

## CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, authority and, if the contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.
2. The contractor must also certify, in writing, that as of the date of its execution, of any Commonwealth contract it has no tax liabilities or other Commonwealth obligations.
3. The contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, and other state, or the federal government shall constitute an event of default of the contract with the Commonwealth.
5. The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth, which results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The contractor shall not be responsible for investigative costs for investigations that do not result in the contractor's suspension or debarment.
6. The contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717)783-6472  
FAX No: (717)787-9138

CONSULTANT INTEGRITY PROVISIONS (December 20, 1991)

1. Definitions
  - a. Confidential Information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
  - b. Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
  - c. Consultant means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a five percent (5%) interest.
  - d. Financial Interest means:
    - (1) Ownership of more than a five percent (5%) interest in any business; or
    - (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  - e. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, and advances of any kind, deposits of money, services, employment, or contracts of any kind.
2. The Consultant shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

3. The Consultant shall not disclose to others any confidential information gained by virtue of this Agreement.
4. The Consultant shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
5. The Consultant shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
6. Except with the consent of the Commonwealth, neither the Consultant nor anyone employed with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.
7. Except with the consent of the Commonwealth, the Consultant shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
8. The Consultant, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
9. The Consultant, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.
10. The Consultant, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Consultant's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management

directives. Such information may include, but shall not be limited to, the Consultant's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the Consultant for a period of three years beyond the termination of the Agreement unless otherwise provided by law.

11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Consultant, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another consultant to complete performance hereunder, and debar and suspend the Consultant from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

COMMONWEALTH  
NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE  
June 30, 1999

Each contract entered into by a governmental agency shall contain the following provisions by which the contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the contractor, subcontractor, or any person acting on behalf of the contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

3. Contractors and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

4. Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.

5. The contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

6. The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

7. The Commonwealth may cancel or terminate the contract, and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the contractor in the Contractor Responsibility File.

Whenever hereinabove the word "contractor" is used it shall also include the word engineer, consultant, researcher, or other entity (governmental, corporate, or otherwise), its successors and assigns as may be appropriate.

FEDERAL NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY CLAUSES  
(All Federal Aid Contracts)\*

1. Selection of Labor:

During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contract will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractor's commitments under section 2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of Section 2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. Compliance With Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations) which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including

\*Not to be used if otherwise included in Construction or Appalachian Contract Provisions.

employment practices when the contract covers a program set forth in the Regulations.

c. Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

d. Information and Reports: The contractor shall 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 highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (2) cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The contractor shall include the provisions of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

*Wherever hereinabove the word "contractor" is used, it shall also include the word engineer, consultant, researcher, or other entity (governmental, corporate, or otherwise), its successors and assigns as may be appropriate.*

OFFSET PROVISION FOR COMMONWEALTH CONTRACTS

April 16, 1999

The Consultant agrees that the Commonwealth may offset the amount of any state tax or Commonwealth liability of the Consultant or its affiliates and subsidiaries that is owed to the Commonwealth against any payments due the Consultant under this or any other Agreement with the Commonwealth.

PENNSYLVANIA ELECTION CODE, 25 P.S. § 3260a.  
February 22, 2001

The Consultant shall be governed by Act 201, July 21, 1974, which amended the Act of June 3, 1937, (Public Law 1333, No. 320), known as the Pennsylvania Election Code, as follows:

"Section 1605.1 Report of Contributions, Duty of Secretary of Commonwealth.

- (a) Any business entity, including but not limited to a corporation, company, association, partnership or sole proprietorship, which has been awarded non-bid contracts from the Commonwealth and its political subdivisions during the preceding calendar year, shall report by February fifteenth to the Secretary of the Commonwealth, an itemized list of all political contributions known to the business entity by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner or individual owner that has been made by (1) any officer, director, associate, partner, limited partner, individual owner or members of their immediate family and (2) any employe or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year. For the purpose of this subsection, "immediate family" means a person's spouse and any unemancipated child.
- (b) It shall be the duty of the Secretary of the Commonwealth to publish sixty days after February fifteenth, a complete itemized list of all contributions given under the provisions of subsection (a). This list shall be a matter of public record open to public inspection and copies made available at cost to any individual who requests the same."

Forms for the report are available from the Bureau of Elections, Department of State, Room 304, North Office Building, Harrisburg, Pennsylvania 17120.

PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT  
January, 2001

During the term of this Agreement, the Consultant agrees as follows:

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. §35.101 et seq., The Consultant understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Consultant agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through Agreements with outside Consultants.
  
- b. The Consultant shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Consultant's failure to comply with the provisions of paragraph a.

CONSULTANT'S CERTIFICATION OF NON-COLLUSION, FEBRUARY, 1990

This certifies that the Consultant has not:

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

If the Consultant cannot so certify, then it agrees to submit along with the agreement/contract a written explanation of which certifications cannot be made.

The Consultant acknowledges that this certification is to furnished to the Department and to the Federal Highway Administration, U. S. Department of Transportation, in connection with this agreement/contract involving participation of Federal-aid funds, and is subject to the applicable State and Federal laws, both criminal and civil.

Appendix A of Title 49 Code of Federal Regulations, Part 29

Certification Regarding Debarment, Suspension, and other Responsibility Matters --  
Primary Covered Transactions  
August 1990

Instructions for Certification

1. By signing and submitting this agreement, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Pennsylvania Department of Transportation's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Pennsylvania Department of Transportation determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Pennsylvania Department of Transportation may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the Pennsylvania Department of Transportation if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Pennsylvania Department of Transportation for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Pennsylvania Department of Transportation.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", provided by the Pennsylvania Department of Transportation, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is debarred, suspended, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Pennsylvania Department of Transportation may terminate this transaction for cause of default.

Certification Regarding Debarment, Suspension, and Other  
Responsibility Matters - Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

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

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

(c) Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity offenses enumerated in paragraph (1)(b) of this certification; and

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

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

CERTIFICATION  
OF  
RESTRICTIONS ON LOBBYING  
August 6, 1990

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The Consultant shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

ACCEPTING PROVISIONS OF THE WORKMEN'S COMPENSATION ACT

The Consultant accepts the provisions of the Workmen's Compensation Act of 1915 of the Commonwealth of Pennsylvania, and supplements and amendments thereto, and has insured its liability thereunder in accordance with the terms of said Act.

CERTIFICATION OF DEPARTMENT OF TRANSPORTATION  
COMMONWEALTH OF PENNSYLVANIA  
JANUARY 1999

The Department certifies that the Consultant has not been required, directly or indirectly, as an expressed or implied condition in connection with obtaining or carrying out this agreement, to:

1. Employ or retain, or agree to employ or retain, any firm or person, or
2. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind, except as here expressly stated in this agreement (if any).

The Department acknowledges that this certification is to be furnished to the Federal Highway Administration, U. S. Department of Transportation, in connection with this agreement involving participation of Federal-aid highway funds, and is subject to the applicable State and Federal laws, both criminal and civil.

Department's Standard Agreement Special Requirements

April 26, 2001

1. Certificate of Authority

The Consultant shall obtain a Certificate of Authority from the Pennsylvania Department of State authorizing the Consultant to do business in Pennsylvania if the Consultant is conducting business as:

(A) A Corporation not incorporated under the laws of Pennsylvania;

(B) A business with headquarters within or without the Commonwealth of Pennsylvania and operating under a fictitious name.

2. Legal or Quasi Legal Proceedings

The Consultant shall not testify in any legal or quasi-legal proceeding concerning any matter under this Agreement or under a task force or committee without written consent of the Department.

3. Scope Conflict

The Consultant's Technical Proposal has been accepted by the Department subject to the modifications, additions, and amplification set forth in the Agreement. The provisions in this Agreement and the Department's Scope of Work and

Services shall govern where a conflict occurs with any Scope of Work and Services set forth in the Consultant's Technical Proposals.

4. Invoice Template

The Consultant shall use the Invoice Template provided by the Department through the ECMS when requesting reimbursement from the Department.

5. Monitoring of Costs

When the costs incurred by the Consultant for any Category of Compensation other than Lump Sum for Fixed Fee, Lump Sum, or Cost Per Units, for any Part of this Agreement, reaches seventy-five (75) percent of the maximum not to be exceeded amount stipulated in the Department's approved invoice template for that category, the Consultant shall cease work on that Part and evaluate the status of the entire Agreement. Work shall not recommence and the Department will not process any invoices on that Part of the Agreement unless one of the following actions has occurred:

- A. The Consultant has evaluated the status of the work and services required for that Part under the terms of the Agreement and verifies in writing that all of the work and services required for that Part can be provided without exceeding the maximum amounts

stipulated in the Department approved invoice template.

- B. The Consultant has evaluated the status of work and services required to be provided for that Part under the terms of the Agreement and has requested a supplemental for additional funds to complete the work and services or a transfer of existing funds within the Department approved invoice template. The Department, acting through the Agreement Project Manager Administrator, has reviewed the Consultant's request, has agreed that the Supplemental Agreement request or fund transfer is justified, and has notified the Consultant in writing that they may continue with the work and services up to the maximum not to be exceeded amounts stipulated in the approved invoice template for that Part of the Agreement.
6. Payment to Subconsultant/Subcontractor
- A. All monies received by the Consultant for services and work furnished by a Subconsultant/Subcontractor shall be paid in full to that Subconsultant/Subcontractor within fourteen (14) calendar days of the date the Consultant received payment from the Department.

B. It shall be the Consultant's responsibility to insure prompt payments to any and all lower tier Subconsultants/Subcontractors.

7. Federal Funds

If funds are provided by the Federal Highway Administration (FHWA) for participation in the cost of this Agreement, the work and services to be provided by the Consultant, as set forth in this Agreement, will be subject to and will be governed by the requirements of the Department Specifications, Publication 442, with respect to the review, comments and acceptance by the Department and by the Federal Highway Administration.

(a) Public Law 101-121, Section 319, prohibits Federal funds from being expended by the recipient or any lower tier sub-recipients of the Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement.

8. Maximum Direct Cost Other Than Payroll Reimbursement

The Department shall not accept any charges for subsistence or travel with rates in excess of the maximum State rates

set forth in appropriate directives promulgated by the Governor's Office, Commonwealth of Pennsylvania (Currently Management Directive 230.10).

9. Disadvantaged Business Enterprise (DBE) Program Assurance

That the Consultant agrees to comply with the terms and conditions of the following Disadvantaged Business Enterprise (DBE) Program Assurance for Federally-funded Agreements:

The Consultant shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of United States Department of Transportation-assisted agreements. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Pennsylvania Department of Transportation deems appropriate. If the Consultant is providing services or supplies for the Pennsylvania Department of Transportation pursuant to this Agreement the Consultant must include this assurance in each subcontract that the Consultant signs with a subcontractor. If the Consultant is a grantee or

other recipient of funds from the Department of Transportation, the Consultant must include this assurance in each contract into which the Consultant enters to carry out the project or activities being funded by this Agreement.

METHOD OF PAYMENT

SPECIAL REQUIREMENTS

Cost Per Unit of Work

February 28, 2001

When the method of payment for work and services is Cost Per Unit of Work, the following provisions apply:

1. Method of Payment

- A. The method of payment for work and services shall be a Cost Per Unit of Work together with the actual Direct Costs Other Than Payroll and Non-Professional subcontracts paid on the basis of certified invoices.
- B. Remuneration of principals or employees proposed to perform work under the Cost Per Unit of Work method of payment shall be limited to \$55.00 per hour, or their audited actual remuneration, whichever is less, for estimating a Unit cost.
- C. The cost for each Unit of Work includes Direct and Indirect Payroll charges and profit for the Consultant and all Subconsultants. All other charges are to be invoiced at actual cost.

2. Compensation

The Consultant shall be reimbursed as provided in its Price Proposal, which is made a part of this Agreement by reference and as further provided hereinafter.

A. Cost Per Unit of Work

The Consultant shall be reimbursed for work and services completed as a percentage of the Unit of Work cost as further provided for under the Department approved invoice template supplied through ECMS.

B. Direct Costs Other Than Payroll

The Consultant shall be reimbursed for the actual Direct Costs Other Than Payroll incurred in the performance of this Agreement as provided for under the Department approved invoice template supplied through ECMS.

C. Direct Costs of Work and Services Performed by Others

The Consultant shall be reimbursed for the actual Costs of Non-Professional Services as provided for under the Department approved invoice template supplied through ECMS. This category of compensation does not include Direct and Indirect Payroll Cost and profit for Subconsultants.

METHOD OF PAYMENT  
SPECIAL REQUIREMENTS

LUMP SUM

February 28, 2001

When the method of payment for work and services is Lump Sum, the following provisions apply:

1. Method of Payment
  - A. The method of payment for work and services shall be a Lump Sum amount together with Direct Costs Other Than Payroll and Subcontractor's Direct Costs Other Than Payroll and Non-Professional Costs paid on the basis of certified invoices.
  - B. Remuneration of principals or employees proposed to perform work under the Lump Sum method of payment shall be limited to \$55.00 per hour, or their audited actual remuneration, whichever is less, for estimating the Lump Sum amount.
  - C. The Lump Sum amount includes Direct and Indirect Payroll charges and profit for the Consultant and all Subconsultants. All other charges are to be invoiced at actual cost.
2. Compensation

The Consultant shall be reimbursed as provided in its Price Proposal, which is made a part of this Agreement by reference as further provided hereinafter.

A. Lump Sum

The Consultant shall be reimbursed for work and services completed as a percentage of the Lump Sum amount as further provided for under the Department approved invoice template supplied through ECMS.

B. Direct Costs Other Than Payroll

The Consultant shall be reimbursed for actual Direct Costs Other Than Payroll incurred in the performance of this Agreement as provided for under the Department approved invoice template supplied through ECMS.

C. Subcontractor's Direct Costs Other Than Payroll and Non- Professional Costs

The Consultant shall be reimbursed for the actual Subcontractor's Direct Costs Other Than Payroll and Non-Professional Costs as provided for under the Department approved invoice template supplied through ECMS. This category of compensation does not include Direct and Indirect Payroll Cost and profit for Subconsultants, which is included in the Lump Sum amount.

METHOD OF PAYMENT  
SPECIAL REQUIREMENTS  
SPECIFIC RATE OF COMPENSATION  
(CONSTRUCTION INSPECTION)

February 28, 2001

When the method of payment for Construction Inspection services is Specific Rate of Compensation the following provisions apply:

1. Construction Inspection Staff

The Consultant's inspection staff assigned under this Agreement shall meet the qualifications as shown on the Department's job descriptions for their respective Department's Inspection Payroll Classifications.

- (a) The Consultant shall make a detailed background check on all potential staffing candidates and then submit their proposed wage rate and resumes in sufficient detail to assure the Department that the individual meets and/or exceeds the requirements for the Department's Inspection Payroll Classification for which the individual is being considered. The job descriptions for the various Department's Inspection Payroll Classifications form a part of this Agreement and are incorporated herein by reference as though physically attached hereto.

- (b) The staffing for each project will be reviewed and approved in writing by an Authorized Department Representative. Inspectors assigned to a project shall remain for the duration of the project unless a transfer is approved or requested by the Department.
- (c) The Department reserves the right to order the immediate removal of any of the Consultant's staff from any project because of unsatisfactory performance or behavior.
- (d) The Department reserves the right, upon giving a minimum of two (2) weeks notice, to replace any or all of the Consultant's staff on any project with Department employees.

2. Method of Payment

- (a) The method of payment for work and services provided under this Agreement shall be a Specific Rate of Compensation for each Consultant Employee together with the actual Direct Costs of items included in the Consultant's Price Proposal as specified by the Department, and the Direct Costs of Work and Services Performed by Others, if applicable.
- (b) The maximum wage remuneration per hour for various Department payroll classifications for each calendar

year shall be as shown in the Consultant's Technical Proposal.

- (c) The Consultant shall not request approval for any hourly wage rate, which exceeds the maximum for the respective Department payroll classification for a particular year as specified in the Consultant's Technical Proposal.
- (d) The employees and their wage rates used to derive their specific rates of compensation, as listed in the Consultant's Price Proposal are for estimating purposes only. Prior to being assigned to this Agreement an employee listed in the Consultant's Price Proposal must be approved in accordance with paragraph 1(b) above. All wage rate approvals and wage rate increases must be approved by the Department prior to the employee being assigned to work under this Agreement or the effective date of the wage increase. All requests for approval of wage rates and wage rate increases shall be submitted to the Department through the Specific Agreement Employee Roster and Maintenance Function of the Department's Engineering and Construction Management System.
- (e) Specific rates of compensation shall be determined using approved hourly payroll rates multiplied by the

appropriate Specific Rate Factor as shown in the Consultant's Price Proposal made a part of this Agreement by reference. The overtime specific rate factor shall only apply as is provided for or may be required under existing law or approved labor agreements. These specific rate factors shall remain fixed for the life of this Agreement.

- (f) The specific rates of compensation for subconsultants shall be determined using the actual approved hourly payroll rates multiplied by the appropriate specific rate factors shown in the Subconsultant's Price Proposal which is part of the Consultant's Price Proposal.

The above specific rate factors shall remain fixed for the life of the Agreement.

### 3. Compensation

The Consultant shall be reimbursed as provided in its Price Proposal made a part of this Agreement by reference and as further provided hereinafter.

#### A. Specific Rate of Compensation

The Consultant shall be reimbursed for the Specific Rate of Compensation incurred in the performance of the work and services required by this Agreement as

further provided for under the Department approved invoice template.

B. Direct Costs Other Than Payroll

The Consultant shall be reimbursed for Direct Costs Other Than Payroll incurred in the performance of the work and services required by this Agreement as provided for under the Department approved invoice template.

C. Direct Costs of Work and Services Performed by Others

The Consultant shall be reimbursed for Direct Costs of Work and Services Performed by Others incurred in the performance of work and services required by this Agreement as provided for under the Department approved invoice template.

METHOD of PAYMENT

SPECIAL REQUIREMENTS

Cost Plus Fixed Fee

May 16, 2005

When the method of payment for work and services is Cost Plus Fixed Fee, the following provisions apply:

1. Method of Payment

The method of payment shall be the actual Direct/Indirect Payroll Costs, Direct Costs Other Than Payroll, Direct Cost of Work and Services by Others, and Lump Sum Fixed Fee.

2. Indirect Payroll Cost

For the computation of the Consultant's Indirect Payroll Cost and for partial payment purposes, a provisional Federal Acquisition Regulation (FAR) overhead percentage, as shown in the Consultant's Price Proposal, will initially be used. The Consultant shall establish, within six (6) months of the end of its fiscal year ending date, its actual FAR overhead percentage of direct salary cost for its first fiscal year ending after the date of this Agreement and submit it to the Department. This submission shall be reviewed and accepted, when applicable, by the Department prior to use by the Consultant. The Consultant shall establish its fiscal year FAR overhead percentage for

each of its fiscal years during which work is performed under this Agreement including the fiscal year in which the services and work are completed and accepted by the Department. When items or certain personnel classifications, ordinarily chargeable as indirect costs are charged to this Agreement as direct costs, the cost of like items applicable to other work of the Consultant will be eliminated from the indirect cost allocated to this Agreement.

3. Direct Payroll Cost

The Consultant has included in its price proposal a list of anticipated project employees by name, classification, and payroll rate per hour. The hourly payroll rates as listed will be subject to review by the Department. Any employee must have a wage rate approved by the Department prior to being assigned to work under this Agreement.

All requests for approval of wage rates shall be submitted to the Department through the Employee Roster and Maintenance Function of the Department's Engineering and Construction Management System.

In the event that the Department's maximum remuneration to principals or employees is revised, the revised maximum remuneration shall apply to this Agreement if allowed for by the Department's procedure implementing the revision.

Also, in the event principals are added, or dropped, or if the duties and responsibilities of a principal are revised, the Consultant shall advise the Department through the Roster Review and Approval of ECMS setting forth the terms as to its participation in those changes.

4. Compensation

The Consultant shall be reimbursed as provided in the Consultant's Price Proposal as further provided hereinafter.

A. Direct and Indirect Payroll Costs

The Consultant shall be reimbursed for its actual Direct and Indirect payroll costs incurred in the performance of the work and services required by this Agreement as allowable under the provisions of Part 31 of the Federal Acquisition Regulations and as provided for under the Department approved invoice template, supplied through ECMS, for the work and services to be provided by the Consultant.

B. Direct Costs Other Than Payroll

The Consultant shall be reimbursed for its actual Direct Costs Other Than Payroll incurred in the performance of work and services required by this Agreement as provided for under the Department approved invoice template supplied through ECMS.

C. Direct Costs of Work and Services Performed by Others  
The Consultant shall be reimbursed for actual Direct Costs of Work and Services Performed by Others incurred in the performance of work and services required by this Agreement as provided for under the Department approved invoice template supplied through ECMS.

The computation of the Subconsultant's/Subcontractor's Indirect Payroll Costs included under this item shall conform to all of the terms and conditions described under Indirect Payroll Cost as shown above, with the exception that the Subconsultant's/Subcontractor's overhead rates shall be as shown for each Subconsultant/Subcontractor in the Consultant's Price Proposal.

D. Lump Sum for Fixed Fee

The Consultant, for the satisfactory completion of the required work and services and the acceptance of the Consultant's work and services by the Department, shall be paid a Lump Sum for Fixed Fee as provided for under the Department approved invoice template supplied through ECMS. It is agreed and understood that this Lump Sum for Fixed Fee will constitute full compensation to the Consultant as a fee in addition to

its costs to provide the required work and services.  
The Consultant's man-hour estimate to provide the work  
and services is not a firm commitment on the part of  
the Consultant and is not a basis to change the Lump  
Sum for Fixed Fee unless the increase or decrease in  
man-hours is due to a substantial change in the  
required scope of work and services.

METHOD OF PAYMENT

SPECIAL REQUIREMENTS

SPECIFIC RATE OF COMPENSATION

February 27, 2001

When the method of payment for work and services is Specific Rate of Compensation, the following provisions apply:

1. Specific Rate of Compensation

- (1) The employees and their wage rates used to derive their specific rates of compensation, as listed in the Consultant's Price Proposal made a part of this Agreement by reference, are for estimating purposes only. Any employee must have a wage rate approved by the Department prior to being assigned to work under this Agreement. Remuneration of employees performing work and services under this Agreement shall be limited to \$55.00.per hour, or their actual remuneration, whichever is less. All requests for approval of wage rates shall be submitted through the Roster Maintenance Function of ECMS.
- (2) Specific rates of compensation shall be determined using actual approved hourly payroll rates multiplied by the appropriate specific rate factor as shown in the Consultant's Price Proposal, made a part of this

Agreement by reference. These specific rate factors shall remain fixed for the life of the Agreement.

- (3) The specific rates of compensation for Subconsultants shall be determined using the actual approved hourly payroll rates multiplied by the appropriate specific rate factors shown in the Subconsultant's price proposal which is part of the Consultant's price proposal.

The above specific rate factors shall remain fixed for the life of the Agreement.

- (4) In addition to the specific rate of compensation, the Consultant shall be paid allowable in-house direct costs such as, but not limited to, travel, subsistence, and reproduction for deliverables only.
- (5) The Consultant shall also be paid the Direct Cost by Others for work and services provided by Subconsultants/Subcontractor, Non-Professional Services, outside computer services and outside reproduction, if directed by the Department.

## 2. Compensation

The Consultant shall be reimbursed as provided in its Price Proposal made a part of this Agreement by reference and as further provided hereinafter.

### A. Specific Rate of Compensation

The Consultant shall be reimbursed for the Specific Rate of Compensation incurred in the performance of the work and services required by this Agreement as further provided for under the Department approved invoice template supplied through ECMS.

B. Direct Costs Other Than Payroll

The Consultant shall be reimbursed for Direct Costs Other Than Payroll incurred in the performance of the work and services required by this Agreement as provided for under the Department approved invoice template supplied through ECMS.

C. Direct Costs of Work and Services Performed by Others

The Consultant shall be reimbursed for Direct Costs of Work and Services Performed by Others incurred in the performance of work and services required by this Agreement as provided for under the Department approved invoice template supplied through ECMS.

GOOD FAITH EFFORT, DATED MAY 4, 2001

The following is a list of types of actions that should be considered as part of the Consultant's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (ECMS Consultant Qualifications file) the interest of all certified DBEs who have the capability to perform the work of the contract. The Consultant must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Consultant must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the work and services required in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the responsibility of all Consultants to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the required work and services for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A Consultant using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Consultant's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime to perform the work of a contract with its own organization does not relieve the Consultant of the responsibility to make good faith efforts.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the firm's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or firm.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.