

TWO PARTY DESIGN ENGINEERING SERVICES BOILERPLATE
STANDARD PROVISIONS
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I.D. _____

I. DEFINITIONS

- A. "DEPARTMENT" means the Wisconsin Department of Transportation.
- B. "FHWA" means the Federal Highway Administration.
- C. "PROJECT" means the a specific section of highway proposed for improvement by the DEPARTMENT in this CONTRACT.
- D. "Services" means the engineering Services, labor, equipment, and materials furnished by CONSULTANT in accordance with this CONTRACT.
- E. "MANUAL" means the DEPARTMENT'S Facilities Development Manual and other manuals referenced therein.

II. SCOPE OF SERVICES

A. GENERAL

- (1) The Services under this CONTRACT shall consist of performing those phases or portions of the design engineering for the PROJECT necessary or incidental to accomplish the PROJECT.
- (2) The CONSULTANT shall furnish all Services and labor necessary to conduct and complete the Services, and shall furnish all materials, equipment, supplies, and incidentals other than those designated in writing as to be furnished by the DEPARTMENT.
- (3) The Services under this CONTRACT shall be performed in accordance with generally accepted standards of the profession and requirements contained in the MANUAL.
- (4) The Services shall comply with the applicable state and federal laws and regulations consistent with the funding to this project.
- (5) The FHWA may participate in all conferences and reviews.
- (6) The CONSULTANT shall from time to time during the progress of the Services confer with the DEPARTMENT and shall prepare and present such information and studies as may be pertinent and necessary or as may be requested by the DEPARTMENT to enable it to reasonably pass judgment on the features of the Services. The CONSULTANT shall make such changes, amendments, or revisions in the detail of the Services as may be required by the DEPARTMENT. The DEPARTMENT reserves the right to select the alternative to be used and may request additional alternatives be studied. The CONSULTANT is not relieved from the responsibility for continuing adherence to generally accepted standards of the profession by DEPARTMENT required changes in detail of the Services.
- (7) At the request of the DEPARTMENT, and during the progress of the Services, CONSULTANT shall furnish maps, portions of plans, supplemental reports or other information relating to Services under this CONTRACT as may be required by the DEPARTMENT.

- (8) This CONTRACT serves as a permit under sec. 86.07 (2), Wis. Stats., for the CONSULTANT and any of its approved subcontractors to carry out the Services hereunder on highway property under the jurisdiction of the DEPARTMENT, unless a separate permit is specifically required by the DEPARTMENT Representative. CONSULTANT and any of its approved subcontractors are authorized representatives of the DEPARTMENT for purposes of the right of entry under sec. 84.01(10), Wis. Stats., to enter private lands to make surveys or inspections or otherwise to carry out the Services required by this CONTRACT.

B. DESIGN REPORTS

- (1) Concept Definition Report:

A Concept Definition Report, as defined in the MANUAL, has been prepared for the PROJECT and will be furnished by the DEPARTMENT.

- (2) Design Study Report:

The CONSULTANT shall prepare a Design Study Report as set forth in the MANUAL. Three copies shall be submitted to the DEPARTMENT for approval. If the PROJECT involves highway work, the preparation of final Road Plans, Structure Plans or Right of Way Plats shall not be undertaken by the CONSULTANT until the Design Study Report has been approved or the CONSULTANT has been authorized to proceed by the DEPARTMENT.

- (3) Pavement Report

If the PROJECT involves highway work, the CONSULTANT shall prepare a Pavement Type Selection Report as set forth in the MANUAL and TRANS 400, Wisconsin Administrative Code. One copy of the report shall be submitted to the DEPARTMENT for approval.

C. ENVIRONMENTAL DOCUMENTATION

The CONSULTANT shall assess the probable environmental impacts of the PROJECT as described in the MANUAL and Chapter TRANS 400, Wisconsin Administrative Code and recommend to the DEPARTMENT the appropriate level of environmental documentation. The type of environmental document required will depend upon the type of action (Type IV, Type III, Type II, Type I) according to the Environmental Action List presented in the MANUAL and Chapter TRANS 400, Wisconsin Administrative Code. Upon the DEPARTMENT'S concurrence of the level of environmental documentation, the CONSULTANT shall prepare the appropriate environmental documentation in accordance with the MANUAL and Chapter TRANS 400, Wisconsin Administrative Code for approval by the DEPARTMENT.

D. AGENCY COORDINATION

- (1) General:

- (a) The CONSULTANT shall consult with all affected local, state, and federal agencies and supply them with the necessary information concerning the PROJECT, including exhibits, so as to enable them to discharge their responsibilities within their jurisdiction.

- (b) Contact with these agencies shall be made early enough in the development of the PROJECT to enable them to make a timely response so that their comments can be considered at the appropriate stage of Services under this CONTRACT. These contacts shall be identified within the public involvement plan and public participation log as set forth under the provisions of section II. F. of this CONTRACT.
- (c) The CONSULTANT shall keep the DEPARTMENT fully informed of its and other affected agency activities.
- (d) Contact with the FHWA shall be only through the DEPARTMENT.

(2) Permits - General:

- (a) The CONSULTANT shall determine those permits necessary to advance the PROJECT to the letting stage. When unable to make this determination the CONSULTANT shall confer with the DEPARTMENT.
- (b) When a permit is required, the CONSULTANT shall prepare the permit applications, on the forms and in the manner prescribed by the issuing agency, or as indicated in the MANUAL, for execution and submittal by the DEPARTMENT.

E. RAILROAD/UTILITY INVOLVEMENTS

(1) General:

- (a) The DEPARTMENT will provide the CONSULTANT with a list of known utilities on the PROJECT and a list of contact personnel for utility coordination. This list is not warranted to be complete, but is furnished to assist the CONSULTANT to comply with Section II. E..(3) (a) of the CONTRACT. If necessary, the list should be expanded by the CONSULTANT based on any additional facilities found in the field or based on contacts with other utilities. All known utilities should be invited to the Operational Planning Meeting.
- (b) During the development of the work under this CONTRACT, the CONSULTANT shall confer on an ongoing basis with all railroad and utility companies in the PROJECT vicinity in accordance with the MANUAL, to establish mutual understanding on design features of the PROJECT affecting railroad and utility facilities.
- (c) The CONSULTANT shall coordinate with railroad and utility companies to insure that facility relocations/ alterations have been adequately considered.
- (d) The CONSULTANT shall keep the DEPARTMENT duly informed of the status and nature of all such coordination activities. The CONSULTANT shall provide the DEPARTMENT with timely plans and information that will permit it to meet its planned construction schedule.

(2) Railroad Negotiations/Agreements:

The CONSULTANT shall provide the DEPARTMENT with all necessary PROJECT information including the names of affected railroad companies, the locations of their facilities

along the project, the manner and extent to which they are affected, and exhibits, plans, specifications, estimates, reports, and other pertinent documentation as may be required to enable the DEPARTMENT to negotiate any necessary agreements with the affected railroad companies, in accordance with the procedures set forth in the MANUAL.

(3) Utility Coordination:

- (a) The CONSULTANT shall arrange for all utility coordination as set forth in the MANUAL, with the exception of negotiating for utility company land interests.
- (b) It is the responsibility of the CONSULTANT to locate existing utilities on plans and plats.
- (c) CONSULTANT shall provide notifications and project plans to the affected owners of utility facilities, review the work plans of the utility facility owners, consider their schedules and prepare special provisions as required by sec. 84.063, Wis. Stats., and Chapter TRANS 220, Wisconsin Administrative Code.

(4) Utility Negotiations/Agreements:

- (a) The CONSULTANT shall provide the DEPARTMENT with all necessary PROJECT information including the names of affected utility companies, the locations of the facilities along the PROJECT, the manner and extent to which they are affected, and exhibits, plans, specifications, estimates, reports, and other pertinent documentation as may be required to enable the affected utility companies to obtain the necessary permits, to enter into any necessary agreements and to adjust and/or relocate their facilities, in accordance with the procedures as set forth in the MANUAL.
- (b) The DEPARTMENT will enter into negotiations with the affected utility companies and will prepare all necessary agreements and conveyances.
- (c) The CONSULTANT shall prepare and submit to the DEPARTMENT a Utility Status Report(s), in accordance with the procedures as set forth in the MANUAL.

(5) Plans, Plats and Other Material:

CONSULTANT shall provide the DEPARTMENT with all plans, plats and other material necessary for the acquisition of utility and railroad interests. In addition to all other plans, CONSULTANT shall provide one copy of the final plan and plat for each utility line, railroad and municipality located within the PROJECT limits.

F. PUBLIC INVOLVEMENT

- (1) The CONSULTANT, after consultation with DEPARTMENT shall prepare a Public Involvement Plan for this PROJECT. A duplicate copy of this plan shall be furnished to the DEPARTMENT.
- (2) In cooperation with the DEPARTMENT the CONSULTANT shall maintain a log of public involvement activities associated with this PROJECT. A duplicate copy of this log shall be

furnished to the DEPARTMENT, including any subsequent additions required to keep that copy current.

- (3) During the life of this CONTRACT the CONSULTANT shall assist the DEPARTMENT in answering all questions received from the general public about this PROJECT.

G. SURVEYS

- (1) The CONSULTANT shall make such surveys as are necessary to accomplish the Services under this CONTRACT in accordance with the MANUAL. Such surveys shall be complete, detailed and as accurate as necessary to develop plans for the design of the PROJECT to usual standards of the DEPARTMENT and to yield the data necessary for computation of the quantities of the items of work in the construction of the PROJECT.
- (2) Surveys shall include such investigation of the site, locating and field staking as may be necessary to provide adequate ties between railroad and utility facilities and the highway stationing for development of the design.
- (3) Surveys shall be tied into the state plane coordinate system using the North American Datum of 1983 (1991 adjustment) - NAD83 (1991).

H. SOILS AND SUBSURFACE INVESTIGATIONS

- (1) The CONSULTANT shall conduct soils and subsurface investigations per normal DEPARTMENT practices as described in Geotechnical Bulletin No. 1, August 1, 1991 or as directed by the District Materials Unit. Copies of the bulletin can be obtained from District Materials Section/Central Office Soils Section.
- (2) The CONSULTANT shall conduct soils and subsurface investigations necessary to determine the suitability of the material in the existing or proposed roadway to sustain the overlying embankment; the need for special treatment of the underlying soils to adequately support the embankment, base course or pavement; the suitability of the material for roadway embankment or base courses; and the location of and extent to which rock or subsurface water may be encountered in construction.
- (3) When completion of the subsurface investigation defined in the CONTRACT is not sufficient to adequately assess subsurface conditions, or provide all the required information for roadway design, the CONSULTANT shall recommend a revised investigation program for authorization by the DEPARTMENT. Such recommendations shall be based on the content of the boring log. The extent of all subsurface investigation performed shall be fully justified in the Soils Report furnished for the PROJECT.
- (4) When sufficient information has been obtained prior to the completion of the anticipated subsurface investigation, the CONSULTANT shall recommend termination of the investigation to the DEPARTMENT. Termination of the investigation shall be justified by the CONSULTANT and substantiated in the Soils Report for the PROJECT.

I. ROAD PLANS

- (1) The CONSULTANT shall prepare Road Plans for the PROJECT.

(2) Road Plans are the compilation of documents, reproducible drawings, depicting the location, character, dimensions, and relevant data necessary to the layout and construction of the prescribed work. Road Plans generally consist of the following:

1. Title Sheet
2. Typical Cross Sections and General Notes
3. Special Details including roadway elements, geometric layouts, and salvage/disposal of highway materials.
4. List of Standard Detail Drawings
5. Engineering Estimates On Computer Worksheet
6. Miscellaneous Quantities
7. Plan and Profile Sheets
8. Computer Earthwork Data and Mass Diagrams
9. Cross Sections
10. Traffic Control Plan
11. Erosion Control Plan

Road Plans shall be designed in accordance with the current practices of the DEPARTMENT and in accordance with the principles, standards, and practices adopted by the DEPARTMENT for manual and computer aided design of highway plans, as specified in the MANUAL and shall be developed in accordance to, or be coordinated with the latest edition of the STANDARD SPECIFICATIONS for HIGHWAY and STRUCTURE CONSTRUCTION, of the DEPARTMENT, hereinafter referred to as STANDARD SPECIFICATIONS.

- (3) The CONSULTANT shall develop sufficient alternative or trial alignments profiles, or other geometric configurations to enable selection of the design that provides the best balance between practical construction considerations, right of way requirements, aesthetics, blending with the topography, and costs. The roadway profiles are to provide a "good fit" to the terrain to minimize earthwork and grading costs and to develop the configuration of other roadway elements such as bridges, intersections and cross-sections. Such trial designs or adjustments are considered essential phases of good engineering design and are required work under this CONTRACT.
- (4) Road Plans may be developed using either manual or computer aided design systems. Plan preparation shall be in accordance with the prescribed methods and on the approved plan sheet vehicles described in the MANUAL.
- (5) Plans for minor incidental retaining walls less than six feet in height and pipe type structures in this CONTRACT shall be considered as special construction details of the Road Plans and not as Structure Plans.
- (6) The DEPARTMENT will furnish to the CONSULTANT such survey notes, partially completed plans or other data as may be available for use in the preparation of the plans. Such partial plans shall be considered only as preliminary information subject to further development.
- (7) In preparation of Road Plans, the CONSULTANT shall prepare and furnish to the DEPARTMENT specifications for construction work included in the plans which are not covered by the STANDARD SPECIFICATIONS of the DEPARTMENT, and such amendments to or revisions of the STANDARD SPECIFICATIONS as may be required to properly cover the work contemplated by the plans.

- (8) The CONSULTANT shall furnish such other pertinent information and data with respect to the plans and design as may be necessary for completion of work under this CONTRACT.
- (9) Plans are subject to review and examination by the DEPARTMENT. Such review and examination may be made on the site of the PROJECT.

J. MEETINGS

- (1) Meetings may be scheduled at the request of the CONSULTANT or the DEPARTMENT for the purpose of discussing and reviewing the Services under this CONTRACT.
- (2) Meeting schedules are to be coordinated with the DEPARTMENT to ensure that DEPARTMENT representatives are available to attend the meetings.

K. PLANS, SPECIFICATIONS, & ESTIMATES (P.S. & E.):

- (1) The CONSULTANT shall prepare a complete P.S. & E. as specified in the MANUAL.
- (2) The CONSULTANT is required to submit the Plan Letter and Special Provisions portion of the P.S. & E. on a diskette using the word processing software specified in the MANUAL.
- (3) The CONSULTANT shall provide one set of final plans for each utility within the PROJECT limits prior to the P.S. & E submittal date.

III. PROSECUTION AND PROGRESS

A. GENERAL

- (1) Services under this CONTRACT shall commence upon written order from the DEPARTMENT to the CONSULTANT, which order will constitute authorization to proceed.
- (2) The CONSULTANT shall complete the Services under this CONTRACT within the time for completion specified on the cover page of this CONTRACT and as supplemented for specific items of service in the Special Provisions of this CONTRACT. The time for completion shall be construed to begin upon written order from the DEPARTMENT and shall end with the DEPARTMENT'S written notification to the CONSULTANT acknowledging formal acceptance of the completed Services. The time for completion shall not be extended because of any delay attributable to the CONSULTANT but may be extended by the DEPARTMENT in the event of a delay attributable to the DEPARTMENT, or because of unavoidable delays caused by an act of God, war, governmental actions, or other conditions beyond the control of the CONSULTANT.
- (3) Services by the CONSULTANT shall proceed continuously and expeditiously through completion of each phase.
- (4) Progress reports documenting the extent of completed Services shall be prepared by the CONSULTANT and submitted to the DEPARTMENT not less than quarterly according to the MANUAL. Progress reports submitted with each invoice under Section IV.A.(4) of these provisions serve to fulfill this requirement.

- (5) The CONSULTANT shall notify the DEPARTMENT in writing when the CONSULTANT has determined that the Services under this CONTRACT have been completed. Upon the DEPARTMENT'S subsequent determination that the Services have been satisfactorily completed, the DEPARTMENT will provide written notification to the CONSULTANT acknowledging formal acceptance of the completed Services.
- (6) Unless the CONTRACT has been terminated prior to the completion of the Services, the CONTRACT shall not be considered terminated upon completion and acceptance of the Services, or upon final payment therefore, but shall be considered to be in full force and effect for the purposes of requiring the CONSULTANT to make revisions or corrections in the Services as are necessary to correct errors or omissions made by the CONSULTANT in the Services, or for the purposes of having the CONSULTANT make revisions in the Services at the request of the DEPARTMENT as "Extra Services".
- (7) The CONTRACT will be considered terminated when the construction of the PROJECT has progressed sufficiently to make it manifest that the construction can be completed without further revisions in the Services, or if the CONSULTANT is released prior to such time by written notice from the DEPARTMENT, or if more than three (3) years have elapsed following formal written notification of final acceptance of the Services by the DEPARTMENT.

B. DELAYS AND EXTENSIONS

- (1) Delays in completing the Services within the time provided for completion as specified elsewhere in this CONTRACT, for reasons not attributable to the CONSULTANT, may constitute justification for additional compensation to the extent of documentable increases in costs of labor, Services, or materials as a result thereof. Failure of the CONSULTANT to submit a formal written request for an extension of time prior to the expiration of CONTRACT time shall constitute a basis for denying any cost adjustments for reasons of delay.
- (2) Delays grossly affecting the completion of the Services within the time specified for completion, attributable to or caused by one of the parties hereto, shall be considered as cause for the termination of this CONTRACT by the other party.

C. TERMINATION OF CONTRACT

- (1) The DEPARTMENT reserves the right to terminate all or part of this CONTRACT at any time upon not less than ten days' written notice to the CONSULTANT.
- (2) In the event the CONTRACT is terminated by the DEPARTMENT without fault on the part of the CONSULTANT, the CONSULTANT shall be paid for the Services rendered, an amount bearing the same ratio to the total CONTRACT price as the amount of Services completed or partially completed and delivered to the DEPARTMENT bears to the total amount of Services provided for herein, as determined by mutual agreement between the DEPARTMENT and the CONSULTANT as a CONTRACT amendment.
- (3) In the event the Services of the CONSULTANT are terminated by the DEPARTMENT for fault on the part of the CONSULTANT, the CONSULTANT shall be paid the reasonable value of the Services rendered and delivered to the DEPARTMENT up to the time of termination. The value of the Services rendered and delivered will be determined by the DEPARTMENT.

- (4) In the event the CONSULTANT shall terminate this CONTRACT for cause set forth under the provisions of Section III.B.(2) of these provisions, the CONSULTANT shall be paid as set forth in Section III.C.(2) above.
- (5) In the event of the death of any member or partner of the CONSULTANT'S firm, the surviving members shall complete the Services, unless otherwise mutually agreed upon by the DEPARTMENT and the survivors, in which case the CONSULTANT shall be paid as set forth in Section III.C.(2) above.

D. SUBLETTING OR ASSIGNMENT OF CONTRACT

- (1) The CONSULTANT shall not sublet or assign any part of this CONTRACT without the prior written approval of the DEPARTMENT.
- (2) When the CONSULTANT is authorized to sublet or assign a portion of the Services under this CONTRACT, the CONSULTANT shall perform, with its own organization, Services amounting to at least one-half of the original CONTRACT amount.
- (3) Consent to assign, sublet or otherwise dispose of any portion of the CONTRACT shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of the CONTRACT.
- (4) When the CONSULTANT subcontracts for the performance of a portion or any phase of the Services under this CONTRACT, the subcontract shall provide for the performance of such Services to the full scope as contemplated in this CONTRACT and to the same standards and concept as if performed by the prime CONSULTANT.
- (5) No subletting, subcontracting or assignment of any portion of the work under this CONTRACT shall state, imply, intend or be construed to limit the legal liability of either the prime CONSULTANT or the Subcontractor.

IV. BASIS OF PAYMENT

A. GENERAL

- (1) The CONSULTANT will be paid by the DEPARTMENT for the completed and approved Services rendered under this CONTRACT on the basis and at the CONTRACT price set forth in the cover sheet, Special Provisions and Basis of Payment Section of this CONTRACT, and for "Extra Services", if any, at the compensation as set forth in the approved written CONTRACT amendments covering such services. Such payment shall be full compensation for Services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the Services.
- (2) If as may be provided elsewhere in this CONTRACT, compensation is to be made on more than one basis, the payment to be made shall be the aggregate sum of the amounts determined on the several bases.
- (3) Reimbursement for costs will be limited to those which are allowable under 48 CFR 1-31.2, Federal Acquisition Regulation, and by DEPARTMENT policy.

- (4) The CONSULTANT shall submit invoices, on the form or format similar to that specified in the MANUAL, not more often than once per month during the progress of the Services, for partial payment on account, for the authorized Services completed to date. Progress reports identified in III.A.(4) shall be submitted with each invoice. The final invoice shall be submitted to the DEPARTMENT within three months of completion of Services under this CONTRACT.
- (5) Should this CONTRACT contain more than one PROJECT a separate invoice and a separate final statement shall be submitted for each individual PROJECT.
- (6) No payment shall be construed as DEPARTMENT acceptance of unsatisfactory or defective Services or improper materials. Final payment of any balance due the CONSULTANT will be made promptly upon its verification by the DEPARTMENT, upon completion of the Services under the CONTRACT and its acceptance by the DEPARTMENT, and upon receipt of documents required to be returned or to be furnished under this CONTRACT.
- (7) The DEPARTMENT has the equitable right to set off against any sum due and payable to CONSULTANT under this CONTRACT, any amount the DEPARTMENT determines the CONSULTANT owes the DEPARTMENT, whether arising under this CONTRACT or under any other CONTRACT or otherwise.
- (8) The CONSULTANT and any Subcontractors to the CONSULTANT shall maintain all documents and evidence pertaining to costs incurred under this CONTRACT for inspection by the DEPARTMENT and FHWA during normal business hours in their respective offices for a period of three years following final CONTRACT payment.
- (9) Compensation in excess of the total CONTRACT amount will not be allowed unless justified and authorized by an approved written CONTRACT amendment.
- (10) Compensation for improper performance by the CONSULTANT will not be allowed.

B. SERVICE ORDERS, EXTRA SERVICE, OR DECREASED SERVICES

- (1) Written orders regarding the Services, including extra services or decreased Services, will be given by the DEPARTMENT.
- (2) Orders that do not change the scope of Services in the CONTRACT, but may increase or decrease the quantity of labor or materials or expense of the Services, shall not annul or void this CONTRACT. The CONSULTANT must proceed with the Services as directed by furnishing the necessary labor, materials and professional Services to complete the Services within the time limits specified in the Service Order Schedules or as adjusted by written agreement of the parties.
- (3) If in the CONSULTANT'S opinion the orders would require the discarding or redoing of Services which were based upon earlier direction or approvals, the CONSULTANT must notify the DEPARTMENT in writing of its opinion if it desires extra compensation. Such notification shall be in accord with paragraph B.(5) of this Section.

- (4) Any orders given by the DEPARTMENT which would involve Services not within the scope of Services of this CONTRACT will require a written order for "Extra Services" as described in Section IV.B.(1)and (2) of this CONTRACT.
- (5) If in the CONSULTANT'S opinion orders involve Services not included in the terms or scope of Services of this CONTRACT, the CONSULTANT must notify the DEPARTMENT in writing if it is the Consultant's opinion that extra compensation or additional time allowance is warranted. Such notification shall include the justification for the claim for extra compensation and the amount of additional fee requested.
- (6) The DEPARTMENT will review the CONSULTANT'S submittal and, if acceptable, approve a change order as an amendment to this CONTRACT. Services under a change order shall not proceed until so authorized by the DEPARTMENT by written CONTRACT amendment. Such change orders shall include appropriate time extensions when the DEPARTMENT determines they are warranted.
- (7) Should the DEPARTMENT determine to make a change in the PROJECT location from that covered by the information furnished by it to the CONSULTANT, or to make a change in the basic design from that set forth in the approved Design Study Report, and that would necessitate substantial revision of previously completed and accepted Services, such substantial revisions may be considered as "Extra Services".

V. MISCELLANEOUS PROVISIONS

A. DESIGN STANDARDS

Preparation of plans and specifications shall be accomplished in accordance with the current standards and criteria as contained in the MANUAL and shall be consistent with generally accepted professional practice. Compliance with standards and criteria as may be provided through revisions to the MANUAL and made subsequent to the execution of this CONTRACT shall be in accordance with Section IV.B. of these provisions.

B. REVISION OF COMPLETED PLANS

- (1) The CONSULTANT shall make such revisions in plans which have been completed, approved, and accepted by the DEPARTMENT as are necessary to correct errors or omissions in the plans, when required to do so by the DEPARTMENT, without compensation therefor from the DEPARTMENT.
- (2) Should the DEPARTMENT find it desirable for its own purposes to have previously satisfactorily completed and accepted plans or parts thereof revised, the CONSULTANT shall make such revisions if requested and as directed by the DEPARTMENT. These Services shall be considered as "Extra Services" and will be paid for as such.

C. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this CONTRACT all PROJECT CONTRACT documents including a magnetic tape copy of computer aided design system map and plan files (when this method of plan and plat development was used by the CONSULTANT), shall be delivered to and become the property of the DEPARTMENT. These notes, studies, reports, estimates,

specifications, plans, etc. may be used without restriction by the DEPARTMENT for any public purpose. Any such use shall be without compensation or liability to the CONSULTANT.

D. CONTINGENT FEES

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

E. ACCESS TO RECORDS

The CONSULTANT, as well as its subcontractors, if any, agree to maintain all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this CONTRACT and to make such materials available at their respective offices at all reasonable times during the CONTRACT period and for three years from the date of final payment under the CONTRACT, for inspection by the DEPARTMENT, the FHWA, and the Comptroller General of the United States, and copies thereof shall be furnished if requested. If more than a nominal number of copies are requested the additional copies shall be furnished at the expense of the requesting agency. The CONSULTANT will maintain these records at the location specified elsewhere in the CONTRACT.

F. LEGAL RELATIONS

- (1) The CONSULTANT shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the Services or CONSULTANT's conduct.
- (2) In carrying out the provisions of this CONTRACT, or in exercising any power or authority granted to the DEPARTMENT or FHWA thereby, there shall be no personal liability upon the authorized representatives of the DEPARTMENT and FHWA, it being understood that in such matters they act as agents and representatives of these agencies.
- (3) The CONSULTANT shall be responsible for any and all damages to property or persons arising out of a negligent act, error and/or omission in the CONSULTANT's performance of the Services under this CONTRACT.
- (4) The CONSULTANT shall indemnify and save harmless the DEPARTMENT and the FHWA and all of their officers, agents, and employees on account of any damages to persons or property resulting from negligence of the CONSULTANT in connection with performance and completion of the Services covered by this CONTRACT.

G. NONDISCRIMINATION IN EMPLOYMENT

- (1) During the performance of this CONTRACT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows: In connection with the performance of Services under this CONTRACT, the CONSULTANT agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, development disability as defined in sec. 51.01 (5), Wis. Stats., sexual orientation as defined in sec. 111.32 (13m), Wis. Stats. or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selecting for training including apprenticeship. Except with respect to sexual orientation, the CONSULTANT further agrees to take affirmative action to ensure equal employment opportunities. The CONSULTANT agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the DEPARTMENT setting forth the provisions of the nondiscrimination clause.
- (2) The following statutory definition shall be used for the purpose of interpreting and administering this CONTRACT. "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition closely related to mental retardation or requiring treatment similar to that required for the mentally retarded, which disability has originated before the individual has attained 18 years of age, has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual.
- (3) The CONSULTANT will comply with the Regulations of the State of Wisconsin and the DEPARTMENT relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the REGULATION), which are herein incorporated by reference and made a part of this CONTRACT.
- (4) The CONSULTANT with regard to the Services performed by it after award and prior to completion of the Services, will not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the CONTRACT covers a program set forth in Appendix B of the REGULATIONS.
- (5) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for Services to be performed under a subcontract including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this CONTRACT and the REGULATIONS relative to nondiscrimination on grounds of sex, race, color or national origin.
- (6) The CONSULTANT will provide all information and reports required by the REGULATIONS, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the DEPARTMENT to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this

information, the CONSULTANT shall so certify to the DEPARTMENT and shall set forth what efforts it has made to obtain the information.

- (7) In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this CONTRACT, the DEPARTMENT shall impose such CONTRACT sanctions as it may determine to be appropriate including, but not limited to:
 - (a) Withholding of payments to the CONSULTANT under the CONTRACT until the CONSULTANT complies; or
 - (b) Cancellation, termination or suspension of the CONTRACT in whole or in part; or both.
- (8) The CONSULTANT will include the provisions for non- discrimination in every subcontract, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, order or instructions issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract or procurement as the DEPARTMENT may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the DEPARTMENT to enter into such litigation to protect the interests of the state and, in addition, the CONSULTANT may request the FHWA to enter into such litigation to protect the interests of the United States.

H. FEDERAL REQUIREMENTS FOR DISADVANTAGED BUSINESS PROGRAM

- (1) Disadvantaged Businesses (DB) as defined in 49 CFR Part 23 and Federal law shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DB requirements of 49 CFR Part 23 and Federal law apply to this CONTRACT only when it is federally funded.
- (2) When this CONTRACT is federally funded and Federal law in effect at the time this CONTRACT is executed authorizes and requires it, the CONSULTANT agrees to ensure that Disadvantaged Businesses as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of any subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard the CONSULTANT shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that Disadvantaged Businesses have the maximum opportunity to compete for and perform subcontracts. The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts. Failure to carry out the requirements of this provision shall constitute a breach of contract and may result in termination of this CONTRACT by the DEPARTMENT or other such remedy as the DEPARTMENT deems appropriate.
- (3) When this CONTRACT is federally funded, if the total CONTRACT amount exceeds \$100,000.00, the CONSULTANT shall subcontract a minimum of 10 percent of the total amount to one or more DB firms. A listing of such firms is maintained by the Wisconsin Department of Development, and by the DEPARTMENT. This requirement does not pertain to this CONTRACT if the prime consultant is a certified DB firm.
- (4) When this CONTRACT is federally funded, the CONSULTANT shall identify, by name, the DB entrepreneur(s) whose utilization is intended to satisfy this provision, the items of Services involved, and the dollar amounts of such items of Services.

- (5) When this CONTRACT is federally funded, the CONSULTANT shall maintain records and document its performance under this item.

I. EQUAL EMPLOYMENT OPPORTUNITY (All Contracts Exceeding \$10,000)

During the performance of this CONTRACT, the CONSULTANT agrees as follows:

- (1) The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (2) The CONSULTANT will comply with all provisions of Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- (3) The CONSULTANT will furnish all information and reports required by Executive Order 11246 and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the DEPARTMENT, FHWA, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (4) The CONSULTANT will include the provisions of this Section entitled "Equal Employment Opportunity" in every subcontract in excess of \$10,000.

J. IMPLEMENTATION OF CLEAN AIR ACT AND CLEAN WATER ACT (All Contracts Exceeding \$100,000)

- (1) The CONSULTANT stipulates that any facility to be utilized in the performance of this CONTRACT, unless such CONTRACT is exempt under the Clean Air Act, as amended (42 U.S.C. 7401 et seq., as amended including Pub. L. 101-549), and under the Clean Water Act, as amended (33 U.S.C. 1251 et seq., as amended, including Pub. L. 100-4), Executive Order 11738, and regulations in implementation thereof (40 CFR Part 15), is not listed, on the date of CONTRACT award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR 15.20.
- (2) The CONSULTANT agrees to comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed thereunder related to CONSULTANT and Services, under this CONTRACT.
- (3) The CONSULTANT shall promptly notify the DEPARTMENT and the U.S. EPA Assistant Administrator for Enforcement of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for this CONTRACT is under consideration to be listed on the EPA List of Violating Facilities.
- (4) The CONSULTANT agrees to include or cause to be included the requirements of the preceding three paragraphs (1), (2), (3), in every nonexempt subcontract.

K. ERRORS AND OMISSIONS

- (1) The CONSULTANT shall be responsible for the accuracy of the Services performed by the CONSULTANT under the CONTRACT, and shall promptly make necessary revisions or corrections to its Services resulting from its negligent acts, its errors or its omissions without additional compensation.
- (2) The CONSULTANT shall give immediate attention to these revisions or corrections to prevent or minimize delay to the PROJECT.
- (3) The CONSULTANT shall be responsible to the DEPARTMENT for any losses to or costs to repair or remedy as a result of CONSULTANT's negligent acts, errors or omissions.

L. CONFLICT OF INTEREST

- (1) The CONSULTANT warrants it has no public or private interest, and shall not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the Services under this CONTRACT.
- (2) The CONSULTANT shall not employ any person currently employed by the DEPARTMENT for any Services included under the provisions of the CONTRACT.

M. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

For purposes of this Section, "proposal" means this entire CONTRACT document when signed and submitted by CONSULTANT to the DEPARTMENT before execution by the Governor.

a. Instructions for Certification

- (1) By signing and submitting this proposal, the CONSULTANT is providing the certification set out in b. below.
- (2) The inability of CONSULTANT to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The CONSULTANT shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the DEPARTMENT'S determination whether to enter into this transaction. However, failure of the CONSULTANT to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- (3) The certification in this clause is a material representation of fact upon which reliance was placed when the DEPARTMENT determined to enter into this transaction. If it is later determined that the CONSULTANT knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the DEPARTMENT may terminate this transaction for cause or default.
- (4) The CONSULTANT shall provide immediate written notice to the DEPARTMENT if at any time the CONSULTANT learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

- (5) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this provision, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the DEPARTMENT for assistance in obtaining a copy of those regulations.
 - (6) The CONSULTANT agrees (by submitting this proposal that, should this CONTRACT be entered into), it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DEPARTMENT.
 - (7) The CONSULTANT further agrees by submitting this proposal that it will include the provision titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," section V. N., without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
 - (8) The CONSULTANT may rely upon a certification of a prospective subcontractor/materials supplier that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A CONSULTANT may decide the method and frequency by which it determines the eligibility of its principals. Each CONSULTANT may, but is not required to, check the DEPARTMENT Disapproval List (Telephone # 608/266-1631).
 - (9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this provision. The knowledge and information of a CONSULTANT is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - (10) Except for transactions authorized by the DEPARTMENT under section V.M.(6), if a CONSULTANT in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the DEPARTMENT may terminate this transaction for cause or default.
- b. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

- (1) The CONSULTANT certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or

performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in section V. M. b.(1)(b) above; and
- (d) Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or Local) terminated for cause or default.

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

N. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS

This certification applies to subcontractors, material suppliers, vendors and other lower tier participants. For purposes of this Section, "proposal" means this entire CONTRACT document when signed and submitted by CONSULTANT to the DEPARTMENT before execution by the Governor.

a. Instructions for Certification

- (1) By signing and submitting this proposal, the CONSULTANT is certifying that the prospective lower tier participant is providing the certification set out below.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participants knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the DEPARTMENT may pursue available remedies, including suspension or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," and "voluntarily excluded," as used in this provision, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

- (5) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DEPARTMENT.
 - (6) The prospective lower tier participant further agrees by submitting this proposal that it will include this provision titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
 - (7) The participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the DEPARTMENT Disapproval List.
 - (8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this provision. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - (9) Except for transactions authorized under section V.N. a.(5) above, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the DEPARTMENT may pursue available remedies, including suspension or debarment.
- b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-- Lower Tier Covered Transactions
- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

O. INSURANCE REQUIREMENTS

- (1) The CONSULTANT shall maintain the following types and limits of commercial insurance in force until such time as all work under or incidentals to the contract have been completed.

Type of Insurance	Minimum Limits required *
(a) Commercial General Liability Insurance; shall be endorsed to include completed operations and blanket contractual liability coverage.	\$1 Million Combined Single Limits per Occurrence, may be subject to an Annual Aggregate Limit of not less than \$2 Million.
(b) Worker's Compensation and Employer's Liability Insurance	Worker's Compensation: Statutory Limits Employer's Liability: Bodily Injury by Accident - \$100,000 Each Accident Bodily Injury by Disease \$500,000 Each Accident \$100,000 Each Employee
(c) Commercial Automobile Liability Insurance; shall cover all CONSULTANT owned, non-owned and hired vehicles used in carrying out the contract.	\$1 Million - Combined Single Limits per occurrence
(d) Architect's and Engineers Errors and Omissions Insurance **	\$1 Million - Each Claim, may be subject to an Annual Aggregate Limit of \$1 Million

* *These requirements may be satisfied either through primary insurance coverage or through excess/umbrella insurance policies.*

** *This insurance requirement applies only to engineering services and is waived for non-engineering services. Engineering services are defined as project management, construction management and inspection, feasibility studies, preliminary engineering, design engineering, surveying mapping and architectural related services.*

- (2) An Insurance Certificate, (or Certificates) showing the CONSULTANT is covered by the above required types and amounts of insurance shall be furnished to the DEPARTMENT prior to the performance of any services under this CONTRACT.
- (3) A 60 day notice of cancellation or change in coverage will be required. All coverage shall be placed with insurance companies licensed to do business in the State of Wisconsin with an A.M. Best rating of A - or better. The DEPARTMENT reserves the right to require other coverage and limits as described in the special provisions of this CONTRACT.
- (4) The above insurance requirements shall apply with equal force whether the work under this CONTRACT is performed by the CONSULTANT, a subcontractor of the CONSULTANT, or by any entity employed directly or indirectly by either party.

- (5) Any exceptions to the above insurance requirements requires approval from the Statewide Consulting Engineer. The approval must be reflected in the special provisions of the CONTRACT.

P. CERTIFICATION REGARDING LOBBYING

CONSULTANT certifies that:

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

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

Q. DEPARTMENTAL PROCEDURES FOR HANDLING ERRORS AS DESCRIBED IN SECTION V.K.

- (1) The DEPARTMENT may recover those additional costs incurred by the DEPARTMENT and FHWA as the result of errors determined to be the responsibility of CONSULTANT as described in Section V.K.

Each CONSULTANT error and the facts about the error will be reviewed by the DEPARTMENT to establish responsibility for additional costs incurred as a result of a particular CONSULTANT error in accordance with the MANUAL.

(2) When the DEPARTMENT pursues reimbursement, the CONSULTANT will be notified of the decision and options for repayment. The DEPARTMENT's options listed in priority order are:

1. Repayment in full.
2. Deductions from other payments due and payable to the CONSULTANT by equitable right of set off.
3. Legal action by the DEPARTMENT to collect the costs, if the CONSULTANT has no other agreements with the DEPARTMENT or no payments due and payable, and refuses repayment in full.
4. Any combination of the above.

R. PREVAILING WAGE RATES

CONSULTANT is advised that sec. 103.50, Wis. Stats., the Wisconsin prevailing wage rate law, does not apply to any laborers or mechanics in the employ of CONSULTANT because CONSULTANT's Services under this CONTRACT are not based on bids as provided in sec. 84.06(2), Wis. Stats.

CONSULTANT is advised that the Federal government has independent authority to interpret the Davis-Bacon Act, 40 USC 276a. The Davis-Bacon Act may apply when the United States is a participating party to this CONTRACT for purposes of reimbursing the DEPARTMENT for portions of the expenditures made by the DEPARTMENT. It is the opinion of the DEPARTMENT that the Davis-Bacon Act does not apply to any laborers or mechanics in the employ of CONSULTANT because this CONTRACT is not advertised for the actual construction, alteration or repair of a public work and the function is not part of the construction contract.