



SPECIFICATIONS FOR CONSULTING SERVICES

2010 EDITION

OHIO DEPARTMENT OF TRANSPORTATION

PREFACE

Chapter 5526 authorizes the Director of the Department of Transportation to “employ or enter into contracts with any qualified firm for professional services in accordance with this chapter.” These professional services shall include the full range of services listed in Ohio Revised Code (ORC) 5526.01(C). These Specifications for the Office of Consultant Services (“Specifications”) are incorporated by reference in each Agreement for professional services, thereby substantially reducing the Agreement text. All references to the ORC will be construed to mean the current text of the law.

These Specifications originally were issued in 1959 and were amended in 1960, 1973, 1977, 1995, 1998, and 2010. This most current revised Specifications document is written from the standpoint of a contractual relationship between the Ohio Department of Transportation and a qualified firm. The term “consultant” shall be interchangeable with the term “qualified firm.” Reference to internal Department entities and procedures have been mostly eliminated, with the terms “State” and “ODOT” being used interchangeably. References to the Department’s internal structure were retained in cases where such is relevant to actions required of the Consultant. Chapter 1 and 2 contain Definitions and General Conditions, respectively, applicable to all Agreements. Chapter 3 explains audit and billing aspects of all Agreements. Chapter 4 explains the Consultant selection process. Chapter 5 explains the Agreement modification process. Cost proposal formats have been eliminated from this document and are now included on the Department’s website.

The date of this latest document revision has been added in the footing of each page to ensure that the copy of these Specifications being incorporated into the Agreement is the current copy. Revisions to these Specifications will be issued by the Department when appropriate, and the Consultant shall be responsible for obtaining a current copy.

In the event that other agencies such as cities or counties having the authority to execute an Agreement incorporating portions of these Specifications, their identity should be substituted for the term “Department”, as appropriate; and the name and title of that agency’s signatory should be identified, with reference to, or copies of, the legislative authority for the signatory to act for that public body.

An Equal Opportunity Employer

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Chapter 1 - Definitions

Words not defined shall be given their plain meaning. Words and terms used in these Specifications or in any documents where these Specifications pertain or govern, shall be defined as follows:

1.01 - Actual Allowable Costs

“Actual Allowable Costs” are eligible amounts determined based on costs incurred as distinguished from predicted or estimated costs. Generally Accepted Accounting Principles (GAAP) and appropriate federal regulations, such as Part 31 of the Federal Acquisition Regulation (hereinafter “FAR”)¹ shall be the basis for recognizing Actual Allowable Costs.

1.02 – Actual Costs Plus a Net Fee Compensation

“Actual Costs Plus a Net Fee” compensation is a form of reimbursement that is a combination of two factors:

- A. The Consultant’s Actual Allowable Costs; and
- B. A Net Fee as set forth in the Agreement.

1.03 - Actual Total Costs

In all Cost Plus a Net Fee agreements, “Actual Total Costs” are computed as the sum of the allowable Direct Costs and allowable Indirect Costs incurred or to be incurred pursuant to the Agreement.

1.04 - Additional Compensation

“Additional Compensation” is compensation that is negotiated for Additional Services after written Authorization to Proceed is received by the Consultant. It is in addition to, and independent from, the Prime Compensation for the Services.

1.05 - Additional Services

“Additional Services” involve the Consultant’s performance of all contractual requirements and the furnishing of all equipment, supplies, and materials required to achieve the general purpose and specific objectives of any Modifications to the Agreement.

1.06 - Adjustment of Prime Compensation

An “Adjustment of Prime Compensation” is an amount that, only by a Modification to the

¹ Codified at 48 CFR Part 31.

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Agreement, may be added to or subtracted from the Prime Compensation as a result of a change in the Scope of Services.

1.07 - Agreement

An “Agreement” is the contract between the signatories that defines the rights and obligations of all the contracting parties. The purpose of the Agreement is to secure the performance of professional services. The term “Agreement” shall include all Modifications.

1.08 - Approving Party

An “Approving Party” is a party, other than the signatories to an Agreement, upon whose acceptance the signatories must depend in the advancement or development of the Services including, but not limited to, the FHWA and appropriate local officials.

1.09 - Audit

An “Audit” is a formal examination of accounting systems, cost records, and other cost presentations to verify their reasonableness, allowability, and allocability for negotiating Agreement fees and for determining Agreement costs for federal, Department, and Local participation. Audits include an evaluation of a Consultant’s policies, procedures, controls, and actual performance. Audit objectives include the identification and evaluation of all activities that contribute to, or have an impact on, proposed or incurred costs of contracts, Agreements, and Specifications.

1.10 - Authorization to Proceed

An “Authorization to Proceed” is a written communication from the Department to the Consultant to start any unit or element of the Services to be performed as specified in the Agreement. This Authorization to Proceed shall establish any conditions and restraints necessary for, or incident to, the performance of the Services. An Authorization to Proceed shall be sent by regular mail to the Consultant, or in a manner approved by the Department.

1.11 - Change of Scope

A “Change of Scope” is an addition, a reduction, a substitution or a revision in the complexity, character or duration of the Services as provided in the Agreement or Specifications.

1.12 - Construction Contract Plan

A “Construction Contract Plan” is the complete set of construction drawings, specifications and estimated quantities required to construct a transportation improvement or facility.

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1.13 - Consultant

A “Consultant” is a firm, consisting of any person or limited liability company that is legally engaged in rendering professional services. Professional services includes the practice of engineering, surveying, landscape architecture, and architectural services related to bridges as well as the specialized areas of environmental impacts, right-of-way acquisition services, and construction contract claims. The term Consultant also is defined to include any past or present partner, officer, director, stockholder, or employee of the firm.

1.14 - Consultants Committee

The “Consultants Committee” is comprised of employees to whom the Director of the Department of Transportation has delegated the authority to select Consultants, negotiate the terms of Agreements, and administer Agreements with the Consultants. The authority of the Consultants Committee shall extend to committees within District Offices or other ODOT Offices as appointed by Director.

1.15 – Contract Audit Circulars

The “Contract Audit Circulars” provide official ODOT policy and serve to clarify and amplify the Cost Principles contained in Part 31 of the FAR. In some instances, the Circulars reflect ODOT policies that are more restrictive than the FAR (see, for example, Circular Nos. 5 and 11). All updates to the Circulars are hereby incorporated by reference. Parties to ODOT Agreements are obligated to review said circulars as their updates are made part of these Specifications as if fully incorporated herein.

1.16- Controlling Board

“Controlling Board” means the State Controlling Board as defined in ORC Chapter 127.

1.17 - Cost Accounting Standards

The “Cost Accounting Standards” (CAS) are issued by the Cost Accounting Standards Board (CASB), a section of the Office of Federal Procurement Policy within the U.S. Office of Management and Budget. The CASB has the exclusive authority to issue and amend cost accounting standards and interpretations designed to achieve uniformity and consistency in the cost accounting practices governing the measurement, assignment, and allocation of costs to contracts that involve federal funds. The CAS are codified at 48 CFR Chapter 99.

1.18 - Cost Accounting System

A “Cost Accounting System” allows for the systematic and timely classification, recording, allocation, presentation, and interpretation of costs, either actual or proposed, paid or required to be paid in the performance of Services. A Cost Accounting System involves a higher level of

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accountability than generally recognized in simple cash-basis financial accounting systems.

1.19 - Date of Acceptance

For interim submissions, the date of the written notice of acceptance from the Department to the Consultant is the Date of Acceptance for that submission. For the final submission of the Services performed, the Date of Acceptance shall be the date that the Department approves the Consultant's work product.

1.20 - Date of Submission

As related to Price Proposals, overhead schedules, and other financial information submitted by the Consultant, the "Date of Submission" is the date such documents are received by the Department, at the address designated by the Department.

1.21 - Department

"Department" means the Ohio Department of Transportation and may be used interchangeably with State or ODOT.

1.22 - Direct Cost

A "Direct Cost" is any labor or non-labor cost that can be traced to a specific cost objective (Project).

1.23 - Director

"Director" refers to the Director of the Ohio Department of Transportation.

1.24 - Disadvantaged Business Enterprise (DBE) Program

"DBE" means a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified as a participant in the DBE Program, a federal program operating under the guidance of the United States Department of Transportation. Authorization for the program comes from 49 Code of Federal Regulations Part 26 (49 CFR 26). The Ohio Department of Transportation (ODOT), as a recipient of federal transportation funds, must comply with the requirements of 49 CFR 26.

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1.25 - Enabling Legislation

“Enabling Legislation” is the existing or required legal documentation between the Department and a political subdivision setting forth or creating appropriate authority for the proposed inter-relationships, reimbursements, compensations, cooperation or consent between the legislative entities. The Enabling Legislation shall set forth the interests of each (city, county planning commission, etc.) in the ownership and administration or a Consultant’s Agreement or other aspects of Project administration.

1.26 - Encouraging Diversity, Growth & Equity (EDGE)

“EDGE Business Enterprise” means a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified as a participant in the Encouraging Diversity, Growth, and Equity Program administered by the Department of Administrative Services under ORC Section 123.152.

1.27 - Environmental Site Assessment

An “Environmental Site Assessment” (ESA) is a study used to determine if any hazardous substances are present on a property or parcel. ODOT uses these studies to determine the potential involvement of a Project’s earth-disturbing construction activities with documented environmental releases from adjacent properties.

1.28 - FHWA

“FHWA” refers to the Federal Highway Administration of the United States Department of Transportation.

1.29 - Indirect Costs (Overhead)

“Indirect Costs” are costs that cannot be feasibly traced to a specific cost objective (Project). Direct Costs of a minor dollar amount may be treated as Indirect Costs. After Direct Costs have been determined and charged to the Agreement or other work as appropriate, Indirect Costs are those remaining allowable costs to be allocated to the Agreement.

1.30 – Invoice and Progress Schedule (IPS)

“IPS” means the Invoice and Progress Schedule, a document incorporated into the Agreement. ODOT uses the IPS to monitor Project progress and Project costs.

1.31 – Lump Sum Compensation

“Lump Sum Compensation” is a type of contract that provides for remuneration of a specific total amount payable (sum certain) for the performance of the Services.

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1.32 - Maximum Prime Compensation

“Maximum Prime Compensation” is the not-to-exceed limit of the Prime Compensation under the provisions of an Agreement.

1.33 - Modification

A “Modification,” or addendum, is an adjustment to an Agreement made necessary as a result of:

- A. A Change of Scope which may require an Adjustment of Prime Compensation; or
- B. Additionally required Services to be performed that may require the Adjustment of Prime Compensation.

1.34 – NEPA

“NEPA” means the National Environmental Policy Act.

1.35 - Net Fee

“Net Fee” is the dollar amount established in the Agreement to provide for the Consultant’s profit, miscellaneous expenses, and other factors that may be considered under the applicable regulations and that are not paid for in other provisions of the Agreement.

1.36 - ODOT

“ODOT” refers to the Ohio Department of Transportation and may be used interchangeably with the terms “State” or “Department.”

1.37 – Organizational Conflicts of Interest

“Organizational conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

1.38 – Overtime Premium Wages

“Overtime Premium Wages” arise from the difference between an employee’s standard hourly wage rate and the special hourly wage rate paid for time in excess of 40 hours per week.

1.39 - PDP

“PDP” means ODOT’s Project Development Process.

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1.40 – Prequalification

“Prequalification” refers to the Department’s system for determining whether Consultants meet certain minimum qualification levels in accordance with ORC Section 5526.04. The Department’s Prequalification requirements are set out in the most current version of the Department’s Consultant Prequalification Requirements and Procedures, which is posted on the Department’s website.

1.41 - Price Proposal

A “Price Proposal” is the Consultant’s written submission of the Project requirements and includes a narrative description of the Project and proposed Services together with a detailed schedule of requested compensations.

1.42 - Prime Compensation

“Prime Compensation” is the monetary remuneration specified for payment by the Department to the Consultant for acceptable elements of the Agreement.

1.43 - Principal

A “Principal” is an individual who is a sole proprietor, owner, partner, shareholder, or contracting officer of a qualified firm.

1.44 - Project

A “Project” is the subject of the Agreement between ODOT and the Consultant.

1.45 - Project Schedule

A “Project Schedule” is a tabular delineation of the Consultant’s agreed schedule of completion, as reflected on the IPS form.

1.46 – Rate of Pay Compensation

“Rate of Pay Compensation” is a type of remuneration that establishes a specific rate of pay in the Agreement applicable for each classification of employee, including Principals, for the time the Consultant directly utilizes each such individual in the performance of the Agreement.

1.47 - Review Time

“Review Time” is the elapsed time between the Date of Submission of a complete and adequately prepared item and its Date of Acceptance.

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1.48 - Services

The term “Services” encompasses the Consultant’s performance of all contractual requirements, including, but not limited to, the furnishing of all equipment, supplies, and materials required to complete the Agreement.

1.49- Specifications

“Specifications,” means the current version of the *Specifications for Consulting Services* of the Ohio Department of Transportation.

1.50 - State

“State” refers to the State of Ohio, represented by the Director of Transportation or authorized designee.

1.51 - Subconsultant

A “Subconsultant” is any person or organization to which the Consultant has subcontracted, transferred, or assigned any portion of its contractual obligations.

1.52 - Subfactors

“Subfactors” means important aspects of a Project that will play a large role in the Consultant selection process. Subfactors are considered in the scoring through normal selection criteria, but firms with experience or a record of good performance in the Subfactors would receive relatively higher scores. Subfactors may play a predominant role in evaluating the categories of Project manager, strength/experience of assigned staff including Subconsultants, and Consultant’s past performance. Examples of Subfactors would be an unusual bridge type, a complex geotechnical or foundation situation, or a very complex interchange configuration.

1.53 - Suspension

“Suspension” is an action taken by the Director to temporarily stop all or selected Services that are included in a specific Agreement.

1.54 - Termination

“Termination” is an action taken by the Director to stop and conclude all Services.

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1.55 – Total Hour Accounting System

A “Total-Hour Accounting System” records all hours worked by all employees, regardless of whether the employees are exempt from overtime pay or whether all direct labor hours are billed to specific contracts. All Consultants that receive compensation under Actual Costs Plus a Net Fee Agreements must maintain a Total-Hour Accounting System.

1.56 – Uncompensated Overtime

“Uncompensated Overtime” as defined by FAR 52.237-10 means “hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave must be included in the normal work week for purposes of computing uncompensated overtime hours.” All Consultants that receive compensation under Actual Costs Plus a Net Fee Agreements must appropriately adjust for Uncompensated Overtime. This is necessary to ensure that Government contracts do not bear a disproportionate share of labor costs.

1.57 – Unit of Work Compensation

“Unit of Work Compensation” is remuneration that establishes a specific unit amount payable for each unit of Services performed.

Chapter 2 – General Conditions

2.01 - Standard Terms and General Conditions

The Department and the Consultant agree, by execution of an Agreement incorporating these Specifications, that the following general conditions shall pertain and govern, except as amended from time to time.

The prevailing order of precedence of contractual incorporation shall be:

- A. the Agreement;
- B. the Scope of Services; then
- C. these Specifications.

2.02 - Compliance with Applicable Laws

The Consultant shall comply with any and all Ohio, federal and local statutes, ordinances, and regulations and obtain all permits that are applicable to the performance of the Services set forth in the Agreement.

2.03 - Continuing Obligations

In the event of any type of change of ownership in the Consultant's business enterprise, including reorganization or death, incapacity, resignation, or termination of any of the Consultant's Principals or other key personnel, neither the Consultant nor the surviving Principals shall be relieved of their continuing obligation to complete the Services in accordance with the scheduled completion dates specified in the Agreement. This obligation may only be waived through an affirmative release granted by the Department.

2.04 - Non-Discrimination Regulations

During the performance of the Agreement, the Consultant, its assignees and successors in interest, agrees as follows:

- A. **Compliance with Regulations:** The Consultant will comply with the Regulations of the U.S. Department of Transportation relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation, (Title 49 Code of Federal Regulations, hereinafter referred to as "the Regulations"), which are incorporated by reference and made a part of the Agreement as if fully written herein.

CHAPTER 2 – General Conditions

- B. **Non-discrimination:** The Consultant, with regard to Services performed after award and prior to completion of the work, will not discriminate on the ground of race, color, religion, gender, sexual orientation, age, disability, national origin, Vietnam era Veteran status, ancestry or genetic information in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- C. **Solicitations of Subconsultants, including procurement of material and equipment:** In all solicitations either by competitive bidding or negotiation made by the Consultant for Services to be performed by a Subconsultant, including procurement of materials or equipment, each potential Subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under the Agreement and the Regulations relative to non-discrimination on the ground of race, color, religion, gender, handicap, Vietnam Veteran era status, national origin or ancestry.
- D. **Information and Reports:** The Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant hereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the FHWA 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 Department or the FHWA, as appropriate, and shall set forth the efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the non-discrimination provisions of the Agreement, the Department will impose such sanctions to the Agreement as it or the FHWA may determine to be appropriate, including but not limited to:
1. Withholding of payments to the Consultant under the Agreement until the Consultant complies; and/or
 2. Termination or Suspension of the Agreement in whole or in part.
- F. **Incorporation of Provisions:** The Consultant shall include the provisions of Section 2.16 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The Consultant shall take such action with respect to any Subconsultant or procurement as the Department or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a Subconsultant or supplier as a result of such direction, the Department may enter into such litigation to protect the interest of the Department, and in addition, the Consultant may request the United States to enter into

CHAPTER 2 – General Conditions

such litigation to protect the interests of the United States.

2.05 – Goals for DBE and EDGE Participation

The Department may establish goals for participation of DBE or EDGE firms on a specific Agreement. Goals will be stated as a percentage of the contract that must be performed by DBE or EDGE firms. For each Agreement that includes a goal, the Department shall include procedures for obtaining a waiver if a goal cannot be attained, along with procedures for sanctions if the Consultant fails to comply with the contract requirements and/or fails to demonstrate the necessary good faith effort.

2.06 – Ownership and Copyright of Deliverables

Except as otherwise provided herein, the Consultant shall deliver, assign, transfer, and convey to the Department all rights, title, and interest to all documents, data, materials, information, studies, reports, surveys, proposals, plans, codes, scientific information, technological information, regulations, maps, equipment, charts, schedules, photographs, exhibits, software, software source code, and documentation prepared or developed or created or discovered as a Deliverable for the benefit of the Department under or in connection with this Agreement. (the “Deliverables”).

The Deliverables provided by the Consultant shall become the property of the State. The State, and any person, agency, or instrumentality providing financial assistance for the Services performed under the Agreement shall have an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. The Department assumes all responsibility for any modifications they make to the Deliverables. The Consultant shall not obtain copyright, patent, or other proprietary protection for the Deliverables.

Unless otherwise agreed upon in writing between the parties, copyright to any Deliverable shall be held by the Department as a work for hire, provided, however, that the Consultant shall reserve its rights in all methods, pre-existing work, data, software, and data used to prepare such Deliverables. If it is agreed that the Consultant shall retain the copyright for any of the Deliverables, the Consultant agrees to grant to the Department a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Department purposes: (a) the copyright in any Deliverable developed under the Agreement; and (b) any rights of copyright to which the Consultant purchases ownership for the Agreement.

In the event of any claim or suit against the Department arising from any alleged patent or copyright infringement arising out of the performance of the services under this Agreement, or out of the use of any supplies furnished or work or Services performed under said Agreement, the Consultant shall furnish to the Department upon request, all evidence and information in possession of the Consultant pertaining to such suit or claim. The Consultant agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or Services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services).

CHAPTER 2 – General Conditions

2.07 - Non-Appropriation, OBM Certification and Taxes

It is understood that the State of Ohio's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails at any time to continue funding for the payments due in connection with any Agreement with the Department, said Agreements will terminate as of the date that the funding expires without further obligation of the Department.

Agreements are subject to ORC Section 126.07, which provides, in part, that orders under State Agreements shall not be valid and enforceable unless the Director of the Office of Budget and Management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations.

The Department represents that it is exempt from all State and local taxation. As long as the Department is exempt, the Department does not agree to pay any of these taxes. The Consultant, not the Department, shall pay any taxes levied upon the Consultant's net income.

2.08 - Political Contributions – Compliance with ORC Section 3517.13

By entering into any Agreement with the Department, the Consultant affirms that, as applicable to it, no party listed in Division (I) or (J) of Section 3517.13 of the Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees, and further certifies that it is aware of Executive Order No. 2007-01S and that it will not, during the term of the Agreement, do anything inconsistent with the Ohio Elections laws or that executive order.

The Consultant understands that knowingly making false statement with regard to the aforementioned certification is, in itself, grounds for the rescission of the Agreement and may result in the loss of other Agreements with the State of Ohio.

2.09 – Certification Regarding Lobbying & Solicitation

- A. The Consultant certifies, by execution of an Agreement with the Department, that:
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.

CHAPTER 2 – General Conditions

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-LOLL, “Disclosure of Lobby 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2.10 - Finding for Recovery

By entering into any Agreement with the Department, the Consultant affirmatively represents to the Department that it is not subject to an unresolved *Finding for Recovery* under ORC 9.24, or that it has taken the appropriate remedial steps required under ORC 9.24 or otherwise qualifies under that section. The Consultant agrees that if this representation is deemed to be false, then the Agreement will be void *ab initio* as between the parties to the Agreement, and any funds paid by the Department hereunder shall be immediately repaid to the Department, or the Department may immediately commence an action for recovery of said funds.

2.11 - Use of Offshore Labor with Department Agreements

The Consultant agrees that it shall not and shall not allow others to perform work or take data outside the United States without express written authorization from the Department, and further affirms that all personnel provided for any Department Agreement, who are not United States citizens, will have executed a valid I-9 form and presented valid employment authorization documents.

2.12 - Ohio Ethics Law Requirements

In accordance with Executive Order 2007-01S, the Consultant, by signing a contract with the Department, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) it has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) it will take no action inconsistent with those laws and Executive Order 2007-01S. The Consultant understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for Termination of

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any and all contracts with the State of Ohio.

2.13 - Drug-Free Work Place

The Consultant agrees to comply with all applicable State and federal laws regarding drug-free workplace. The Consultant shall make a good faith effort to ensure that all of the Consultant's employees, while working on State property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

2.14 - Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA Form)

Pursuant to the ORC Sections 2909.32, 2909.33, and 2909.34, all Consultants must complete and submit a DMA form to become prequalified.

All DMA forms and reference information, including a list of licenses subject to DMA and the Terrorist Exclusion list, can be found on the Ohio Homeland Security Web site at www.homelandsecurity.ohio.gov/dma.asp.

House Bill 461, which became effective July 1, 2007, requires vendors to complete the DMA certification through the Ohio Business Gateway. The Ohio Business Gateway is the repository for all pre-certifications and vendors are only required to complete the certification one time for the biennium. This process must be completed electronically. The Ohio Business Gateway can be found at obg.ohio.gov.

2.15 - Conflicts of Interest

Prior to submitting a letter of interest in response to an ODOT project notification, the Consultant shall identify and evaluate potential organizational conflicts of interest or develop recommended actions for known organizational conflicts of interest. Consultants are directed to FAR 2.101, 9.504(a), OAC 4733.35-05, 23 CFR 636.116(a)(1), and 40 CFR 1506.5(c) (as amended) for guidance as to when a conflict of interest arises.

If the Consultant determines that a potential organizational conflict of interest exists, the Consultant shall, before submitting its letter of interest, submit to the Department a Notice of Potential Conflict of Interest explaining the circumstances of the potential conflict and any remedial action proposed by the Consultant. The Department may meet with the Consultant to discuss any potential conflicts after receipt of such notice. If a waiver of potential conflicts of interest is needed, the Department may approve or deny the request for a waiver and any decision to deny by the Department is final.

If, as a condition of award, the Consultant's eligibility for future prime Consultant or Subconsultant awards will be restricted or the Consultant must agree to some other restraint due to the conflict, then the letter of interest shall contain a proposed clause that specifies both the nature and duration of the proposed restraint. The Department shall include the clause in the

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Agreement, first negotiating the clause's final terms with the successful Consultant if it is appropriate to do so.

The restraint imposed by a clause shall be limited to a fixed term of reasonable duration, sufficient to avoid the circumstance of unfair competitive advantage or potential bias. This period varies. It might end, for example, when the first production contract using the Consultant's specifications or work statement is awarded, or it might extend through the entire life of a system for which the Consultant has performed systems engineering and technical direction. In every case, the restriction shall specify Termination by a specific date or upon the occurrence of an identifiable event.

The Consultant warrants it has no public or private interest, and shall not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the Services under the Agreement.

The Consultant shall not employ any person currently employed by the Department for any Services included under the provisions of the Agreement. The Consultant may have other contracts with other clients (e.g., utility companies, other units of government, or abutting land owners) whose interests may be in conflict with the objectives of a particular Department-initiated Project. It is the Consultant's responsibility to avoid conflicts of interest in these circumstances and to disclose them as soon as they arise.

2.16 – NEPA Disclosure Statement

By entering into any Agreement with the Department or accepting any subsequent assignment of work under that Agreement, the Consultant hereby certifies that, in accordance with 40 CFR 1506.5, that it is has no financial or other interest in the execution or outcome of the Ohio Department of Transportation Project.

2.17 - Restrictions on Participation in Construction Contracts

It is understood that the Services performed by the Consultant under any Agreement with the Department may result in a highway construction Project initiated by the Department or an entity affiliated with the Department. The Consultant, and any of its Subconsultants that have provided Services to the Department that have been directly utilized in preparation of construction contract documents, will **NOT** be eligible to provide Services to the construction contractor for that Project, either as a prime Consultant or as a Subconsultant. Moreover, in regard to ORC Chapter 5525.01, the Consultant agrees that, as a limited agent of the Department, it will not perform any work for a contractor or subcontractor for said highway construction Project that would facilitate the contractor's or subcontractor's pursuit of a Value Engineering Change Proposal.

2.18 - Restrictions on Participation in Design-Build Contracts

The Consultant, and any of its Subconsultants that have provided Services to the Department that have been directly utilized in the preparation of design-build contract documents or a Scope of

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Services document, will **NOT** be eligible to participate in the design-build contract for that Project, either as a prime Consultant or as a Subconsultant.

However, the Department may determine that there is not an organizational conflict of interest for a Consultant or Subconsultant under the provisions of Section 2.15, and grant a waiver on that basis.

2.19 - Qualifications of Consultants

Consultants must be prequalified by the Department to perform design, environmental, and other Services that are included in the Department's *Consultant Prequalification Requirements and Procedures*. The Department may waive Prequalification in the selection of Consultants for Services that are not included therein.

The Department may, in verification of a Consultant's qualifications, conduct pre-award evaluations of the Consultant's professional and financial capabilities and capacities, including, but not limited to, the adequacy of the prospective Consultant's Cost Accounting System to segregate and accumulate reasonable, allocable, and allowable costs. To comply with these requirements, the Consultant shall maintain current Prequalification with the Department.

2.20 - Ownership of Records

All photography, survey data, reports, studies, drawings, maps, computations, plans, specifications, estimates, and other documented evidence of the Services (including computer generated forms of the preceding), prepared by or for the Consultant as part of the Deliverables under the provisions of the Agreement, shall become and remain the property of the Department upon demand, Termination, or completion of the Services provided.

The Consultant agrees that final payment may be withheld until all original aerial photographic negatives, survey notes and associated original mapping products have been received by the Department.

The Consultant further acknowledges and agrees that, subject to certain statutory exceptions, most documents and records maintained by, and for, the Department are public records and are subject to disclosure under the Ohio Public Records Act. All documented evidence of the Services prepared by or for the Consultant under any Agreement with the Department shall be produced at the Department's request.

2.21 - Access to the Records

The Department or approving parties, upon reasonable notice to the Consultant during the negotiation for, and advancement of the Agreement, shall be permitted to inspect the Consultant's professional, technical and financial conditions, Cost Accounting System, and other facilities and records in order to provide reasonable assurance of the Consultant's ability to provide the Services specified in said Agreement.

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Following the Department's acceptance of the work, the Consultant and all Subconsultants shall maintain all accounts, papers, maps, reproductions, documentary materials, and other evidence pertaining to the Agreement. The record retention period shall be three years after the date of the Department's payment of the final invoice. If Audit findings have not been resolved, the records shall be retained beyond the three-year period. One copy of the appropriate records shall be furnished to the Department, or any authorized representatives, if requested, at no additional cost to the Department.

The Consultant and each Subconsultant shall provide, at no additional cost, facilities and appropriate personnel to expedite any inspection by the Department or the approving parties.

2.22 - Cost Principles and Limitations

The Department shall apply the cost principles set forth in FAR Part 31 in negotiating fees under the Agreement and in determining the Actual Total Costs of Services performed in accordance with the Agreement.

Additionally, the Department has a policy limiting Actual Allowable Costs for travel. The Department's limitation on travel is governed by ORC Section 126.31 as quoted, in part, as follows:

Notwithstanding any other statute to the contrary, no executive officer, legislative officer, or judicial officer of the supreme court, and no member or employee of, or Consultant to any State agency, whose compensation is paid in whole or in part from State funds shall travel at State expense to attend any association, conference, or convention, or perform official duties, inside this State except as authorized by the appropriate State agency and in the manner, and at the rates that do not exceed those, provided by rule of the Director of the Office of Budget and Management adopted in accordance with ORC Chapter 119.

Travel rules prescribed by the Director of the Office of Budget and Management are filed in Ohio Administrative Code Rule 126-1-02, as amended from time to time, and shall be incorporated into these Specifications as if fully written herein.

All travel costs included in Price Proposals and invoices shall conform to Administrative Rule 126-1-02, as amended from time to time.

2.23 - Methods of Compensation

The Department may use any one of the following methods (individually or in combination), to compensate the Consultant for Services rendered: (1) Lump Sum Compensation, (2) Actual Costs Plus a Net Fee Compensation, (3) Rate of Pay Compensation, or (4) Unit of Work Compensation, all as defined in Chapter 1 of these Specifications. At ODOT's discretion, pre-award, interim, and/or final Audits may be required for any or all methods.

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2.24 - Overtime Premium Wages

For any Agreement or part of an Agreement for which payment is based on Actual Costs Plus a Net Fee compensation, Overtime Premium Wages must be approved by the Department in writing prior to being incurred.

2.25 - Insurance and Indemnity

The Consultant shall indemnify and hold harmless the Department and approving parties and all of their officers, agents, and employees from all damages, suits, actions, claims, judgments, losses or liabilities brought for, or on account of any injuries or damages received by any person or property resulting from any negligent acts, errors, or omission of the Consultant, its employees, agents, Subconsultants, or any other representatives of the Consultant committed in the performance of professional Services under the Agreement.

The total insurance coverage and related provisions specified hereinafter have been selected to provide the minimum protection to the Department intended by the pre-described indemnity. The Consultant shall be required to maintain in full force and effect, and at its own expense, from the date of the first Authorization to Proceed until the Department's acceptance of the work product, at least the following minimum coverage. Insurance shall be maintained as specified below, for the minimum limits as indicated. Insurance shall be written by insurance companies authorized to transact business in the State of Ohio under the laws of the State and licensed by the Ohio Department of Insurance as either admitted or non-admitted insurers with at least an A- (Excellent) rating from A.M. Best Co.

The types of insurance coverage specified herein are intended to protect the Department from claims for a personal and bodily injury, death, disease, and damage to tangible property including loss of use, arising in any manner from wrongful acts, negligent acts, errors, or omissions of the Consultant, its employees, agents, Subconsultants, their employees or agents, or any other representatives of the Consultant involved in the prosecution of the work.

The State of Ohio, ODOT, its officers and employees assume no responsibility for the adequacy of limits and coverage in the event of any claims against the Consultant, its officers, employees, Subconsultants or any agent of any of them. The obligations of the indemnity Agreement recited above shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified to the fullest extent of the State's Statutes of Repose.

Certificates of insurance shall be provided in the same manner and form as the insurance policies as set out above.

The Department will not issue an Authorization to Proceed nor shall the Consultant commence any portion of the Services until the Consultant certifies that the prerequisite insurance coverages are in effect. In addition, no invoice for any type of compensation will be honored by the Department without appropriate evidence of prerequisite insurance coverage.

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A. Professional Liability Insurance

Pursuant to ORC 5526.07, professional liability insurance, either a practice policy or Project policy, is required for all Projects unless noted otherwise in the Agreement. Prior to performing any work, the Consultant agrees to provide evidence of professional liability insurance coverage. The Consultant is responsible for any and all deductibles.

A practice policy shall be the default option if no option is specified in the Scope of Services.

1. Practice Policy Professional Liability Insurance

Practice professional liability insurance shall be carried in an amount not less than \$1,000,000 per claim and \$1,000,000 in aggregate for all claims for negligent performance. Coverage shall be maintained in force for a period ending two years after substantial completion of construction, provided coverage is available to the Consultant.

2. Project Professional Liability Insurance Policy

When required, the Consultant shall provide and maintain a separate professional liability Project insurance policy to insure against negligent performance on a specific Project. The policy shall also include coverage for asbestos exposures, pollution liability and contractor's pollution liability. The Project policy shall cover the design and construction period and a discovery period of not less than two years. The discovery period shall be measured from substantial completion of construction. The Project must be endorsed to the Consultant's practice policy upon expiration of the discovery period. The Project policy shall carry minimum limits per claim and Project aggregate and a deductible amount as required by the Scope of Services. All design professionals and all Subconsultants providing Services, including environmental and geotechnical Services, shall be included in the policy as named insured parties.

B. Workers' Compensation and Employees Liability

The Consultant shall provide and maintain workers' compensation insurance in compliance with Ohio's Workers' Compensation laws, and any other applicable workers' compensation or disability laws.

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C. Commercial General Liability Insurance

The Consultant shall provide and maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate. Coverage shall be on an occurrence form, and include contractual liability. The policy shall be amended to include the following extensions of coverage:

1. Exclusions relating to the use of explosives, collapse, and underground damage to property shall be removed.
2. The Consultant shall provide ODOT advance notice of a policy cancellation on the project. The policy shall require that the insurer endeavor to notify ODOT of the policy cancellation.
3. The Department, all approving parties, and all of their officers, agents, and employees shall be additional insured parties.

D. Automobile Liability

The Consultant shall provide and maintain automobile liability insurance covering all owned, leased, borrowed, rented, or non-owned autos used by employees or others on behalf of the Consultant for the conduct of the Consultant's business, for an amount not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage. The term "automobile" shall include private passenger autos, trucks, and similar type vehicles licensed for use on public highways. The policy shall be amended to include the following extensions of coverage:

1. Contractual Liability coverage shall be included to cover the assumed liability of the indemnity recited in this paragraph;
2. The Consultant shall provide ODOT advance notice of a policy cancellation on the project. The policy shall require that the insurer endeavor to notify ODOT of the policy cancellation ; and
3. The Department, all approving parties, and all of their officers, agents, and employees shall be additional insured parties.

E. Watercraft Liability

1. When necessary to use watercraft for the performance of the Consultant's Services under the terms of the Agreement, either by the Consultant, or any Subconsultant, the Consultant shall carry watercraft liability in the amount of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable. Coverage shall apply to owned, non-owned, and hired watercraft.

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2. If the maritime laws apply to any work to be performed by the Consultant under the terms of the Agreement, the following coverage shall be provided:
 - a. United States Longshoremen & Harborworkers; and
 - b. Maritime Coverage - Jones Act.
3. The policy shall provide thirty (30) days notice of cancellation to ODOT.
4. The Department, all approving parties, and all of their officers, agents and employees shall be additional insured parties.

F. Aircraft Liability

1. When necessary to use aircraft for the performance of the Consultant's Services under the terms of the Agreement, either by the Consultant or Subconsultant, the Consultant shall carry aircraft liability in the amount of \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage shall apply to owned, non-owned and hired aircraft.
2. The Consultant shall provide ODOT advance notice of a policy cancellation on the project. The policy shall require that the insurer endeavor to notify ODOT of the policy cancellation.
3. The Department, all approving parties and all of their officers, agents, and employees shall be additional insured parties.

G. Valuable Papers and Records Insurance

Insurance covering valuable papers and records shall be included only if specifically required in the Agreement.

H. Umbrella Liability

Umbrella coverage in excess of the underlying liability policies in an amount not less than \$1,000,000 per occurrence / \$1,000,000 aggregate. The policy shall include the following extensions of coverage:

1. A thirty (30) day notice of cancellation to ODOT; and
2. The following form of primary general and automobile liability coverage:
 - a. The Department, all approving parties, and all of their officers, agents, and employees shall be additional insured parties;

CHAPTER 2 – General Conditions

- b. Products and completed Operations (coverage to be included);
- c. Explosion, Collapse and Underground (exclusions removed);
- d. Contractual Liability (coverage to be included);
- e. Watercraft Liability (coverage to be included); and
- f. Aircraft Liability (a \$6,000,000 Aircraft Liability Policy is an acceptable alternative if the Consultant’s Umbrella Insurer will not provide aircraft coverage on a following form basis).

I. Notice of Cancellation

Should any of the above-described insurance policies be cancelled, non-renewed, or be reduced in coverage or limits before the expiration date, the Consultant shall provide ODOT advance notice of a policy cancellation on the project. The issuing company shall endeavor to notify ODOT of the policy cancellation.

2.26 - Environmental Site Assessment Liability

To the extent that it is required by the terms of the Agreement, the Consultant shall provide Services in accordance with all federal, State and local laws and regulations governing hazardous or toxic substances.

The Consultant acknowledges and agrees that in the event of litigation and/or governmental investigations concerning or arising from the presence or suspected presence of hazardous or toxic substances, including remedial or removal Services performed, that it shall cooperate and assist in such litigation and/or governmental investigations as needed, including, but not limited to, providing testimony, documents, information, or other materials or matters relating to the history of the site, the nature of the contamination at the site, costs of clean-up of the site, responsibility for contamination, alternative methods for clean-up of the site, and other related matters.

2.27 – State’s Obligations

An ODOT District Office or Central Office shall be responsible for administering the Agreement. The Department shall provide to the Consultant, during the negotiation and administration of an Agreement, a mutually agreeable number of copies of existing reports, plans, photographs, topographic mapping, traffic data and projections, utility information, administrative guidelines, directives, technical manuals, specifications, and other documents pertinent to the Services.

The Department may review the Consultant’s submission and provide comments where necessary. Such review shall not relieve the Consultant of any obligation concerning accuracy or completeness of the work. The Department represents that the Consultant shall be entitled to rely

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on the accuracy and completeness of any documents or materials provided by the Department, and that the Consultant's use of such documents or materials will not infringe upon any third party's rights, but in no way will the Department indemnify the consultant for its use of the documents or materials provided by the Department under the Agreement.

2.28 - Relationships with Others

The Consultant shall cooperate fully with the Department and approving parties, Consultants on adjacent or overlapping Projects, municipalities, counties, other local government agencies, railroad and utility companies, and other public and private agencies as may be directed by the Department. This shall include attendance at meetings, discussions, hearings, provision of plans and other data as may be requested from time to time by the Department.

2.29 - Publicity

All news releases and responses to media inquiries shall be approved and released only through the Department.

2.30 - Access to the Project Site

The Department shall provide the Consultant legal access rights to the Project site during the performance of the Agreement, including ingress and egress from a public right-of-way.

To ensure amicable public relations, the Consultant shall notify the property owner or person in possession of the property at least 48 hours prior to entry into said property. The notification format shall be approved by the Department before use.

The Authorization to Proceed shall constitute permission for the Consultant to occupy public right-of-way within the Project area for the performance of the Services.

2.31 - Delegation of Services

A. Professional Services

For any professional Services that require Prequalification, the Consultant shall not subcontract such Services to a non-qualified firm without first obtaining written approval from the Department. Additionally, the use of any Subconsultants other than those specifically identified in the Price Proposal must be approved in writing by the Department. If a Consultant elects to subcontract any portion of the professional Services covered by an ODOT contract, then, in relation to the portion of the Services delegated to the Subconsultant, the Consultant shall neither be relieved from the responsibility to perform in compliance with provisions of the contract nor the responsibility to maintain adequate insurance coverage as specified by the contract.

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B. Nonprofessional Services

No approval will be necessary for the subcontracting of nonprofessional Services such as printing, reproductions, and other routine Services normally performed or provided by those not a party to the Agreement, provided that compensation for such Services is included in the Prime Compensation.

C. Compensation

The Department will not compensate the Consultant for subconsultant fees in excess of the Actual Allowable Costs incurred by the subconsultant. Accordingly, the Consultant may not charge overhead or profit on subconsultant fees.

The Consultant shall compensate Subconsultants using the same method of compensation established in the Agreement, unless a different method of compensation is specifically approved in writing by the Department. All Subconsultant costs are subject to Audits in accordance with Chapter 3.

The Consultant shall require Subconsultants to provide notice if actual costs will exceed estimated costs. The Consultant shall not allow Subconsultants to exceed their estimated actual costs without prior written approval by the Department. The Consultant is further cautioned that cost overruns associated with a Subconsultant's contract are not available for use by the prime Consultant, unless the Department and FHWA (if applicable) have given prior written approval.

2.32 - Performance of the Services

The Department shall provide written Authorization to Proceed with performance of the Services. No Services shall be performed until such authorization has been issued by the Department. Services performed prior to the written Authorization to Proceed are not compensable.

A completion schedule acceptable to ODOT and the Consultant shall be negotiated for each Agreement. The Department's standard IPS forms as posted on the ODOT website shall be used, if applicable.

In the event that the Consultant fails to meet the Project Schedule, all progress payments will stop until:

- A. The Project is back on schedule.
- B. The Department agrees to a revised schedule.

Acceptance and approval of a revised work schedule from a Consultant shall not constitute a basis for Modification of the Agreement.

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2.33 – Evaluation of Consultant Performance

The Department will evaluate the Consultant's performance in order to measure the Consultant's conformance with the Project Schedule and ODOT's established processes, procedures and criteria. Performance will be evaluated upon completion of the services, but the Department reserves the right to conduct interim evaluations.

These evaluations will be used to:

- A. Provide Consultants with timely information about deficiencies attributed to their staff;
- B. Track changes in the quality of Services produced by the Consultant;
- C. Assist in focusing review efforts on poorly performing Consultants;
- D. Assist ODOT in maintaining a list of pre-qualified Consultants; and
- E. Assist ODOT in selecting Consultants.

2.34 - Appearances, Conferences and Meetings

The Consultant shall provide appropriately qualified representatives for meetings that the Department deems necessary. This includes, but is not limited to, Project development conferences, Construction Contract Plan and report interpretation conferences, location and design conferences, utility relocation conferences, plan and progress review meetings, public meetings, public hearings, and other such representations as may be required prior to the final acceptance of the Services.

2.35 - Compliance with Health and Safety Requirements

When providing Services that require visiting the site of an ODOT construction Project, the Consultant shall be responsible for compliance with applicable health and safety requirements, including OSHA requirements (29 CFR 1926), and medical testing required by OSHA and ODOT rules and regulations.

The Consultant shall provide, as a minimum, the same level of safety equipment as required for ODOT inspectors. Consultant inspectors shall be subject to compliance inspections by ODOT personnel.

2.36 - Reviews

All preliminary and final studies, reports, designs, plans, specifications, estimates, and other documents prepared by the Consultant may be reviewed by the Department.

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2.37 - Errors and Omissions

Services provided by the Consultant under the Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

The Consultant shall be responsible for the accuracy of the Services and shall promptly make necessary revisions or corrections resulting from its negligence, errors or omissions without any Additional Compensation from the Department. The Department's use of the Consultant's Services shall not relieve the Consultant of any responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities.

During construction or any phase of work performed by others based on Services provided by the Consultant, the Consultant shall confer with the Department when necessary for the purpose of interpreting the information, and/or to correct any negligent act, error or omission. The Consultant shall prepare any plans or data needed to correct the negligent act, error or omission without Additional Compensation, even though final payment may have been received by the Consultant. The Consultant shall give immediate attention to these changes so there will be a minimum of delay to the contractor.

In the event of any negligent act, error or omission which the Department determines to be the responsibility of the Consultant in any phase of the Services, the correction, repair or reconstruction of which may require additional field or office work, the Consultant shall be promptly notified and shall be required to perform such corrective Services as may be necessary without undue delay and without additional costs to the Department.

The Consultant shall be responsible for damages including but not limited to economic waste, direct and indirect damages incurred as a result of its negligent act, error or omission, and for losses or costs to repair or remedy construction. Acceptance of the Services by the Department shall not relieve the Consultant of responsibility for subsequent correction.

2.38 – Cost Accounting Requirements for Errors and Omissions

When notified by the Department of a potential error or omission, either during Project development or during the construction phase of a Project, the Consultant shall establish and maintain cost accounting records to segregate all costs associated with evaluation and correction of the potential error or omission. All costs associated with errors and omissions, including directly-associated legal fees, must be borne by the Consultant and may not be charged to any ODOT contract directly or through overhead.

2.39 - Partnering

For specific Projects noted in the Scope of Services, the Consultant will be required to enter into a cooperative partnership Agreement with ODOT and the construction contractor. The objective of said Agreement will focus on the timely completion of the Project and the delivery of a

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quality product. The “Partnering Agreement” will not affect the terms and conditions of the Consultant Agreement. Instead, the Partnering Agreement is a document that is solely intended to establish an environment of cooperation between the parties.

2.40 - Dispute Resolution

In the event of a dispute, the Consultant and the Department may, by mutual agreement, use the services of a mutually-acceptable third party mediator. The mediation process shall be established and controlled by the mediator, and the costs of the mediator’s Services shall be borne equally by the Consultant and the Department.

If mediation efforts fail, the parties may, by mutual agreement, and to the extent permitted by law, elect to arbitrate the dispute. Arbitration shall be binding upon the parties if agreed to with the cost of the arbitration to be shared equally. The form of arbitration may vary and is again at the option of the Consultant and the Department.

Finally, in the event that mediation and arbitration fail to resolve the dispute, the Consultant and the Department may pursue all other remedies provided by law; however, neither Audit findings nor errors and omissions are subject to mediation under this paragraph or any other part of these Specifications.

2.41 - Sanctions for Deficient Performance or Improper Accounting Practices

The Director of Transportation may impose sanctions when a Consultant’s performance is found to be deficient by the Department. However, the Consultant shall have fourteen (14) days from receipt of the notice of deficiency to cure or submit a plan for cure that is acceptable to the Department. If the Consultant fails to cure such deficiency or submit a plan to cure such deficiency, at the Director’s discretion, sanctions may be imposed under the following circumstances:

A. Accounting System Deficiencies

An accounting system deficiency exists when any of the following elements, either individually or in combination, are detected during any Interim or Final Incurred-Cost Audit:

1. Significant weaknesses of internal controls;
2. Claiming a significant amount of unallowable costs;
3. Failure to implement prior Audit guidance; or
4. Findings for monetary recovery.

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B. Technical Performance. Technical performance deficiencies exist when any of the following exists, either individually or in combination:

1. The Department has incurred significant damages as a result of the Consultant's error or omission;
2. The Consultant's performance evaluation ratings indicate a pattern of poor performance; or
3. Other performance issues deemed significant by the Department.

Sanctions range in severity and are designed to help ensure the Consultant complies with applicable federal and State laws, regulations, and Department policies and standards. Sanctions may range from requiring the Consultant to complete a corrective action plan to Termination of Prequalification status and/or active Agreements, administrative Suspension (Consultant debarred from pursuing additional contracts), or other measures deemed appropriate by the Director. The Director may exercise complete discretion in considering the nature and substance of any issues when evaluating the qualifications of a Consultant for current or future work with the Department.

The Department will provide written notification to the Consultant if sanctions will be imposed. If applicable, additional information regarding the Consultant Sanction Process will be provided at that time.

Request for Review. Upon receipt of a notification that sanctions have been imposed by the Department (written notification), the Consultant may submit to the Director a written request for review. Requests for review must be postmarked within fifteen (15) calendar days from the Consultant's date of receipt of the written notification. The Department will evaluate the request and notify the Consultant of its determination in writing.

2.42 - Suspension

The Director, may at any time prior to completion of the Agreement, temporarily suspend any Agreement when it is determined to be in the Department's interest. Such Suspension shall be provided by written notice. If such Suspension is not lifted within 120 days from the notice of Suspension, the Consultant may request that the Agreement be terminated.

2.43 - Termination

The Director may terminate an Agreement at any time prior to its completion. The Director shall give written notice to the Consultant regarding anticipated Termination actions.

Total compensation to the Consultant, in the event of Termination, shall be made promptly by the Department for the total of all types of compensation earned by the Consultant. This includes the pro rata portion of the Net Fee, under the provisions of the Agreement to the effective date of said Termination, less any payments previously paid or in the process of payment by the

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Department. The Consultant also shall be reimbursed for the actual costs of its reasonable and necessary mobilization and demobilization expenses. All requests for earned compensation and for any other reimbursements shall be supported with acceptable cost accounting data and documentation of work completed, and shall be subject to an Audit by the Department. The Consultant shall make no claim for any other liability or compensation (including anticipated profit) from the Department by reason of such Termination.

Chapter 3 – Audits, Reviews, and Invoicing

3.01 – Audit and Review Requirements

The Department and the Consultant agree that, by execution of an Agreement incorporating these Specifications, the following review and billing provisions shall pertain and govern in the negotiation and administration of the Agreement.

The Department shall subject each Price Proposal to a pre-award review to determine the propriety of proposed costs. To expedite the review, the Consultant's Price Proposal shall contain an itemized breakdown of the estimate for performing the Services as stipulated in Chapter 4. This estimate shall include the Consultant's estimated amounts for Direct Costs (both labor and non-labor costs), Indirect Costs, costs of Subconsultants, and the Net Fee. The estimate shall be presented in a format suitable to the Department. Required formats are addressed in Chapter 4.

The Consultant is responsible for establishing and maintaining an acceptable Cost Accounting System that satisfies the requirements of FAR Part 31. In accordance with FAR Part 31, the Consultant must maintain time records in a manner that will permit, at any time during the performance of the Services or at the conclusion of the Services, a direct comparison of estimated labor listed in the Price Proposal (or agreed to during the final negotiation) to actual labor expended. FAR Part 31 also specifies that the Consultant bears the burden of proof to establish the allowability, allocability, and reasonableness of any costs charged to Government contracts. This applies to all costs, including costs directly assigned to contracts and Indirect Costs that are recovered through the application of an overhead rate and/or facilities capital cost of money (FCCM) rate.

In addition to the pre-award review described above, the Department may conduct interim and final Audits to determine the actual, allowable costs incurred during the Agreement period. In all cases, the Department shall apply the cost principles and procedures set forth in FAR Part 31, the ODOT Contract Audit Circulars, as amended from time to time, and any other special criteria established in the Agreement. This includes additional Department policies and/or interpretations of federal laws and regulations, including the State of Ohio Travel Regulations (Ohio Administrative Code Rule 126-1-02), and the AASHTO Uniform Accounting Guide.

3.02 - Invoice Preparation

An acceptable progress schedule is required to be submitted prior to the release of payment. In addition, no invoice for any type of compensation shall be honored by the Department without appropriate evidence of prerequisite insurance coverage. The Consultant may submit, not more frequently than once a month or as otherwise stipulated in the Agreement, a billing for the total of all compensation earned.

CHAPTER 3 – Auditing and Billing

For all Agreements, all Direct Costs must be properly supported by time records and/or copies of receipts or other acceptable evidence of expenditures. Actual Allowable Costs shall be determined in conformance with applicable provisions of the Department's policies and directives, the FHWA's Federal-Aid Policy Guide, and the principles and procedures set forth in FAR Part 31. When specific Department and FHWA policies differ from FAR Part 31, the Department and FHWA policy shall prevail.

The amount earned for each type of compensation, unless otherwise set forth in the Agreement, shall be computed for inclusion on the invoice as follows:

- A. *Lump Sum Compensation* shall be computed by applying the actual percentage of progress of the service being performed, as evidenced by the current IPS, to the lump sum amount established in the compensation clause of the Agreement or that portion thereof assigned to the element of the Services.
- B. *Actual Costs Plus a Net Fee Compensation* shall be computed as the additive total of all eligible items of Actual Allowable Costs plus that portion of the predetermined Net Fee derived by applying the actual percentage of progress of the Services, as evidenced by the current IPS, to the total Net Fee established in the Prime Compensation clause of the Agreement.
- C. *Unit of Work Compensation* shall be computed as the additive total of all units of work performed by their respective unit costs as established in the Agreement.
- D. *Rates of Pay Compensation* shall be computed as the additive total of all classifications and increments of service of employees engaged in the work by their rates of pay as established in the Agreement. Non-labor Direct Costs, if separately defined in the Agreement, shall be included in the computation to the extent supported by suitable evidence.

3.03 - Compensation and Schedules of Payments

Unless specifically stated otherwise in the Agreement, the schedule of payments for the Consultant's Services shall be in accordance with the following:

- A. The Department shall pay to the Consultant, or its legal representatives, partial payments equal to the compensation earned for authorized Services, less the total of all previous invoices submitted.
- B. Upon completion of the contracted Services, the amount of the final compensation paid shall be one hundred percent of the maximum Prime Compensation earned and shall not exceed the maximum limitations as established in the Agreement.
- C. Unless otherwise instructed, the Consultant shall submit an invoice and updated progress schedule (IPS) every thirty (30) days. The format, number of copies, and method of

CHAPTER 3 – Auditing and Billing

- submission shall be as stated in the Agreement or otherwise agreed by the Department.
- D. All payments shall be made pursuant to ORC Section 126.30. Furthermore, any payment made by the Department under the provisions of the Agreement shall not be conclusive evidence of acceptable performance of the work, either wholly or in part, (See Section 2.36 - Errors and Omissions), or a release from the Consultant's continuing obligations (See Section 2.03).

Chapter 4 – The Consultant Selection Process

This Chapter establishes the procedures for selecting Consultants to provide professional Services.

4.01 - Consultant Selection Process

The Department shall select Consultants in accordance with ORC Section 5526 and applicable federal law.

4.02 - Prequalification

The Department shall establish Prequalification requirements, in accordance with Section 2.19, and administer the Prequalification process accordingly. When applicable, Prequalification requirements shall be used as a selection factor.

4.03 - Project Notification

A. Project Notification

For Projects that require public notice in accordance with ORC 5526.03 (exceptions to the requirements of ORC 5526.03 are noted in ORC 5526.06), the Department shall provide a Project notification seeking letters of interest from Consultants. The ODOT Internet Website (<http://www.dot.state.oh.us>), updated weekly, shall be utilized for notifications.

The Project notification shall contain the following information as appropriate:

1. A description of the selection process to be used, including the number of steps (direct selection based on the information provided, or a two-step process with a short list and second submittal, etc.), and the selection rating criteria to be used.
2. Project designation (County-Route-Section).
3. Project Identification Number (PID).
4. A description of the Project including the location and the specific Services required.
5. The pre-qualification required to provide the Services.
6. The approximate construction cost if applicable.
7. Subfactors, if any, that will be considered in the selection process.
8. Estimated date of authorization.

CHAPTER 4 – The Consultant Selection Process

9. Time period in which the work must be completed.
10. The maximum Net Fee percentage.
11. The DBE or EDGE goal percentage if any.
12. Instructions for submitting a letter of interest.
13. Date and time that the letter of interest is due.

The Department shall place the names of the selected firms on the ODOT Website following the selection.

B. Scope of Services Meeting

The Department may conduct a Scope of Services Meeting to further clarify the Scope of Services for the Project, set out the content and organization of the Price Proposal and establish a due date for the Price Proposal. The selected Consultant and appropriate Subconsultants shall attend the Scope of Services Meeting.

C. Price Proposals

The Department shall set out the required format for Price Proposals on ODOT's Website. Price Proposals shall be organized as discussed in the Scope of Services Meeting, or as otherwise directed by the Department. Price Proposals must be received by the Department by the time and date established at the Scope of Services Meeting. If a Price Proposal is not received timely, the proposal may receive no further consideration.

The Department may accept the proposed fee, offer the Consultant a lower fee, or negotiate with the Consultant. If negotiation with the highest ranked Consultant fails to result in an agreed upon fee, the Department will notify that firm in writing of the Termination of negotiations. The next highest ranked Consultant will be invited to a Scope of Services Meeting and then be requested to submit a Price Proposal. If negotiations again fail, the same procedure shall be followed with the next most qualified firm until an Agreement has been negotiated. If the remaining Consultants are considered unqualified, the notification and selection phases will be repeated.

D. Controlling Board Approval, Agreement Processing and Authorization

After final selection, the Department shall obtain Controlling Board approval and shall prepare an Agreement for execution by the Consultant and the Director.

CHAPTER 4 – The Consultant Selection Process

4.04 - Communications Restrictions

To avoid even the appearance of impropriety and to assure an unbiased and uninfluenced selection process, the following policy governs communication with the Department during the selection process for a specific Project, or a group of Projects posted simultaneously:

- A. During the time period between advertisement and the announcement of final Consultant selection, the Department will not communicate with Consultants (or their agents) regarding the status of the selection process, or entertain any communications related to marketing, etc. When completed, selections are announced through the Department's Website;
- B. Permissible communications include Project administration activities for authorized Agreements, scope and negotiation activities for Projects selected but not under contract, training or related activities, and technical or Scope of Services questions specific to posted Projects; and
- C. When appropriate, the Department may specify procedures for submitting questions in writing, and responding through the Department's website.

4.05 - Confidential Information

All selection information, including Consultant letters of interest, technical proposals and Price Proposals, and the Department's selection ratings and estimate, shall be considered confidential and will not be available for public disclosure until after an Authorization to Proceed has been issued by the Department.

Chapter 5 – The Agreement Modification Process

5.01 - Initiation

Modifications to Agreements may be initiated through one of two processes, as follows:

- A. When Additional Services outside the scope of the original Agreement are required, the Department may request the Consultant to submit a proposal for a Modification to the original Agreement. The Department's request shall be in writing, and shall be signed by a Deputy Director or authorized designee. The request shall clearly state the scope of the Additional Services. When additional clarification is required, the Department shall arrange a Scope of Services Meeting.

- B. When a Consultant believes that the scope of services included in the Agreement has been exceeded, the Consultant shall promptly notify the Department in writing. Such changes also may be dictated by written procedures included in manuals or decisions made by the Department. As the project develops, it is the Consultant's responsibility to advise the Department of significant changes in the work that may require modification of the Agreement, and to maintain separate cost accounting for each specific issue. The Department's written comments and other technical decisions concerning development of the project shall not be construed as authorization for Additional Services for which Additional Compensation may be claimed. Modification of the Agreement or written authorization to proceed is required prior to the performance of Additional Services. The Consultant may submit a proposal for Modification to the ODOT office administering the Agreement. That office shall process the request or shall return the proposal to the Consultant with an explanation of the Department's denial for further processing. When specifically requested by the Consultant, the ODOT office must forward a proposal for Modification to the Consultants Committee when there is an unresolved dispute regarding the need for, or extent of, the alleged Additional Services.

5.02 - Approval of the Fee, Controlling Board Approval and Agreement Processing

The Department shall accept the proposed fee, offer the Consultant a reduced fee, or negotiate a new fee acceptable to both parties. Should the Modification contain a request for an advance authorization of funds, the Consultants Committee shall determine the acceptability of the request, and the Department will notify the Consultant to proceed if approval is granted.

Following acceptance of the fee and receipt of Controlling Board approval, the Department will complete the Modification and authorize the Consultant to proceed.