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DEPARTMENT OF TRANSPORTATION
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TRANSMITTAL LETTER

PUBLICATION:

Pub 442 – 2026 Edition

DATE:

6/18/2026

SUBJECT:

Specifications for Consultant Agreements for Project Development Services, Publication 442, 2026 Edition

INFORMATION AND SPECIAL INSTRUCTIONS:

An electronic version of the 2026 Edition of Publication 442, Specifications for Consultant Agreements for Project Development Services, is available in the ECMS file Cabinet.

Publication 442 (2026) will be effective July 01, 2026. All agreements and supplements created on or after July 01, 2026, will have the updated 2026 edition attached to them.

Comments or questions concerning this manual are to be directed to the Bureau of Design and Delivery's Contract Management Division.

CANCEL AND DESTROY THE FOLLOWING:

Publication 442 (February 2025)
Specifications for Consultant Agreements for Project Development Services

List of Clearance Transmittals and Strike Off Letters:
H-26-007

ADDITIONAL COPIES ARE AVAILABLE FROM:

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Publication 442 - Specifications for Consultant Agreements for Project Development Services (2026 Revisions)			
Chapter	**Section**		**Revision**
		Table of Contents	Added Section 3.18
Preamble		Code of Ethics	No change
Chapter 1 General	1.1	Introduction	No change
	1.2	Applicability	No change
	1.3	Definitions	No change
	1.4	Consultant Office	No change
	1.5	Certificate of Authority	No change
	1.6	CWOPA Access	No change
	1.7	Federal Funds	No change
	1.8	Disadvantaged Business Enterprise (DBE) Program Assurance	No change
	1.9	Diverse Business	No change
Chapter 2 Agreement Administration	2.1	Project Manager	No change
	2.2	Inspection and Quality of Work and Services	No change
	2.3	Consultant Qualification Package	No change
	2.4	Quality of Consultant Personnel	No change
	2.5	Restrictions on Employment	No change
	2.6	Contacting Agencies, Utilities or Individuals	No change
	2.7	Notice of Intent to Enter Property	No change
	2.8	Agreement Assignment	No change
	2.9	Good Faith Acceptance of Consultant's Proposal	No change
	2.10	Scope Conflict	No change
	2.11	Notice to Proceed	No change
	2.12	Management of Project Costs	No change
	2.13	Date of Acceptance	No change
	2.14	Acceptance of Final Payment	No change
	2.15	Consultant Evaluation/Past Performance Report	No change
Chapter 3 Agreement Terms and Conditions	3.1	Indemnification	No change
	3.2	Insurance	No change
	3.3	Worker Protection and Investment Certification	No change
	3.4	Contract Suspension and Cancellation	No change
	3.5	Violation or Breach of Contract	No change
	3.6	Ownership of Material and Work	No change
	3.7	Cost Elements for Consultant Agreements	Clarifications regarding audited, unaudited and safe harbor overhead rates and agreement amounts (see pages 3.7, 3.8 and 3.9)
	3.8	Proposed Project Employees	No change
	3.9	Agreement Performance	No change
	3.10	Transfer of Electronic Data	No change
	3.11	Overpayment and Non-Eligible Costs	No change
	3.12	Costs Incurred Outside the Legal Agreement	No change
	3.13	Overtime	No change
	3.14	Publication 408 Specifications	No change
	3.15	No Third-Party Rights Created	No change
	3.16	Right to Know Law	No change

Publication 442 - Specifications for Consultant Agreements for Project Development Services (2026 Revisions)			
Chapter	**Section**		**Revision**
	3.17	Records and Documentation	No change
	3.18	FAR 52.240-1 - Prohibition on Unmanned Aircraft Systems Manufactured or Assembled by American Security Drone Act-Covered Foreign Entities	New section added (see pages 3.16 and 3.17)
Chapter 4 Invoices	4.1	Partial Payments	No change
	4.2	Monitoring of Costs	No change
	4.3	Final Invoice	No change
	4.4	Prompt Payment of Subconsultant/Subcontractor Invoices	Added language regarding entering subconsultant payment dates in ECMS (see page 4.3)
	4.5	Invoice Template	No change
	4.6	Management Directive 230.10	No change
Chapter 5 Design Errors and Claims	5.1	Consultant Design Error Liability	No change
	5.2	Responsibility for Design Errors	No change
	5.3	Board of Claims	No change
	5.4	Notice of Intent to File a Claim and Determination of Claim	No change
Chapter 6 Consultant Restrictions	6.1	Disclosure of Confidential Information	No change
	6.2	Legal or Quasi-Legal Proceedings	No change
	6.3	Engineering Involvement Restrictions	No change
	6.4	Conflicts of Interest	No change
Chapter 7 American Recovery and Reinvestment Act (ARRA) of 2009	7.1	Applicability	No change
	7.2	ARRA Section 902	No change
	7.3	ARRA Section 1515 (a)	No change
	7.4	Implementation of the American Recovery and Reinvestment Act of 2009	No change

SPECIFICATIONS FOR CONSULTANT AGREEMENTS FOR PROJECT DEVELOPMENT SERVICES

Pennsylvania
Department of Transportation
www.pa.gov/penndot

PUB 442 (6-26)

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Preamble

Code of Ethics

The Consultants will conduct themselves in an ethical manner by adhering to the current National Society of Professional Engineers (NSPE) Code of Ethics. The current NSPE Code of Ethics for Engineers is located on the internet at http://www.nspe.org/Ethics/CodeofEthics/index.html.

Chapter 1 – General

1.1 Introduction

These specifications, contract provisions, and policies apply to the Prime Consultant and all subconsultants.

The Prime consultant is responsible for ensuring that all subconsultants adhere to all PennDOT contract provisions, specifications and policies.

1.2 Applicability

It is understood and agreed that, unless otherwise indicated in writing in an executed Consultant Agreement, the specifications hereinafter set forth apply to and become a part of all Consultant Agreements required to assist PennDOT in the development and construction of a transportation improvement project and any parts thereof as provided by law.

1.3 Definitions

Prime Consultant - The contractual party providing Consultant Work and Services pursuant to the Agreement with the Department.

Subconsultant/Subcontractor - The party providing work and services to the Prime Consultant (which is providing Consultant Work and Services pursuant to an agreement with the Commonwealth) pursuant to an Agreement with the Prime Consultant to which the Department is not a party.

Consultant – Within this publication, unless otherwise specified, this term will apply to both consultant and subconsultant.

PennDOT - The Pennsylvania Department of Transportation acting through the Secretary of Transportation or designee.

FHWA – Federal Highway Administration

ECMS – Engineering and Construction Management System

Responsible Charge - An individual position that requires initiative, skill and independent judgment, and implies such degree of competence and accountability gained by technical education and experience of a grade and character as is sufficient to qualify the individual to personally and independently engage in and be entrusted with the work involved.

Professional Engineer - An individual licensed and registered under the laws of the Commonwealth of Pennsylvania (Commonwealth) to engage in the practice of engineering.

Professional Land Surveyor - An individual licensed and registered under the laws of the Commonwealth to engage in the practice of land surveying.

Professional Geologist - An individual licensed and registered under the laws of the Commonwealth to engage in the practice of geology.

Employee - An individual who is on a firm's payroll and for whom taxes are withheld and Social Security is withheld and matched.

Engineering Firm/Corporation (Engineer) - A firm or corporation, where the directing heads and employees of such firm or corporation, in responsible charge of its activities in the practice of engineering, are licensed and registered in conformity with the Commonwealth's "Engineer, Land Surveyor and Geologists Registration Law," Act of 1945, P.L. 913, No. 367, as amended, 63 P.S. Sections 148—158.2.

1.4 Consultant Office

A. The Consultant shall maintain, for the life of the Agreement, a legal address within the Commonwealth through which notices or messages can be transmitted for action in cases of emergency. The address information must also be maintained in PennDOT's Engineering and Construction Management System (ECMS) Business Partner Registration.

B. The Consultant shall notify PennDOT immediately after the receipt of the executed Agreement of any change in the location or locations where the work will be performed as well as the type and approximate percentage of the work to be accomplished at each location.

   The Consultant shall obtain prior written approval of PennDOT's Project Manager for any subsequent change in work location.

C. If the Consultant elects to perform any or all the work at a location outside the Commonwealth, the Consultant shall not be reimbursed for either Direct or Indirect Costs of the travel, food or lodging of the Consultant or its employees to or from the location or from locations outside the Commonwealth to any office in Pennsylvania designated for required conferences and/or inspection of the work by PennDOT and/or the Federal Highway Administration (FHWA).

1.5 Certificate of Authority

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

A. A Corporation not incorporated under the laws of Pennsylvania;
B. A business with headquarters within or outside the Commonwealth and operating under a fictitious name.

1.6 Commonwealth of Pennsylvania (CWOPA) Access

- If a Consultant Inspector is leaving a project, the Consultant must notify the IO [Initiating Organization (Engineering District, Central Office Bureau, etc.)] within 30 days of leaving the project, in writing, that the Inspector has been removed from a project and is not returning to service. A Request for Service (RFS) will be entered by the Department Project Manager to remove the user from the system.
- If a Consultant Inspector is leaving a project, the Consultant must notify the IO within 30 days, in writing, that the Inspector has been removed from a project and will be returning to service after a period of time. A Request for Service (RFS) will be entered by the Department Project Manager to suspend the user from the system and reinstate them at a later date.
- If a Consultant Inspector leaves a project and is transferred to another PennDOT assignment outside the IO, the Consultant must notify the IO within 30 days of leaving the project, in writing, that the Inspector has been moved out of the IO to another PennDOT assignment. Consultant inspectors may retain their CWOPA accounts going from IO to IO, but this effort needs to be coordinated between the IOs affected by the personnel change and the consulting firm; this will aid the IO with tracking Consultant Inspectors with CWOPA accounts to determine who has access within the IO.
- Failure to report personnel who are leaving the IO may result in termination of individual account without further notice to the firm.

1.7 Federal Funds

If funds are provided by the FHWA for participation in the cost of this Agreement, the work and services to be provided by the Consultant, as set forth in this Agreement, will be subject to and will be governed by the requirements of PennDOT's Specifications.

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

1.8 Disadvantaged Business Enterprise (DBE) Program Assurance

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

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

1.9 Diverse Business Participation for Non-Federally Funded Projects

NOTE: For use in non-federally funded consultant selection contracts administered and issued by the Pennsylvania Department of Transportation (Department).

I. GENERAL GOOD FAITH EFFORT REQUIREMENTS—

Section 303 of Title 74 of the Pennsylvania Consolidated Statutes, 74 Pa.C.S. §303, requires offerors on contracts funded pursuant to the provisions of Title 74 (Transportation) and 75 (Vehicle Code) administered and issued by the Department to make good faith efforts to solicit subcontractors that are Diverse Businesses (DBs) as defined in Section 303. The DB requirements of Section 303 apply to this contract.

Under the statute, offerors must make good faith efforts as set forth below to ensure that DBs have the opportunity to compete for and perform contracts. Do not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts. Failure to exert good faith efforts in the solicitation of subcontractors that are DBs may result in the offeror being declared ineligible for the contract.

Document and submit to the Department all good faith efforts to solicit subconsultants that are DBs as more fully described below. Offerors are encouraged to utilize and give consideration to second-tier or lower-tier subconsultants offering to utilize DBs in the selection and award of contracts.

Within 7 calendar days of being selected as the successful offeror, provide to the Department the name and business address of each subconsultant that is a DB and will provide the prime consultant with professional services in connection with the performance of the contract, all as set forth below.

If it becomes necessary to replace a subconsultant that is a DB at any time during the evaluation of a proposal or performance of awarded work the offeror or consultant, as appropriate, immediately notify the Department of the need to replace the DB. Include the reasons for the replacement in the notice.

Good faith efforts to solicit and use DBs are in addition to all other equal opportunity requirements of the contract.

Failure to comply with requirements of Section 303 or as specified may constitute a breach of contract and may result in imposition of sanctions as appropriate under Section 531 of the Procurement Code, 62 Pa.C.S. §531 (relating to debarment and suspension).

II. DEFINITIONS—

The following definitions apply for terms used in this specification:

(a) Disadvantaged Business. A business that is owned or controlled by a majority of persons, not limited to members of minority groups, who are subject to racial or ethnic prejudice or cultural bias.

(b) Diverse Business (DB). A disadvantaged business, minority-owned or women-owned business or service-disabled veteran-owned or veteran-owned small business that has been certified by a third-party certifying organization and is both an ECMS Business Partner and pre-qualified, if required.

(c) ECMS. The Department's Engineering and Construction Management System.

(d) ECMS Business Partner. An individual, firm, partnership, or corporation that has a valid Registered Business Partner Identification issued by the Department through ECMS.

(e) Good Faith Effort Review Officer. The Department's Executive Deputy Secretary for Administration or their designee, who reviews good faith efforts submitted by offerors.

(f) Minority-owned Business. A business owned and controlled by a majority of individuals who are African Americans, Hispanic Americans, Native Americans, Asian Americans, Alaskans or Pacific Islanders.

(g) Professional Services. An industry of infrequent, technical or unique functions performed by independent contractors or consultants whose occupation is the rendering of the services, including design professional services as defined in Section 901 of the Procurement Code, 62 Pa.C.S. §901 (relating to definitions); legal services; advertising or public relations services; accounting, auditing or actuarial services; security consulting services; computer and information technology services; and insurance underwriting services.

(h) Service-disabled Veteran. Being in possession of a disability rating letter issued by the United States Department of Veterans Affairs or a disability determination from the United States Department of Defense or, if approved by the Department of General Services, a surviving spouse or permanent caregiver of a such a service-disabled veteran.

(i) Service-disabled Veteran-owned Small Business. A business in the United States which is independently owned and controlled by a service-disabled veteran or veterans, not dominant in its field of operation, and employs 100 or fewer employees.

(j) Subconsultant. Any individual, partnership, firm, or corporation entering into a contract with the consultant for work under the contract.

(k) Third-party Certifying Organization. An organization that certifies a small business, minority-owned business, women-owned business or veteran-owned small business as a DB, including the National Minority Supplier Development Council; the Women's Business Enterprise Council, the Small Business Administration; the Department of Veterans Affairs; and the Pennsylvania Unified Certification Program.

(l) Veteran. An individual who served on active duty in the United States Armed Forces, including a reservist or member of the National Guard who was discharged or released from the service under honorable conditions, a reservist or member of the National Guard who completed an initial term of enlistment or qualifying period of service, and a reservist or member of the National Guard who was disabled in the line of duty during training.

(m) Veteran-owned Small Business. A business in the United States which is independently owned and controlled by a veteran or veterans, is not dominant in its field of operation, and employs 100 or fewer employees.

III. ACTIONS REQUIRED BY THE OFFEROR AT THE PROPOSAL STAGE AND PRIOR TO AWARD—

(a) Submission Requirements. The apparent successful offeror that will self-perform 100% of its agreement is required to submit paper documentation by 3:00 P.M. prevailing local time within 7 calendar days after the selection is published. Submit paper documentation by email to minorityparticipation@pa.gov or by fax to (717) 705-1504. This paper documentation will become part of the agreement.

The apparent successful offeror that will not self-perform 100% of its agreement is required to demonstrate its good faith efforts to solicit subconsultants that are DBs by 3:00 P.M. prevailing local time on the seventh (7th) calendar day after the selection is published. Present good faith efforts by submitting paper documentation by email to minorityparticipation@pa.gov or by fax to (717) 705-1504. The good faith efforts will become part of the agreement.

The paper documentation of good faith efforts must include the business name and business address of each DB, as well as all good faith efforts to solicit other DBs that are not ECMS Business Partners. Supporting documentation must also include a DB acknowledgment for each DB providing services, proof of certification, and any explanation of good faith efforts the offeror would like the Department to consider. Any services to be performed by a DB are required to be readily identifiable to the agreement.

When the seventh (7_{th}) calendar day after the selection falls on a day that the Department offices are closed, submit the good faith efforts by 3:00 P.M. prevailing local time on the next business day.

Failure to electronically submit good faith efforts within 7 calendar days of the selection by the 3:00 P.M. deadline will result in rejection of the proposal. The next ranked offeror will be notified to electronically submit good faith efforts in the manner described above by 3:00 P.M. prevailing local time within 7 calendar days of the notification.

(b) Good Faith Efforts Requirements. Good faith efforts are demonstrated by seeking out DB participation in the project given all relevant circumstances. The following illustrate the types of efforts that may be taken, but they are not deemed to be exclusive or exhaustive. The Good Faith Review Officer may consider other factors and types of efforts included in an offeror's submission of good faith efforts if deemed relevant.

1. Efforts made to solicit through all reasonable and available means (e.g., use of the DB Directory, advertising and/or written notices) the interest of all certified DBs with the capability to perform the work of the agreement. The offeror must provide written notification at least 5 calendar days before the time solicitations are due to allow the DBs to respond to the solicitation. The offeror must determine with certainty if DBs are interested by taking appropriate steps to follow up initial solicitations.

2. Efforts made to select portions of the work to be performed by DBs. This includes, where appropriate, breaking out contract work into economically feasible units to facilitate DB participation.

3. Efforts made to provide interested DBs with adequate information about the services required in a timely manner to assist them in responding to a solicitation.

4. Efforts made to negotiate in good faith with interested DBs. Offerors are encouraged to make a portion of the work available to DBs and to select those portions of the work needs consistent with the available DBs so as to facilitate

participation of DBs. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBs that were considered; a description of the information provided regarding the required services selected for subcontracting; and evidence as to why additional agreements could not be reached for DBs to perform the services. An offeror using good business judgment would consider a number of factors in negotiating with subconsultants, including DB subconsultants, and would take a firm's capabilities into consideration as well as its own ability or desire to perform the services with its own work force.

5. Efforts made to thoroughly investigate DBs for qualification based on their capabilities. Offerors cannot reject or withhold solicitation of DBs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DB's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the offeror's efforts to meet the good faith efforts requirement.

6. Efforts to assist interested DBs in obtaining bonding, lines of credit, or insurance.

7. Efforts to assist interested DBs in obtaining necessary equipment, supplies, materials, or related assistance or services.

8. Efforts to effectively use existing databases and the resources of supportive services to assist in finding DBs.

IV. ACTIONS TO BE TAKEN BY THE DEPARTMENT BEFORE AWARD—

(a) Approval. If the apparent successful offeror submits acceptable good faith efforts by the deadline and meets all other contract requirements, the Department will approve the submission. The Good Faith Review Officer will make the determination of whether the good faith efforts are acceptable. The offeror may be contacted for clarifications during the review.

(b) Conditional Approval. The Department will issue a conditional approval of the good faith efforts to the apparent successful offeror if any DB is not included in the DB listing, or not an ECMS Business Partner at the time the Department desires to award the contract.

(c) Rejection of Bid. If the Good Faith Review Officer determines that the apparent successful offeror has failed to make acceptable good faith efforts, the proposal will be rejected and the apparent successful offeror will be notified of the rejection. The Department will then notify the next ranked offeror on the project to submit good faith efforts by 3:00 P.M. prevailing local time within 7 calendar days after notification. When the seventh (7th) calendar day after the notification falls on a day the Department offices are closed, submit good faith efforts by 3:00 P.M. prevailing local time on the next business day.

V. ACTIONS REQUIRED BY THE CONSULTANT DURING PERFORMANCE OF THE SERVICES—

(a) DB Participation. Continue good faith efforts for the life of the project.

(b) DB Subcontractor Approval. Firms listed in the good faith efforts submission are not to commence work until they are approved.

(c) Conditional Approval Resolution. Continually monitor conditional approval of DB subconsultant.

(d) Replacement or addition of DB. If it becomes necessary to replace or add a subconsultant that is a DB at any time during performance of the services immediately notify the Department of the need to replace the DB. Include the reasons for the replacement in the notice. If a prime consultant who originally elected to self-perform all work subsequently decides to use a subconsultant for any work under the contract, the consultant must submit documentation of good faith efforts as to the work for which a subconsultant is obtained.

(e) Additional Work. The obligation to make good faith efforts to solicit subconsultants that are DBs extends to additional work required for any service which is identified as to be performed by a DB.

(f) Payments. Make payments to DB subconsultants in accordance with the prompt payment requirements of Chapter 39, Subchapter D of the Procurement Code, 62 Pa.C.S. §§3931 et seq. and 49 C.F.R. part 26. Performance of services by a DB subconsultant in accordance with the terms of the contract entitles the subconsultant to payment.

(g) Records and Reports. Keep such project records as are necessary to perform the reporting function discussed below. These records can be used as documentation of good faith efforts. Design these records to indicate:

1. The number of DB and non-DB subconsultants and the type of work or services performed on the project.

2. The progress and efforts made in seeking out DB consultant organizations and individual DBs for services under the contract.

3. Documentation of all correspondence, personal contacts, telephone calls, etc., to obtain the services of DBs. Submit reports, as required by the Department. Certify that the amounts were actually paid to the DB for services performed under the agreement and keep cancelled checks on file in the home office to reflect payment for the specific agreement and for inspection and audit by the Department. Track payment information and include the following:

a. The number of agreements awarded (with approved subconsultants) to DBs, noting the type of service and amount of each agreement executed with each firm and including the execution date of each agreement.

b. The amount paid to each DB during the month and the amount paid to date. If no payments are made to a DB during the month, enter a zero ($0.00) payment.

c. Paid invoices or a certification attesting to the actual amount paid to each firm, upon completion of the individual DB's work. In the event the actual amount paid is less than the award amount, provide a complete explanation of the difference.

Maintain all such records for a period of 3 years following acceptance of final payment. Make these records available for inspection by the Department.

VI. ACTIONS REQUIRED BY THE CONSULTANT FOLLOWING COMPLETION OF THE SERVICES—

When requested, or within 30 days of the end of the agreement submit a report to the Department summarizing the use of approved DB subconsultants.

Identify in the report the name of the subconsultant; the nature of the work or services performed by the subconsultant (i.e. prime, direct or tiered subconsultant; who certified the subconsultant as a DB; the subconsultant's ECMS Business Partner number; the subconsultant's ECMS agreement number; and the amount of their subcontract).

For direct and tiered subconsultants, provide the amount of the contract that is performed, managed and supervised by the DB's own forces. The value of the subcontracted work may be counted only if the DB's subconsultant is itself a DB; do not include services that a DB subcontracts to a non-DB firm.

VII. ACTIONS TO BE TAKEN BY THE DEPARTMENT FOLLOWING PERFORMANCE OF THE SERVICES—

Upon completion of the services the Department will review the actual DB participation and make a determination regarding the contractor's compliance with Section 303 and this policy. Sanctions may be imposed for noncompliance.

Chapter 2 – Agreement Administration

2.1 Project Manager

The Consultant shall place in responsible charge of the work and services covered by the Agreement a designated representative, who is an experienced and qualified Project Manager. The Project Manager shall be the individual identified in the Consultant's statement of interest and/or technical proposal. The Project Manager shall be empowered by the Consultant to affix their name and professional seal, if applicable, as the person responsible for the preparation of plans, calculations, reports, etc. as required by PennDOT's policy and procedures.

The Consultant shall not remove or reassign the Project Manager without written permission from PennDOT's Project Manager.

2.2 Inspection and Quality of Work and Services

All work and services rendered under the Agreement shall be of high quality, complete, accurate and in full conformance with PennDOT requirements and shall be consistent with the highest professional standards common to the consulting/engineering profession. Such work shall be subject to PennDOT's and, when applicable, the FHWA's periodic review and quality check in the field, the Consultant's office, or PennDOT's office. If after said periodic review and quality check PennDOT and/or FHWA determine that the Consultant's work performed, services rendered, and/or material furnished does not measure up to PennDOT requirements as specified in writing at the time of execution of the Agreement, and the quality and professional standards normally required, it shall be redone, reperformed, recomputed, and/or refurnished as directed by PennDOT's Deputy Secretary for Highway Administration (Deputy Secretary), to meet the said requirements and quality standards at the sole expense of the Engineer and at no direct or indirect cost to PennDOT. All materials and records shall be furnished in accordance with PennDOT's standards of quality.

2.3 Consultant Qualification Package

All Consultants, both prime and subconsultants, must submit a Consultant Qualification Package (CQP) annually through ECMS. The CQP indicates the Consultant's project experience, quality plan, employee qualifications and certifications, the services that the Consultant can provide, and the Disadvantaged Business Enterprise certification, if applicable.

ECMS automates the packaging of supporting documents and provides an electronic "cover page" used to collect and store general information about the Consultant, its location, and services. The cover page is also used to attach (or package) the other documents comprising the CQP.

The following elements comprise the CQP:

- Cover Page (online)
- General Information (template provided)
- Project Experience (template provided)
- Employee Resumes (template provided)
- Quality Plan (no template provided)

2.4 Quality of Consultant Personnel

The Consultant shall employ only competent and efficient engineers, designers, drafters, and/or other necessary personnel required in the performance of the Agreement. Whenever, in the opinion of PennDOT, any employee is unfit to perform their task, or does their work contrary to instructions, or conducts himself/herself improperly, the Consultant shall discontinue the services of such employee immediately upon receipt of the Deputy Secretary's, or designee's, written request; and the Consultant shall not employ him/her again on this or any other Agreement with PennDOT without PennDOT's prior written permission.

2.5 Restrictions on Employment

The Consultant shall not engage, on a full, part-time, or other basis during the period of the Agreement, any professional or technical personnel who are employed by the FHWA or PennDOT, without the knowledge and consent of the employer of such person. The Consultant shall not employ a former PennDOT employee on any PennDOT Agreement during the first year after the employee leaves PennDOT, without express written opinion rendered by the State Ethics Commission.

2.6 Contacting Agencies, Utilities, or Individuals

The Consultant, when and as directed by PennDOT, shall contact any public or private agencies, utilities, or individuals concerned to coordinate the requirements for the project development. The provisions of the applicable Chapters and Sections of PennDOT Manuals, or as specifically directed by PennDOT, shall apply to such contacts. The Consultant in making these contacts is not authorized to and shall not make any commitment for PennDOT and shall so inform the contacted parties.

2.7 Notice of Intent to Enter Property

Section 309 of the Eminent Domain Code, 26 Pa. C.S. effective September 1, 2006, requires that entry upon any land or improvement prior to condemnation by PennDOT employees or agents, whether for the purpose of conducting studies, surveys, tests, soundings or appraisals, must be preceded by ten days notice to the owner of the land or the party in whose name the property is assessed. The Notice of Intent to Enter Form is located in the current version of Publication 378, *Right-of-Way Manual*. Additional information can be found in Design Manual 1-C (DM-1C), Section 3.3, Preliminary Engineering Activities.

2.8 Agreement Assignment

The Consultant shall not assign, in whole or in part, the Agreement, or its duties, obligations, liabilities, rights or benefits, including the right to payment under the Agreement, without the prior written consent of PennDOT’s Deputy Secretary for Highway Administration or authorized designee. If an assignment is anticipated and approved, the Consultant and its assignee shall enter into and execute a written agreement, in which the assignee agrees to be legally bound by all of the terms and conditions of the Agreement and to assume the duties, obligations and liabilities being assigned. In addition, the Consultant and PennDOT may have to enter into and execute a Supplemental Agreement signifying PennDOT’s consent to the assignment.

2.9 Good Faith Acceptance of Consultant's Proposal

It is expressly understood that all information, statements, and material presented by the Consultant and used by PennDOT in the negotiations, development, and computation of the Consultant Cost Estimate, the Lump Sum for Fixed Fee and the total fee to be paid the Consultant are accepted in good faith by PennDOT and the burden of proof of the accuracy remains with the Consultant for the life of the Agreement. PennDOT may at its option elect to cancel the Agreement for cause and recover damages or elect to enter into a renegotiation to revise the amount of the fee as provided for in the Agreement when PennDOT determines that the said Consultant's submissions are in error, inaccurate and/or false and that the correct information and/or material when used will cause a change in the amount of fee to be paid the Consultant. It is expressly understood that such action by PennDOT is applicable to any Agreement regardless of the method of payment as set forth in these specifications or as may be otherwise provided in the Agreement.

2.10 Scope Conflict

The Consultant's Technical Proposal has been accepted by PennDOT subject to the modifications, additions, and amplification set forth in the Agreement. The provisions in this Agreement and PennDOT's Scope of Work and Services shall govern where a conflict occurs with any Scope of Work and approach set forth in the Consultant's Technical Proposals.

2.11 Notice to Proceed

The Consultant agrees work and services performed under this Agreement and any supplements to this agreement (regardless of the basis of payment) will be accomplished as directed by PennDOT through the issuance by PennDOT of Notices to Proceed.

For ECMS agreements, the Consultant shall not proceed with work and services required under any Part of this Agreement until specifically authorized by PennDOT to proceed on that Part in the form of an electronic Notice to Proceed issued through ECMS.

NTP for Work Orders under an Open End Agreement occurs at the time of the consultant's signature.

Any work or services performed by the Consultant prior to the receipt of a Notice to Proceed will not be reimbursable.

The Department reserves the right to issue an Advanced Notice to Proceed ("ANTP") to the Consultant by means of an ANTP Letter, in a form prescribed by the Department (Publication 93 Appendix 4J), signed by authorized representatives of the Department and the Consultant, for any Work Order or Work Order Amendment prepared during the term of this Agreement or any supplements or extensions thereof. The parties shall act promptly following issuance of the ANTP to prepare and execute the Work Order or Work Order Amendment. Upon receipt of the ANTP, the Consultant may rely on it to begin performing work and incurring costs under the Work Order or Work Order Amendment; provided, however, that the Consultant shall not invoice the Department for work performed and costs incurred, and the Department shall not make payment, until the Work Order or Work Order Amendment has been fully executed. A work order should be executed in ECMS within 60 days of ANTP. If the Work Order or Work Order Amendment is not fully executed on account of budgetary reasons or issues relating to form and legality, the Consultant risks nonpayment for any work already performed.

2.12 Management of Project Costs

The Consultant shall exercise proper management practice pertaining to personnel and fiscal, technical, and professional surveillance to ensure that the project costs (for cost reimbursable type agreements) are kept within the labor-hours and dollars in the Consultant's estimate. The Consultant shall (for cost reimbursable type Agreement) inform PennDOT promptly when the cost deviates from the estimate and provide PennDOT with justification and documentation required to cover the increase in labor-hours and cost. PennDOT will review the justification and documentation and if acceptable will issue the necessary adjustment by a Supplemental Agreement.

A. The Consultant shall agree and understand that the maximum cost to PennDOT for each Category of Compensation shall not exceed the maximum amount stipulated in PennDOT-approved invoice template without prior approval of PennDOT and the FHWA, where applicable, in the form of a Fund Transfer approval from PennDOT.

B. The Consultant agrees that the Consultant will not request reimbursement for any costs incurred in excess of the maximum amount stipulated for each Category of Compensation in the PennDOT-approved invoice template.

2.13 Date of Acceptance

The date on which PennDOT Project Manager notifies the Consultant of the acceptance of all work and services provided under the Agreement shall be the date of final settlement of the Agreement.

If the Consultant files a claim with the Board of Claims the date of final settlement shall be the date of the final adjudication of the claims filed with the Board of Claims.

2.14 Acceptance of Final Payment

It is also agreed and understood that the acceptance of the final payment by the Consultant shall be considered as a release in full of all claims against the Commonwealth of Pennsylvania arising out of, or by reason of, the work, services and materials furnished under this Agreement for which final payment has been made.

2.15 Consultant Evaluation / Past Performance Report

Immediately upon the completion of all the work and services required under an individual Part of an Agreement, PennDOT's Project Manager will evaluate the Consultant's performance on that particular part.

The Evaluation/Past Performance Report will be discussed with and signed by the Consultant's Project Manager and/or a Principal of the Consultant.

The Consultant's Project Manager and/or Principal should sign the report acknowledging that they have read the report and had the opportunity to discuss the report with the appropriate PennDOT representative(s). The Consultant signature does not mean that the Consultant agrees with the rating but they did have an opportunity to discuss the rating with PennDOT representative(s). For ECMS agreements, if the Consultant does not respond within fifteen days, the system automatically finalizes the evaluation without comments by updating the status to “Complete”.

The Evaluation/Past Performance Report will be used for comparison purposes during the consultant selection process.

Chapter 3 – Agreement Terms and Conditions

3.1 Indemnification

The Consultant shall indemnify the Commonwealth (including PennDOT) and the Federal Government against claims and liability related to third-party claims for bodily injury or property damage arising from any intentional acts, negligence, errors, or omissions of the Consultant, its subconsultants, subcontractors, agents, or employees, in the performance of this Contract.

Notwithstanding the foregoing, PennDOT shall pay for any loss, liability, or expense arising out of or relating to PennDOT's acts or omissions regarding its obligations under this Contract, where a final determination of liability on the part of PennDOT is established by a court of law, Board of Claims, or where settlement has been agreed to by PennDOT. This provision may not be construed to limit PennDOT's rights, claims, or defenses arising as a matter of law or under any other provision of this Contract. This provision may not be construed to limit the sovereign immunity of the PennDOT.

3.2 Insurance

A. During the term of this Contract, the Consultant shall procure and maintain at its expense and require its subconsultants/subcontractors to procure and maintain, as appropriate, the following types of insurance, issued by companies authorized to conduct business under the laws of the Commonwealth of Pennsylvania:

1) For design professional services, Professional Liability/Errors & Omission insurance in an amount not less than $1,000,000.
2) Workers' Compensation insurance sufficient to cover the Consultant's employees and those of any subconsultant/subcontractor engaged in performing Services in accordance with the *Workers' Compensation Act* (77 P.S.§ 101, *et seq*).
3) Auto, Comprehensive General Liability and Property Damage insurance in an amount not less than $250,000 per person and $1,000,000 per occurrence.

B. The commercial general liability and property policies must name the Commonwealth of Pennsylvania as an additional insured and provide notice of cancellation to the Commonwealth, at least thirty (30) days in advance of the effective date of the change or cancellation, except for cancellation due to the Consultant's nonpayment of premium, where at least fifteen (15) days' prior notice of cancellation must be given to the Commonwealth. The insurance must not contain endorsements or other forms limiting or restricting any action by the Commonwealth as an additional insured.

C. The Consultant shall promptly notify the Commonwealth of material changes to its insurance coverage. Cancellation or alteration shall not relieve Consultant of its continuing obligation to maintain insurance coverage in accordance with this Section 3.2 (Insurance).

D. The Consultant shall maintain insurance for the term of the Contract meeting the minimum requirements set forth in this Section 3.2 (Insurance); however, the obligations created under this Chapter 3 apply without regard to a limitation in insurance coverage and Consultant should secure insurance coverage sufficient to protect its business interests, which may exceed any minimum coverage limits required above. Upon request, the Consultant shall provide the Commonwealth with a copy of each current certificate of insurance or insurance policy that evidences the required minimum coverage.

E. The Consultant may maintain "umbrella" insurance policies to fulfill these insurance requirements, provided the policies meet or exceed the minimum coverages required under this Section 3.2 (Insurance).

F. The Consultant is not required to attach insurance documents within ECMS; however, the Commonwealth reserves the right to request the insurance documents to ensure compliance with Section 3.2. Unless requested, certificates of insurance are not required to be attached to the consultant's technical proposal in ECMS.

3.3- Worker Protection and Investment

In accordance with Executive Order 2021-06, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania's Unemployment Compensation Law, Workers' Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws. All firms on the final ranked team will need to attach signed copies of the WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM (found in the ECMS File Cabinet) to the technical proposal for the original agreement. The Department will verify final ranked firms are not included on the Pennsylvania Department of Labor and Industry's (L&I's) public list of non-compliant businesses prior to awarding any contract or grant. Failure to attach the completed CERTIFICATION FORM to the technical proposal will result in a non-responsiveness determination and rejection of the technical proposal. A firm's inclusion on the public list of non-compliant businesses may result in rejection of the technical proposal, non-award and/or other appropriate remedial measures.

The WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM shall also be attached to the technical proposal for all agreement supplements for all firms included in the supplement, and the Department will verify that the firms are not included on L&I's public list of non-compliant businesses prior to creating the legal supplement.

3.4 Contract Suspension and Cancellation

A. Suspension of Work Notice

The Deputy Secretary (or authorized designee), District Executive, and Assistant District Executive shall have the authority to suspend the work wholly or in part, under the terms of the Agreement whenever the Deputy Secretary deems such suspension is in the best interest of the Commonwealth, by issuing a Suspension Order to the Consultant. The Suspension Order may apply to the entire Agreement, or to any part(s), phase(s), or item(s) of work thereof, and upon one or multiple occasions. Upon receipt of such Suspension Order, the Consultant shall cease work immediately in accordance with the Suspension Order provisions and shall order all subconsultant(s) and subcontractor(s) to cease work immediately. The Consultant shall continue the suspension of work until such Suspension Order is subsequently withdrawn in writing by PennDOT. During the time the Suspension Order is in effect, the Consultant shall exercise due care and caution to protect and secure the completed work and work that was in process.

After receipt of the Suspension Order the Consultant may exercise one of the following options:

1) **For Cost Plus Fixed Fee Method**, the Consultant may invoice for the Direct and Indirect Payroll costs, for any applicable In-house Direct Costs, and the Direct Cost of Work and Services by Others as of the effective date specified in the Suspension Order.

2) **For Lump Sum Method and Unit of Work Method and for the Lump Sum Fee in the Cost Plus Fixed Fee Method**, the Consultant, with the approval of PennDOT, may establish an interim percentage of progress payments for accrued earnings to the effective date specified in the Suspension Order and may submit an invoice for the amount thereof.

3) **For the Specific Rate of Compensation Method**, the Consultant may invoice for the total accrued hours of work for the employees as of the effective date specified in the Suspension Order.

In support of such invoice the Consultant shall cite the Suspension Order as the basis for the submission. A copy of the Suspension Order should be attached to the invoice.

PennDOT will not recognize nor authorize standby time during the effective period of the Suspension Order.

If the Suspension Order is in effect for a period of six months or longer prior to being rescinded, PennDOT will consider negotiating a Supplemental Agreement.

B. Cancellation of Contract

PennDOT shall have the right to cancel the Agreement at any time upon written notice signed by the Deputy Secretary, and in any such event the Consultant shall be paid as hereinafter set forth, by the method of payment indicated in the Agreement and Supplements thereto. The Consultant shall cease work as of the date the registered letter is received and shall be paid only for such work and services as have already been rendered up to and including the cease work date specified in said Notice of Cancellation.

The Consultant shall also be paid for a period of thirty (30) calendar days after the Cancellation Notice for work and services performed for the collection, assembling and transmitting to PennDOT the items which were obtained, prepared or developed as part of the work required under the Agreement. These items include, but are not limited to, all materials; electronic files; plans; studies; correspondence; drawings; computations; maps; supplies; survey notes, including field books; and property records, including deeds, tax maps, title searches, etc.

1) The amount due the Consultant for earnings on a Cost Plus Fixed Fee type of Agreement shall include the Consultant's direct and indirect costs defined in the Agreement as of the date of cancellation plus a payment in the amount of the Lump Sum for Fixed Fee computed on an agreed upon percentage of the Consultant's progress of completion of the Agreement as of the effective termination date specified in the Cancellation Notice. This agreed upon percentage shall be based on the actual work completed and not the percentage determined by comparing the expended payroll amount against the estimated amount for payroll included in the Agreement.

2) The amount due the Consultant for earnings on a Lump Sum Method of Payment contract shall be based on an agreed upon percentage of actual work completed. This percentage shall be based on a detailed review of the work completed as applied to the amounts established in the Estimated Progress Report, approved at the start of the project or as subsequently approved by PennDOT.

3) The amount due the Consultant for earnings on a Specific Rate of Compensation type Agreement shall be the payment for the total accrued

amount of Compensation due the Consultant as of the effective date specified in the Cancellation Notice.

4) The amount due the Consultant for earnings on a Cost per Unit of Work Method of Reimbursement shall be the payment:

(a) For all Units of Work completed as of the effective date specified in the Notice of Cancellation.

(b) For the completion of Units of Work on which the Consultant has work underway and PennDOT directs completion subsequent to the effective date specified in the Notice of Cancellation.

(c) For Units of Work on which actual work has been performed prior to the effective date specified in the Notice of Cancellation an agreed percentage of completion of each unit, after negotiation with the Consultant, shall be established by PennDOT to determine the amount of reimbursement due the Consultant.

(d) No allowance will be made for Units of Work on which the Consultant has performed no work as of the date of the receipt of the Notice of Cancellation.

5) The thirty (30) days notice shall date from the time of mailing of such letter to the Consultant. The right to cancel may be exercised by PennDOT as to the entire project, or as to any particular phase or phases, part or parts, thereof, and such cancellation shall not be subject to revocation.

3.5 Violation or Breach of Contract

If a consultant or subconsultant finds that it is in violation or breach of contract, it should notify PennDOT immediately.

If PennDOT finds that a consultant or subconsultant is in violation or breach of contract, PennDOT will notify the consultant. Appropriate corrective legal action will be taken.

3.6 Ownership of Material and Work

All plans, specifications, estimates, electronic files, including copies of the surveyed surface, design surface(s), and alignment files in LandXML format, correspondence, software developed or acquired as a part of the project, drawings, studies, computations, aerial photographic negatives and models, mosaics, maps and all other material, supplies, and designs prepared, developed, or obtained under the terms of the Agreement shall be delivered to and become the sole property of PennDOT. The original survey field books, notes, sketches, records, charts, computations, computer programs, tests results, LandXML files, and other data prepared, acquired, or obtained under this Agreement at PennDOT expense shall be delivered and become the sole property of PennDOT upon request without restriction or limitation on their further use. When an Agreement is for studies only, no commitment shall be implied therefrom that would constitute a limitation on the subsequent use of the studies, reports, and plans by PennDOT.

PennDOT and the Consultant intend and agree that all work, services, products, and materials (Works) created under this Agreement shall constitute works made for hire as that term is defined under the Copyright Act of 1976, as amended (Copyright Act). The Consultant acknowledges and agrees that the Works shall belong to and shall be the sole and exclusive

property of PennDOT. If for any reasons the Works would not be considered a work made for hire under applicable law, the Consultant hereby sells, assigns, and transfers to the Commonwealth, acting through PennDOT, its successors and assigns, the right, title and interest in and to the copyright in the Works and any registrations and copyright applications relating therefore and in and to all works based upon, derived from, or incorporating the Work. Consultant agrees to sign and deliver to PennDOT, either during or subsequent to the term of this Agreement, such other documents as PennDOT considers necessary to effectuate the assignment of copyright. This provision shall survive the term of the Agreement.

3.7 Cost Elements for Consultant Agreements

All costs must be in accordance with federal cost principles, as contained in the FAR.

The following cost elements are totaled to determine the maximum not to be exceeded Agreement amount:

- Direct Labor/Direct Payroll
- Overhead/Indirect Payroll
- Direct Costs Other Than Payroll
- Direct Cost of Work and Services by Others
- Fixed Fee or Profit
- Escalation
- Premium Pay (Design and Miscellaneous Services Agreements)

Additional information concerning these elements can be found in Pub 93.

A. Direct Labor/Direct Payroll

Direct labor is the cost of salaries for those personnel such as Project Manager, engineers, technicians, drafters, CADD operators, survey personnel, and clerks that are directly chargeable to the project.

All consultant personnel must be on the consultant's PennDOT approved roster prior to working under a PennDOT Agreement.

The Consultant's estimate of its in-house Direct Payroll cost, presented as a breakdown of work-hour requirements into the work breakdown structure tasks and detail tasks, is required to accomplish the project. Each detail task will have the classifications of employees to be used with the average hourly rate for each classification, extended and summated to arrive at the total estimated payroll cost. The work breakdown structures tasks and detail tasks so presented in this estimate shall be identical to those used in the Consultant's Cost Accounting Records for the work and services performed under the Agreement.

B. Overhead/Indirect Payroll

The overhead cost represents those allowable costs that are not directly attributable to the project. Overhead costs generally include, but are not limited to, the following:

- Provisions for office, light, heat, and related items associated with the working space, depreciation allowances or rental for furniture, drafting equipment, and CADD equipment, automobile expenses, and office and drafting supplies not

directly chargeable to the project;

- Taxes and insurance other than those included as salary cost, but excluding federal income taxes;
- Library and periodical expense, and other means of keeping current in the profession, such as attendance at technical and professional meetings;
- Those services and expenses essential to conduct business, including preliminary arrangements for new projects, executive, administrative, accounting, and legal salaries and expenses, other than identifiable salaries included in salary costs and expenses included in reimbursable non-salary expenses, plus salaries of partners and principals, to the extent that they perform general executive and administrative services as distinguished from technical or advisory services directly applicable to the project;
- Business development expenses, including salaries of principals and salary costs of employees so engaged; Provision for loss of productive time of technical employees between assignments and for time of principals and employees on public-interest assignments; and
- Payroll burden and fringe benefits, which include:
    - paid sick leave
    - vacation
    - holidays
    - payroll taxes
    - unemployment contributions
    - social security taxes
    - insurance benefits
    - retirement

The determination of the allowable cost items making up the Consultant overhead/indirect costs shall be governed by provisions set forth in FAR Part 31.

The Consultant overhead rate expressed as a percentage is calculated as follows:

Overhead Rate (%) = (Allowable Overhead Costs/ Direct Labor Costs) X 100

The Indirect Payroll cost is calculated by multiplying the direct labor cost by the overhead rate divided by 100.

Overhead Submissions

The Consultant shall have a current approved FAR overhead rate(s) on file with PennDOT in order to perform work on PennDOT projects. Approved FAR overhead rate(s) are valid up to eighteen months from the consultant's audit fiscal year end.

In order to obtain PennDOT approval of their overhead rate(s), consultants must submit in ECMS the following documentation to PennDOT :

- Cognizant approved indirect cost rate(s) if available (see Cognizant Audit below for requirements). If the consultant has received a cognizant letter, the only additional documentation required is the Contractor Cost Certification below. *OR*
- FHWA Order 4470.1A Appendix A – Contractor Cost Certification – See Appendix 3C .
- Audit report disclosing the results of an indirect cost rate(s) FAR audit, performed by an independent CPA in accordance with Generally Accepted government Auditing Standards. It is highly recommended that the CPA also utilize the guidance provided in the latest edition of the AASHTO Uniform Audit and Accounting Guide to perform the audit of the indirect cost rate(s). The FAR

audit report shall be provided at no direct cost to PennDOT. A consultant may submit an unaudited FAR overhead rate(s) statement; however, they will be limited to $250,000 of direct plus indirect payroll costs for each agreement that they work on. A consultant who submits an unaudited rate may be a prime consultant or subconsultant on a PennDOT agreement subject to the limitation noted above.

- A complete compensation analysis prepared in accordance with all criteria outlined in the AASHTO Uniform Audit and Accounting Guide (UAAG) Section 7.5 or the National Compensation Matrix (NCM) Executive Compensation Compliance Worksheet.
- AASHTO Internal Control Questionnaire (ICQ) and the following attachments:
  - Final fiscal year end trial balance that reconciles to the overhead schedule. If accounts on the overhead statement include multiple expense accounts, indicate which expense accounts on the trial balance make up the overhead statement account.
  - Overhead rate schedule showing the calculation of the overhead rate(s) and showing excluded unallowable amounts as per FAR 31.
  - The Company's policies for vacation and sick leave.
  - The Company's bonus policy.

The UAAG, the updated ICQ and NCM are available at https://transportation.org/audit/resources/eap-subcommittee-resources/ .

The rates should be calculated and rounded to the **third decimal place** when submitted in ECMS. Also, the proposed overhead rates on the Certification of Final Indirect Costs should match the proposed overhead rates submitted in ECMS, as well as the proposed overhead rates on the overhead statement.

Additional information may be requested by the PennDOT negotiator and shall be provided by the Consultant in a timely manner.

Safe Harbor Office Overhead Rate

Consulting firms that provide engineering and design related services may choose to apply an office and/or field safe harbor overhead rate if they lack financial expertise to develop an overhead rate, lack financial resources to develop an indirect cost rate themselves or to hire a Certified Public Accountant (CPA) to develop an indirect cost rate for the firm, are a new or start-up firm that does not have contract-related cost history, or are a well-established firm that does not have previous experience with federally funded contracts. Publication 93, Appendix 3G contains the expected Safe Harbor time frame schedule. The maximum office safe harbor overhead rate is 110%. The maximum field safe harbor overhead rate is 95%. To be eligible to use the office or field safe harbor overhead rate, a firm must not have had a FAR compliant overhead rate previously accepted by PennDOT or any other cognizant agency. A Consultant requesting approval for use of an office and/or field safe harbor overhead rate must certify (Publication 93 Appendix 3H) that it will stand by the office and/or field safe harbor overhead rate for the duration of affected agreements and will not expect additional reimbursement for amounts above the requested office and/or field safe harbor overhead rate based on any future audits. Documents listed in the Overhead Submission section of this publication are required according to the Publication 93, Appendix 3G "Compliance Components" schedule. Safe harbor office and/or field overhead rate submissions must be made, reviewed and approved through ECMS and approvals are valid up to eighteen months from the consultant's fiscal year end. Since the safe harbor overhead rate is unaudited, the consultant will be limited to $250,000 of direct plus indirect payroll costs for each

agreement that they work on. The consultant who submits an unaudited safe harbor rate may be a prime consultant or subconsultant on a PennDOT agreement subject to the limitation noted above.

Field Pro-Forma Overhead Rate - If the consultant that has previously had an ***office*** FAR compliant overhead rate accepted by PennDOT or other cognizant agency and is unable to generate a FAR ***field*** Overhead Rate because the firm has not done construction inspection or other work requiring a field overhead rate for the previous fiscal year, the consultant shall generate a field Pro-Forma Overhead Rate based on the best available accounting information. This field Pro-Forma Overhead Rate will be used as a provisional rate in the Consultant's price proposal. The field Pro-Forma overhead rate is limited to 95%.

Voluntary Lower Overhead Rates – A Consultant requesting approval for use of an overhead rate lower than the overhead rate it submitted as FAR compliant (audited or unaudited) must agree that it will stand by the lower overhead rate for the duration of affected agreements and will not expect additional reimbursement for amounts above the requested lower rate based on any future audits of the rate. Additionally, the consultant requesting approval for a lower overhead rate must provide as part of its overhead submission a certification that it will stand by the requested lower rate for the duration of agreements affected by the rate, a narrative explaining why it is requesting a lower overhead rate, and an identification of the specific costs that are being voluntarily reduced to arrive at the lower overhead rate.

Cognizant Audit - PennDOT will accept indirect cost rates deemed by a cognizant agency, to be established in accordance with the FAR cost principles. This determination may be made through an audit performed by the cognizant agency or through their concurrence with an audit performed by a CPA firm. A cognizant agency may be any of the following: (1) Federal agency; (2) The Home State DOT (the State where the consulting firm's accounting and financial records are located); or (3) A Non-Home State DOT to whom the Home State has transferred cognizance in writing for the particular indirect cost rate audit of a consulting firm.

PennDOT requires a letter from the cognizant agency establishing the accepted "cognizant indirect cost rate(s)". A cognizant indirect cost rate(s) submission must include the Contractor Cost Certification of Final Indirect Costs form. This form is available at the ECMS website overhead information link and in Publication 93 Appendix 3C.

Office Overhead Rates

Design and Miscellaneous and Construction Management Agreements – The use of an office overhead rate is allowed for all operations.

For an agreement where the estimated direct plus indirect payroll cost for the consultant is more than $250,000, a prime or subconsultant is required to have an audited FAR overhead rate on file with PennDOT prior to submitting a price proposal using Lump Sum, Cost per Unit of Work, or Specific Rate of Compensation methods of payment. The prime or subconsultant may use an internally prepared FAR overhead rate, accepted by PennDOT, for price proposal preparation for an agreement using a Cost Plus Fixed Fee method of payment, but an audited FAR overhead rate must be on file with PennDOT prior to submitting an invoice under the agreement.

For an agreement with an estimated direct plus indirect payroll cost for the consultant less than $250,000, a prime or subconsultant may use an internally prepared FAR

overhead rate, accepted by PennDOT. The internally prepared overhead rate must be accepted by PennDOT prior to price proposal preparation. A prime or subconsultant may submit an audited FAR overhead rate if one is available.

Field Overhead Rates

Construction Inspection Agreements - The use of a field overhead rate is required for consultant employees performing construction inspection who are not supplied a full time work station within the consulting firm's operations.

For an agreement where the estimated direct plus indirect payroll cost for the consultant is more than $250,000, a prime or subconsultant is required to have an audited FAR field overhead rate on file with PennDOT prior to being included as a prime or subconsultant in an SOI.

For an agreement with an estimated direct plus indirect payroll cost for the consultant less than $250,000, a prime or subconsultant may use an internally prepared FAR field overhead rate, accepted by PennDOT. The internally prepared field FAR overhead rate must be accepted by PennDOT prior to the prime or subconsultant being included in an SOI. A prime or subconsultant may submit an audited FAR field overhead rate if one is available.

Design and Miscellaneous Agreements – The use of a field overhead rate is required for consultant employees who are not supplied a full time workstation within the consulting firm's operations.

In situations, where a field rate will be required but the consulting firm does not have an approved field rate, PennDOT and the Office of the Comptroller has the ability to approve a provisional field overhead rate.

C. Direct Costs Other than Payroll

The Consultant will not receive any mark-up on in-house direct costs.

Indirect Costs - The Direct Costs Other Than Payroll costs to be provided by the Consultant are to be identified as being directly charged to the Agreement and not to an account which is included in the Consultant's overhead percentage. The out of pocket expenses, for travel and subsistence (lodging and meals), for both the Consultant and the subconsultant (subcontractor) shall be charged at actual cost, not to exceed those authorized by the Commonwealth's Management Directive 230.10 and revisions thereto, whether charged as a direct or an indirect cost. Both the Consultant and subconsultant (subcontractor) shall be governed by the regulations as defined by this Directive.

DBE Crediting - For professional work and services, DBE crediting will be made only when the work and services have been performed by a DBE subconsultant. Costs for professional work and services included in a DBE consultant's price proposal as direct costs of work and services by others should not count as DBE participation in the Agreement unless the direct cost is incurred by a certified DBE consultant.

If the prime Consultant is a certified DBE, all costs except for those realized by non-DBE certified subconsultants will count toward the DBE goal.

All DBE participation will be counted towards the Agreement's DBE goal in accordance with 49 CFR Part 26.55.

D. Direct Costs of Services and Work by Others

The Consultant will not receive any mark-up on these direct costs.

This element encompasses the actual costs associated with subconsultants and Non-Professional Contractual Services whether obtained by negotiations or by bidding. Even though subconsultant costs are considered a direct cost with respect to the Prime's agreement, each subconsultant agreement has its own budget of funds per Category of Compensation and shall be managed in accordance with all procedures detailed in Publication 93 and terms and conditions indicated in Publication 442.

3.8 Proposed Project Employees

The Consultant shall submit to PennDOT the names of the employees proposed to be used on the project. Their payroll classification, actual current payroll rate and the date the payroll rate was effective will be provided by ECMS. During the life of the contract, the Consultant shall notify PennDOT, through ECMS, of proposed wage rate increases and request approval prior to placing them into effect. When PennDOT objects to the amount of such increase, the wage rate will be rejected and justification will be required. Submissions for approval of payroll rate increases are to be made through ECMS indicating the proposed payroll rate with the new effective date.

3.9 Agreement Performance

The Consultant shall perform with its own forces all the work and services and furnish all equipment and materials required to accomplish all the provisions and requirements of the Agreement, with the exception of those services, work, equipment, and/or material specifically listed in the Agreement or approved pursuant to the provisions above, which are to be performed or furnished by other than the Consultant forces.

3.10 Transfer of Electronic Data

A. Terms and Conditions for the Release of Electronic Data Files

1) That PennDOT does not warrant or guarantee the information and data in these Computer Aided Design Drafting (CADD) project files as a substitute for the sound engineering judgment of the Consultant.

2) That use of the CADD project files in conjunction with engineering work and services provided by the Consultant to PennDOT will reduce the cost of such services and thereby benefit the public.

3) That the Consultant desires to make use of the CADD project files in conjunction with engineering work and services provided by the Consultant to PennDOT.

4) That PennDOT grants permission to the Consultant to use the CADD project files (Commonwealth's Intellectual Property) and any translated or converted form of these files subject to the terms and conditions of this Agreement, and any supplements to this Agreement. A paper copy of the Commonwealth's Intellectual Property will be provided by PennDOT.

5) That the Consultant has no proprietary rights in or to the Commonwealth's Intellectual Property or any subsequent version thereof. The Consultant shall maintain and protect the Commonwealth's Intellectual Property in the strictest confidence. No translated or converted form may be transferred in any form without the express written permission of PennDOT.

6) That the Commonwealth's Intellectual Property or any translated or converted form of this Intellectual Property shall not be used by the Consultant on any other project. The Consultant shall be expressly prohibited from copying any portion of the files, except to the extent necessary to perform the Project.

7) That the Consultant may not copy, distribute, sell, rent, sublicense, or lease the Commonwealth's Intellectual Property to any third parties or use the files or any translated or converted form of the files to produce, market, or support the Consultant's own products.

8) That no information or data contained in the Commonwealth's Intellectual Property or any translated or converted form of same shall be transferred in any electronic form without written permission of PennDOT's Deputy Secretary for Highway Administration.

9) That, after payment of the final invoice for work and services provided by the Consultant as part of this Agreement, the Consultant shall remove the information and data contained in the Commonwealth's Intellectual Property or any translated or converted form of the same from all of the Consultant's electronic data processing systems. The Consultant shall not retain any electronic copies of the information and data contained in the Commonwealth's Intellectual Property or any translated or converted form of its Intellectual Property after payment of the final invoice for work and services provided under this Agreement. Within ten (10) days of the conclusion of the Project work, the Consultant shall return all copies of the Commonwealth's Intellectual Property and all related materials to PennDOT and shall delete all portions of the Commonwealth's Intellectual Property from computer memory.

10) That PennDOT may terminate this Agreement at any time, and the Consultant shall immediately remove the Commonwealth's Intellectual Property or any translated or converted form of the same from the Consultant's electronic data processing systems upon demand of PennDOT.

11) That PennDOT reserves all rights not expressly granted. Nothing in this Agreement constitutes a waiver of PennDOT's rights under any federal or state law.

12) That the Commonwealth's Intellectual Property is being provided "AS IS" without any covenant, representation, or warranty of any kind or nature whatsoever, express or implied; and the Consultant assumes the entire risk as to its quality and performance. The Consultant's remedy is limited to returning the Commonwealth's Intellectual Property and accompanying documentation to PennDOT for replacement.

13) That PennDOT shall not be liable for any direct, indirect, special, incidental, or consequential damages, whether based on contract, in tort or in any other legal theory, arising out of the use of, or inability to use, the Commonwealth's Intellectual Property or any accompanying documentation.

14) That PennDOT shall not be liable for any direct, indirect, special, incidental, or

consequential damages, whether based on contract, in tort or on any other legal theory, arising out of any defect in the Commonwealth's Intellectual Property or any accompanying documentation.

15) That the Consultant shall indemnify and hold harmless the Commonwealth, PennDOT, its officials, and employees for any injury to the person or property of third parties arising out of the use of or any defect in Commonwealth's Intellectual Property or any translated or converted form of this Intellectual Property or any accompanying documentation.

16) That the Consultant shall indemnify and hold harmless the Commonwealth, PennDOT, its officials, and employees for any injury arising out of any infringement of the copyright laws of the United States of America.

17) That the warranty and remedies set forth in this Agreement are exclusive and in lieu of all others, oral or written, express or implied.

18) That nothing contained in this Agreement shall be construed to represent or warrant that the Consultant has any right to reproduce or copy any portion of the Commonwealth's Intellectual Property; and the Consultant acknowledges that it has no right to reproduce and include copyright or trade secret notices, or patent rights on any copies, in whole or in part, in any form. All copies of the Commonwealth's Intellectual Property remain the property of the Commonwealth and any rights involving the copyright law as codified in 17 U.S.C. Section 101 et seq. remain with the Commonwealth and PennDOT as defined by the software licensing provisions of its CADD acquisition agreements.

19) That this Agreement constitutes the entire Agreement between PennDOT and the Consultant. No employee of PennDOT is authorized to make any modification or addition to this Agreement, except through the issuance of a fully executed Supplemental Agreement.

20) That the Consultant shall provide, at no cost to PennDOT, the magnetic medium, acceptable to PennDOT, for transfer of the Commonwealth's Intellectual Property.

B. Additional terms and conditions for the release of electronic BRADD project drawing files

1) That the Consultant is solely responsible for the installation of the transferred BRADD files onto its electronic drafting system.

2) That the Consultant shall verify the integrity, correctness, and acceptability of the transferred data contained in the BRADD files as compared to the paper copy of the files provided by PennDOT.

3) That the Consultant shall acknowledge in writing the integrity, correctness, and acceptability of the transferred BRADD files.

4) That PennDOT will provide the Consultant, without modification, the BRADD files as produced by PennDOT 's BRADD System.

5) That the Consultant is solely responsible to make all the necessary and required modifications and changes to the BRADD files as per the SHEET O file.

6) That the Consultant shall sign and seal all final bridge plans. This includes all transferred BRADD files used in the final bridge plans, whether or not those files were modified by the Consultant.

7) That prior to payment of the final invoice, the Consultant shall submit in writing, at no additional expense to PennDOT, documentation of the experience using the transferred files. This documentation shall include:

   (a) the effort required by the Consultant to accept and use the transferred files;
   (b) the accuracy of the transferred files as compared to the paper copy, including any corrections required to the files; and
   (c) the effect of the transferred file size and format on the subsequent use of the files by the Consultant.

3.11 Overpayment and Non-eligible Costs

In the event that an overpayment or noneligible charge is disclosed, as a result of a Departmental audit of the certified costs as herein provided, it is agreed by the Consultant that upon notice of such overpayment or noneligible charge the Consultant will refund the amount thereof to PennDOT in accordance with the terms of such notice. Upon failure of Consultant to comply with said notice PennDOT is hereby authorized to deduct such overpayments from monies due the Consultant under the terms of the Agreement or any other agreement between PennDOT and the Consultant.

3.12 Costs Incurred Outside the Legal Agreement

No costs for work or services included in a Legal Agreement, Work Order, or Supplement can be incurred by the Consultant prior to NTP or beyond the expiration date. No costs for work or services outside a legal Agreement, Work Order, or Supplement can be incurred.

The Consultant is prohibited from incurring costs for work outside the terms and conditions of the agreement, even if such costs are incurred based on verbal directions or instructions that may have been given by a PennDOT representative. Similarly, Subconsultants are prohibited from incurring costs for work outside the terms and conditions of the agreement, even if such costs are incurred based on directions or instructions that may have been given by a Prime representative. Directions or instructions for work, services, or materials, not provided for in the Agreement, issued by any PennDOT official/employee or other Consultant will not be binding on nor will PennDOT be liable for payment for the work or service.

Any such work or materials which may be done or furnished by the Consultant shall be at the Consultant's risk, cost, and expense.

No one within PennDOT has the authority to direct a Consultant to perform work outside of a fully executed Agreement, Work Order or Supplement. In cases where a PennDOT representative directs the Consultant to perform work without an agreement, the responsible individual may be subject to disciplinary action

If a Consultant incurs costs outside of the constraints of its Legal Agreement, Work Order, or Supplement, i.e. works prior to or after the contract time, or incurs costs beyond Category of Compensation limitations, invoices requesting these type of costs cannot be processed by PennDOT.

In these cases, IO Project Managers are advised to contact the Contract Management Division (CMD) Chief. The CMD Chief can provide the Consultant with the various avenues available to rectify the situation.

The CO CMD office (Consultant Agreement Unit) will run a report on approved invoices every six months to determine any invoices that are outside the set parameters of probability for the firm's budget. The Districts and the Consultant will be contacted and the Consultant will be given a chance to provide justification for expenses within budget. If found outside their budget the firm will be instructed to repay the Department.

3.13 Overtime

The design Consultant shall be reimbursed for such overtime paid to its employees for work and services performed hereunder, as is provided for or may be required under existing law or approved labor agreement, when such overtime has been provided for in the Agreement and has been approved in writing by the Deputy Secretary for Highway Administration and approved where applicable by the FHWA. No employee shall receive for any overtime a sum exceeding the normal rate paid by the Consultant's overtime policy.

3.14 Publication 408 Specifications

If the engineering work to be performed by the Consultant under this Agreement is subject to Section 100 of PennDOT's Specifications, Publication 408 (current version at time of executed agreement), the Consultant shall comply with all applicable portions of Section 100, unless otherwise provided in this Agreement or its Special Requirements. In this connection, where the word "contractor" appears in any portion of Section 100 of Publication 408, it shall mean the Consultant; and where the word "engineer" appears, it shall mean the Deputy Secretary for Highway Administration of the Department of Transportation.

3.15 No Third-Party Rights Created

Nothing contained in the Agreement, or in these Specifications shall be deemed to create any contractual relationship with, or to create a cause of action of any kind, nature or type, whether grounded in contract, tort, equity or any other legal theory, in favor of any third party against either PennDOT or the Consultant, or any of their officers, agents, employees, consultants, or designees, or anyone acting on their behalf.

Nothing contained in the Agreement or in these Specifications is intended to benefit any third party. PennDOT and the Consultant do not intend that any other person or entity, including, but not limited to contractors, their subcontractors, their officers, agents, or employees, or anyone acting on their behalf, shall be third-party beneficiaries of the Agreement.

3.16 Right to Know Law

A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. Therefore, this Contract/Agreement is subject to, and the Consultant shall comply with, the clause entitled Contract Provisions – Right to Know Law 8-K-1532, as follows and made a part of this Contract/Agreement. As used in this Contract/Agreement, the term "Contractor" refers to the Consultant. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.

B. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact

information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

C. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:

1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

D. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

E. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

F. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

3.17 Records and Documentation

The Consultant and its subconsultants/subcontractors shall maintain and provide access to all books, documents, papers, records supporting cost proposals, accounting records, employees time cards, payroll records, and other evidence pertaining to costs incurred on the project and shall make such materials available at a site designated by PennDOT at all reasonable times during the Agreement period and for seven years from the date of final payment under the Agreement for inspection and/or audit by PennDOT, FHWA, or any other authorized representative of the state or federal government, and copies thereof shall be furnished, if requested.

The Consultant and its subconsultants/subcontractors shall maintain and provide access to PennDOT, Municipalities, FHWA, the US Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representative to

any books, documents, papers, and records of the consultant which are directly pertinent to this specific contract for the purpose of making audit examination, excerpts, and transcription.

3.18 FAR 52.240-1 - Prohibition on Unmanned Aircraft Systems Manufactured or Assembled by American Security Drone Act-Covered Foreign Entities

FAR 52.240-1 - Prohibition on Unmanned Aircraft Systems Manufactured or Assembled by American Security Drone Act-Covered Foreign Entities (Nov 2024)

(a) *Definitions.* As used in this clause—

American Security Drone Act-covered foreign entity means an entity included on a list developed and maintained by the Federal Acquisition Security Council (FASC) and published in the System for Award Management (SAM) at https://www.sam.gov (section 1822 of the National Defense Authorization Act for Fiscal Year 2024, Pub. L. 118-31, 41 U.S.C. 3901 note prec.).

FASC-prohibited unmanned aircraft system means an unmanned aircraft system manufactured or assembled by an American Security Drone Act-covered foreign entity.

Unmanned aircraft means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft (49 U.S.C. 44801(11)).

Unmanned aircraft system means an unmanned aircraft and associated elements (including communication links and the components that control the unmanned aircraft) that are required for the operator to operate safely and efficiently in the national airspace system (49 U.S.C. 44801(12)).

(b) *Prohibition.* The Contractor is prohibited from—

(1) Delivering any FASC-prohibited unmanned aircraft system, which includes unmanned aircraft (i.e., drones) and associated elements (sections 1823 and 1826 of Pub. L. 118-31, 41 U.S.C. 3901 note prec.);

(2) On or after December 22, 2025, operating a FASC-prohibited unmanned aircraft system in the performance of the contract (section 1824 of Pub. L. 118-31, 41 U.S.C. 3901 note prec.); and

(3) On or after December 22, 2025, using Federal funds for the procurement or operation of a FASC-prohibited unmanned aircraft system (section 1825 of Pub. L. 118-31, 41 U.S.C. 3901 note prec.).

(c) *Procedures.* The Contractor shall search SAM at https://www.sam.gov for the FASC-maintained list of American Security Drone Act-covered foreign entities prior to proposing, or using in performance of the contract, any unmanned aircraft system. Additionally, the Contractor shall ensure any effort or expenditure associated with a FASC-prohibited unmanned aircraft system is consistent with a corresponding exemption, exception, or waiver determination expressly stated in the contract.

(d) *Exemptions, exceptions, and waivers.* The prohibitions in this clause do not apply where the agency has determined an exemption, exception, or waiver applies and the contract indicates that such a determination has been made. [See sections 1823 through 1825 and 1832 of Public Law 118-31 (41 U.S.C. 3901 note prec.) for statutory requirements pertaining to exemptions, exceptions, and waivers.].

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

Chapter 4 – Invoices

4.1 Partial Payments

The interval for consultants to submit an invoice should be four to six weeks. ECMS will allow prior period invoicing if charges were missed. A note (comment) should be added in ECMS to explain missed charges. The invoicing period should not span between the consultant's two fiscal years.

Each subconsultant invoice must be approved by the supervising Consultant (which may be either another subconsultant or the prime). All subconsultant invoices for the same consultant Agreement/Part number that are in "Supervisor Firm Approved" status are linked with the prime invoice into a "payment".

Lump Sum Payment – As the work progresses, PennDOT, at its discretion, may require the Consultant, at intervals of time of one month or longer, to develop and submit an interim Progress Report as provided in these Specifications. The IO Project Manager will verify the Progress Report and upon acceptance will process the Consultant's invoice as provided above.

Cost Per Unit of Work Payment - The Consultant may at intervals of not less than once a calendar month submit an invoice for work completed during that time frame.

Cost Plus Fixed Fee Payment - The Consultant may at intervals of not less than once a calendar month submit an invoice for its accrued direct and indirect costs for the invoice period, including certified invoices paid to subconsultants, subcontractors and suppliers. The Lump Sum for Fixed Fee will be processed as same as that for a Lump Sum Method, above, with the exception that any amount earned based on the percent of work completed regardless of the amount will be invoiced as a part of a monthly invoice for direct and indirect costs as set forth above.

The computation of the Consultant's monthly partial payment will be computed initially using the provisional Overhead Rate.

Upon notification by PennDOT of the acceptance of the Overhead Rate for the Consultant's fiscal year, the Consultant shall, by an appropriate adjustment of the prior partial payment invoices, in which the provisional Overhead Rate was used, submit an invoice to PennDOT for the amount due the Consultant or make an appropriate refund to PennDOT for overpayments.

The accepted fiscal year Overhead shall be used as the provisional Overhead Rate for the ensuing fiscal year and at its end, the Consultant and PennDOT will establish the accepted audited Overhead Rate and the foregoing adjustments will again be made. The verification of the Consultant's Overhead Rate together with the appropriate adjustment of the Consultant's billing will be accomplished for each of the Consultant's fiscal years for the term of the Agreement.

Specific Rate of Compensation - The Consultant may at intervals of not less than one month submit an invoice covering such earnings to PennDOT.

4.2 Monitoring of Costs

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

A. The Consultant has evaluated the status of the work and services required for that Part/Work Order under the terms of the Agreement, and verified in writing that all of the work and services required for that Part/Work Order can be provided without exceeding the maximum amounts stipulated in PennDOT approved invoice template.

B. The Consultant has evaluated the status of work and services required to be provided for that Part/Work Order under the terms of the Agreement and requested a supplemental agreement for additional funds to complete the work and services or a transfer of existing funds within PennDOT approved invoice template. PennDOT, acting through the Agreement Project Manager Administrator, has reviewed the Consultant's request, has agreed that the Supplemental Agreement request or fund transfer is justified, and has notified the Consultant in writing that they may continue with the work and services up to the maximum not to be exceeded amounts stipulated in the approved invoice template for that Part/Work Order of the Agreement

4.3 Final Invoice

After the work to be performed by the Consultant under the Agreement has been completed and deemed satisfactory in all respects by PennDOT's Project Manager and accepted by PennDOT and where applicable by the FHWA, PennDOT will notify the Consultant in writing of its acceptance of the work as fulfilling the Agreement, or part of the Agreement. The Consultant must submit its final invoice within fourteen (14) calendar days of receipt of PennDOT's acceptance of work. The final invoice may be submitted by the Consultant within one month of the previous invoice. PennDOT will pay to the Consultant upon its final invoice when accepted and approved by PennDOT's Project Manager, all moneys due the Consultant under the terms of the Agreement. The payment of the final invoice to the Consultant for work and services under the terms of the Agreement does not waive the right of PennDOT to establish overpayments or adjustments disclosed by subsequent audits by PennDOT of the Consultant's project records and cost accounts. PennDOT will notify the Consultant of such amounts due PennDOT and request a refund for the amount of the overpayment as provided in these Specifications.

Lump Sum Method of Payment - The Consultant shall be paid the Lump Sum amount as provided in the Agreement for the project as a whole or such parts thereof on which a Lump Sum is provided. The amount of the final invoice shall be the remaining amount due the Engineer after all prior partial and/or interim payments by PennDOT have been deducted from the Lump Sum amount as set forth in the Agreement.

Cost Per Unit of Work Method - The Consultant will be paid for the total number of Units of Work completed. The final invoice shall be the total number of units completed minus prior units paid.

Cost Plus a Fixed Fee Amount Method – The Consultant shall be paid the amount of the fee computed in accordance with the procedure set forth for partial payments in these Specifications above, subject to a final audit of the Agreement and the determination of the Consultant's total amount due. The final settlement will be the submission by the Consultant of a Final Invoice in the amount of the audited amount due less the aggregate sum of the prior partial payments by PennDOT to the Consultant where the total aggregate sum of the prior partial payments exceeds the amount of the final audited amount of fee, the Consultant shall refund the overpayment amount to PennDOT.

Specific Rate of Compensation - The Consultant shall be paid the accumulated earnings of the Consultant's employees authorized by PennDOT to perform work less the amount of the aggregate total of partial payments by PennDOT to the Consultant.

4.4 Prompt Payment of Subconsultant/Subcontractor Invoices

In compliance with the Contractor and Subcontractor Payment Act (CASPA) and the Prompt Payment Act (PPA) of the Pennsylvania Procurement Code, when a subconsultant/subcontractor has performed in accordance with the provisions of the contract, the prime Consultant is obligated to make prompt payment on the invoices.

All monies received by the Consultant for work and services furnished by a subconsultant/subcontractor must be paid in full to that subcontractor within fourteen (14) calendar days of the date the prime Consultant received payment from PennDOT. The prime consultant is required to enter the subconsultant payment date into ECMS for which the subconsultant will be able to acknowledge or dispute receiving payment.

It is the Consultant's responsibility to ensure prompt payments to any and all subconsultants/subcontractors in accordance with the contractor and subcontractor Payment Act (CASPA), the Prompt Payment Act (PPA), 49 CFR part 26 and the project agreement terms and conditions.

The Consultant is responsible to comply with the prompt payment requirements specified in 49 CFR 26.29.

4.5 Invoice Template

The Consultant shall use the invoice template provided by PennDOT for the Agreement when requesting reimbursement from PennDOT.

For ECMS Agreements, the Consultant shall use the invoice template provided by PennDOT through the ECMS when requesting reimbursement from PennDOT.

4.6 Management Directive 230.10

The Consultant's out of pocket expenses for lodging and meals shall be charged at actual costs, not to exceed those authorized by the Commonwealth Management Directive 230.10.

Regardless of the amount submitted in the Price Proposal, consultants are responsible to use the current rate as indicated in the Commonwealth Management Directive when invoicing.

Reimbursement for subsistence is not allowed for Construction Inspection.

Chapter 5 – Design Errors and Claims

5.1 Consultant Design Error Liability

PennDOT will attempt to recover all PennDOT costs incurred above what PennDOT's cost would have been without design errors that are determined to be the responsibility of a consultant.

5.2 Responsibility for Design Errors

A design error is a design flaw presented by the Consultant in a set of plans, specifications, contract documents or design computations as a result of negligent engineering or negligent document preparation. Negligent engineering and/or negligent document preparation is a failure to meet the standard of reasonable care, skill and diligence that an engineering professional would ordinarily exercise under similar circumstances.

Design errors that are discovered prior to contract letting are to be corrected by the Consultant at no additional costs to PennDOT.

For design errors discovered after contract letting, the ADED (Assistant District Executive for Design) or designee shall verbally notify the Consultant of the alleged design error and confirm the notification in writing to the Consultant. The ADED shall request that the Consultant participate in developing a solution in cooperation with the PennDOT Staff, at no cost to PennDOT. Corrective action should not be taken prior to notifying the Consultant unless the DE (District Executive) determines safety issues warrant immediate action.

The ADED and ADEC (Assistant District Executive for Construction) shall immediately assemble an appropriate team, including the Consultant, if willing, and the Contractor, if appropriate, to determine the likely cause of the alleged error and develop recommended solutions that are cost-effective and provide the desired quality. The ADED shall instruct the Consultant in writing to keep all charges associated with developing a solution for the potential design error separate from the other consultant project costs. These consultant costs will not be eligible for payment if it is determined a design error exists. The ADED and ADEC shall brief the DE as to the outcome of the team efforts. The ADEC shall recommend a solution to the DE and the CMD Chief that is cost-effective and provides the desired quality.

The ACE shall oversee the preparation of a construction work order that provides a complete description and consequences of the error and document the additional construction cost. The ACE shall provide a copy of this work order to the ADED.

The ADED shall provide a copy of the construction work order, where applicable, to the Consultant and notify the Consultant of the amount to pay PennDOT as a result of the design error. If the Consultant agrees with the cost, a payment plan to PennDOT will be arranged. The Office of Chief Counsel must approve any payment plan that results in PennDOT not receiving full payment within ninety (90) calendar days. Payment of the determined amount shall conclude the design error process.

If a consultant is unwilling to reimburse PennDOT for all costs resulting from the determination of a design error, a fact-finding meeting between the DE or designee, a

representative of the Office of Chief Counsel and the CMD Chief and the Consultant will be conducted. The Consultant will be given an opportunity to provide evidence that the cost is incorrect or justification to support the position that the Consultant was not negligent or should not be responsible for all, or a portion of the cost. The DE, in consultation with the FHWA and the Director of the Bureau of Design and Delivery or designee, shall consider the additional information and make appropriate corrections in the determination of negligence and/or in the cost if warranted. The Office of Chief Counsel will commence legal remedies if reimbursement from the Consultant is desired.

5.3 Board of Claims

All questions or disputes, respecting any matter pertaining to the Agreement or any part thereof or any breach of said Agreement, shall be referred to the Board of Claims created by the Pennsylvania Act of December 3, 2002, P.L. 1147, codified in Sections 1721-1726 of the Commonwealth Procurement Code, 62 Pa. C.S. §§ 1721-1726, in the manner and under the terms and conditions as provided therein.

5.4 Notice of Intent to File a Claim and Determination of Claim

A. As a condition precedent to filing a claim for additional compensation, submit notice of intent to claim to the Chief of the Contract Management Division, in writing, within ten (10) days' time of when the Consultant knew of or should have known of the circumstances leading to the claim. This notice of intent will give PennDOT the opportunity to investigate the claim and to maintain and document information for future resolution or litigation of the claim.

   File the claim in writing with the Chief of the Contract Management Division within six (6) months of the date it accrues and not thereafter. If the Consultant fails to file the claim or does not file the claim within the specified time period, the Consultant will be deemed to have waived its right to assert the claim in any forum. Claims not filed within the specified time period will be disregarded by the Chief of the Contract Management Division. The claim, when filed, must state all grounds upon which the claim is based and must include a copy of the previously submitted notice of intent to claim.

B. The Chief of the Contract Management Division will attempt to settle and resolve the claim with the Consultant. The Chief of the Contract Management Division, at his or her discretion, may conduct a claim review meeting to attempt to settle and resolve the claim with the Consultant. If a claim review meeting is held, it will be attended by representatives of the Consultant and such PennDOT representatives as the Chief of the Contract Management Division considers appropriate.

   If the claim is not resolved by agreement between the Chief of the Contract Management Division and the Consultant, the Chief of the Contract Management Division will issue a determination in writing regarding the claim and will mail it to the Consultant by first class mail. The determination will be mailed within one hundred twenty (120) days of the date on which the Chief of the Contract Management Division received the claim, unless the one hundred twenty- (120-) day period is extended by consent of the Chief of the Contract Management Division and the Consultant. If the Chief of the Contract Management Division fails to issue a final determination within the one hundred twenty (120) days, unless extended by consent of the Chief of the Contract Management Division and the Consultant, the claim will be deemed denied. The determination of the Chief of the Contract Management Division will be the final

order of PennDOT regarding the claim. The determination of the Chief of the Contract Management Division will be conclusive and binding upon the Consultant unless the Consultant appeals the determination by filing a statement of claim with the Board of Claims within fifteen (15) days of the mailing date of the determination, or, if no extension is agreed to by the Chief of the Contract Management Division and the Consultant, within one hundred thirty-five (135) days of the receipt by the Chief of the Consultant Review Section of the claim, whichever occurs first.

Chapter 6 – Consultant Restrictions

6.1 Disclosure of Confidential Information

The Consultant agrees to guard the confidentiality of any Commonwealth matter with the same diligence with which it guards its own proprietary information. In order for information to be deemed confidential, PennDOT will designate the information as "confidential" in such a manner as to give notice to the Consultant. If the Consultant needs to disclose all or part of project materials to third parties to perform the work or services covered under this Agreement, it may do so only if such third parties sign agreements containing substantially the same provisions as those set forth in this Paragraph. Upon termination of this Agreement, the Consultant shall return all copies of confidential information to PennDOT, except for one copy, which may be maintained for archival purposes only.

The Consultant agrees that it will not purchase, lease, take options upon, or in any manner financially benefit from any transaction involving real estate, affected by or located contiguous to future improvements planned by the Department of Transportation, in the planning for which the Consultant has gained knowledge through its contractual or other activity relationships with PennDOT.

All restrictions imposed upon the Consultant by the preceding paragraphs of this section shall be compulsory and applicable not only to the Consultant, but to its employees, agents, and members of its family. The Consultant agrees that it will advise all of its employees, agents, and members of its family of the requirements of this section, and that it will constantly supervise the activities of its employees, agents, and members of its family to guarantee that the requirements of this section are not violated.

6.2 Legal or Quasi-Legal Proceedings

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

6.3 Engineering Involvement Restrictions

By submitting a statement of interest for this project, the Consultant certifies that it is in agreement and in compliance with the following paragraphs and the Engineering Involvement Restriction Matrix.

A. Any consultant that provided or is providing any work and services to PennDOT for a design-build project will **not** be eligible to provide any work and services to the contractor design-build team for that project. Engineering Districts may use the PennDOT Consultant that developed the conceptual design for Consultation During Construction, Department Review, or Construction Inspection.

B. Any consultant providing work or services for the contractor design-build team, such as Final Design or Peer Review, is not eligible for any involvement under a Department Agreement on that project.

C. Any consultant providing any work and services to PennDOT for a design project would not be eligible to provide any work and services as a prime consultant on a Consultant Management Project Manager (CMPM) agreement involving that

project. A consultant would not be restricted from serving as a subconsultant on a CMPM agreement provided that its involvement on the CMPM agreement would have no affiliation respective to its design effort.

D. A consultant providing work or services to a developer, where the work or services directly or indirectly affect PennDOT's project (including the review of a Highway Occupancy Permit), will be restricted from any involvement under a Department Agreement on that project.

E. A consultant providing work and services to a local government agency as its Municipal Engineer will not be restricted from project involvement under a Department Agreement, provided that the Municipal Engineer's involvement with the Municipality does not require that it advise the Municipality in the Municipality's review of PennDOT's project.

F. A consultant under Agreement to a Municipality, or to a Municipal authority, to provide work or services for a Municipal project will not be restricted from project involvement under a Department Agreement, provided that the consultant's involvement with the Municipality does not require that it advise the Municipality in the Municipality's review of PennDOT's project and the projects are not related and no conflicts of interest exist between projects.

G. A consultant that is involved with a grant application or preparing a Request for Proposal (RFP) for a particular project are not eligible to perform preliminary engineering or final design on that project.

ENGINEERING INVOLVEMENT RESTRICTIONS MATRIX

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS

Feasibility Studies, Traffic Studies, Mapping Services		- No restrictions. However,
		  Constructability Reviews should be performed by personnel not directly involved with the project design to assure an independent, objective review.
		  No recommendations, in accordance with Adverse Interest Act.

Preliminary Engineering, Preliminary Engineering Constructability Reviews, and Environmental Studies Anticipating a CEE		- Not eligible for Preliminary Engineering Design Management. - A consultant providing Preliminary Engineering services is eligible for either the Department Review OR the Construction Inspection, but not both. - Not eligible to perform **any** work or services for the contractor design-build team. • Exception – A subconsultant working on a Department Agreement containing multiple "projects," which are let under separate construction contracts, can be part of the contractor design-build team

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
		provided that the design-build work is for a "project" in which the subconsultant did not participate in ANY work for the Department. See "Department Agreements Containing Multiple Projects for Subconsultant" Table Below.
Preliminary Engineering, Preliminary Engineering Constructability Reviews, and Environmental Studies Anticipating an EA/ EIS		- Same Restrictions as "Preliminary Engineering, Preliminary Engineering Constructability Reviews, and Environmental Studies Anticipating a CEE" and the following: - May be considered for all other work and services, but may not enter into a specific Agreement, or a Work Order for other work and services, prior to the date of a Finding of No Significant Impact (FONSI) or Record of Decision (ROD).
Conceptual Design / Bid Package Preparation for Design-Build Project		- Not eligible to perform **any** work or services for the contractor design-build team. • Exception – A subconsultant working on a Department Agreement containing multiple "projects," which are let under separate construction contracts, can be part of the contractor design-build team provided that the design-build work is for a "project" in which the subconsultant did not participate in ANY work for the Department. See "Department Agreements Containing Multiple Projects for Subconsultant" Table Below.
Final Design		- Not eligible for Construction Management Project Manager, Construction Inspection, Constructability Review, or the Design Management services of reviewing work, services or deliverables from consultant's Final Design Agreement (Consultant may provide other Design Management services). • Exceptions to the Department Final Design Consultant: ○ Constructability Reviews are permitted if included in the Scope of Work of the Final Design Agreement. ○ Construction Inspection may be considered if criteria meet those

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
		specified in Section 1.5.1 of Publication 93.
	Final Design	- Consultant for contractor design-build team providing Final Design services is not eligible to perform Quality Assurance Reviews for the contractor design-build team. - Contractor design-build team participants are restricted from any future involvement under a Department Consultant Agreement for that contract.
Preliminary Engineering-Design Management, Review Note: This includes consultants performing reviews for a District or Central Office Agreement, including an Open End Agreement.		- Not eligible for Preliminary Engineering Design or environmental work and services. - Not eligible to perform any work or services for the contractor design-build team. • Exception – A subconsultant working on a Department Agreement containing multiple "projects," which are let under separate construction contracts, can be part of the contractor design-build team provided that the design-build work is for a "project" in which the subconsultant did not participate in ANY work for the Department. See "Department Agreements Containing Multiple Projects for Subconsultant" Table Below
Final Design Management, Review Note: This includes consultants performing reviews for a District or Central Office Agreement, including an Open End Agreement.		- Not eligible for Preliminary Engineering, Environmental Studies or Final Design. - Not eligible to participate as a consultant for the contractor design-build team.
	Quality Assurance Review	- Contractor design-build team participants are restricted from any involvement under a Department Agreement including Department Review, Construction Consultant Management Project Manager, and Construction Inspection services.
Department Review (Any design review completed as a representative of PennDOT for Design-Build Project, including Quality Assurance		- Not eligible for Construction Inspection or Construction Consultant Management Project Manager Services.

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
Review and Owner's Perspective)		
Consultant Management Project Manager (CMPM)		- Not eligible for Construction Inspection or Construction Consultant Management Project Manager Services. • Exception – A subconsultant would not be restricted from serving as a subconsultant provided that their involvement on the Construction Inspection or Construction Consultant Management agreement would have no affiliation respective to their CMPM effort.
Consultant Construction Management Support Services (CM) (Any construction activity completed as a representative of PennDOT other than Construction Inspection, or Services During Construction)		- Eligible for Construction Inspection, **except** no involvement in: • Development or procurement of Construction Inspection Agreements. • Approval of Payrolls of Consultant Construction Inspection. • Establishment or adjustment of Construction Inspection resources. - Not eligible for Constructability Reviews unless the work and services are included in the Scope of Work of the Construction Consultant Management Project Manager contract. - Not eligible to participate as a consultant for the contractor design-build team.
Services during Construction (Any design support services/reviews conducted during construction)		- Not eligible for Construction Inspection. - Not eligible for Construction Consultant Management Project Manager.
Construction Inspection		- Eligible for Construction Consultant Management Project Manager, **except** no involvement in: • Development or procurement of Construction Inspection Agreements. • Approval of payrolls of Consultant Construction Inspection. • Establishment or adjustment of Construction Inspection resources. - Not eligible for Constructability Reviews unless the work and services are included in the Scope of Work of the construction inspection contract. - Not eligible to participate as a consultant for the contractor design-build team.

DEPARTMENT AGREEMENT CONTAINING MULTIPLE PROJECTS (FOR SUBCONSULTANT) TABLE

Work Subconsultant Performed Only on Project A		Project A				Project B			
		Final Design	Quality Assurance Review	*Dept. Review*	*CM/CI*	Final Design	Quality Assurance Review	*Dept. Review*	*CM/CI*
Project A	*Preliminary Engineering Activities (Does not include Bid Package Prep)*	N	N	Y *	Y *	Y'	Y'	Y'	Y'
	Conceptual Design/Bid Package Prep	N	N	Y *	Y *	Y'	Y'	Y'	Y'
	Final Design		N	N	N			N	N
	Quality Assurance Review			N	N			N	N
	Dept. Review				N	N	N	Y**	Y**

Note: Project A and Project B represent multiple projects under one Engineering Agreement that were let under **separate** construction contracts.

N - Subconsultant is not eligible to perform service.

Y*- A subconsultant, working on the Preliminary Design or Conceptual Design/Bid Package Prep for Project A, can work on **EITHER** the Department Review for Project A **OR** the Construction Inspection for Project A, but not both.

Y**- A subconsultant firm, that worked on the Department Review for Project A, can work on **EITHER** the Department Review for Project B **OR** the Construction Inspection for Project B, but not both

Y'- A subconsultant firm, that worked on the Preliminary Design or the Conceptual Design/Bid Package Prep for Project A, can only work **on one** of the following: Final Design, Quality Assurance Review, Department Review, or Construction Management/Construction Inspection (CM/CI) for Project B.

Shading represents work to be performed by the Contractor Design-Build team

6.4 Conflicts of Interest

Consultants shall adhere to 2 CFR 200.112, 23 CFR 1.33 and 23 CFR 172 regarding conflicts of interest.

Chapter 7 – American Recovery and Reinvestment Act (ARRA) of 2009

7.1 Applicability

The specifications hereinafter set forth apply to and become a part of Consultant Agreements that are funded through the American Recovery and Reinvestment Act (ARRA) of 2009. Any and all other federal and state requirements are still applicable to ARRA projects.

7.2 ARRA Section 902

***Required Contract Provision to Implement ARRA Section 902**:*

Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009 requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

> *"(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and*
> *(2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions."*

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

7.3 ARRA Section 1515 (a)

Section 1515(a) of the ARRA provides as follows:

> *Section 1515(a) of the ARRA provides authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the inspector general have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.*

7.4 Implementation of the American Recovery and Reinvestment Act of 2009

A. Preamble –

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, ("ARRA") was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

This agreement addendum addresses additional requirements applicable to ARRA funds. Subject to further guidance by the applicable Federal awarding agency, the following terms and conditions are consistent with the mandatory requirements for agreements funded by ARRA.

Be advised that ARRA funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of ARRA and related guidance. For projects funded by other sources in addition to ARRA funds, Contractors must keep separate records for ARRA funds and must ensure those records comply with the requirements of the ARRA.

The federal Government has not fully developed the implementing instructions of ARRA, particularly concerning specific procedural requirements for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of ARRA. In the event there is any inconsistency between these ARRA requirements and current award terms and conditions, the ARRA requirements will take precedence.

Contractor agrees that in consideration of receipt of Federal ARRA Funds, it will comply with all of the terms, conditions, requirements and limitations set forth below:

B. Definitions

1) "ARRA funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

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

C. ARRA Terms & Conditions

1) Revisions to Requirements. Contractor acknowledges that this Addendum may be revised pursuant to ongoing guidance from the relevant Federal or Commonwealth agency regarding requirements for ARRA funds. Contractor agrees to abide by any such revisions upon receipt of written notification from the Commonwealth of the revisions, which will automatically become a material part of this Addendum, without the necessity of either party executing any further instrument.

2) Reporting Requirements.

Not later than 5 days after the end of each calendar quarter, or more frequently as directed by the Commonwealth, the Contractor shall submit a report to the Commonwealth that contains:

(a) The total amount of ARRA funds received;
(b) The amount of ARRA funds received that were expended or obligated to projects or activities;
(c) A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
  i) The name of the project or activity;
  ii) A description of the project or activity;
  iii) An evaluation of the completion status of the project or activity;
  iv) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and
  v) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under ARRA, and name of the person to contact at the agency if there are concerns with the infrastructure investment;
(d) Detailed information on any subcontracts or subgrants awarded by the Contractor must include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget;
(e) If required by the Commonwealth, Contractor agrees to separately identify the expenditures for each award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the Contractor reports required by ARRA;
(f) If required by the Commonwealth, Contractor shall submit backup documentation for expenditures of ARRA funds including such items as timecards and invoices. Contractor shall provide copies of backup documentation at the request of the Commonwealth.

3) Registrations and Identification Information

(a) Contractor must maintain current registrations in the Center Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

(b) If applicable, the Contractor agrees to separately identify to each sub- contractor and document at the time of award of contract or approval of application and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of ARRA funds.

4) Flow Down Requirement. Contractor must include these ARRA Terms and Conditions in any subcontract.

5) Prohibition on Use of Funds. No ARRA funds may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, or any other items prohibited by ARRA.

6) Required Job Posting. To ensure Pennsylvanians have the utmost opportunity to be hired for jobs created through the receipt of ARRA funding, all Contractors shall post jobs they create or seek to fill as a result of receiving ARRA funding to the PA CareerLink® system at www.pacareerlink.state.pa.us. Contractors can locate their local PA CareerLink® office through the same website or by calling 1-866-858-2753. Staff at local PA CareerLinks® can assist Contractors with posting positions and explain how to retrieve resumes or applications within the system.

7) Whistleblower Provision.

(a) An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:

i) gross mismanagement of an agency contract or grant relating to covered funds;

ii) a gross waste of covered funds;

iii) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;

iv) an abuse of authority related to the implementation or use of covered funds; or

v) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate U.S. Office of the Inspector General.

(c) Any employer receiving covered funds under ARRA, shall post notice of the rights and remedies as required by Section 1553 of ARRA. See www.recovery.gov.

8) Duty to Report Fraud. Contractors and subcontractors shall promptly refer to the U.S. Office of Inspector General and Commonwealth Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person will or has: 1) submitted a false claim under the False Claims Act; 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, ethics or similar misconduct involving ARRA funds; or 3) engaged in misuse, gross waste, gross mismanagement or abuse of authority related to the use or award of ARRA funds.

9) Environmental and Preservation Requirements. The Contractor shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by the awarding Federal agency to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, the Clean Air Act, the Federal Water Pollution and Control Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Failure of the Contractor to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding. The Contractor shall not undertake any project having the potential to impact EHP resources without the prior approval of the awarding Federal agency, including but not limited to communication towers, physical security enhancements, new construction, and modification to buildings that are 50 years old or greater. The Contractor must comply with all conditions placed on the project as a result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, the Contractor must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Contractor will immediately cease construction in that area and notify the awarding Federal agency and the Pennsylvania Historical and Museum Commission. Any construction activities that have been initiated prior to the full environmental and historic preservation review will result in a non-compliance finding.