Arizona Department of Transportation

Intermodal Transportation Division

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INFORMATION BULLETIN NO. 07-02

TO: ADOT Project Managers/Monitors, Resident Engineers And Consultant Engineering Firms

FROM: Engineering Consultants Section (ECS)

SUBJECT: FEDERAL IMMIGRATION AND NATIONALITY ACT

Pursuant to the Governor's Executive Order No. 2005-30, ECS procedures were modified to require all prime consultants and subconsultants to certify their compliance with all federal, state and local immigration laws prior to entering into contract.

Failure of the consultant or any subconsultant to comply with the immigration laws with respect to any activity under the contract or any personnel performing or managing work under the contract is a material breach of the contract.

Effective this date, all ECS contracts will be modified to include the attached new and revised Immigration contract language requiring the consultant and subconsultants to comply with immigration law and regulations, allowing the State the right to inspect records and giving the State the right to take necessary action if violations are encountered.

For existing contracts, all prime and subconsultants are required to submit to ECS a document certifying that they have followed the employment verification provisions of the Federal Immigration and Nationality Act. For future contracts, a document is required from all prime and subconsultants prior to the execution of a contract.

Please find attached a copy of the Immigration Certification Statement that all primes and subconsultants are requested to complete and submit to ECS.

If you have questions regarding this bulletin or the contract language, please call the undersigned at (602) 712-7720 or Carrie Satterlee at (602) 712-7532.

John W. Carr

John Carr
Engineering Technical Group Manager

New Contract Language

4.XX FEDERAL IMMIGRATION AND NATIONALITY ACT:

(A) General:

The consultant, including all subconsultant, 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 State shall retain the right to perform random audits of consultant and subconsultant records or to inspect papers of any employee thereof to ensure compliance.

(B) Compliance Requirements:

By submission of a proposal, the consultant warrants that the consultant and all proposed subconsultants are and shall remain in compliance with all federal, state and local immigration laws and regulations relating to the immigration status of their employees who perform services on the contract. The State may, at its sole discretion, require evidence of compliance from the consultant or subconsultant. Should the State request evidence of compliance, the consultant or subconsultant shall have ten working days from receipt of the request to supply adequate information.

The Department will accept, as evidence of compliance, a showing by the consultant or subconsultant that it has followed the employment verification provisions of the Federal Immigration and Nationality Act as set forth in Sections 274A and 274B of that Act, including implementation of regulations and agreements between the Department of Homeland Security and the Social Security Administration's verification service.

The Consultant shall include the provisions of Subsection 4.XX in all its subcontracts.

(C) Sanctions for Non-Compliance:

Failure to comply with the immigration laws or to submit proof of compliance constitutes a material breach of contract. The Department will reduce the consultant's compensation by $10,000 for the initial instance of non-compliance by the consultant or subconsultant. Should the same consultant or subconsultant commit subsequent violations within a two-year time period from the initial violation, the consultant's compensation will be reduced by $50,000 for each violation. The third instance by the same consultant or subconsultant within a two-year period may result, in addition to the $50,000 reduction in compensation, in removal of the offending consultant or subconsultant, 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. In addition, the Department may debar a consultant or subconsultant who has committed three violations within a two-year period for up to one year. For purposes of this paragraph, a violation by a subconsultant does not count as a violation by the consultant.

Any delay resulting from 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 a sanction under this subsection.

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

Offense by:			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 of the subconsultant and/or debarment of the subconsultant.			

Revised Contract Language

4.30 SUBCONTRACTS

The CONSULTANT agrees to insert in all subcontracts the clauses hereof entitled "Civil Rights," "Affirmative Action," "Ownership of Documents," "Patents and Copyrights", "Anti Lobbying and Disclosure," "Retention of Records", and "Immigration". The CONSULTANT further agrees to insert in any subcontract exceeding $100,000 the clause hereof entitled "Environmental Protection."

Immigration Certification Statement

Each prime consultant and each subconsultant must submit the following statement on its company letterhead prior to the execution of the contract. This form must be signed by either (1) an authorized signer; (2) officer of the corporation; or (3) controlling owner of a firm.

I, _____(name and title)_____, certify, by signing and submitting this statement that (1) I and my firm are aware of the provisions of Governor's Executive Order No. 2005-30; and (2) to the best of my knowledge and belief, that _____(company name)_____ is in compliance and will continue to be in compliance with all federal, state and local immigration laws and regulations with respect to the immigration status of all employees under this contract.

I further acknowledge that compliance with the immigration laws is a material condition for eligibility to participate in the contract; and failure to comply with respect to any activity under the contract or with respect to any personnel performing or managing work under the contract is a material breach of the contract.

_____ _____

Owner or Corporate Officer, Company Name Date