| AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT | 1. Contract Number DCKA-2011-R-0080 | Page of Pages 1 \| 22 |
|---|---|---|

| 2. Amendment/Modification Number | 3. Effective Date | 4. Requisition/Purchase Request No. | 5. Solicitation Caption |
|---|---|---|---|
| **One (1)** | | | **Disadvantaged Business Enterprise Supportive Services** |

| 6. Issued By: Code | 7. Administered By (If other than line 6) |
|---|---|
| Office of Contracting and Procurement<br>Roads and Highway<br>2000 14th Street NW 6th Floor<br>Washington DC 20009 | DDOT<br>Office of Civil Rights<br>2000 14th Street NW 4th Floor<br>Washington DC 20009 |

| 8. Name and Address of Contractor (No. Street, city, country, state and ZIP Code) | (X) | 9A. Amendment of Solicitation No. |
|---|---|---|
| | | **DCKA-2011-R-0080** |
| | | 9B. Dated (See Item 11) |
| | | 10A. Modification of Contract/Order No. |
| | | 10B. Dated (See Item 13) |
| Code Facility | | |

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

[X] The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers [ ] is extended. [X] is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning 1 copies of the amendment: (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or fax which includes a reference to the solicitation and amendment number. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or fax, provided each letter or telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. Accounting and Appropriation Data (If Required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14

| | |
|---|---|
| (X) | A. This change order is issued pursuant to: (Specify Authority)<br>The changes set forth in Item 14 are made in the contract/order no. in item 10A. |
| | B. The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation date, etc.) set forth in item 14, pursuant to the authority of 27 DCMR, Chapter 36, Section 3601.2. |
| | C. This supplemental agreement is entered into pursuant to authority of: |
| | D. Other (Specify type of modification and authority) |

**E. IMPORTANT:** Contractor [ ] is not, [X] is required to sign this document and return 1 copies to the issuing office.

14. Description of amendment/modification (Organized by UCF Section headings, including solicitation/contract subject matter where feasible.)

The solicitation is amended as follows:

**DELETE** Attachment J.2 in its entirety and **REPLACE** with the new Attachment J.2 (affixed to this amendment).

**DELETE** Page 2 of Attachment J.4 and **REPLACE** with the new Page 2R of Attachment J.4 as amended on the attached.

Questions posed at the Pre-Proposal Meeting of March 22, 2011 is attached for reference purposes.

Except as provided herein, all terms and conditions of the document referenced in Item (9A or 10A) remain unchanged and in full force and effect

| 15A. Name and Title of Signer (Type or print) | | 16A. Name of Contracting Officer | |
|---|---|---|---|
| 15B. Name of Contractor<br>(Signature of person authorized to sign) | 15C. Date Signed | 16B. District of Columbia<br>Jerry M. Carter<br>(Signature of Contracting Officer) | 16C. Date Signed<br>3/23/11 |

(7) "Any other minorities or individuals found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) and 8(d) of the Small Business Act, as amended, (15 U.S.C. 637(a)).

The Contracting Officer shall make a rebuttable prerogative that individuals in the above groups are socially and economically disadvantaged. This prerogative shall be based on criteria set forth in 49 CFR Part 26. The Contracting Officer also may determine, on a case-by-case basis, that individuals who are not members of one of the above groups are socially and economically disadvantaged.

**Prompt Payment:** The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract within 7 days from the receipt of each payment the prime contractor receives from DDOT. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the recipient. This clause applies to both DBE and non-DBE subcontractor.

**Contract Goals:**

The bidder shall subcontract **Thirty-Five (35)%** of the dollar value of the total amount of this DOT-assisted contract to qualified DBE subcontractors. A complete DBE plan containing a list of DBE firms to be utilized on this project must be submitted within five (5) working days subsequent to bid opening to DDOT, Construction Contract Branch; 2000 14th Street, N.W., 6th floor Washington, D.C. 20009.

The DBE plan shall include, but it is not limited to:

1. The names, addresses of DBE firms that will participate in the contract;
2. A description of work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm;
4. Written and signed document of commitment to use the DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.
6. If the bidder fails to meet the contract goal, evidence of good faith efforts, as described below shall be submitted.

A bidder who fails to meet these requirements and who cannot show good faith effort will be considered non-responsive.

**Good Faith Effort:**

The following actions, by the bidder, are generally considered a sign of good faith effort. This list is not exclusive or exhaustive, but should be used as a guide in determining good faith effort.

1. Attendance at pre-bid meetings scheduled to inform DBE's of the project.

**Disadvantaged Business Enterprise (DBE) Supportive Services**
**Pre-Proposal Questions and Answers**
**March 22, 2011 @ 10:00 a.m.**

**Question**: Are there preferences for CBE firms?
**Answer**: No. This is a federally-funded project and local regulations do not prevail.

**Question**: Will cost considerations be given to local 'vs' out-of-state firms?
**Answer**: No

**Question**: Is there data that exist which reflects DBE participation on DDOT contracts?
**Answer**: Yes

**Question**: Are the costs of consulting with the FHWA Financial consultant related to contract?
**Answer**: No

**Question**: Are most deliverables within the first 6 month of the contract?
**Answer**: No – only the deliverables outline in F.2 are due within the first 6 months.

**Question**: Is it part of the Technical Assessment, locating 25 firms out of the 1,200 certified, included in the first 6 months of the contract?
**Answer**: No – the 25 DBE firms should be identified after the DBE Capacity Assessment.

**Question**: Provide clarification on deliverables timeframe:
**Answer**: F.2 outlines the items due within the first 6 months. The remaining items will be scheduled in coordination with the winning consultant and the Office of Civil Rights.

**Question**: Does a firm have to be certified on the day the RFP is due.
**Answer**: Yes

**Question**: Does the consultant, as a DBE prime contractor, count towards the 35%?
**Answer**: Yes

**Question**: To receive the 5% DBE bonus does the prime have to be certified as a DBE?
**Answer**: Yes

**Question**: Is there an expedited certification (DBE) process?
**Answer**: No

**Question**: How will the program be marketed?
**Answer**: Through the Office Civil Rights' eblast and through our regional partners.

**Question**: How is the BOW-DC Hotline to be funded?
**Answer**: DDOT has one already in place which will be utilized.

**Question**: Will DDOT also provide the web-based technology?
**Answer**: Yes

**Question**: if any of the 25 DBE firms are dropped from the program, are there sanctions against the Consultant?
**Answer**: No

**Question**: Can you subcontract more than the 35% goal?
**Answer**: Yes

**Question**: Are the hours of 9 am – 5:00 pm hours at BOW and the 2-days at Civil Rights Office on 14th Street also to be used to handle walk-ins?
**Answer**: Yes - there will be flexibility with the office hours at the BOW/DC. There will be a required commitment to have some working hours at the BOW/DC and some meetings periodically at DDOT's main office.

**Question**: Will consultants be evaluated based on their past performance on other contracts or evaluated based on the individuals proposed to perform on the contract.
**Answer**: EVALUATION CRITERIA – reiterated:

- Specialized experience and technical competence of the consultants and its personnel proposed to perform on the contract (maximum 20 points)
- Past performance in addressing unique challenges and collaborating with community leaders and other small business stakeholders (maximum 20 points)
- Demonstrated understanding of Disadvantaged Business Enterprise Program (49 CFR part 26) and evidence of effective communication with the prime contractor community taking into account the unique challenges in highway construction projects (maximum 20 points)
- Capacity to accomplish the work on schedule (maximum 20 points)
- Familiarity with local highway construction market (maximum 20 points)
- Firm certified as a DBE (maximum 5 bonus points)

**Question**: If a DBE and a non-DBE merge to create a Joint Venture, does the DBE's certification become part of the Joint Venture?
**Answer**: No, the Joint Venture will have to apply for certification as a Joint Venture with DDOT. To be certified as a joint venture, the DBE partner must own and control at least 51% of the joint venture. Further, it is not required that the joint venture have DBE certification to submit a proposal. 35% DBE participation is required.

**Question**: What is the deadline for additional questions not covered in this amendment and location to send questions?
**Answer**: By close of business March 25, 2011. Send questions to: Mr. Jerry M. Carter, Contracting Officer, DDOT, 2000 14th Street NW, 6th Floor, Washington, DC 20009.

**Question**: Does the cover sheet, table of contents, etc., count towards the 10 page limit of the Proposal?
**Answer**: No

**Question**: Please explain (a) how the five (5) DBE bonus points will be awarded to proposals submitted and (b) the difference between awarding of the DBE bonus points and the 35% DBE participation requirement.
**Answer**: (A) the 5% bonus points will be awarded to Prime contractors who are DBE certified firms; and (b) the 35% DBE participation is the goal for subcontracting with a DBE firm certified by DDOT. Again, the DBE prime contractor can meet the subcontracting requirement by using its own organization.

**Question**: Is there an expectation that the successful bidder must provide full time coverage at the MLK Office between the hours of 9-5

Option A -- A full-time employee (FTE) onsite

Option B -- Members of the consultant team will be allowed to rotate based on an approved schedule

**Answer**: Option B

# GENERAL PROVISIONS

## (Federally Funded Agreements)

## February 19, 1981

## REVISED 3/2/2001

## ATTACHMENT B

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## GENERAL PROVISIONS

1. DEFINITIONS:

The terms "Mayor" and "Contract Appeals Board" shall mean the Mayor of the District of Columbia and the Contract Appeals Board of the District of Columbia. The term "Contracting Officer" shall mean the contracting Officer of the District of Columbia District Department of Transportation or his Authorized Representative. The term "DC DDOT" shall mean the District of Columbia District Department of Transportation. The term "U.S. DOT" shall mean the United States Department of Transportation. The term "FHWA" shall mean the Federal Highway Administration of the U.S. DOT. The term "Consultant" shall mean, the Consultant, an individual, association, joint venture, corporation or any other like term, and its heirs, its executors and its administrators or successors.

2. PROPRIETARY RIGHTS:

A. PATENT RIGHTS: The parties to this Agreement agree that all rights accruing from discoveries or inventions resulting from work described herein shall be the sole property of the Consultant. The Consultant agrees and hereby grants to the District, all state highway departments and the United States an irrevocable, non-exclusive, non-transferable and royalty-free license to practice each invention in the manufacture, use and disposition of any article, material or method that may be developed as a part of the work under this Agreement.

B. COPYRIGHTS: Copyrights resulting from work described herein shall be the sole property of the Consultant. The Consultant agrees and does hereby grant to the District, all state highway departments and United States a royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use and to authorize others to use the work for Government purposes.

3. PATENTS AND COPYRIGHT INFRINGEMENT:

The Consultant shall hold and save the District, its officers, agents, servants and employees harmless from liability or claims of any nature or kind, including cost and expenses, for or on account of any patented or unpatented invention, copyright, article, process or appliance manufactured or used in the performance of this Agreement, including their use by the District, unless otherwise specifically stipulated in this Agreement.

4. CHANGES:

The Contracting Officer may, at any time by a written order and without notice to the sureties, make changes in the work and services to be performed under this Agreement and within the general scope thereof. If such changes cause an increase or decrease in the cost of performing the work and services under this Agreement or in the time required for its performance, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly. Any claim under this Provision must be made in writing to the Contracting Officer within ten (10) consecutive calendar days from the date the change is ordered. Provided, however, the Contracting Officer, if he determines that the facts justify such action, may receive, consider and adjust any such claim made at any time prior to the date of final settlement of this Agreement. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Provision 14 hereof. Nothing provided in this Provision shall excuse the Consultant from proceeding with the prosecution of the work so changed.

5. INDEMNIFICATION AGREEMENT:

The District shall have an absolute right of indemnity against any and all claims or liability arising from or based on, or as a consequence or result of, any negligent act, error, omission or fault of the Consultant, its employees, or its subconsultants, in the performance of, or in connection with any services required, contemplated or performed under the contract; any and all claims or liability arising from or based on, or as a consequence or result of, any act of approval, inspection, supervision, or acceptance, or any failure to approve, inspect, supervise, or accept, by the District and any of its officers, agents, servants and employees, where such act or failure to act causes or contributes to any negligent act, error, omission or fault of the Consultant, its employees, or its subconsultants, in the performance of, or in connection with any services required, contemplated or performed under the contract. Monies due or to become due the Consultant under this contract, may be retained by the District as necessary to satisfy any outstanding claim which the District may have against the Consultant.

6. APPOINTMENT OF ATTORNEY:

A. The Consultant shall designate and appoint a person, located within the District, whether the Consultant himself, an individual, a partnership or corporation or member thereof, an attorney, attorney-in-fact, agent, or representative, who shall receive service of all notices and process issued by any court or agency of the District and all pleadings or other papers related to any legal action or proceedings arising out of, or pertaining to, this Agreement or the work required by, or performed hereunder.

B. The Consultant expressly agrees that the validity of any service upon the person or entity designated pursuant to Section 1 hereof shall not be affected either by the fact that the said Consultant was personally within the District and otherwise subject to personal service at the time of such service upon the designated person or entity or by the fact that the Consultant failed to receive a copy of such process, notice, pleading or other paper so served upon the designated person or entity.

C. The Consultant shall immediately inform the Contracting Officer in writing of any change in the designation required by Section 1 hereof, whether such change is in the designee, the address or telephone numbers.

7. EMPLOYMENT OF DISTRICT EMPLOYEES:

The Consultant shall not, without written permission from the Contracting Officer, engage the services of any person or persons in the employment of the District for any work required by the terms of this Agreement for the period of this Agreement.

8. POST-GOVERNMENT EMPLOYMENT CONFLICT OF INTEREST:

A. Pursuant to Public Law 95-521, as amended, no <u>former employee</u> of the United States or Government of the District of Columbia:

1. Shall knowingly represent the Consultant before any Government agency through personal appearance or communication in connection with a matter involving specific parties to this Agreement where the former Government employee participated personally and substantially in the matter while in Government employ.

2. Shall, <u>within two (2) years</u> after terminating Government employment, knowingly represent the Consultant before any Government agency through personal appearance or communication in connection with a matter involving specific parties to this Agreement, where the matter was pending under the official responsibility of the former employee <u>within one (1) year</u> prior to termination of Government service.

B. Pursuant to Public Law 95-591, as amended, no former senior level officer or former senior level employee of the United States Government or the District of Columbia Government, named in or designated by the Director of the Office of Government Ethics under Section 207(d) of Title 18 USC:

1. Shall, within two (2) years after terminating Government employment, knowingly represent or aid, counsel, advise, consult or assist in representing any other person by personal presence at any formal or informal appearance before any Government agency in connection with a matter involving specific parties, where the former employee participated personally and substantially in that matter while in Government employ.

2. Shall, within one (1) year after terminating Government employment, knowingly act as an agent or attorney for or otherwise represent anyone in any formal or informal appearance before or, with the intent to influence, make any written or oral communication on behalf of anyone to (1) his or her former Department or agency or any of its officers or employees, or (2) in connection with any particular Government matter, whether or not involving a specific party, which is pending before such Department or agency or in which it has a direct and substantial interest.

9. LAWS TO BE OBSERVED:

The Consultant at all times shall observe and comply with all laws, regulations, orders and decrees of the United States and of the District, and shall indemnify and save harmless the District and all of its officers, agents and servants against any and all claims or liability arising from or based on the violation of any such law, regulation, order or decree, whether by the Consultant or any employee or agent of the Consultant associated with him, including any person, firm or corporation having the status of an independent contractor engaged by the Consultant in the performance of, or in connection with the work required by this Agreement.

10. WAIVER:

No action or non-action of the District shall be construed as a waiver of any provision or any breach of this Agreement unless the same has been expressly declared and recognized as a waiver by the Contracting Officer in writing. No waiver so declared and recognized as such in writing by the Contracting Officer shall operate as a waiver of any other provision of subsequent breaches of the same or other provisions of this Agreement.

11. PERFORMANCE BY THE CONSULTANT:

Except as otherwise expressly provided In this Agreement, none of the work or services required by this Agreement to be performed by the Consultant shall be performed by anyone other than Consultant or regular salaried employees of the Consultant, including subconsultants, without express written consent of the Contracting officer, and any violation of this Provision shall entitle the Contracting Officer to reduce the compensation otherwise payable to the Consultant whether or not the Contracting Officer terminates this Agreement or any part hereof for violation of this Provision or for any other reason.

12. TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT:

The District reserves the right to terminate this contract in whole or In part, for the convenience of the Government in accordance with the provisions of Chapter 37 of the D.C. Procurement Regulations, Title 27 DCMR (July, 1988).

13. AUTHORITY OF THE CONTRACTING OFFICER:

The Contracting Officer represents that he or she has the authority to take any action provided for herein on behalf of the District, including approval, certification, acceptance and changes within the scope of the work.

14. DISPUTES:

A. All disputes arising under or relating to this contract shall be resolved as provided herein.

B. Claims by a Contractor against the District.

Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following:

(1) A description of the claim and the amount in dispute;

(2) Any data or other information in support of the claim;

(3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and

(4) The Contractor's request for relief or other action by the contracting officer.

(b) The Contracting Officer may meet with the contractor in a further attempt to resolve the claim by agreement.

(c) For any claim of $50,000 or less, the Contracting Officer shall issue a decision within sixty (60) calendar days from receipt of a written request from a Contractor that a decision be rendered within that period.

(d) For any claim over $50,000, the Contracting Officer shall issue a decision within ninety (90) calendar days of receipt of the claim. Whenever possible, the Contracting Officer shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

(e) The Contracting Officer's written decision shall do the following:

(1) Provide a description of the claim or dispute;

(2) Refer to the pertinent contract terms;

(3) State the factual areas of agreement and disagreement;

(4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

(5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

(6) Indicate that the written document is the contracting officer's final decision; and

(7) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(f) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as authorized by D.C. Official Code § 2-309.04.

(g) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

(2) Liability under this paragraph (f) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(h) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D. C. Official Code § 2-309.04.

(i) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

C. Claims by the District against a Contractor

(a) Claim as used in Section C of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(b) (1) All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.

(2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:

(a) Provide a description of the claim or dispute;

(b) Refer to the pertinent contract terms;

(c) State the factual areas of agreement and disagreement;

(d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

(e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

(f) Indicate that the written document is the Contracting Officer's final decision; and

(g) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The decision shall be supported by reasons and shall inform the Contractor of his or her rights as provided herein.

(4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

(5) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(c) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the District as authorized by D.C. Official Code §2-309.04.

(d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

15. OFFICIALS NOT TO BENEFIT:

No Member or no Delegate to Congress nor Resident Commissioner nor officer nor employee of the District shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom, and any contract entered into by any Contracting Officer in which he or any officer or employee of the District shall be personally interested shall be void, and no payment shall be made thereon by the District or any officer thereof, but this Provision shall not be construed to extend to the Agreement if made with a corporation for its general benefit.

16. COVENANT AGAINST CONTINGENT FEES:

The Consultant warrants that he has not employed any person to solicit or secure this Agreement upon any agreement for a bonus, commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Contracting Officer the right to terminate this Agreement, or, in his discretion, to deduct from the Agreement price or consideration the amount of such bonus, commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by the Consultant upon contract or sales secured or made through bonafide established commercial or selling agencies maintained by the Consultant for the purpose of securing business.

17. CONSULTANT'S WARRANTY AGAINST DEBARMENT:

The Consultant, in compliance with Section 29.510 of the debarment regulation (49 CFR 29), shall certify at the time of the bid opening that he/she or anyone associated therewith in any capacity of (owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds) is not suspended, debarred or voluntarily excluded from or otherwise determined ineligible to receive award of or performance on D.C. or Federally-funded projects.

If at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, he/she shall provide immediate written notification to the Contracting Officer.

Furthermore, the Consultant agrees that he/she shall not knowingly subcontract any company or person which/who is debarred, suspended, declared ineligible or voluntarily excluded from participation on D.C. or Federally-funded projects.

The Consultant, when subcontracting, or when soliciting for subcontractors, further agrees to certification regarding debarment, and to include the clause titled 'Certification Regarding Debarment, Suspensions, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction' without modification in all lower tier covered transactions.

Finally, this General Provision serves to apprise the Consultant that if he/she knowingly subcontracts with a company or person which/who is suspended, debarred, ineligible or voluntarily excluded from participation on D.C. or federally-funded projects, in addition to other remedies available to the District of Columbia and Federal Government, the contracting Officer may terminate the contract for Cause of Default.

The foregoing requirements apply as well to their full extent to suppliers, vendors, materialmen, et al. The Consultant shall comply with this General Provision by submitting with his/her Agreement a completed and notarized Certification."

18. NON-ASSIGNABILITY, DEATH OR DISABILITY:

This Agreement is for the services of the Consultant and is not assignable by him. Where the services of a partnership are engaged as Consultants, each partner shall be held fully responsible for, and shall actively participate in all work provided for herein from date of execution of this Agreement until the services have been completed and accepted by the District; provided, however, that the death, incapacitation or retirement of one or more of the partners shall not, of itself, be deemed to incapacitate the other or remaining partner,, provided the remaining partners are, in the judgment of the Contracting Officer, able and competent to carry out the terms of this Agreement, in which latter event no reduction shall be made in the compensation on account of such death, incapacitation or retirement. In the event one or more of the remaining partners is determined by the District to not be competent to carry out the terms of this Agreement, the District may reduce compensation in proportion to the number of partners thus deemed not competent to complete the Agreement.

19. DOCUMENTATION:

The Consultant shall, where appropriate, document the results of his work to the satisfaction of the District and the FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of agreement objectives.

20. SUBCONTRACTS.

The Consultant shall be required to perform all work not subcontracted under General Provision 27, Section D (Goal for DBE Participation) except specialized services or other tasks specifically exempted in this Agreement, provided, however, that governmental recipients of 23 U.S.C. 104(f) or 402 funds may subcontract as necessary to accomplish approved work program activities.

All subcontracts exceeding $10,000 in cost shall incorporate all required provisions of these General Provisions by reference thereto.

21. COST PRINCIPLES:

Cost principles contained in 41 CFR 1-15 (Federal Procurement Regulations) and Subpart 1-15.2, as modified by subpart 1-15.102, apply to this Agreement.

22. AUDIT INSPECTION AND RETENTION OF RECORDS:

The Consultant shall permit the authorized representatives of the District, the U.S. DOT and the Comptroller General of the United States to inspect and audit all data and records of the Consultant relating to performance or transactions under the Agreement until the expiration of three (3) years after final payment.

The Consultant further agrees that the District, the U.S. DOT and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under any subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subconsultant.

With respect to records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, the periods of access and examination described above shall continue until such appeals, litigation, claims or exceptions have been finally resolved.

23. CLEAN AIR AND WATER:

The standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency (EPA) regulations (40 CFR Part 15), prohibiting the use of facilities Included on the EPA List of Violating Facilities under non-exempt Federal contracts, grants or loans, are applicable to this contract and to each subcontract hereunder, where such amounts are in excess of $100,000.
The Consultant shall report any notices of violation to the Contracting Officer and to the U.S. EPA Assistant Administrator for Enforcement. (EN-329).

24. EQUAL OPPORTUNITY OBLIGATION:

During the performance of this Agreement, the Consultant shall comply with, Mayor's Order 85-85 dated June 10, 1985 and implementing guidelines published as Chapter 11 in DISTRICT OF COLUMBIA REGISTER, dated August 15,1986.

25. NON-DISCRIMINATION REQUIREMENTS:

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

A. Compliance with Regulations. The Consultant shall comply with the regulations of the U.S. DOT relative to non-discrimination in federally-assisted programs of the U.S. DOT (49 CFR Part 21 appendix H and 23 CFR 710.405(b), hereinafter referred to as "the Regulations"), which are incorporated by reference and made part of this Agreement.

B. Non-Discrimination. The Consultant, in fulfilling the provisions and requirements of this Agreement, after execution thereof and prior to completion of its terms and conditions by the said Consultant, shall not

discriminate on the grounds of race, color, religion, age, sex or national origin in the selection and retention of contractors and subcontractors, including procurements of materials and leases of equipment, The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiations made by the Consultant for work under this Agreement to be performed under a contract and/or a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Consultant of his obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, religion, age, sex or national origin.

D. Information and Reports. The Consultant shall provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the District or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify. to the District or the FHWA, as appropriate, and shall set forth what efforts he has made to obtain the information.

E. Sanctions for Noncompliance. In the event of the Consultant's noncompliance with the non-discrimination provisions of this Agreement, the District shall impose such sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Consultant under this Agreement until the Consultant complies; and/or
2. Cancellation, termination or suspension of this Agreement in whole or in part.

F. Incorporation of Provisions. The Consultant shall include the provisions of sections (1) through (6) in every contract and subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations or orders and instructions issued pursuant thereto. The Consultant shall take such action with respect to any contract and subcontract or procurement as the District or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the consultant becomes involved in, or is threatened with, litigation with a contractor or subcontractor or supplier as a result of such direction, the Consultant shall notify the District of the litigation in writing. The Consultant may request the District to enter into such litigation to protect the interests of the District, and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

26. EQUAL EMPLOYMENT OPPORTUNITY .RESPONSIBILITIES:

A. General: The requirements of Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60) shall apply to the Consultant and to each subcontract hereunder, where such amounts are in excess of $10,000. The requirements set forth herein supplement these orders.

B. Equal Employment Opportunity Policy: The Consultant shall accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons and to promote the full realization of equal employment opportunity through a positive continuing program:

"It is the policy of this Consultant to assure that applicants are employed, and that employees are treated during employment, without regard to race, religion, color, age, sex or national origin. Such action shall include: employment, upgrading, demotion or transfer; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship and/or on-the-job training."

C. Equal Employment Opportunity Officer: The Consultant shall designate and make known to the Contracting Officer an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who shall be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who shall be assigned adequate authority and responsibility to do so.

D. Dissemination of Policy: All members of the Consultant's staff who are authorized to hire, supervise, promote and discharge employees, or who recommend such action, or who are substantially involved In such action shall be made fully cognizant of, and shall implement the Consultant's equal employment opportunity policy and contractual responsibilities. To ensure that the above Agreement will be met, the following actions shall be taken as a minimum:

1. Periodic meetings of supervisory and personnel office employees shall be conducted before the start of work and then not less often than once every six (6) months, at which time the Consultant's equal employment opportunity policy and its implementation shall be reviewed and explained. The meeting shall be conducted by the EEO Officer or other knowledgeable company official.

2. All new supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the Consultant's equal employment opportunity obligations within thirty (30) days following their reporting for duty with the Consultant.

3. The EEO Officer or knowledgeable company official shall instruct all employees engaged in the direct recruitment of employees for the project relative to the methods following by the Consultant in locating and hiring minority group employees.

In order to make the Consultant's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., employment agencies, labor unions (where applicable), schools, college placement officers, etc., the Consultant shall take the following actions:

a. Notices and posters setting forth the Consultant's equal employment opportunity policy shall be placed in areas readily accessible to employees, applicants for employment and potential employees.

b. The Consultant's equal employment opportunity policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks or other appropriate means.

E. Recruitment: When advertising for employees, the Consultant shall include in all advertisements for employees the notation: "An Equal Opportunity Employer". He shall insert all such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the project workforce would normally be derived.

The Consultant shall, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, state employment agencies, schools, colleges and minority group organizations. To meet this requirement, the Consultant shall, through his EEO Officer, identify sources of potential minority group employees and establish with such identified sources procedures whereby minority group applicants may be referred to the Consultant for employment consideration.

The Consultant shall encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with employees.

F. Personnel Actions: Wages, working conditions and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff and termination, shall be taken without regard to race, religion, color, age, sex or national origin. The following shall be followed:

1. The Consultant shall periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

2. The Consultant shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Consultant shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective actions shall include all affected persons.

3. The Consultant shall investigate all complaints of alleged discrimination made to the Consultant in connection with his obligations under this Agreement, shall attempt to resolve such complaints and shall take corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Consultant shall inform every complainant of all the complainant's avenues of appeals.

G. Training and Promotion: The Consultant shall assist in locating, qualifying and increasing the skills of minority group employees and applicants for employment. Consistent with his manpower requirements and as permissible under Federal and District regulations, the Consultant shall make full use of training programs, i.e., preapprenticeship, apprenticeship and/or on-the-job training programs for the Consultant's geographical area. The Consultant shall advise employees and applicants for employment of available training programs and entrance requirements for each. The Consultant shall periodically review the training and promotion potential of minority group employees and shall encourage eligible employees. to apply for such training and promotion.

H. Unions: If the Consultant relies in whole or in part upon unions as a source of his workforce, he shall use his best efforts to obtain the cooperation of such unions to increase minority group opportunities within the unions, and to effect referrals by such unions of minority group employees. Actions by the Consultant shall include the procedures set forth below:

1. Use his best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members for membership in the unions and increasing the skills of minority group employees so that they may qualify for higher paying employment.

2. Use his best efforts to incorporate an equal employment opportunity clause into all union agreements to the ends that such unions will be contractually bound to refer applicants without regard for race, religion, color, age, sex or national origin.

3. In the event a union is unable to refer applicants as required by the Consultant within the time limit set forth in the union agreement, the Consultant shall, through his recruitment procedures, fill the employment vacancies without regard to race, religion, color, age, sex or national origin, making full efforts to obtain qualified minority group persons.

I. Records and Reports: The Consultant shall beep records as necessary to determine compliance with the Consultant's equal employment opportunity obligations. The records shall be designed to indicate:

1. The number of minority and non-minority group members employed in each work classification on the project.

2. The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to consultants who rely in whole or in part on unions as a source of their workforce).

3. The progress and efforts being made in locating, hiring, training, qualifying and upgrading minority group employees.

Such records shall be retained for a period of three (3) years following completion of work under this Agreement and shall be available at reasonable times and places for inspection by authorized representatives of the DC DDOT and the FHWA. The Consultant shall submit a monthly report to DC DDOT for the first three (3) months after work under this Agreement begins, and thereafter upon request, for the duration of the project, indicating the number of minority and non-minority group employees currently engaged in each work classification required by this Agreement.

27. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

A. Policy - It is the policy of the U.S. Department of Transportation that DBEs, as defined in 49 CFR Part 26 shall have the equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements contained in the above cited regulation are applicable on this contract and shall be complied with by all consultants.

B. DBE Obligation- The prime consultant agrees to ensure that DBEs, as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of subcontracts on this federally-funded contract and that he/she shall not discriminate on the basis of race, color, national origin, age, sex or handicap in the prosecution of this contract

All offerors are required to submit a written certification that they have read, understand and will comply with these requirements.

C. Definitions - The following definitions apply to this contract:

1. "Disadvantaged business" means a small business concern, (a) which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
2. "Small business concern" means a small business as defined pursuant to Section (3) of the Small Business Act, as amended, including all applicable and relevant rules and regulations promulgated pursuant thereto.
3. "Socially and economically disadvantaged individuals who are citizens of the United States ( or lawfully admitted permanent residents) and who are:

    a. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
    b. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
    c. "Native Americans", which includes persons who are American Indian, Eskimos, Aleuts, or Native Hawaiians;
    d. "Asian-Pacific Americans" which includes persons whose origins are from Japan, China Taiwan, Korea, Vietnam, Laos, Cambodia, Burma, Thailand, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
    e. "Asian-Indian Americans", which includes persons who origins are from India, Pakistan and Bangladesh
    f. Women ( of all races); and

g. "Any other minorities or individuals found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) and 8(d) of the Small Business Act, as amended, (15 U.S.C. 637(a)).

The Contracting Officer shall make a rebuttable prerogative that individuals in the above groups are socially and economically disadvantaged. This prerogative shall be based on criteria set forth in 49 CFR Part 26. The Contracting Officer also may determine, on a case-by-case basis, that individuals who are not members of one of the above groups are socially and economically disadvantaged.

D. Goal

The District Department of Transportation will establish a yearly overall goal for DBE participation. DDOT will institute contract goals only in the event that the overall yearly goal cannot be met utilizing the race neutral method of procurement. While no specific contract goal has been established, offerors are encouraged to utilize DBE firms to perform work on this project.

**Specific information from your firm and all firms, both DBE and non-DBE from which quotations were received or discussions were held in conjunction with this solicitation is required . Please provide the information requested with regard to potential DBE and non-DBE firms as requested in the DBE/Subcontractor (DBE and non-DBE) certification form which should be made a part of your response to the request for qualifications.**

A complete DBE plan containing a list of the DBE firms to be used on this project will be submitted with the proposal. This list should contain the name and address of each DBE firm, amount of award and area of work to be performed.

Furthermore, offerors are advised that they will be required to provide proof of actual payment to DBE firms utilized on this project by providing cancelled checks for each payment made.

Offerors are advised that each proposed DBE participant must have a valid certification at the time of proposal submission.

E. Good Faith Efforts (If Contract Goals are Found Necessary)

On any project on which contract goals have been established, all offerors who submit proposals shall document steps taken to obtain DBE participation, including, but not limited to, the following listed efforts as well as any others from 49 CFR Part 26, Appendix A - Guidance Concerning Good Faith Efforts and shall make this documentation and other pertinent records available to the Contracting Officer and his representative.

a. Publishing of advertisements in area newspapers, various trade association publications and minority-oriented publications for at least fifteen (15) days.
b. Written notification to a reasonable number of specific DBEs soliciting their interest in sufficient time to allow them to respond
c. Follow-up to determine which DBEs were genuinely interested
d. Negotiations with DBEs for specific sub bids, including at a minimum:
    i. The names, addresses and telephone numbers of DBEs with whom negotiations occurred.
    ii. A description of information provided to solicited DBEs describing plans and specifications for various portions of the project proposed for DBE participation and opportunities provided to the DBE firms for entering into consulting

agreements. This statement also shall explain what efforts were made to assist firms contacted to obtain necessary technical and financial assistance.

iii. A statement explaining the lack of additional DBE subconsulting agreements. This statement shall explain the reasons for the DBE exclusions.

This documentation must be made available, upon request, to DDOT, Office of Contracting and Procurement-Civil Rights Division, 2000 - 14th Street, N.W., 6th Floor, Washington, DC 20009.

DBE Directory

Information pertaining to lists of certified DBEs may be obtained by contacting:

DC District Department of Transportation
Office of Contracting and Procurement
Civil Rights Division
2000 14th St. NW 6th Floor
Washington, DC 20009
202/671-2270

28. TAXES:

The Government of the District of Columbia is exempt from, and will not pay, Federal Excise Taxes and DC Sales and Use Tax. BIDDERS MUST EXCLUDE SUCH TAXES, AS WELL AS STATE AND CITY TAXES FROM THEIR BIDS.

29. DEFAULT:

A. The District may, subject to the provisions in Chapter 37 of the D. C. Procurement Regulations, 27 DCMR (July 1988), and paragraph C. below, by written notice of default to the Consultant, terminate the whole or any part of this contract in any of the following circumstances:

1. If the Consultant fails to make satisfactory delivery of the supplies or to satisfactorily perform the services within the time specified herein or any extension thereof; or
2. If the Consultant fails to satisfactorily perform any of the other provisions of this contract, or so fails to make satisfactory progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.
3. If the consultant fails or refuses to go forward with the work in accordance with the directions of the Contracting Officer; or
4. If the Consultant expresses through word or conduct an intention not to complete the work in a timely manner; or
5. If the Consultant fails to perform any of the other provisions of the contract.

B. In the event the District terminates this contract in whole or in part as provided in paragraph A. of this clause, the District may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Consultant shall be liable to the District for any excess costs of reprocuring said similar supplies or services, provided the Consultant shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

C. The Consultant shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Consultant. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Consultant.

D. If this contract is terminated as provided in paragraph A. of this clause, the District, in addition to any other rights provided by applicable law or regulation, may require the Consultant to transfer title and deliver to the District, in the manner and to the extent directed by the Contracting Officer, (1) completed supplies and (2) such partially completed supplies and materials, parts, tools, dies, jig,, fixtures, plans, drawings information and contract rights (hereinafter called "manufacturing materials") as the Consultant has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Consultant shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Consultant in which the District has an interest. Payment for completed supplies delivered to and accepted by the District shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the District and for the protection and preservation of property shall be in an amount agreed upon by the Consultant and Contracting Officer; failure to agree to such amount shall be a dispute concerning within the meaning Of the clause of this contract entitled "DISPUTES". The District may withhold from amounts otherwise due the Consultant for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.

E. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Consultant was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the contract had been terminated for the convenience of the District. The Consultant shall submit a settlement proposal in accordance with Chapter 37 of the D. C. Procurement Regulations, 27 DCMR (July 1988). Failure to agree to, or the amount of, the settlement shall constitute a dispute within the meaning of the clause of this contract entitled "DISPUTES".

F. The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, regulation or this contract.