a maximum of Contract Amount for costs authorized by this CONTRACT as further described in detail in the APPROVED COST PROPOSAL SUMMARY (**APPENDIX B**) or as amended by a Contract Modification.

RECITALS

1. The STATE desires that _____ be provided for ADOT _____ location. The trained personnel needed for this CONTRACT and related project(s) are not currently available within its own organization.

2. The CONSULTANT firm, principals, project team, and Subconsultants listed in the CONSULTANT'S Statement of Qualifications (SOQs), licensed in the State of Arizona, are qualified and capable of performing the work required by this CONTRACT in the time allotted.

3. Therefore, pursuant to A.R.S. §28-6922(A)(5), it is deemed to be in the public interest to enter into this CONTRACT.

   The parties below hereto agree to abide by all the provisions of this CONTRACT. IN WITNESS WHEREOF, the parties sign and cause this CONTRACT to be executed.

AGREEMENT

Therefore, in consideration of these premises and of the mutual clauses and agreements herein contained, and the faithful performance thereof, the CONSULTANT and the STATE contract and agree.

SAMPLE

SECTION 2.0 SCOPE OF WORK

2.01 CONTRACT SCHEDULE AND COMPLETION DATE

Work on this CONTRACT is scheduled to commence on (**Date**). Work shall be completed within ____ calendar days from Notice to Proceed (NTP) for an estimated completion date of (**Date**). The STATE assumes no liability for work performed or costs incurred prior to the beginning date or subsequent to the CONTRACT completion date. Extensions of time allowed for completing the CONTRACT may be granted the DEPARTMENT under appropriate circumstances. Time extensions for completing the CONTRACT may be granted by the DEPARTMENT under appropriate circumstances.

2.02 SCOPE OF WORK (WITH STANDARDIZED DICTIONARY OF WORK TASKS) (APPENDIX A)

SECTION 3.0 CONSULTANT'S COMPENSATION

3.01 CONSULTANT'S COMPENSATION – LUMP SUM - MULTI-PHASE

1. The method of compensation for this CONTRACT is Lump Sum (LS). Costs shall be derived from the rates as shown in this CONTRACT.

PHASE I - DESIGN

SELECT ONE

a. **Negotiated Overhead (if overhead rate is determined before contract execution)**

Total compensation for the work performed shall not exceed the sum of $_____ plus any adjustments approved by the DEPARTMENT. The Negotiated Overhead rate of ____%, which is based on the result of the Pre-award Review, has been established and shall be set for the term of the CONTRACT. At each renewal year(s) of the CONTRACT, if new Negotiated Overhead rates have been provided to and approved by ADOT Office of Audit & Analysis, a Contract Modification shall be executed to revise the Negotiated Overhead rate. The Contract Modification execution date shall be the effective date for all redetermination of costs.

OR

b. **Negotiated Provisional Overhead (if overhead rate is determined after contract execution)**

Total compensation for the work performed shall not exceed the sum of $_____ plus any adjustments approved by the Department. The Negotiated Provisional Overhead rate shall be set at _____**%**. The Overhead rate, Direct Expenses and Fixed Fee are subject to change pending the result of the Pre-Award Review. Upon receipt of the Pre-award Review, a Contract Modification shall be executed to establish the Negotiated Overhead for the term of this CONTRACT. A one-time redetermination adjustment in the total amount paid or to be paid on all payment reports shall be made to reflect the established Negotiated Overhead rate and any resulting additional payments, refunds, or credits shall be made promptly by the STATE or CONSULTANT. The contract NTP date shall be the effective date for all redetermination of costs. At each renewal year(s) of the CONTRACT, if new Negotiated Overhead rates have been provided to and approved by ADOT Office of Audit & Analysis, a Contract Modification

SAMPLE

shall be executed to revise the Negotiated Overhead rate. The Contract Modification execution date shall be the effective date for determination of costs.

2. **PHASE II – POST-DESIGN SERVICES**

The CONSULTANT'S compensation for work on Phase II, Post-Design Services, shall begin after the ADOT Board approves the Construction contract and shall be at specific hourly rates (direct labor, overhead and fixed fee) plus FAR-allowable direct expenses approved by the DEPARTMENT. Rates may be subject to negotiation prior to execution of this phase. Identification of personnel within each classification may be required by ADOT. Authorization for Post-Design Services shall be executed by Contract Modification.

3. The STATE shall pay the CONSULTANT in installments based upon the Monthly Progress Reports and Progress and/or Final Payment Reports submitted by the CONSULTANT, with payments subject to the following limitations:

   a Prior to approval of the Stage II Design Submittal, the billed amount shall not exceed ___% of the total CONTRACT amount.

   b Prior to approval of the Stage III Design Submittal, the billed amount shall not exceed ___% of the total CONTRACT amount.

   c Prior to approval of the Final Design Submittal, the billed amount shall not exceed ___% of the total CONTRACT amount.

4. The STATE, at its discretion may, by written notification, waive the above limitations. Approval authority shall be the same as for progress payments.

5. Costs shall be identified separately for each project number and shall not exceed the amounts budgeted for those specific categories during the CONTRACT timeframe without prior written approval by the STATE.

6. The CONSULTANT shall submit a Monthly Progress Report in a format furnished by the STATE showing the status of the work and the degree of completion.

7. The STATE shall not withhold retention on progress payments. However, if satisfactory progress has not been made, the STATE may first retain a maximum of 10% of the current and subsequent billings, or secondly, the STATE may refuse to make full progress payment(s) of such sums which are considered necessary.

8. The CONSULTANT shall submit invoices on a regular (monthly) basis in accordance with a timetable agreed to during contract negotiations. Invoices shall be sent directly to ADOT Project Manager (PM).

9. The CONSULTANT shall submit invoices for work performed by their Subconsultants even though the CONSULTANT may not have performed any work during the preceding month.

10. On or before the **seventh day** after the STATE makes a progress payment to the CONSULTANT, the CONSULTANT shall pay the Subconsultant for the work performed to the extent of each Subconsultant contractual interest in the progress payment.

SAMPLE

11. When all work is delivered, accepted and approved as complete by the STATE, ADOT Office of Audit & Analysis may prepare a report showing allowable costs incurred. Preparation of this report may require an audit of the CONSULTANT'S records and may also include an audit of Subconsultants or subcontractors records.

12. Final payment shall be made as soon as possible after 60 days from the date of acceptance of audit findings, if applicable, by the STATE and the CONSULTANT.

13. In the event the STATE requires substantial changes in the scope, character, or complexity of the work on the CONTRACT, the total compensation as well as the fixed fee may be re-evaluated and adjusted to a greater or lesser amount by mutual agreement between the CONSULTANT and the STATE.

14. In the event this CONTRACT is terminated by the STATE as herein provided, the CONSULTANT may be paid all the allowable costs incurred, including mobilization and demobilization expense, plus the portion of the fixed fee earned to date of termination as determined by the STATE. Mobilization and demobilization expenses shall include only reasonable costs of marshalling personnel (and equipment if specifically provided for in the contract) for performing this work and of terminating employment of such personnel. No costs shall be allowable in connection with termination of employment if incurred fifteen (15) days after the date of termination. Costs shall be determined as provided in the Federal Acquisition Regulation (FAR) 48 CFR Part 31 and may be verified by an audit.

15. Lump Sum contracts shall not be subject to audit except on a sample bases to determine the efficiency of ADOT negotiation process for its own internal control purposes.

3.02 APPROVED COST PROPOSAL SUMMARY (APPENDIX B)

Cost Proposal back-up documents are available online in the electronic Contract Management System (eCMS) Cost Proposal Module.

SECTION 4.0 UNIFORM TERMS AND CONDITIONS

4.01 GENERAL COMPLIANCE WITH LAWS

The CONSULTANT shall comply with all Federal, State laws and regulations, and local ordinances, as they relate to the performance of work under this CONTRACT.

4.02 GOVERNING LAW - ARIZONA

The interpretation of this CONTRACT and the rights and duties of the parties shall be governed by Arizona law.

4.03 MONTHLY PROGRESS AND WORK-HOUR REPORTS

The CONSULTANT is required to submit monthly Progress Reports with all Payment Reports to the ADOT PM. The form and format to be utilized are provided in the Post-Award Instruction Package on the Engineering Consultants Section (ECS) website or in eCMS. The CONSULTANT, unless notified otherwise, is required to submit a monthly Progress Report and Work-Hour Report, expended to date on the project by labor category and design elements. The ADOT PM or ECS Contract Specialist (ECS Specialist) may request further breakdown by personnel name and labor classification. Failure to meet this requirement may result in delay in processing the monthly payments to the CONSULTANT.

SAMPLE

4.04 PAYMENT REPORTS/INVOICES

The CONSULTANT shall invoice ADOT on or before the end of each month for work performed under this CONTRACT or no later than **_____th** day of the month. The CONSULTANT shall report its monthly costs on the Payment Report (PR) form provided by ECS. If no work has been performed in any month, the CONSULTANT shall still submit a zero ($0.00) PR indicating that no work has been performed for that month. The CONSULTANT shall submit PR for reimbursement to ADOT for work performed by its Subconsultants within thirty (30) days of receipt of invoice from the Subconsultant, even though the CONSULTANT may not have performed any work during the preceding month.

A monthly summary of costs billed by category or subcategory shall be included with the monthly PR submitted. The PR shall be formatted to permit comparison of actual to proposed costs and shall be submitted with the required information and supporting documentation based on the CONTRACT compensation type. The PR shall also include a breakdown of costs incurred by each Subconsultant who completed work for the time period requested. The PR shall be submitted for reimbursement to the ADOT PM, electronically or on forms provided by ECS. The PRs shall be approved by the ADOT PM and ECS Specialist.

4.05 LATE SUBMITTAL OF PAYMENT REPORTS

Unless waived by the DEPARTMENT in writing, all PRs for work performed under this CONTRACT shall be submitted within thirty (30) days from date of acceptance of the completed portion of the work performed. The DEPARTMENT, in its sole option, may refuse to pay any late invoices or may deduct a reasonable amount for damages. The CONSULTANT is made aware that late submission of PRs may cause substantial damages to the DEPARTMENT, including but not limited to, difficulty in obtaining or inability to obtain federal reimbursement, budget allocations and inability to verify work and hours. If work performed or costs incurred during the State fiscal year-end (June 30) is not invoiced by the following August 31st, the DEPARTMENT shall not pay for work or costs incurred.

Repeated violation of the requirement to submit timely PR in accordance with the terms of this CONTRACT shall result in sanctions including and up to liquidated damages, CONTRACT termination and removal of the offending party or disqualification of the offending CONSULTANT or Subconsultant from participation in future ADOT projects. ADOT shall not be obligated to pay invoices that are submitted more than sixty (60) calendar days after the end of the State fiscal year in which costs were incurred.

4.06 PROMPT PAY LEGISLATION (A.R.S. §28-411)

In accordance with the Arizona Prompt Payment Law (A.R.S. §28-411), ADOT shall issue payments to CONSULTANTS within 21 calendar days after receipt of complete and accurate PR unless proper objection is made under the statute. The law also requires the CONSULTANT to pay their Subconsultants within seven (7) calendar days after receiving payment from ADOT, to the extent of each Subconsultant's contractual interest in the payment, subject to provision of the statute.

Incomplete or incorrect PR shall be returned to the CONSULTANT within seven (7) calendar days of receipt by ADOT. The 21-calendar-day payment timeframe shall begin anew upon receipt of the complete and corrected PR.

The DEPARTMENT shall not withhold retention on progress payments; however, if satisfactory progress has not been made on the project, the DEPARTMENT may first retain a maximum of 10% of the current and subsequent billings. If unsatisfactory progress continues for a second subsequent month, the DEPARTMENT may, at its sole option, refuse to make progress payment(s) of such sums, which the

SAMPLE

DEPARTMENT considers necessary. This provision shall not limit the DEPARTMENT'S rights to terminate the CONTRACT for default.

The CONSULTANT shall not withhold the Subconsultant's payment if ADOT has paid the full value of services rendered. Failure by the CONSULTANT to invoice ADOT in accordance with the terms of this CONTRACT and/or pay its Subconsultants in accordance with the Arizona Prompt Pay Law is a material breach of this CONTRACT and the CONSULTANT shall be subject to disqualification in accordance with Section 2.02 of ECS Rules (Revised August 2010). ADOT reserves the right to request that CONSULTANT provides proof of payment to its Subconsultants.

The CONSULTANT shall be found to be in breach of this CONTRACT if it executes subcontract agreements with Subconsultants, DBE and non-DBE, which materially change the Prompt Pay requirement. This action may result in termination of the CONTRACT, or any other such remedy as deemed appropriate by the DEPARTMENT.

4.07 CONTRACT MODIFICATIONS

The Contract Modifications (CM), which define, limit or change the terms of the CONTRACT, such as CONSULTANT compensation, shall be approved in writing by the DEPARTMENT, and shall be submitted in the form and format provided by the DEPARTMENT. The CONSULTANT shall be compensated only with prior written authorization by the DEPARTMENT. Any administrative/technical costs associated with the preparation of said modifications are solely the responsibility of the CONSULTANT.

a. BILATERAL MODIFICATIONS

Significant changes in the scope, character, or complexity of the work may be negotiated if it is mutually agreed that such changes are desirable and necessary. CONTRACT changes defining and limiting the work and compensation shall be authorized by the DEPARTMENT. Such bilateral modifications shall be made in writing, and it is expressly understood and agreed that no claim for extra work performed or materials furnished shall be made by the CONSULTANT until authorization to proceed is granted, in writing, by the DEPARTMENT.

b. UNILATERAL (CHANGE ORDERS)

The DEPARTMENT may at any time, by written order, and without notice to sureties, if any, make or direct changes within the general scope of this CONTRACT in the services to be performed.

4.08 CONTRACT TIME EXTENSIONS

A CONTRACT Time Extension may be granted as determined by ADOT. A time extension is valid only if approved in writing as a modification to this CONTRACT. Time extensions for projects using Federal-aid Highway funds over five (5) years after the original CONTRACT completion date shall be approved by the Federal Highway Administration (FHWA).

4.09 DISPUTE ESCALATION

The following dispute escalation levels shall be utilized to resolve disputes during the course of this CONTRACT. The following dispute escalation levels shall be utilized in the event the ADOT PM, CONSULTANT PM or ECS Specialist are unable to agree on the scope, level of effort, cost or any other issues related to this CONTRACT. It is the intent of the DEPARTMENT to resolve disputes at the lowest level possible. If agreement cannot be reached at that level, then the matter is escalated to the next higher level of management. Failure to agree at any level constitutes escalation to the next level.

SAMPLE

Failure by the CONSULTANT to utilize the escalation process shall constitute a waiver of any claims for additional compensation or any other relief.

The following table depicts the dispute resolution escalation levels for CONTRACT issues:

Level	ADOT	CONSULTANT	ECS
Level 1	Project Manager/ Resident Engineer	Project Manager	Contract Specialist
Level 2	Project Manager/ Section Manager/ District Engineer	Project Principal/ Project Manager	Contract Manager
Level 3	Group Manager/ Assistant State Engineer/ District Engineer	Project Principal	ECS Assistant Director
Level 4	Deputy State Engineer/ State Engineer	Project Principal	ECS Director

The decision of the State Engineer is final.

4.10 FORCE MAJEURE

For delays that are beyond the CONSULTANT'S control, such as a force majeure, and upon written request from the CONSULTANT, the DEPARTMENT'S authorized representative shall negotiate an adjustment to the project schedule set forth in the SOQ and Scope of Work (**APPENDIX A**) of this CONTRACT. A "force majeure event" is an event beyond the CONSULTANT'S reasonable control, including but not limited to, unusually severe weather, fire, floods, acts of God, labor disputes, acts of war or terrorism. The CONSULTANT shall use all reasonable efforts to minimize the duration and consequences or any delay resulting from a force majeure and shall give the DEPARTMENT prompt notice of the occurrence of such an event. It shall be the CONSULTANT'S responsibility to promptly notify, in writing, the ADOT PM and other ADOT representatives if the project cannot be completed as scheduled for any reason. The ADOT PM shall have the authority to adjust the schedule, in writing, within the term of this CONTRACT.

4.11 ELECTRONIC PLAN DOCUMENTATION

The CONSULTANT shall adhere to the current DEPARTMENT development standards and As-Built Policy (ENG10-1) on the ADOT website on the date the plans or data are submitted. It is the CONSULTANT'S responsibility to provide all plans, specifications, surveys, and associated data in the DEPARTMENT'S acceptable electronic format through a File Transfer Protocol (FTP) site; alternatively, two (2) copies of the electronic files shall be submitted on one or more CD-ROM/DVD.

All project data shall be organized in the DEPARTMENT'S project directory structure (all files in one folder with no subfolders). It is the CONSULTANT'S responsibility to be aware of all current DEPARTMENT requirements and formats. The DEPARTMENT'S CADD requirements and formats can be found at http://www.azdot.gov/highways/cms/standards/standards_v8.asp. Red-line and As-Built Procedures and Guidelines can be found at http://www.azdot.gov/Highways/SWProjMgmt/PDF/RedlinesAsbuilt.pdf.

4.12 ERRORS AND OMISSIONS

If ADOT determines that the CONSULTANT had made any errors and/or omissions (E&O) in the work product delivered to the DEPARTMENT under the terms of this CONTRACT, the CONSULTANT shall

SAMPLE

make all necessary revisions or corrections resulting from E&O without additional cost to ADOT. Errors and Omissions is defined as a deviation from the standard of care on the part of a design engineering consultant in the performance of architectural and/or engineering services under this CONTRACT. ADOT shall actively pursue the resolution of E&Os at the lowest possible level within a reasonable timeframe in accordance with the most current version of ADOT'S Errors & Omissions Policy (MGT 00-2 Consultant Errors and Omissions Discovered During Construction). The general E&O procedures are as follows:

a) ADOT shall conduct an Initial Review of all documentation and shall notify the CONSULTANT that there is an E&O. If the CONSULTANT agrees with ADOT'S Initial Review decision, the CONSULTANT shall remit payment to ECS within ten (10) business days from ADOT'S written notification. If the CONSULTANT disagrees with ADOT'S decision, the CONSULTANT may appeal the E&O decision through the following three (3) levels of Administrative Reviews.

Level	Chairperson/Facilitator	Participants
Level 1	ADOT Value and Quality Assurance Section Manager (VQA) - Facilitator	ADOT Project Manager, Resident Engineer, other applicable ADOT Section, representatives and CONSULTANT
Level 2	VQA (Facilitator) Assistant State Engineer-Construction (Chairperson)	Applicable design Assistant State Engineer, District Engineer, Resident Engineer, ADOT Project Manager, and CONSULTANT
Level 3	VQA (Facilitator) Deputy State Engineer-Development (Chairperson)	Deputy State Engineer-Operations or Valley Transportation, a 3rd party ADOT representative selected by the Chairperson, and CONSULTANT

b) During the Administrative Review process, the CONSULTANT'S failure to make timely submissions or respond to ADOT'S request shall constitute an admission of deficiency as identified by ADOT. Time extensions for any phase of the process may be granted by ADOT if requested in writing by the CONSULTANT. No dispute shall be escalated to the next level of Administrative Review unless the dispute has been reviewed at the preceding level and the CONSULTANT disagrees with the decision, in writing, within the specified timeframe.

c) If any Administrative Review Panel determines that the issue under consideration is <u>not</u> an E&O, the appropriate ADOT PM will send written notification (*Initial Review Notification – Not an E&O*) to the CONSULTANT that the issue has been resolved. If any Administrative Review Panel determines that the issue under consideration <u>is</u> an E&O, ECS shall send written notification (*Notice of Settlement Offer*) to the CONSULTANT with a request for payment. The CONSULTANT shall have 10 business days to respond to the DEPARTMENT'S decision.

1. If the CONSULTANT <u>agrees</u> with ADOT'S decision, the CONSULTANT shall forward payment to ECS within ten (10) business days from ADOT notification and ECS shall notify all parties in writing within five (5) business days from receipt of payment that the issue has been resolved/settled; or

2. If the CONSULTANT <u>disagrees</u> with ADOT'S decision, the CONSULTANT shall respond to ECS in writing within ten (10) business days from ADOT notification requesting the next level of Administrative Review.

3. If the CONSULTANT <u>does not respond</u> within the specified timeframe, the CONSULTANT'S non-response shall be deemed by ADOT as the CONSULTANT'S acceptance of the E&O decision. The dispute shall be withdrawn from the administrative process and there shall be no

SAMPLE

further administrative remedies available to the CONSULTANT. ECS will send a non-responsive letter to the CONSULTANT notifying the firm of the termination of the Administrative Review process and that the CONSULTANT'S action or inaction resulted in admission of ADOT'S E&O decision.

d) If the issue is not resolved after the three levels of Administrative Reviews and the amount under dispute is less than $500,000, either party (ADOT or CONSULTANT) has the option to arbitrate the matter within sixty (60) days from the third level Administrative Review decision. Any arbitration costs shall be equally borne by both parties. The E&O shall be arbitrated under the relevant rules of the American Arbitration Association (AAA) in accordance with the CONTRACT terms and shall be binding for both parties.

e) For unresolved E&O issues over $500,000 that went through the three levels of Administrative Reviews, and Arbitration, ADOT may initiate litigation to resolve E&Os. Each party shall bear its own litigation costs (e.g., attorney's fees, expert fees, etc.).

4.13 CONSULTANT OR SUBCONSULTANT ENDORSEMENT OF PLANS

Pursuant to the Arizona Administrative Code (A.A.C.) R4-30-304 (Use of Seals), which is incorporated herein by reference and hereby made a part of this CONTRACT, the CONSULTANT shall affix a proper engineer's seal to all plans, reports and engineering data furnished under this CONTRACT.

4.14 ARBITRATION

The parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this agreement where the sole relief sought are monetary damages of $500,000 or less, exclusive of interest and costs.

The arbitration shall be submitted under the relevant rules of the American Arbitration Association (AAA) in effect as of the date of the demand for arbitration. The matter disputed shall be submitted to an arbitrator mutually selected by the DEPARTMENT and the CONSULTANT.

4.15 LITIGATION

In the event of litigation between the CONSULTANT and the DEPARTMENT involving this CONTRACT, the laws and decisions of the State of Arizona shall apply and any such litigation shall be commenced and prosecuted in the Maricopa County Superior Court, State of Arizona.

4.16 SUSPENSION OF WORK

Work on this CONTRACT may be suspended by written order at the DEPARTMENT'S sole discretion. The CONSULTANT is not entitled to any compensation when work is suspended.

4.17 PROJECT DELAYS, POSTPONEMENTS AND EXTENSIONS

The CONSULTANT agrees that no charges or claims for damages shall be made against the DEPARTMENT for any delays or hindrances during the progress of this CONTRACT unless delays are caused by the DEPARTMENT. Such delays or hindrances, if any, shall be covered by an extension of time for a reasonable period as mutually agreed upon between the parties. It is agreed and understood, however that permission to proceed with the CONTRACT after the established completion date, shall not be construed as a waiver by the DEPARTMENT of any of its rights under this CONTRACT.

SAMPLE

4.18 TERMINATION FOR DEFAULT OR CONVENIENCE

a. Termination for Default

The DEPARTMENT may terminate this CONTRACT for default under the following circumstances:

1. CONSULTANT'S failure to perform the services as detailed herein and in any modifications to this CONTRACT.

2. CONSULTANT'S failure to complete this CONTRACT within the timeframe specified herein and in any modifications to this CONTRACT.

3. CONSULTANT'S failure to comply with any of the material terms of this CONTRACT.

If the DEPARTMENT contemplates termination under the provisions of Subsections a.1., a.2., or a.3. above, the DEPARTMENT shall issue a written notice of default describing the deficiency. The CONSULTANT shall have five (5) business days to cure such deficiency. In the event the CONSULTANT does not cure such deficiency, the DEPARTMENT may terminate the CONTRACT without further consideration by issuing a Notice of Termination for Default and may recover compensation for damages.

If, after the Notice of Termination for Default has been issued, it is determined that the CONSULTANT was not in default or the termination for default was otherwise improper, the termination shall be deemed to have been a Termination for Convenience.

b. Termination for Convenience

The DEPARTMENT may terminate the CONTRACT for convenience, in whole or in part, when, for any reason, the DEPARTMENT determines that such termination is in its best interest. The CONTRACT termination is effected by notifying the CONSULTANT, in writing, specifying that all or a portion of the CONTRACT is terminated for convenience and the termination effective date. The CONSULTANT shall be compensated only for work satisfactorily completed prior to the termination of the CONTRACT. The CONSULTANT is not entitled to loss or profit. The amount due to the CONSULTANT is determined by ADOT.

In the event of termination for convenience, the DEPARTMENT shall be liable to the CONSULTANT only for CONSULTANT'S work performed prior to termination and only to the extent and as provided in SECTION 3.0 (CONSULTANT"S COMPENSATION) of this CONTRACT.

c. The DEPARTMENT'S Right to Proceed with Work

In the event this CONTRACT is terminated, the DEPARTMENT shall have the option of completing the CONTRACT or entering into an agreement with another party to complete services outlined in the CONTRACT.

4.19 CANCELLATION

In accordance with A.R.S. §38-511 (A), the DEPARTMENT may cancel the CONTRACT without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the CONTRACT on behalf of the DEPARTMENT or any of its departments or agencies is, at any time while the CONTRACT or any extension of the CONTRACT is in effect, either (1) an employee of the CONSULTANT in any capacity, or (2) a consultant to the CONSULTANT or an employee or consultant to a Subconsultant with respect to the subject matter of the CONTRACT. The cancellation shall be effective

SAMPLE

when written notice from the DEPARTMENT is received by all other parties to the CONTRACT unless the notice specifies a later timeframe.

4.20 INSURANCE

The CONSULTANT and all Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this CONTRACT, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, his agents, representatives, employees or Subconsultants.

The insurance requirements herein are minimum requirements for this CONTRACT and in no way limit the indemnity covenants contained in this CONTRACT. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the CONSULTANT from liabilities that might arise out of the performance of the work under this CONTRACT by the CONSULTANT, its agents, representatives, employees or Subconsultants, and the CONSULTANT is free to purchase additional insurance.

A. <u>MINIMUM SCOPE AND LIMITS OF INSURANCE</u>: The CONSULTANT shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

The policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

- General Aggregate $2,000,000
- Products – Completed Operations Aggregate $1,000,000
  Products and completed operations coverage shall be maintained for three (3) years after completion of design
- Personal and Advertising Injury $1,000,000
- Blanket Contractual Liability – Written and Oral $1,000,000
- Fire Legal Liability $50,000
- Each Occurrence $1,000,000

Contract Value	Required Insurance			
$0 to $5,000,000	$1,000,000	Each Occurrence;	$2,000,000	Aggregate
$5,000,001 to $15,000,000	$5,000,000	Each Occurrence;	$5,000,000	Aggregate
$15,000,001 to $50,000,000	$5,000,000	Each Occurrence;	$10,000,000	Aggregate
$50,000,001 & up	$25,000,000	Each Occurrence;	$25,000,000	Aggregate

The CONSULTANT may purchase an excess or umbrella policy to secure these limits.

a. The CONSULTANT shall be responsible for monitoring the CONTRACT value as it increases and the CONSULTANT shall be responsible for purchasing additional insurance to be in compliance with this CONTRACT should the increased in CONTRACT value require a higher limit of insurance. The DEPARTMENT reserves the right to request that the CONSULTANT provide proof of increased insurance coverage corresponding to increased CONTRACT value.

b. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials,***

SAMPLE

agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CONSULTANT."

c. The policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONSULTANT.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this CONTRACT.

Combined Single Limit (CSL)	$1,000,000

If work is performed on the active roadway then CONSULTANT or Subconsultant shall provide a minimum of $5,000,000 Combined Single Limit coverage.

a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CONSULTANT, involving automobiles owned, leased, hired or borrowed by the CONSULTANT."***

b. The policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONSULTANT.

3. Worker's Compensation and Employers' Liability

Each Accident	$500,000
Disease – Each Employee	$500,000
Disease – Policy Limit	$1,000,000

a. The policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONSULTANT.

b. This requirement shall not apply to: Separately, EACH CONSULTANT or Subconsultant exempt under A.R.S. §23-901, AND when such CONSULTANT or Subconsultant executes the appropriate waiver (Sole Proprietor/Independent Consultant) form.

4. Professional Liability (Errors and Omissions Liability)

Each Claim	$1,000,000
Annual Aggregate	$2,000,000

Contract Value	Required Insurance			
$0 to $5,000,000	$1,000,000	Each Occurrence;	$2,000,000	Aggregate
$5,000,001 to $15,000,000	$5,000,000	Each Occurrence;	$5,000,000	Aggregate
$15,000,001 to $50,000,000	$5,000,000	Each Occurrence;	$10,000,000	Aggregate
$50,000,001 & up	$25,000,000	Each Occurrence;	$25,000,000	Aggregate

SAMPLE

The CONSULTANT may purchase an excess or umbrella policy to secure these limits.

a. The CONSULTANT shall be responsible for monitoring the CONTRACT value as it increases and the CONSULTANT shall be responsible for purchasing additional insurance to be in compliance with this CONTRACT should the increased value of the CONTRACT require a higher limit of insurance. The DEPARTMENT reserves the right to request that the CONSULTANT provide proof of increased insurance coverage corresponding to increased contract value.

b. In the event that the professional liability insurance required by this CONTRACT is written on a claims-made basis, the CONSULTANT warrants that any retroactive date under the policy shall precede the effective date of this CONTRACT; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this CONTRACT is completed.

c. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work (**APPENDIX A**) of this CONTRACT.

5. Aircraft Liability – Per Occurrence Form

The policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

• Products – Completed Operations Aggregate	$1,000,000
• Personal and Advertising Injury	$1,000,000
• Hangarkeepers Liability	$1,000,000
• Per Seat Limit	$1,000,000
• Blanket Contractual Liability – Written and Oral	$1,000,000
• Fire Legal Liability	$50,000
• Each Occurrence	$5,000,000

a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CONSULTANT."***

b. The policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONSULTANT.

6. Valuable Papers Coverage

Valuable papers insurance shall be included in the policy for a minimum of $25,000 or in a higher amount sufficient to assure the restoration of any document, memoranda, plans, specifications, drawings, media, computer files, data or other information related to the work of the CONSULTANT in the completion of this CONTRACT.

B. <u>ADDITIONAL INSURANCE REQUIREMENTS</u>: The policies shall include, or be endorsed to include, the following provisions:

SAMPLE

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the CONSULTANT, even if those limits of liability are in excess of those required by this CONTRACT.

2. The CONSULTANT'S insurance coverage shall be primary insurance with respect to all other available sources.

3. Coverage provided by the CONSULTANT shall not be limited to the liability assumed under the INDEMNIFICATION provisions (Section 4.21) of this CONTRACT.

C. NOTICE OF CANCELLATION: With the exception of the 10-day notice of cancellation for non-payment of premium, any changes material to compliance with this CONTRACT in the insurance policies above shall require a 30-day written notice to the State of Arizona. Such notice shall be sent directly to ECS and shall be sent by certified mail, return receipt requested.

D. ACCEPTABILITY OF INSURERS: Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less than A-VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the CONSULTANT from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: The CONSULTANT shall furnish the DEPARTMENT (ECS) with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this CONTRACT. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements shall be received and approved by the DEPARTMENT (ECS) before work commences. Each insurance policy required by this CONTRACT shall be in effect at or prior to commencement of work under this CONTRACT and remain in effect for the duration of this CONTRACT. Failure to maintain the insurance policies as required by this CONTRACT, or to provide evidence of renewal, is a material breach of this CONTRACT.

All certificates required by this CONTRACT shall be sent directly to ECS. The ECS Contract number and project description shall be noted on the certificate of insurance. The DEPARTMENT reserves the right to require complete, certified copies of all insurance policies required by this CONTRACT at any time.

F. SUBCONSULTANTS: The CONSULTANT is responsible for ensuring and/or verifying that all Subconsultants have current, valid, and collectable certificates of insurance that are consistent with the minimum requirements within the CONSULTANT CONTRACT. This is applicable to all lines of insurance within the CONTRACT. The DEPARTMENT reserves the right to request that the CONSULTANT provide proof that its Subconsultants have the required insurance coverage.

G. EXCEPTIONS: Requests for exceptions to insurance requirements for Subconsultant(s) shall be provided in writing to ECS and the ADOT Risk Manager prior to the start of work and will be reviewed for any risks to the DEPARTMENT. No work by the involved Subconsultant(s) shall proceed until ADOT makes a decision regarding the request.

4.21 INDEMNIFICATION (RESPONSIBILITY FOR CLAIMS AND LIABILITIES)

The parties to this CONTRACT agree that the State of Arizona, its departments, agencies, boards, commissions and universities shall be indemnified and held harmless by the CONSULTANT for the

SAMPLE

vicarious liability of the State as a result of entering into this CONTRACT. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this CONTRACT is responsible for its own negligence.

This indemnity shall not apply if the CONSULTANT or Subconsultant(s) is/are an agency, board, commission or university of the State of Arizona.

4.22 PERMITS FOR WORK ON ADOT RIGHT-OF-WAY

The CONSULTANT and all Subconsultants shall obtain a permit from ADOT for any and all encroachments into ADOT Right-of-Way, and shall comply with the obligations in such permit. The CONSULTANT understands and agrees that additional insurance may be required by ADOT for activities within ADOT Right-of-Way that presents exposure to risk not anticipated in this CONTRACT. The CONSULTANT shall contact the appropriate ADOT District Permit Office for more details or visit http://www.azdot.gov/highways/maintpermits/encroachment_permits.asp for more details on how to secure proper permits.

4.23 ANTI-TRUST VIOLATIONS

The CONSULTANT and the DEPARTMENT recognize that in actual economic practice, overcharges resulting from anti-trust violations are in fact borne by Purchaser or ultimate user which in this case, the DEPARTMENT. Therefore, the CONSULTANT, acting as a vendor, hereby assigns to the DEPARTMENT any and all claims for such overcharges.

4.24 CONSULTANT'S RESPONSIBILITY FOR PLANS AND DATA

The CONSULTANT has total responsibility for the accuracy and comprehensiveness of plans and related data prepared under the terms of this CONTRACT and shall check all such material accordingly for completeness, missing items, correct multipliers and consistency. ADOT may review the plans and other documents for conformity with ADOT standards and CONTRACT terms, but is not required to do so ADOT'S review does not include detailed review or checking of design of major components and related details or the accuracy with which such designs are depicted on the plans. ADOT'S review shall not relieve the CONSULTANT of any of its duties.

4.25 PROFESSIONAL CONDUCT AND PROFESSIONAL REGISTRATION

The CONSULTANT shall comply with the "Rules of Professional Conduct" provision pursuant to A.A.C. R4-30-301, which is incorporated herein by reference and hereby made a part of this CONTRACT.

The CONSULTANT shall comply with the "Registration as an Architect, Assayer, Engineer, Geologist, Landscape Architect, or Land Surveyor" provision pursuant to A.A.C. R4-30-201, which is incorporated herein by reference and hereby made a part of this CONTRACT.

4.26 IMPROPER EXERCISE OF AUTHORITY

It is further understood and agreed that the CONSULTANT shall not, in any way, exercise any portion of the authority or powers of the DEPARTMENT, and shall not make a contract or commitment, or in any way represent itself as an agent of the DEPARTMENT beyond the scope of this CONTRACT unless expressly authorized, in writing, by the DEPARTMENT.

4.27 CONFLICTS OF INTEREST

SAMPLE

a. The CONSULTANT shall not engage the services on this CONTRACT of any present or former DEPARTMENT employee who was involved as a decision maker in the selection or approval processes or who negotiated and/or approved billings or CONTRACT modifications for this CONTRACT.

b. The CONSULTANT agrees that no public or private interest exists and none shall be acquired directly or indirectly which would conflict in any manner with the performance of this CONTRACT.

4.28 CONSULTANT/CONTRACTOR CONFLICTS OF INTEREST

a. No CONTRACT for the construction of a project shall be awarded to the CONSULTANT that designed the project, or its subsidiaries, affiliates, parent company or Subconsultants, except with the written approval by the DEPARTMENT.

b. The applicability of the above also applies to a Management and/or General CONSULTANT or any of its subsidiaries, affiliates, parent company or Subconsultants that were involved in any aspect of the design phase.

c. The CONSULTANT agrees that it shall not perform services on this project for the contractor, subcontractor or any supplier in accordance with the most current Consultant Participation in ADOT Contract policy available on the ECS website (http://www.azdot.gov/Highways/ECS/pdf/mgt02-3.pdf).

d. The CONSULTANT shall not negotiate, contract, or make any agreement with the contractor, subcontractor or any supplier with regard to any of the work under this CONTRACT, or any services, equipment or facilities to be used on this CONTRACT.

4.29 ORGANIZATION EMPLOYMENT DISCLAIMER

a. This CONTRACT is not intended to constitute, create, give to, or otherwise recognize a joint venture agreement or relationship, partnership, or formal business organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in this CONTRACT.

b. The parties agree that no persons supplied by the CONSULTANT in the performance of CONSULTANT obligations under the CONTRACT are considered to be DEPARTMENT employees, and that no rights of State civil service, retirement or personnel rules accrue to such persons. The CONSULTANT shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and shall save and hold the DEPARTMENT harmless with respect thereto.

4.30 FEDERAL DEBARMENT AND SUSPENSION

a. By signature on this CONTRACT, the CONSULTANT certifies its compliance, and the compliance of its Subconsultants or subcontractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;

2. Does not have a proposed debarment pending;

SAMPLE

3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and

4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years as specified by Code of Federal Regulations 49 CFR paragraph 29.305(a).

b. Where the CONSULTANT or its Subconsultant is unable to certify to the statement in Section a.1. above, the CONSULTANT or its Subconsultant shall be declared ineligible to enter into CONTRACT or participate in the project.

c. Where the CONSULTANT or Subconsultant is unable to certify to any of the statements as listed in Sections a.2., a.3., or a.4. above, the CONSULTANT or its Subconsultant shall submit a written explanation to the DEPARTMENT. The certification or explanation shall be considered in connection with the DEPARTMENT'S determination whether to enter into CONTRACT.

d. The CONSULTANT shall provide immediate written notice to the DEPARTMENT if, at any time, the CONSULTANT or its Subconsultant, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

4.31 CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than bona fide employee working solely for the CONSULTANT, to solicit or secure this CONTRACT, and that it has not paid or agreed to pay any company or person, other than bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this CONTRACT. For breach or violation of this warranty, the DEPARTMENT shall have the right to annul this CONTRACT without liability, or in its discretion, deduct from the CONTRACT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fees.

4.32 SUBLETTING, ASSIGNMENTS AND TRANSFERS

a. The CONSULTANT team and key personnel was chosen to perform the work on this CONTRACT based on the training and qualifications of its members. Therefore, subletting, assignment or transfer of any work to its Subconsultant(s) and lower-tier Subconsultants, unless approved in writing by the DEPARTMENT prior to performance of work, is expressly prohibited. The dollar amount of work performed by the Subconsultants shall not exceed 49% of the total CONTRACT dollar value unless waived, in writing, by the DEPARTMENT.

b. The use of Subconsultants shall not relieve the CONSULTANT of any of its duties under this CONTRACT.

4.33 SUBCONTRACTS

The CONSULTANT agrees to execute a written CONTRACT with all Subconsultants for work to be completed under this CONTRACT. The executed CONTRACT shall include Subconsultant's Scope of Work and all the Uniform Terms and Conditions set forth in Section 4.0 of this CONTRACT.

The CONSULTANT shall provide electronic copies of signed subcontract agreements with all Subconsultants to ADOT Civil Rights Office (CRO) by uploading them to the CRO'S online DBE Contract & Labor Compliance Management System (**DBE System**) at https://adot.dbesystem.com. Subcontract agreements shall include all required assurances and required clauses as outlined in Section 4.0 of this

SAMPLE

CONTRACT. Each agreement and required attachment shall be dated and signed by the Subconsultant in order for the subcontract to be considered valid.

The CONSULTANT shall be in breach of this CONTRACT if the CONSULTANT materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subconsultants. Deviations from the terms of this CONTRACT may result in termination of the CONTRACT, or any other such remedy as deemed appropriate by the DEPARTMENT.

4.34 KEY PERSONNEL

a. No substitution or transfer of personnel, specifically identified in the approved Key Personnel list shall be made without prior written approval by the DEPARTMENT.

b. Key Personnel are those individuals whose qualifications were highly significant and appropriate in evaluating the overall qualifications of the project team Key Personnel includes, at a minimum:

1) The CONSULTANT'S registered Project Principal/Owner responsible for the overall technical and administration aspects of this CONTRACT;
2) The person in direct charge of the overall project work (Project Manager);
3) The person in charge of each major engineering disciplines/component of the work (e.g., bridge, pavement design, environmental, etc.);
4) Where applicable, the person in charge of overall scheduling of the project work.

Key Personnel may also include, but are not limited to, Project Engineer, Subconsultants' Team members and any other Key Personnel deemed vital to the completion of the project, and whose qualifications were evaluated by the Selection Panel.

c. The DEPARTMENT will review the CONSULTANT'S proposed list of Key Personnel presented during contract negotiations and will approve the list of Key Personnel assigned to the CONTRACT. The DEPARTMENT'S decision as to Key Personnel composition shall be final.

d. The CONSULTANT shall not change any of the Key Personnel assigned to this CONTRACT until it has obtained written approval from the ADOT PM and ECS through a Contract Modification. The CONSULTANT shall notify the DEPARTMENT in advance of an anticipated change in the Key Personnel no later than 10 calendar days prior to the change, and shall inform the DEPARTMENT of the reasons the change for the change and shall certify that the overall intent of the CONTRACT will not be impaired by the change. The advance notice requesting a Key Personnel change shall include the name(s) of the Key Personnel, date of departure, the proposed replacement and his/her credentials/resume. Qualifications of any Key Personnel proposed in a change shall be equal to or greater than the original qualifications of the person being replaced.

The DEPARTMENT shall have the right to approve or reject the proposed successor. The DEPARTMENT will consider any change in Key Personnel, and at its discretion may decide to terminate the CONTRACT for convenience if, in the DEPARTMENT'S sole discretion, the DEPARTMENT believes that the project team is materially different because of the change. The DEPARTMENT shall make its decision within 30 days of the CONSULTANT'S request to change Key Personnel.

Failure to provide the DEPARTMENT with advanced notification may result in termination of the CONTRACT, award of damages to the DEPARTMENT or loss of prequalification status.

4.35 EMPLOYMENT OF PERSONNEL OF PUBLIC AGENCIES

SAMPLE

The CONSULTANT shall not engage the service of any person or persons employed by the DEPARTMENT for work covered by the terms of this CONTRACT without prior written approval by the DEPARTMENT.

4.36 SUCCESSORS AND ASSIGNS

The CONSULTANT and all successors, executors, administrators and assigns of CONSULTANT'S interest in the work or the compensation herein provided shall be bound to the DEPARTMENT to the full legal extent to which the CONSULTANT is bound with respect to each of the terms and agreements of this CONTRACT.

4.37 CONTINUING OBLIGATION

The CONSULTANT agrees that if due to death or any other occurrence it becomes impossible for any principal or employee of the CONSULTANT to render the services required under this CONTRACT, neither the CONSULTANT nor the surviving principals shall be relieved of any obligation to render complete performance. However, in such event, the DEPARTMENT may terminate this CONTRACT if it considers the death or incapacity of such principal or employee to be a loss of such magnitude as to (1) affect the CONSULTANT'S ability to satisfactorily complete the performance of this CONTRACT, or (2) materially affect the evaluation of the CONSULTANT'S qualifications.

4.38 NAME CHANGE, MERGER AND ACQUISITIONS

a. In cases where a firm changes its name, acquires, or merges with another company, the firm under CONTRACT with ADOT shall notify ADOT of name or ownership changes within **10 business days** from the date when the name or ownership change is legally signed/approved **before** the new CONSULTANT begins any work on acquired firm's contract(s). The CONSULTANT changing its name due to merger, acquisition, consolidation and/or transfer of ownership shall be responsible for fulfilling all obligations, liabilities, and contract terms/conditions for all ADOT CONTRACTS of the acquired firm. The new/acquiring firm shall provide ECS with the required information to approve the name change, including but not limited to the following:

1. A letter, on company letterhead, indicating the new name and reason for the change. The letter shall also include:

   i. Effective date of the change.
   ii. List of active and pending closeout ADOT CONTRACTS affected by the change with contract description. Indicate which contract(s) the firm served as a CONSULTANT or Subconsultant.
   iii. A statement certifying that the new/acquiring CONSULTANT shall assume all obligations and liabilities set forth in the respective contracts for all listed contracts between the new/acquiring CONSULTANT and ADOT.
   iv. A statement certifying that no changes have been made in the Key Personnel responsible for the affected contracts. If a Key Personnel change occurs resulting from the merger, acquisition, consolidation and/or transfers of ownership, the CONSULTANT shall submit a separate request to obtain ADOT'S approval for the Key Personnel change in accordance with Section 4.34 (KEY PERSONNEL) of this CONTRACT.

2. A copy of Arizona Corporation Commission (ACC) or home-state equivalent Corporation Commission approval documentation of the new/acquiring CONSULTANT
3. Updated professional license(s) of the new/acquiring CONSULTANT
4. Updated W-9 Form of the new/acquiring CONSULTANT

SAMPLE

b. If the acquiring firm is approved by ADOT to take over the merged or acquired CONTRACTS, the CONTRACTS shall be modified to include the acquiring firm's name by a Contract Modification. The CONSULTANT shall also re-prequalify with ECS under the new entity/firm name.

c. If a Subconsultant listed in the CONTRACT changes its name due to merger, acquisition, consolidation and/or transfer of ownership, the **Subconsultant shall notify the CONSULTANT** of the name or ownership changes within **10 business days** when the name or ownership change is legally signed/approved **before** the new/acquiring Subconsultant begins any work on the acquired Subconsultant contract(s). The CONSULTANT shall request ADOT'S written approval within 10 calendar days from the Subconsultant notification. The name-change request shall include, at a minimum, the following:

1. A letter, on company letterhead, indicating the new Subconsultant(s) name and reason for the change. The letter shall also include:

   i. Effective date of the change
   ii. List of active and pending closeout ADOT CONTRACTS affected by the change with contract description. Indicate which contract(s) the firm served as a CONSULTANT or Subconsultant.
   iii. A statement certifying that the new/acquiring Subconsultant shall continue to provide quality work under the CONTRACT
   iv. A statement certifying that no changes have been made in the Key Personnel responsible for the affected contracts. If a Key Personnel change occurs resulting from the merger, acquisition, consolidation and/or transfers of ownership, the Subconsultant shall submit a separate request through the CONSULTANT, to obtain ADOT'S approval for the Key Personnel change in accordance with Section 4.34 (KEY PERSONNEL) of this CONTRACT.

2. A copy of the new/acquiring Subconsultant's ACC or home-state equivalent Corporation Commission approval documentation related to the change.

4.39 ANTI-LOBBYING

The CONSULTANT certifies, by signing and submitting the SOQ, to the best of his/her knowledge and belief, that:

a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or 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 any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and 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 the "Disclosure of Lobbying Activities" form in accordance with its instructions (http://www.whitehouse.gov/omb/grants/sflllin.pdf).

SAMPLE

c. 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 and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than $10,000 and not more than $100,000 for each such failure.

d. The CONSULTANT also agrees, by submitting its SOQ that it shall require that the language of this certification be included in subcontracts with all Subconsultant(s) and lower-tier Subconsultants which exceed $100,000 and that all such Subconsultants and lower-tier Subconsultants shall certify and disclose accordingly.

e. The DEPARTMENT shall keep the firm's certification on file as part of its original SOQ. The CONSULTANT shall keep individual certifications from all Subconsultants and lower-tier Subconsultants on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

f. Disclosure forms for the CONSULTANT and its Subconsultants and lower-tier Subconsultants shall be submitted to the ECS Contract Specialist assigned to this CONTRACT on the date the Statement of Qualifications are due. The CONSULTANT and each Subconsultant and lower-tier Subconsultant shall file revised disclosure forms at the end of each calendar quarter in which events occur that materially affect the accuracy of any previously filed disclosure form. The Disclosure forms shall be submitted by the ECS Director to the FHWA for further review.

4.40 ADOT PRODUCTS

a. ADOT shall provide the CONSULTANT with the ADOT-developed software for the sole purpose of completing this CONTRACT, as set forth in the Site License Contract, which includes a detailed list of software that shall be provided to the CONSULTANT. The software shall be provided to the CONSULTANT solely for the purpose of completing this CONTRACT and for no other purposes. ADOT-developed software including manuals, electronic information, programs, and associated materials remains the property of ADOT.

b. Any use of this software for purposes other than the fulfillment of this CONTRACT is strictly prohibited. The CONSULTANT shall not copy the software or provide, distribute or demonstrate the software to other entities. Upon completion of this CONTRACT or when otherwise notified by ADOT, the CONSULTANT shall return all software, backup copies, manuals, electronic information and associated materials to ADOT.

4.41 RECORDS RETENTION, MAINTENANCE AND AUDIT

a. Pursuant to A.R.S. §35-214, the CONSULTANT and its Subconsultant(s) shall keep and maintain all books, papers, records, accounting records, files, accounts, expenditure records, reports, cost proposals with backup data and all other such materials related to the CONTRACT and other related project(s). The CONSULTANT shall make all such materials related to the project(s) available at any reasonable time and place during the term of the CONTRACT and for five (5) years from the date the Initial Closeout Letter is sent to the CONSULTANT after ADOT indicates that work on the CONTRACT has been completed to the satisfaction of the DEPARTMENT (Contract Status Form). All Documents shall be retained for auditing, inspection and copying upon the DEPARTMENT'S or at FHWA's request, or any other authorized representative of the Federal Government.

b. Pursuant to A.R.S. §35-215, the CONSULTANT and its Subconsultant(s) with intent to defraud, deceive, improperly influence, obstruct or impair an audit being conducted or about to be conducted in relation to any CONTRACT or subcontract with the DEPARTMENT is guilty of a Class 5 Felony.

SAMPLE

c. In case of an audit and the CONSULTANT has failed to retain records in accordance with the applicable CONTRACT provision, it shall be presumed that the documents would not have supported the CONSULTANT'S position. Therefore, failure to retain such records shall result in the CONSULTANT being required to reimburse ADOT for unsupported costs. The CONSULTANT may also be disqualified per revised ECS Rules Section 2.02 from submitting future SOQ proposals.

d. Upon completion and final closeout of the CONTRACT, physical/paper or electronic CONTRACT files and any supporting materials shall be maintained in accordance with ADOT and State Record Retention Center Records Retention/Destruction Policy and Schedules.

4.42 FINAL/INCURRED COST AUDIT

a. Final/Incurred Cost Audit (ICA) of the CONSULTANT'S costs may be performed by ADOT Office of Audit & Analysis to determine the CONTRACT costs' allowability, allocability, and reasonableness in accordance with the terms of this CONTRACT. Information related to final audits can be found in ADOT Consultant Audit Guideline (Info Bulletin 09-04).

b. A CPA-prepared overhead schedule or a Cognizant Audit Report that meets ADOT/AASHTO/FHWA guidelines is acceptable for establishing a given year's overhead rate with the concurrence of ADOT Office of Audit & Analysis.

c. Upon receipt of an ICA draft report, the CONSULTANT has 14 calendar days to respond to the Incurred Cost Auditor with any disagreements, questions, or request for additional supporting documentation. A time extension may be allowed, if requested in writing within the 14-day timeframe, by the appropriate parties. Disagreements related to the results of the ICA draft report shall be addressed or resolved with the Incurred Cost Auditor on or before the date of the formal Exit Conference with the Incurred Cost Auditor and the CONSULTANT. Non-response to the draft audit report after the 14-day timeframe and after the Exit Conference will be deemed by ADOT as the CONSULTANT'S acceptance of the findings in the draft report. The ICA report shall be issued by ECS to the CONSULTANT after ADOT Office of Audit & Analysis' review and approval. Once the audit report is issued to ECS by ADOT Office of Audit & Analysis, ADOT shall not re-examine any new issues not addressed in the draft report and/or formal Exit Conference. The CONSULTANTS disagreeing with the ICA report has the option of escalating the matter in accordance with the ECS Pre-Award/ICA Escalation Guidelines (http://www.azdot.gov/Highways/ECS/pdf/Pre_Award_ICA_Escalation_Guideline.pdf).

d. ADOT or the CONSULTANT shall reimburse either party in accordance with the ICA results. Failure of the CONSULTANT to reimburse ADOT for over-billed charges based on the results of the Pre-award Reviews or ICAs shall result in disqualification of the CONSULTANT in accordance with the revised ECS Rules Section 2.02.

4.43 REVIEWS AND INSPECTIONS

Representatives from the DEPARTMENT and FHWA are authorized to review and inspect the CONTRACT activities and facilities during the CONSULTANT'S and its Subconsultants normal business hours.

4.44 PROPERTY OR EQUIPMENT

Except as otherwise provided in this CONTRACT, computer or other special equipment needed to fulfill this CONTRACT, shall be purchased through the ADOT Procurement Group and considered as ADOT property. The control, utilization and disposition of property or equipment acquired using Federal/State funds shall be determined in accordance with the property management standards set forth in 49 CFR Part

SAMPLE

18 and ADOT Policy – FIN 11.02 and shall follow ADOT'S Fixed Assets procedures in both property identification and inventory control processes.

4.45 NONDISCRIMINATION

1. During the performance of this CONTRACT, the CONSULTANT, for itself, its Subconsultants, assignees and successors shall:

   a. Not discriminate on the basis of race, color, national origin, or sex and shall carry out applicable requirements of 49 CFR Part 26 in the performance of this CONTRACT. Failure by the CONSULTANT to carry out these requirements is a material breach of this CONTRACT, which may result in the termination of this CONTRACT, disqualification from proposing on other CONTRACTS or other remedy as the STATE deems appropriate.

   b. Comply with Executive Order 2009-09, "Prohibition of Discrimination in Employment by Government contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this CONTRACT.

   c. Comply with the provisions of Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this CONTRACT.

   d. Post in conspicuous places available to employees and applicants for employment, the following notice:

      "It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying-off or termination; rates of pay or other compensation; and selection for training, and on-the-job training. Also, it is the policy to insure and maintain a working environment free of harassment, intimidation and coercion."

   e. Comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter DOT), 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this CONTRACT.

   f. Not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.

   g. In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a subcontract, including procurement of materials or leases of equipment, notify each potential Subconsultant or supplier of the CONSULTANT'S obligations under this CONTRACT and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.

SAMPLE

h. Provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the STATE as appropriate, and shall set forth what efforts it has made to obtain the information.

2. In the event of the CONSULTANT'S noncompliance with the NONDISCRIMININATION provision (Section 4.45) of this CONTRACT, the STATE shall impose such CONTRACT sanctions as the STATE or FHWA may determine to be appropriate, including but not limited to:

   a. Withholding of payments 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.

3. The CONSULTANT shall include the provisions of paragraph 1.a. through 1.h. in every subcontract with Subconsultants, DBEs and Non-DBEs, including procurement of materials and equipment leases, unless exempt by the Regulations or directives issued pursuant thereto.

4. The CONSULTANT shall take such action with respect to any Subconsultants or procurement as the STATE or the Federal Aviation Administration (FAA), FHWA and the Federal Transit Administration (FTA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the CONSULTANT becomes involved in or is threatened with litigation with a Subconsultant 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 United States to enter into such litigation to protect the interests of the United States.

4.46 AFFIRMATIVE ACTION (FOR FEDERAL CONTRACTS)

The CONSULTANT shall take the following affirmative action steps with respect to securing supplies, equipment or services under the terms of this CONTRACT:

1. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.

2. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.

3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.

4. Where the requirement permits, establish delivery schedules which shall encourage participation by firms owned by socially and economically disadvantaged individuals.

5. Use the services and assistance of ADOT DBE Supportive Services Program, the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as needed.

SAMPLE

4.47 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES – COMMITMENT, COMPLIANCE AND REPORTING

1. The DEPARTMENT has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. ADOT has received federal financial assistance from the USDOT and as a condition of receiving this assistance, ADOT has signed an assurance that it shall comply with 49 CFR Part 26.

   It is ADOT'S policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally-funded contracts. It is also ADOT'S policy to:

   a. Ensure nondiscrimination in the award and administration of federally-funded contracts;

   b. Create a level playing field on which DBEs can compete fairly for federally-funded contracts;

   c. Ensure that the DBE program is narrowly tailored in accordance with applicable law;

   d. Ensure that only firms that fully meet 49 CFR Part 26 eligibility requirements are counted as DBEs;

   e. Help remove barriers to the participation of DBEs in federally-funded contracts; and

   f. Assist in the development of firms that can compete successfully in the marketplace.

   The Federal regulations require a recipient of federal highway funding to implement an approved DBE Program that consists of establishing a statewide DBE utilization goal that uses race-neutral means to the maximum feasible extent to achieve the goal. Where race-neutral measures prove inadequate to achieve the goal, the STATE is required to use race-conscious measures, such as a DBE participation goal for individual contracts.

   The DEPARTMENT has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends to meet the goal with a combination of race-conscious efforts and race-neutral efforts. Race-conscious participation occurs where the CONSULTANT uses a percentage of DBEs to meet a contract-specified goal. Race-neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses.

   The CONSULTANT is required to adhere to the commitment made to utilize certified Disadvantaged Business Enterprises (DBE) as indicated in the firm's Statement of Qualifications (SOQ) or subsequently agreed to by the STATE during negotiations. The STATE, at its discretion on a case by case basis, may waive the above limitations.

2. **DBE GOAL/COMMITMENT AND DOCUMENTATION**:

   a. A DBE GOAL OF ____% HAS BEEN ESTABLISHED ON THIS CONTRACT. THE CONSULTANT IS ENCOURAGED TO OBTAIN DBE PARTICIPATION ABOVE AND BEYOND THE GOAL ON THIS PROJECT.

   b. The CONSULTANT is required to adhere to the commitment made to utilize certified Disadvantaged Business Enterprises (DBE) as indicated in the firm's Statement of Qualifications (SOQs) or the CONSULTANT and Subconsultant DBE Affidavits submitted,, or

SAMPLE

subsequently agreed to by the STATE during negotiations. The STATE, at its discretion on a case-by-case basis, may waive the above limitations.

c. The CONSULTANT is also required to utilize DBEs at or above the DBE goal established in this CONTRACT if Contract Modifications increase the value of the CONRACT. If ADOT determines that the CONSULTANT has not met the DBE goal or has not made an adequate good faith effort to meet the DBE goal as Contract Modifications increase the value of the contract, ADOT reserves the right to disapprove the Contract Modification negotiations with the firm. If the CONSULTANT wishes to dispute the Good Faith Effort determination, the CONSULTANT may escalate the decision according to the levels outlined in Section 4.09 (DISPUTE ESCALATION) of this CONTRACT. The ADOT Civil Rights Office (CRO) will be represented at each escalation level with the goal of resolving the matter at the lowest possible level.

3. **COMPLIANCE**:

a. This CONTRACT is subject to DBE compliance tracking for the CONSULTANT and its Subconsultants. Lower-tier Subconsultants and Vendors are required to provide any requested DBE CONTRACT compliance-related data in hard copy or electronically as determined by the STATE, including written agreements between the CONSULTANT and Subconsultant DBEs. The CONSULTANT shall report the amount earned by and paid to each DBE and Non-DBE Subconsultants working on the project for the preceding month on each monthly Progress Payment Report. The CONSULTANT is responsible for ensuring that the CONSULTANT and all its Subconsultants and lower-tier Subconsultants have completed all requested items and that their contact information is accurate and up-to-date.

b. The CONSULTANT'S achievement of the DBE goal is measured by actual payments made to the DBEs. At the completion of the project, the CONSULTANT shall complete and submit a *Certification of Payments to DBE Firms* affidavit for each DBE firm working on the project. This affidavit shall be signed by the CONSULTANT and the relevant DBE Subconsultant and submitted to ECS and CRO.

4. **REPORTING AND SANCTIONS**:

a. ADOT is required to collect DBE participation data on all Federal-aid projects, whether or not there is a stated DBE goal/commitment on this CONTRACT. Therefore, the CONSULTANT shall report the monthly payments made to all DBE, Non-DBE Subconsultants and Direct Expense Vendors, including all lower-tier Subconsultants, for labor, equipment, and materials. If the CONSULTANT and its Subconsultants do not provide all required DBE usage and payment information with the monthly Progress Payment Reports (PRs) submittals for the preceding month, the STATE shall deduct $1,000 for each delinquent report, whether from the CONSULTANT or any of its Subconsultants, from the progress payment for the current month, not as a penalty but as liquidated damages. If by the following month, the required DBE payment information for the previous month has still not been provided, the STATE shall deduct an additional $1,000 for each delinquent report. Such deductions shall continue for each subsequent month that the CONSULTANT or its Subconsultants fail to provide the required payment information.

b. DBEs shall confirm the payments received from the CONSULTANT through CRO'S DBE Contract & Labor Compliance Management System (**DBE System**).

SAMPLE

c. After execution of this CONTRACT and before the first Payment Report/Invoice is submitted to ECS, the CONSULTANT is required to log into the CRO'S online DBE System (https://adot.dbesystem.com) and enter the name, contact information, and subcontract amounts for all Subconsultants, lower-tier Subconsultants and Direct Expense vendors performing any work on the project to help ADOT track and monitor payments to DBE and Non-DBE Subconsultants on the project and to confirm that the scope of services and commitments made via the DBE Intended Participation Affidavits are being met.

d. All DBE and non-DBE subcontracting activities and payments shall be reported by the CONSULTANT. All DBE subcontracting activities will be counted toward DBE participation. This includes lower-tiers subcontracting activities regardless of whether or not the DBE is under contract with another DBE.

5. At the completion of this CONTRACT, the CONSULTANT shall submit a *Certification of Payments to DBE Firms* affidavit certifying that all DBEs were paid in full for material and/or work promised and performed under the terms of this CONTRACT.

6. **DBE SUBSTITUTION OR REPLACEMENT**:

a. The CONSULTANT shall not terminate a DBE Subconsultant listed in the SOQ or in the CONSULTANT or Subconsultant DBE Affidavit submitted with each approved Task Order without the prior written approval by the STATE.

b. If a Subconsultant is terminated, or fails to complete its work on this CONTRACT for any reason, the CONSULTANT shall make a good faith effort to find another DBE to perform at the least the same amount of work under the CONTRACT as the DBE that was terminated, to the extent needed to meet the DBE commitment percentage established in this CONTRACT.

7. The DEPARTMENT, at its sole discretion, may terminate the CONTRACT at any time if the DEPARTMENT determines that the CONSULTANT is not satisfactorily meeting the DBE goal/commitment stated in the CONTRACT or is not making satisfactory good faith efforts to meet the goal.

4.48 COUNTING DBE PARTICIPATION

In counting the DBE participation, the DEPARTMENT shall apply the rules in 49 CFR §26.55 (**APPENDIX C**) as a supplement herein. The firm shall count only the value of the work actually performed by the DBE toward DBE goals. No credit shall be allowed for shipping, manufacturing or supply.

1. CONTRACTS created to artificially create DBE participation are not acceptable; the arrangement shall be within normal industry practices. The DBE shall perform a commercially useful function.

2. Count the entire amount of that portion of a CONTRACT (or other CONTRACT not covered by paragraph (2) of this section) that is performed by the DBE's own forces. Firms shall include the cost of supplies and materials obtained by the DBE for the work on the CONTRACT, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE Subconsultant purchases or leases from the CONSULTANT or its affiliate).

3. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or

SAMPLE

insurance specially required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with the fees customarily allowed for similar services.

4. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the lower-tier Subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE does not count toward DBE goals.

5. It is presumed that the DBE is not performing a commercially useful function if: (a) a DBE does not perform or exercise responsibility for at least 30 percent (30%) of the total cost of its CONTRACT with its own work force; or (b) the DBE subcontracts a greater portion of the work of a CONTRACT than would be expected on the basis of normal industry practice for the type of work involved.

4.49 ENVIRONMENTAL PROTECTION

(This clause is applicable if this CONTRACT exceeds $100,000. It applies to Federal-aid contracts only.)

The CONSULTANT is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement (EN-329).

4.50 ENERGY CONSERVATION

(This clause is applicable to Federal-aid contracts only.)

The CONSULTANT is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency, which is contained in the State Energy Conservation Plan issued by the DEPARTMENT in compliance with the Energy Policy Conservation Act (Public Law. 94-163).

4.51 PUBLICITY AND ENDORSEMENTS

The CONSULTANT shall obtain the DEPARTMENT'S approval prior to releasing any publicity regarding the subject matter of this CONTRACT. Publicity includes, but not limited to, notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the CONSULTANT or its employees or its Subconsultants. Publicity does not include notices of the CONTRACT award or identification of the project in the SOQ or proposal made to government agencies. The CONSULTANT shall not claim that DEPARTMENT endorses its products and services.

4.52 OWNERSHIP OF DATA

a. The CONSULTANT agrees to maintain (in sufficient detail as shall properly reflect all work done and results achieved in the performance of this CONTRACT) tracings, plans, specifications and maps, basic survey notes and sketches, books, records, reports, research notes, charts, graphs, comments, computations, analyses, recordings, photographs, computer programs and documentation thereof, and other graphic or written data generated in connection with the work required in the CONTRACT; all such information and documentation to be termed "Data" under this CONTRACT.

b. All Data procured hereunder for the work funded by ADOT shall become the property of ADOT and delivered to ADOT upon request, and shall not be used or released by the CONSULTANT or any other person except with the prior written approval by the DEPARTMENT; provided that the

SAMPLE

CONSULTANT shall not be required to retain any Data not requested by ADOT within five (5) years from the date of final payment *(see Initial Closeout Letter, Section 4.41.(a))* to the CONSULTANT hereunder; and provided further that until such delivery to ADOT, the CONSULTANT agrees to permit ADOT and FHWA representatives to examine and review at reasonable times all Data still in the possession of the CONSULTANT.

c. All services, information, computer program elements, reports and other deliverables which may be patented or copyrighted and created under this CONTRACT are the property of the DEPARTMENT and shall not be used or released by the CONSULTANT or any other person except with the prior written approval by the DEPARTMENT.

4.53 PATENTS AND COPYRIGHTS

All services, information, computer program elements, reports and other deliverables which might be patented or copyrighted and created under this CONTRACT are the property of the DEPARTMENT and shall not be used or released by the CONSULTANT or any other person except with the prior written approval by the DEPARTMENT.

4.54 FRAUD AND FALSE STATEMENTS

The CONSULTANT understands that, if the project which is the subject of this CONTRACT is financed in whole or in part by federal funds, that if the undersigned, the company that the CONSULTANT represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the CONSULTANT and any company that the CONSULTANT represents may be subject to prosecution under the provision of 18 USC §1001 and §1020.

4.55 FEDERAL IMMIGRATION AND NATIONALITY ACT

a. **GENERAL**

The CONSULTANT, including all Subconsultants, shall comply with all federal, state and local immigration laws and regulations, as set forth in Arizona Executive Order 2005-30, relating to the immigration status of their employees who perform services on the CONTRACT during the duration of the CONTRACT. The DEPARTMENT shall retain the right to perform random audits of CONSULTANT and Subconsultants' records or to inspect papers of any employee thereof to ensure compliance.

The CONSULTANT shall include the provisions of this Section in all its subcontracts. In addition, the CONSULTANT shall require that all Subconsultants comply with the provisions of this Section, monitor such Subconsultants' compliance, and assist the DEPARTMENT in any compliance verification regarding its Subconsultant(s).

b. **COMPLIANCE REQUIREMENTS**

The DEPARTMENT retains the legal right to inspect the papers or records of the CONSULTANT and its Subconsultants who works on this CONTRACT to ensure compliance with A.R.S. §41-4401, Government Procurement, E-Verify Requirements; Sanctions.

By submission of an SOQ proposal, the CONSULTANT warrants that the CONSULTANT and all proposed Subconsultant(s) are and shall remain in compliance with:

SAMPLE

1. All federal, state and local immigration laws and regulations relating to the immigration status of their employees who perform services on the CONTRACT; and

2. A.R.S. §23-214 (A) which states "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer."

A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the CONTRACT, and the CONSULTANT and its Subconsultant(s) are subject to sanctions specified in Section D below.

Failure to comply with a DEPARTMENT audit process to randomly verify the employment records of CONSULTANT and Subconsultants shall be deemed a material breach of the CONTRACT, and the CONSULTANT and Subconsultants are subject to sanctions specified in Section D below.

c. **COMPLIANCE VERIFICATION**

The STATE may, at its sole discretion, require evidence of compliance from the CONSULTANT and its Subconsultant(s).

Should the DEPARTMENT request evidence of compliance, the CONSULTANT shall complete and return the Consultant Employment Record Verification Form and Employee Verification Worksheet provided by the DEPARTMENT, no later than 21 days from receipt of the request for such information.

Listing of the compliance verification procedure specified above does not preclude the DEPARTMENT from utilizing other means to determine compliance.

The DEPARTMENT retains the legal right to inspect the papers of any employee who works on the CONTRACT to ensure that the CONSULTANT and its Subconsultant(s) is/are complying with the warranty specified in this Section.

d. **SANCTIONS FOR NONCOMPLIANCE**

For purposes of this paragraph, noncompliance refers to either the CONSULTANTS or its Subconsultants' failure to follow the immigration laws or to the CONSULTANT'S failure to provide records when requested. Failure to comply with the immigration laws or to submit proof of compliance constitutes a material breach of CONTRACT. At a minimum, the DEPARTMENT shall reduce the CONSULTANT'S compensation by $10,000 for the initial instance of noncompliance by the CONSULTANT or its Subconsultant(s). If the same CONSULTANT or its Subconsultant(s) is in noncompliance within two (2) years from the initial noncompliance, the CONSULTANT'S compensation shall be reduced by a minimum of $10,000 for each instance of noncompliance. The third instance by the same CONSULTANT or its Subconsultant(s) within a two (2) year period may result in addition to the minimum $50,000 reduction in compensation, in removal of the offending CONSULTANT or its Subconsultant(s), suspension of work in whole or in part or, in the case of a third violation by the CONSULTANT, termination of the CONTRACT for default. Instances of noncompliance are counted on a firm-wide basis, not on a contract-by-contract basis.

In addition, the DEPARTMENT may declare the CONSULTANT or its Subconsultant(s) who is in noncompliance three times within a two (2) year period ineligible to perform on any DEPARTMENT CONTRACT for up to one (1) year. For purposes of considering a declaration of ineligibility: (1) noncompliance by a Subconsultant does not count as a violation by the CONSULTANT; and (2) the DEPARTMENT shall count instances of noncompliance on other DEPARTMENT CONTRACTS.

SAMPLE

The sanctions described herein are the minimum sanctions. In case of major violations, the DEPARTMENT reserves the right to impose any sanctions including and up to termination and debarment, regardless of the number of instances of non-compliance.

Any delay resulting from compliance verification or a sanction under this subsection is a non-excusable delay. The CONSULTANT is not entitled to any compensation or extension of time for any delays or additional costs resulting from compliance verification or a sanction under this Section.

An example of the minimum sanctions under this subsection is presented in the table below:

Offense by:			Minimum Reduction in Compensation
Consultant	Subconsultant A	Subconsultant B	
First			$10,000
	First		$10,000
	Second		$50,000
		First	$10,000
	Third		$50,000*
* May, in addition, result in removal and debarment of the Subconsultant.			

4.56 SCRUTINIZED BUSINESS OPERATIONS

In signing this CONTRACT, the CONSULTANT certifies, (1) pursuant to A.R.S. §35-391, that it does not have scrutinized business operations in Sudan; and (2) pursuant to A.R.S. §35-393, the CONSULTANT does not have scrutinized business operations in Iran.

4.57 PANDEMIC CONTRACTUAL PERFORMANCE

a. The DEPARTMENT shall require a written plan that illustrates how the CONSULTANT shall perform up to contractual standards in the event of a pandemic. The DEPARTMENT may require a copy of the plan at any time prior to or at post-award phase of the CONTRACT. At a minimum, the pandemic performance plan shall include:

   1. Key succession and performance planning if there is a sudden significant decrease in the CONSULTANT'S workforce.

   2. Alternative methods to ensure adequate work force.

   3. An updated list of the CONSULTANT'S contacts and organizational chart.

b. In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization (WHO), which makes performance of any term under this CONTRACT impossible or impracticable, the DEPARTMENT shall have the following rights:

   1. After the official declaration of a pandemic, the DEPARTMENT may temporarily placed the CONTRACT(S) on "HOLD," in whole or in part, if the CONSULTANT cannot perform to the standards agreed upon in the initial terms.

SAMPLE

2. The DEPARTMENT shall not incur any liability if a pandemic is declared and emergency procurements are authorized by ADOT Director pursuant to §41-2537 of the Arizona Procurement Code (APC).

3. Once the pandemic is officially declared over or the CONSULTANT can demonstrate the ability to perform, the DEPARTMENT, at its sole discretion may reinstate the temporarily voided CONTRACT(S).

c. The DEPARTMENT, at any time, may request to see a copy of the written plan from the CONSULTANT. The CONSULTANT shall produce the written plan within 72 hours of the request.

4.58 PERFORMANCE EVALUATIONS

The CONSULTANT'S performance shall be evaluated periodically in accordance with the schedule set forth in **APPENDIX D** of this CONTRACT. Final CONSULTANT evaluations for CONTRACTS executed after **July 1, 2010**, shall be considered in the future CONSULTANT selection process as outlined in the Appendix.

4.59 CONTRACT COMPLETION

When technical review establishes that all phases of the CONTRACT have been completed to the satisfaction of the DEPARTMENT, a written concurrence is completed and signed by the ADOT PM and ADOT Group Manager to initiate the CONTRACT closeout phase. The CONSULTANT is notified, in writing, (Initial Closeout Letter) of the final closeout procedure which may include submittal of the final Payment Report, deliverables and the final audit, if applicable, of the CONSULTANT and all Subconsultant's records. The CONSULTANT shall submit all required deliverables as detailed in the CONTRACT.

SAMPLE

SECTION 5.0 SIGNATURE PAGE

FOR THE DEPARTMENT **ARIZONA DEPARTMENT OF TRANSPORTATION**

_____ **By:** _____

Date *Signature*

_____

Print Name

_____

Title

FOR THE CONSULTANT **FIRM NAME**

_____ **By:** _____

Date *Signature*

_____

Print Name

_____

Title

SAMPLE

"By signing this document, the CONSULTANT declares that the CONTRACT was reviewed and to the best of the CONSULTANT'S knowledge and belief, it is true, correct, and approved. Both parties agree that manually or electronically signing and submitting the CONTRACT via a PDF document by email is acceptable and constitutes a binding agreement."

APPENDIX A

SCOPE OF WORK

(WITH STANDARDIZED DICTIONARY OF WORK TASKS)

(Insert a cover page/divider for Standardized Dictionary of Work Tasks)

SAMPLE

APPENDIX B

APPROVED COST PROPOSAL SUMMARY

SAMPLE

APPENDIX C

TITLE 49 - TRANSPORTATION
Subtitle A – Office of the Secretary of Transportation

PART 26 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

[Code of Federal Regulations]; [Title 49, Volume 1]; [Revised as of October 1, 2008]
From the U.S. Government Printing Office via GPO Access; [CITE: 49CFR26.55]; [Page 300-302]

Subpart C Goals, Good Faith Efforts, and Counting

§26.55 - How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such and extra participant, you shall examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at **least 30 percent** of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than

SAMPLE

would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it shall obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(6) For purposes of this paragraph (d), a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1) (i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2) (i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

SAMPLE

(A) To be a regular dealer, the firm shall be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in Sec. 26.87(i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

SAMPLE

Appendix D

ENGINEERING CONSULTANTS SECTION (ECS)
CONSULTANT EVALUATION PROGRAM GUIDELINES

Introduction & Purpose

The Consultant Evaluation Program is a program administered by ECS as a means to monitor and evaluate the quality of work performed on engineering consultant contracts. A positive approach to the program assures that project schedule, cost and quality of design and construction are attainable. This assures that potential problems, which may impact other projects or the 5-Year Construction Program, are identified and resolved in a timely manner.

All engineering consultant contracts shall be evaluated annually based on the CONTRACT'S Notice to Proceed (NTP) anniversary date by the ADOT staff assigned to the contract, including the ADOT PM, other Technical groups, ECS staff, etc., in accordance with applicable contract provisions. In addition to annual evaluations, a final consultant evaluation shall be conducted at the end of all engineering consultant contracts.

Implementation Timeline

This evaluation program will be effective for all ECS contracts with a Notice to Proceed (NTP) date of July 1, 2010, or later. Annual evaluation using this program will be conducted on contracts which were NTP'd before July 1, 2010, but the results shall not affect the consultant selection.

Uses for Consultant Evaluation

The Consultant Evaluations shall be used for the following purposes:

1. To identify the CONSULTANT performance strengths and weaknesses, as well as help identify, document and resolve performance issues, as needed.

2. As one factor or criterion in the selection process for subsequent contracts. Final evaluations for CONTRACTS executed after July 1, 2010, shall be used as part of the selection process. Up to five (5) points may be deducted from the CONSULTANT'S score during the selection process for final evaluation ratings of less than three (3) (average performance) on performance factors of evaluation for projects a firm has completed for ADOT over a three-year time period.

   Evaluation history to be used for selection shall include evaluation scores encompassing the most current three-year period at any given time. The three-year evaluation history shall be maintained for firm contracts executed after July 1, 2010. For example, a firm's evaluation history in FY 2013 would include scores from FY 2011 through FY 2013, in FY 2014, the evaluation history would include FY 2012 through FY 2014.

   ECS will deduct points from the scores of submitted Statements of Qualifications (SOQ) for each firm based on performance rating as follows:

Performance rating of 1 or 2 on 1-2 evaluation factors	-1 Point
Performance rating of 1 or 2 on 3-4 evaluation factors	-2 Points
Performance rating of 1 or 2 on 5-6 evaluation factors	-3 Points
Performance rating of 1 or 2 on 7-8 evaluation factors	-4 Points
Performance rating of 1 or 2 on 9 or more evaluation factors	-5 Points

SAMPLE

3. As documentation to justify disqualification of the CONSULTANT or Subconsultant from submitting Statement of Qualifications (SOQ) proposals. In order for ECS to take action that could lead to CONSULTANT disqualification from submitting SOQs, the ADOT PM or staff shall complete a Consultant Evaluation by initiating the process through the ECS Specialist. When an evaluation form is used to document issues which could lead to the CONSULTANT disqualification from submitting SOQ proposals (as outlined in Section 2.02 of the ECS Rules and Procedures), the ECS Specialist shall initiate consultant evaluation type "Other" in eCMS.

4. As documentation to justify the declaration of a breach of contract for the CONSULTANT'S failure to fulfill terms of the CONTRACT or to address problems identified by ADOT in the performance of the CONTRACT. In order for ECS to take action that could lead ADOT to declare a breach of contract, the ADOT PM or staff shall complete a Consultant Evaluation by initiating the process through the ECS Specialist. When an evaluation form is used to document issues which could lead to a breach of contract being declared (as outlined in Section 4.17 of the ECS Rules and Procedures), the ECS Specialist shall select "Other" as the evaluation type in eCMS.

Procedures

ECS Specialist initiates the completion of consultant evaluation forms for CONTRACTS annually on the CONTRACT'S NTP anniversary date.

Since evaluations will be used as a factor in the consultant selection process, it is important for ADOT PMs, Resident Engineers or other appropriate staff to complete evaluations in a timely manner.

Please adhere to the following general guidelines in completing the electronic consultant evaluation in eCMS.

1. All consultant evaluations (Annual, Final or Other) shall be initiated by the ECS Specialist. ADOT PMs, who wish to conduct a consultant evaluation outside of the normal annual or final cycle should contact the ECS Specialist to initiate consultant evaluation type "Other" in eCMS .

2. Section I (Items 1-4) of the evaluation form shall be completed by ECS staff in eCMS and forwarded to the ADOT PM through automatic email notification.

3. The ADOT PM shall confer with other ADOT Project Team members involved in the CONTRACT and complete Section II of the evaluation form (Items 5-11) in eCMS. The ADOT PM shall forward the fully completed evaluation to the CONSULTANT electronically through eCMS within 14 calendar days from the receipt of notification from the ECS Specialist.

   If the ADOT PM is a Supplemental Services (SS) CONSULTANT, the PM portion of the evaluation shall be completed in eCMS by the SS CONSULTANT'S Supervisor or Manager.

4. Section II, Item 12 (Post-Design) shall be forwarded to the ADOT Resident Engineer (RE) by the ADOT PM for completion, as applicable. The ADOT RE shall confer with the ADOT PM and other ADOT Project Team members involved in the project and shall complete Section II, Item 12 within five (5) calendar days.

5. When totally completed, the ADOT PM shall discuss the evaluation with the CONSULTANT (telephonically or in-person) and "publish" it to the CONSULTANT through eCMS. The CONSULTANT shall complete Section III by indicating the their agreement or disagreement with the ratings, type comments and "publish" the evaluation back to ADOT through eCMS within 10 calendar days, with the goal of completing the entire evaluation process within 30 calendar days.

SAMPLE

ADOT PMs should encourage the CONSULTANTS to share the results of the Subconsultant's portion of the evaluation with their Subconsultants.

General Guidelines

1. Each individual line item in the evaluation constitutes a performance factor.

2. ECS shall assign negative points based on individual factor scores, not on an overall composite score.

3. Each individual performance factor and category on the form shall be treated equally.

4. General comments are highly recommended to support scores in each major performance category.

5. Documentation and specific comments shall be included to justify any performance factor receiving a score of 2 or less.

6. The ADOT PM, ECS and other appropriate ADOT staff are encouraged to take appropriate steps to resolve performance issues with the CONSULTANTS, as they arise, in a timely manner, and to document these issues in the eCMS Evaluation tab for that particular CONTRACT. This information shall be used as a means of documenting issues for future evaluation ratings.

7. If performance issues arise, ADOT PMs and ECS Contract Managers should expeditiously inform the CONSULTANTS, in writing, that they are performing unsatisfactorily (using the Issues Resolution form in eCMS) to provide them the opportunity to take corrective action to cure the deficiency before they are formally evaluated (Annual or Final evaluation). The following steps shall be taken if there are performance issues with the CONSULTANT, which could potentially lead to an evaluation score of less than three (3) (average):

   a) If communicating to resolve the matter with the CONSULTANT informally does not resolve the issue, the ADOT PM, ECS Specialist, ECS Manager or other appropriate ADOT employee shall notify the CONSULTANT, in writing, of the deficient performance, identify the required solutions and establish a deadline to resolve the issues. The Consultant Performance Issues Resolution form in eCMS should be completed by the appropriate ADOT staff and forwarded to the CONSULTANT for further action, as needed.

   b) If the CONSULTANT does not respond within ten (10) business days or other timeframe specified on the form and/or the matter is still unresolved after the deadline set for the cure, it is appropriate for the ADOT staff to rate the CONSULTANT a 2 or less on the applicable evaluation criteria on the consultant evaluation form.

8. The CONSULTANT should take the initiative to expeditiously contact the ADOT PM or ECS if they are experiencing difficulties which could result in a score of less than 3 on any performance factor. The CONSULTANT should identify any problems, state proposed resolutions and specify dates the CONSULTANT expects to resolve the issues.

9. Subconsultant performance will affect the scores of the CONSULTANT as it relates to performance factors in item #9, "Utilization of Key Subconsultants." Therefore, it is important for the CONSULTANT to closely oversee the work of their Subconsultants.

SAMPLE

10. The Subconsultant scores on Item #10 of the evaluation will not affect the scores of the CONSULTANT. ECS will maintain an evaluation history on Subconsultants.

SAMPLE

11. If the CONSULTANT or Subconsultant receives 10 or more scores of 2 or less on evaluations within a two (2) year time period, these firms may be evaluated as candidates for disqualification from submitting future SOQs to ECS, and may not be eligible for work as a CONSULTANT or Subconsultant on ECS contracts for a minimum of one (1) year. A list of CONSULTANTS that are pre-qualified and/or disqualified from submitting SOQs will be posted on the ECS website. Individual consultant evaluation scores will not be posted.

12. New CONSULTANTS with no ADOT contracts or evaluation history shall be evaluated according to the criteria outlined in the SOQ Package and shall not be evaluated based on past performance.

13. CONSULTANTS' ratings shall not be adversely affected if ADOT reduces the scope of work or in some way delayed or impacted the ability of the CONSULTANT to reasonably meet a performance factor.

14. There is no formal escalation process for consultant evaluation issues at this time. However, if the CONSULTANT believes that the firm has been unfairly evaluated and rated, the firm can indicate its points of disagreement on the evaluation form itself or submit a letter to ECS, which shall be included as an official part of the evaluation file and may be considered by ECS as a mitigating factor.

SAMPLE