

Federal-Aid Requirements for Architectural/ Engineering Consultant Supplement

ARTICLE A. DOCUMENTS FORMING THIS AGREEMENT

The agreement must include the documents forming the agreement between the Sponsor and the Consultant. The following will be included in the agreement:

- Agreement Form - "Municipal Consultant Agreement";
- Project Description and Funding;
- Scope of Services;
- As applicable, Staffing Rates, Hours, Reimbursables and Fee;
- Federal-Aid Requirements for Architectural/Engineering Consultant Supplement.

ARTICLE B. COMPENSATION METHODS, RATES AND PAYMENT

As full compensation for Consultant's work, services and expenses hereunder the Sponsor shall pay to the Consultant, and the Consultant agrees to accept compensation based the methods designated and described in this agreement. Compensation methods must be clearly documented in the agreement. Compensation methods available are Cost Plus Fixed Fee Method, Specific Hourly Rate Method, and Lump Sum Cost Plus Reimbursables Method.

ARTICLE C. INSPECTION

The duly authorized representatives of the Sponsor, and on Federally aided projects, representatives of the New York State Department of Transportation ("NYSDOT") and the Federal Highway Administration ("FHWA"), shall have the right at all times to inspect the work of the Consultant.

ARTICLE D. EXTRA WORK

If the Consultant is of the opinion that any work the Consultant has been directed to perform is beyond the scope of the Project Agreement and constitutes extra work, the Consultant shall promptly notify the Sponsor, in writing, of this fact prior to beginning any of the work. The Sponsor shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. In the event that the Sponsor determines that such work does constitute extra work, the Sponsor shall provide extra compensation to the Consultant in a fair and equitable manner. If necessary, an amendment to the Project Agreement, providing the compensation and describing the work authorized, shall be prepared and issued by the Sponsor. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the Sponsor to the Consultant for execution after approvals have been obtained from necessary Sponsor officials, and, if required from the FHWA.

ARTICLE E. WORKER'S COMPENSATION AND LIABILITY INSURANCE

This Agreement shall be void and of no effect unless the Consultant shall secure Workman's Compensation Insurance for the benefit of, and keep insured during the life of this agreement, such employees as are necessary to be insured in compliance with the provisions of the Workman's Compensation Law of the State of New York.

The Consultant shall secure policies of general and automobile liability insurance and maintain said policies in force during the life of this agreement. Said policies of insurance shall protect against liability arising from errors and omissions, general liability and automobile liability in the performance of this agreement in the sum of at least \$1,000,000.00 (One Million dollars) each.

The Consultant shall furnish a certified copy of said policies to the Sponsor at the time of execution of this agreement.

ARTICLE F. RECORDS RETENTION

The Consultant shall establish and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to performance under this agreement (collectively called the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment is received, whichever is later. The Sponsor, State, FHWA, or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of the Consultant within the State of New York or, a mutually agreeable reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

ARTICLE G. COVENANT AGAINST CONTINGENT FEES

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

ARTICLE H. PROPRIETARY RIGHTS

The Consultant agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. However, the Consultant agrees to and does hereby grant to the United States Government and the State of New York and the Sponsor a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

ARTICLE I. CERTIFICATION REQUIRED BY 49 CFR, PART 29

The signator to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

- A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- C. does not have a proposed debarment pending; and
- D. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

ARTICLE J. CERTIFICATION FOR FEDERAL-AID AGREEMENTS

The prospective participant certifies, by signing this Agreement to the best of his or her knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal agreement, 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 agreement, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal agreement, grant, loan, or cooperative agreement, the undersigned shall

complete and submit the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be, included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE K. NON-DISCRIMINATION REQUIREMENTS

The Consultant agrees to comply with all applicable Federal, State and Sponsor Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and Title VI of the Civil Rights Act of 1964, as amended, and any other State and Federal Statutory and constitutional non-discrimination provision, the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a agreement for the construction, alteration or repair of any public building or public work for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this agreement shall be performed within the State of New York, Consultant agrees that neither it nor its Subconsultants shall, by reason of race, creed, color, disability, sex or national origin; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. Consultant is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

ARTICLE L. CERTIFICATION REQUIRED BY 40 CFR 111506.5(c)

If the work of the Project includes the preparation of an Environmental Impact Statement (EIS), the signator to this Agreement, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

- A. an existing agreement for the Projects ROW incidental work or construction engineering; or

- B. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the Project alternatives.

This does not preclude the Consultant from being awarded a future agreement covering the work describe in this Article or being awarded Phases V & VI Final Design after the EIS has been approved.

ARTICLE M. WAGE AND HOURS PROVISIONS

If this is a public work agreement covered by Article 8 of the Labor Law or a building service agreement covered by Article 9 thereof, neither Consultant's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Consultant and its subconsultants must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

ARTICLE N. INTERNATIONAL BOYCOTT PROHIBITION

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this agreement exceeds \$5,000, the Consultant agrees, as a material condition of the agreement, that neither the Consultant nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Consultant, or any of the aforesaid affiliates of Consultant, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the agreement's execution, such agreement, amendment, or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Sponsor and the State Comptroller within five (5) business days of such conviction, determination, or disposition of appeal (See, 2 NYCRR 105.4).

ARTICLE O. PROMPT PAYMENT

While federal regulation (49 CFR 26.29) requires payment to subcontractors within 30 days, New York State law is more stringent. NYS General Municipal Law §106-b and NYS Finance Law Article 9, §139-f require prime contractors and prime consultants to pay their vendors within seven (7) calendar days of receipt of payment from the public owner/Sponsor and provides for interest on late payments for all public works agreements. Agreement provisions incorporating any other payment schedule will not be allowed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subagreement have been accomplished and documented. When the Sponsor

has made an incremental acceptance of a portion of a prime agreement, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.