

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSAL

No. 19-09-002

Project Specifications and Instructions
to the Consultant for Submitting a
Proposal to Furnish

**Federal Policy Analysis –
SAFETEA LU Reauthorization and
American Association of State and
Highway Transportation Officials (AASHTO)
Coordination**



Susan Martinovich, P.E., Director
Department of Transportation

SECTION I - INSTRUCTIONS TO CONSULTANTS

The enclosed "Request for Proposal" (RFP) is being advertised for consulting firms to utilize in submitting information that will be used to select a firm with whom we hope to negotiate an agreement for the described services.

The Proposal must be typewritten, legible and submitted with an **original plus three (3) for a total of four (4)** copies. Faxed proposals will not be accepted. Written proposals must be received **NO LATER THAN 3:00 P.M., on Wednesday March 3, 2010**, and addressed **exactly** as follows:

Agreement Services
Nevada Department of Transportation
Attn: RFP # 19-09-002
1263 South Stewart Street, Room 101
Carson City, NV 89712

Proposals received after the specified deadline or submitted to the wrong location **will not** be considered and will be returned to the Consultant.

Consultants desiring to prequalify in the Federal Policy Analysis discipline will first be reviewed to determine if they meet the minimum qualifications set forth for the discipline. Any proposals submitted that do not meet the minimum prequalification requirements, as outlined below, will be returned to the Consultant without further review.

Federal Policy Analysis

Consultant must have a Project Manager located in Washington DC area; have the ability to assist in the development of a federal/state transportation strategy; knowledge of State of Nevada and Federal transportation program regulations; knowledge of the previous four Federal Transportation Authorization bills, and knowledge of current proposed re-authorization proposals; knowledge of AASHTO by-laws and procedural/operational organizations; knowledge of AASHTO and State Legislative policy, procedures and publications.

Any proposal received prior to the date and time specified above for receipt of proposals may be withdrawn or modified by written request of the Consultant. To be considered, however, the modified proposal must be received by the time and date specified above. Oral interviews may be conducted for each firm that submits a written proposal.

All materials submitted in accordance with the prescribed deadline become the property of the Nevada Department of Transportation (NDOT) and will not be returned, selection or rejection does not affect this right. The proposal will be signed by a person legally authorized to bind the Consultant. Proposals submitted are considered confidential and copies will not be released to persons requesting them until negotiations are completed and an agreement has been successfully executed. Any request for copies of proposals must be submitted in writing for further consideration by NDOT.

Confidential Information, Trade Secrets and/or Proprietary Information must be sealed in a separate package and clearly marked Confidential. The failure to separate and mark this information shall constitute a complete waiver of any and all claims for damages caused by release of the information by the State.

Please direct all questions concerning this RFP to Agreement Services at (775) 888-7070 or agreeservices@dot.state.nv.us.

Issuance of this RFP shall in no way constitute a commitment by the NDOT to execute an agreement. The NDOT reserves the right to reject any or all proposals received in response to this RFP, or to cancel this RFP if it is deemed in the best interest of the State to do so.

The NDOT reserves the right to issue supplements to this RFP prior to the closing date. In the event it becomes necessary to supplement any part of this RFP, NDOT will provide copies of the supplements to all who have communicated to NDOT Agreement Services that they received the RFP.

The NDOT assumes no financial responsibility in connection with the costs incurred in the preparation and submission of the Consultant proposal packet.

With this RFP, the Consultant is furnished a copy of the draft agreement. To maintain consistency between the NDOT and its Consultant's only those portions of the "Draft Agreement" that are open for negotiation shall be blank. A pre-negotiation audit may be required by the NDOT's Internal Audit Division. The "cost plus fixed fee" method of compensation shall be used for the Consultant's services, as set forth in 48 CFR Chapter 1.

Contact with the NDOT personnel, other than Agreement Services, regarding these services will not be allowed during the solicitation period of this request for proposal. Any questions raised by Consultants must be in writing to Agreement Services, 1263 South Stewart Street, Room 101, Carson City, Nevada 89712, faxed to (775) 888-7101 or email to agreeservices@dot.state.nv.us and received by 3:00 p.m., on Monday February 15, 2010. Written responses will be distributed by the NDOT on or before Friday February 19, 2010.

SECTION II - DBE REQUIREMENTS

There are no Disadvantage Business Enterprises (DBE) requirements for the project.

SECTION III - SELECTION PROCESS

Selection will be based on the factors shown on the attached Consultant Evaluation Form which will be used by a committee(s) to evaluate the written proposal. Based upon the number of written proposals received, a "short list" of candidates may be established and reviewed by a second committee. The second committee will review the written proposals and may conduct interviews. If the NDOT elects to interview, the Consultant shall be notified of the interview schedule. The same attached evaluation criteria will be used for all reviews and interviews. Failure of a firm to appear at the interview will be considered non-responsive, and that firm will be eliminated from any further consideration. The Committees will be comprised of NDOT staff and others representing local entities who shall remain anonymous.

All evaluators may use the information in the firm's prequalification package in addition to the information submitted in the written proposal and presented at the interview (if applicable) to arrive at the final ranking. The firms will be ranked and a Consultant agreement shall be negotiated following the selection of the Consultant. If an acceptable agreement cannot be reached with the initial Consultant selected, the NDOT shall proceed to negotiate with the next most qualified firm and so on until an acceptable agreement is negotiated.

SECTION IV - BACKGROUND

SAFETEA-LU (Federal Surface Transportation Authorization Act) expired September 30, 2009. NDOT is an active participant in the re-authorization process at the national level, and is in need of assistance with this process. The NDOT is also very active in AASHTO and the Director of NDOT is currently the AASHTO Vice-President. NDOT needs to be responsive to this national organization as re-authorization is discussed and legislation is formulated and approved by Congress.

SECTION V - SCOPE OF SERVICES

1. Review the State of Nevada's transportation programs in relation to the federal legislative initiatives that may be undertaken.
2. Assist in the development of a federal/state transportation strategy to address the near, mid and long-term goals of the State in relationship to the federal transportation reauthorization.
3. Provide immediate review and written comment on reauthorization legislation and proposed policy.
4. Coordinate with the DEPARTMENT's Director and the Washington Office of the State of Nevada with the goal of insuring maximum effectiveness for the State in meeting its transportation objectives and insuring the maximum return and benefit to the State of Nevada.
5. Prepare all correspondence, memoranda and reports developed to the DEPARTMENT's Director, and provide the Director with a weekly report and a monthly summary highlighting progress made relative to federal transportation reauthorization, legislation, etc., as well as any other information the CONSULTANT feels may be beneficial to the DEPARTMENT. To attend up to twelve (12) meetings with the DEPARTMENT per year.
6. Ability to respond/prepare Review, Comment, Meetings and Presentation Materials with very short notice.

SECTION VI - PROPOSAL CONTENT

Proposals shall be brief and to the point. One section shall be devoted to each topic listed below with sections separated by a divider. The cover letter should not exceed one single-spaced, single-sided 8½" x 11" page and should include the Consultant's contact person relative to the proposal and the invoice address to which payment shall be made. The proposals shall include:

A. CONSULTANT CRITERIA EVALUATION ITEMS

1. **Project Team:**
 - a. Provide a summary of the education and past experience with similar projects of Project Manager located in Washington DC, including resumes.
 - b. Provide a summary of the education and past experience with similar projects for each member of the team who will be assigned to this project, including resumes.

- c. Include a current organizational chart of the project team, with responsibilities of team members identified therein.
 - d. Identify the location of the office which will provide primary project control for this project.
- 2. Availability and Capacity:**
- a. Provide a matrix or chart which lists all current projects of the Project Team, the number of hours remaining for completion of each project and the estimated completion date for each project.
 - b. In view of this data, describe your team's ability to meet time lines established for this project.
 - c. Identify the availability of Consultant staff to attend meetings and interact with NDOT staff on short notice.
- 3. Past Performance:**
- a. Describe your firm's experience (within the past three (3) years) with similar projects.
 - b. Provide a detailed description of each project listed.
 - c. Provide information pertaining to meeting time and budget requirements for each project item listed.
 - d. Please provide a reference name and phone number with each past project.
 - e. Provide a completed "Statement of Qualification Form" for Non-Engineering Consultants.
- 4. Project Approach:**
- a. Describe your team's understanding of project requirements contained in the Scope of Services.
 - b. Identify specific methods to be used to complete each project requirement.
 - c. Identify potential complications or difficulties that might be encountered in the implementation of required services along with suggested resolutions for each.

B. PROPOSAL LIMITATIONS

The written proposals shall be limited by the following:

- 1. The total proposal package shall not exceed twenty (20) double-spaced, single-sided 8½" x 11" pages, which does not include the cover letter.
- 2. Statement of Qualification, cover letter, and section dividers without verbiage or graphics do not count towards the page limitations.
- 3. Pages contained in the Consultant's proposal which are 11" x 17" will be counted as two (2) pages.

SECTION VIII – PROTEST PROCEDURE

In the event an unsuccessful proposer wants to protest the results of selection, the NDOT will accept written protests within 10 calendar days of an official NDOT Notification of Results. An original protest **MUST** be in writing and filed by mail at the following:

Nevada Department of Transportation
ATTN: Administrative Services/Dispute Resolution Office
1263 South Stewart Street, Room 101
Carson City, NV 89712

Copies can be submitted via facsimile to 775-888-7101 or via email to agreeservices@dot.state.nv.us to meet the deadline, with the original to follow.

Protests must include:

1. Information about the protesting firm, including firm name, mailing address, phone number and name of the individual responsible for submission of the protest;
2. Specific and complete statement(s) of the NDOT's action(s) being protested;
3. Specific description of the grounds for the protest;
4. Information about the evidence to substantiate the protest, including but not limited to copies of any documents and at least one sworn affidavit substantiating the fact(s) that support grounds for the protest; and
5. Description of the relief or correction action sought by the firm.

The following are the only grounds for protesting the award of an agreement under an RFP. All protests base upon other criteria will not be considered.

1. Computation error(s) in the scoring were made; or
2. The NDOT failed to follow the procedures established in the RFP, or applicable State/Federal laws/regulations; or
3. Bias, discrimination or conflict of interest is demonstrated on the part of any member of the evaluation, review or interview committee.

No Stay Pending Final Determination: Agreement negotiations with the selected Consultant/Contractor shall not be stayed during the pendency of any protest. Any agreement with the selected Consultant/Contractor shall be made contingent upon the outcome of any pending protest. Unless otherwise stipulated by the protestor, the NDOT has five (5) working days from receipt of a timely protest to investigate or request additional information. The NDOT's final determination will be made within fifteen (15) working days of the receipt of any requested additional information or the end of the investigation period, which ever is later. A subsequent unsuccessful legal challenge by a protesting firm shall require reimbursement to the NDOT for reasonable attorney's fees and costs.

Attachments:

- Consultant Evaluation Form
- Statement of Qualification Form (for non-engineering)
- Sample Agreement

CONSULTANT CRITERIA EVALUATION FORM

PROJECT DESCRIPTION: **Federal Policy Analysis – SAFETEA- LU Reauthorization and American Association of State and Highway Transportation Officials (AASHTO) Coordination**

CONSULTANT: _____

SUB-CONSULTANT(S): _____

<i>EVALUATION ITEMS</i>	<i>MAX SCORE</i>	<i>SCORE</i>
<p>1. Project Team: Project Manager located in DC to be assigned, education, capability and experience of the key personnel to be assigned and the estimated effectiveness of the team's proposed organization and coordination process.</p>		
<p>Comments:</p>		
<p>2. Availability and Capacity: Demonstrate the availability of the key project team members for the duration of the project. Consider team members existing and projected workloads. Demonstrate the capacity of the firm to meet the needs of the project. Consider the depth of staffing and other resources.</p>		
<p>Comments:</p>		
<p>3. Past Performance: Past performance of project team in terms of cost control of the Consultant's budget commitments, quality of work and compliance with project schedule. Include all relevant work completed in the past three (3) years.</p>		
<p>Comments:</p>		
<p>4. Project Approach: Consultant's approach to identifying and implementing the project requirements and meeting the NDOT's needs.</p>		
<p>Comments:</p>		
TOTAL	100	

Approved:

Committee Member

Date

CONSULTANT'S AGREEMENT

This Agreement, made and entered into the _____ day of _____, _____ by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT and [Name and Address], hereinafter called the CONSULTANT.

WITNESSETH:

WHEREAS, pursuant to the provisions contained in Chapter 408 of the Nevada Revised Statutes, the Director of the DEPARTMENT may contract for such technical services that may be required; and

WHEREAS, provisions contained in Chapter 284 of the Nevada Revised Statutes authorizes heads of departments to contract for the services of independent contractors; and

WHEREAS, the assistance in development of federal/state transportation strategy is necessary to address the near, mid and long-term goals of the State in relationship to the federal transportation reauthorization, hereinafter called the PROJECT; and

WHEREAS, the CONSULTANT's services will be of great benefit to the DEPARTMENT and to the people of the State of Nevada;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, it is hereby agreed by and between the parties as follows:

ARTICLE I - SCOPE OF SERVICES

1. The CONSULTANT agrees to:
 - a. Review the State of Nevada's transportation programs in relation to the federal legislative initiatives that may be undertaken.
 - b. Assist in the development of a federal/state transportation strategy to address the near, mid and long-term goals of the State in relationship to the federal transportation reauthorization.
 - c. Provide immediate review and written comment on reauthorization legislation and proposed policy.
 - d. Coordinate with the DEPARTMENT's Director and the Washington Office of the State of Nevada with the goal of insuring maximum effectiveness for the State in meeting its transportation objectives and insuring the maximum return and benefit to the State of Nevada.
 - e. Prepare all correspondence, memoranda and reports developed to the DEPARTMENT's Director, and provide the Director with a weekly report and a monthly summary highlighting progress made relative to federal transportation reauthorization, legislation, etc., as well as any other information the CONSULTANT feels may be beneficial to the DEPARTMENT. To attend up to twelve (12) meetings with the DEPARTMENT per year.

f. Ability to respond/prepare Review, Comment, Meetings and Presentation Materials with very short notice.

2. The CONSULTANT agrees to furnish all labor, materials, services, equipment, tools and personal expenses necessary to perform the professional services required under the terms of this Agreement, except as specifically provided herein.

3. The CONSULTANT agrees to comply with all requirements contained in the Request for Proposal, which is incorporated into this Agreement by reference.

ARTICLE II - PERFORMANCE

1. The term of this Agreement shall be from the date first written above through and including _____, _____, unless a change is further agreed to by written amendment signed by all parties.

2. The CONSULTANT shall not proceed with said work until a copy of this fully executed Agreement is received, which shall constitute a written "Notice to Proceed" from the DEPARTMENT. If the CONSULTANT does commence said work prior to receiving said "Notice to Proceed", the CONSULTANT shall forfeit any and all right to reimbursement for that portion of the work performed prior to the receipt of said "Notice to Proceed". The CONSULTANT shall notify the DEPARTMENT in writing of the exact date of commencement.

3. The DEPARTMENT shall promptly notify CONSULTANT of all necessary revisions or corrections related to CONSULTANT'S errors and omissions. DEPARTMENT'S notice to CONSULTANT shall specify the maximum time frame necessary for the correction. The CONSULTANT shall make all necessary revisions or corrections resulting from errors and omissions on the part of the CONSULTANT, and shall make such revisions and corrections without delay caused by the negligence, lack of adequate resources or any other cause within the CONSULTANT's control, and shall make such revisions and corrections without additional compensation. CONSULTANT shall track all related costs for the correction. Acceptance of the professional services by the DEPARTMENT will not relieve the CONSULTANT of the responsibility for subsequent correction of any such errors and omissions, and the clarification of any ambiguities. The CONSULTANT will be held responsible for additional costs in subsequent related construction resulting from its errors or omissions. Should the DEPARTMENT use its own personnel, supplies or equipment to remedy the deficiency, all such costs incurred by the DEPARTMENT shall be deducted from the sum due or which may become due to the CONSULTANT. In the event all such costs and charges incurred by the DEPARTMENT exceed the sum which would have been payable under this Agreement, then the CONSULTANT shall reimburse the DEPARTMENT the amount of said excess.

4. The CONSULTANT shall assign one individual throughout the life of this Agreement who shall have overall PROJECT responsibility unless illness or termination should require replacement.

5. The CONSULTANT acknowledges and agrees that the award of this Agreement was based, in part, on the qualifications, experience and capacity of the CONSULTANT's PROJECT team and its commitment that such individuals would be available to undertake and perform all services identified herein in addition to its ability to manage the PROJECT. The CONSULTANT further represents, warrants and covenants that such individuals are available for and will fulfill the roles identified in its proposal. A key person is defined as any individual identified in the CONSULTANT's proposal as part of the PROJECT team. If such a person

leaves his position for a reason other than as set forth in Article II, Paragraph 6, the DEPARTMENT shall have the unilateral right to terminate this Agreement. If this Agreement is terminated in this manner, the CONSULTANT shall be paid for actual costs incurred for all services rendered and accepted by the DEPARTMENT and an amount of fee proportional to the work completed as of the date of termination. Additionally, the CONSULTANT shall not be entitled to any settlement costs, if any. Such termination will not occur if the CONSULTANT provides a replacement who is acceptable to the DEPARTMENT within thirty (30) calendar days of the date when such individual has left his/her position. The CONSULTANT shall notify the DEPARTMENT within ten (10) calendar days, in writing, when such a vacancy occurs.

6. The termination rights described in Article II, Paragraph 5 above, shall not apply if the CONSULTANT removes or replaces such individual at the direction of the DEPARTMENT; or such individual dies, retires, becomes incapacitated or leaves the employment of the CONSULTANT (including the CONSULTANT's affiliates, subsidiaries and parent companies/organizations), or such entity that employed the individual for performance of services contained in this Agreement. This clause does not waive the requirement for the CONSULTANT to promptly propose a suitable replacement within thirty (30) calendar days for the DEPARTMENT's review and written consent. In the proposal for this PROJECT as submitted by the CONSULTANT, key personnel were listed to perform or supervise various aspects of design. Any change to these key positions or their salaries must be approved by the DEPARTMENT before payment shall be authorized.

7. The CONSULTANT shall at all times maintain control over and have complete responsibility for all services performed by the CONSULTANT and any subconsultants under this Agreement.

8. The CONSULTANT warrants that all deliverables and professional services produced under this Agreement shall be completed in a workmanlike manner consistent with standards in the trade, profession or industry. The standard of care applicable to CONSULTANT's services will be of the degree of skill and diligence normally employed by consultants performing the same or similar services at the time said services are performed.

9. This Agreement, and any amendments, may be suspended temporarily, either wholly or in part, by the DEPARTMENT upon oral notice confirmed in writing within ten (10) calendar days, when the DEPARTMENT determines that conditions beyond the control of the CONSULTANT are unfavorable to its satisfactory prosecution. Should such conditions be encountered, the time for completion may be extended in an amount determined by the DEPARTMENT to be equivalent to the delay. Requests for suspension of time by the CONSULTANT must have the written approval of the DEPARTMENT. No allowance shall be made for delay or suspension of the services solely due to the fault of the CONSULTANT.

10. An alteration ordered by the DEPARTMENT which substantially changes the services provided for by the expressed intent of this Agreement will be considered extra professional services, and shall be specified in a written amendment signed by all parties, which will set forth the nature and scope thereof. The method of payment for extra professional services shall be specified at the time the amendment is written.

11. The CONSULTANT shall not assign or subcontract any of the professional services performed under this Agreement without the prior written approval of the DEPARTMENT. The CONSULTANT will, subsequent to obtaining written approval from the DEPARTMENT, provide the DEPARTMENT with a copy of the contract or Agreement for said professional services. Should the CONSULTANT subcontract any professional services under

this Agreement, it is the CONSULTANT's responsibility to include the requirement that the subconsultant comply with all provisions of 48 CFR Chapter 1, Part 31 in the agreement with the subconsultant. Should the subconsultant fail to comply with 48 CFR Chapter 1, Part 31, then the CONSULTANT will be responsible for any costs or deficiencies resulting from such noncompliance. Any attempted assignment of rights or delegation of duties under this Agreement, without the prior written consent of the DEPARTMENT, shall be void.

12. The CONSULTANT agrees to complete and sign Attachment A - "Affidavit Required under Section 112 (c) of Title 23 United States Code".

ARTICLE III - TERMINATION

1. The DEPARTMENT may terminate this Agreement without cause ten (10) calendar days after service of a termination letter to the CONSULTANT. In the event this Agreement is terminated in this manner, the CONSULTANT shall be paid for the cost of the professional services which have been completed and accepted by the DEPARTMENT up to the date of termination.

2. The continuation of this Agreement beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Nevada State Legislature and/or federal sources. The DEPARTMENT may terminate this Agreement, and the CONSULTANT waives any and all claim(s) for damages, effective immediately upon receipt of written notice, or any date specified therein, if for any reason the DEPARTMENT's funding from state and/or federal sources is not appropriated or is withdrawn, limited or impaired.

3. A default or breach may be declared with or without termination. This Agreement may be terminated by either party upon written notice of default or breach to the other party as follows:

a. If the CONSULTANT fails to provide or satisfactorily perform any of the professional services called for by this Agreement within the time requirements specified in this Agreement or within any granted extension of those time requirements; or

b. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law or regulation to be held by the CONSULTANT to provide the goods or services required by this Agreement is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed or not renewed; or

c. If the CONSULTANT becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

d. If the DEPARTMENT materially breaches any material duty under this Agreement and any such breach impairs the CONSULTANT's ability to perform; or

e. If it is found by the DEPARTMENT that any quid pro quo or gratuities in the form of money, services, entertainment, gifts or otherwise were offered or given by the CONSULTANT, or any agent or representative of the CONSULTANT, to any officer or employee of the State of Nevada with a view toward securing an Agreement or securing favorable treatment with respect to awarding, extending, amending or making any determination with respect to the performing of such Agreement.

4. Termination upon a declared default or breach may be exercised after service of written notice and the subsequent failure of the defaulting party, within fifteen (15) calendar days of service of that notice, to provide evidence, satisfactory to the aggrieved party, showing the declared default or breach has been corrected. Such correspondence shall be deemed to have been served on the date of postmark.

5. In the event of the CONSULTANT's breach of the Agreement, all costs and charges incurred by the DEPARTMENT, together with the cost of completing the work under this Agreement, shall be deducted from any money due or which may become due to said CONSULTANT. In case expenses exceed the sum which would have been payable under this Agreement, then the CONSULTANT shall be liable and shall pay to the DEPARTMENT the amount of said excess.

6. Whenever the professional services contemplated and covered by this Agreement have been completely performed on the part of the CONSULTANT, and all items of professional services have been approved and accepted by the DEPARTMENT, according to this Agreement, and the final payment made, this Agreement shall be terminated.

ARTICLE IV - COST

1. The "cost plus fixed fee" method of compensation shall be used for the CONSULTANT's services.

2. Indirect costs (overhead) of the CONSULTANT shall be apportioned among all professional services projects being done by the CONSULTANT during the term of this Agreement and will be billed at the provisional indirect cost rate of _____ percent (___%) of direct labor costs. This rate may be adjusted to the actual indirect cost rate at the time of final audit.

3. Costs shall include direct salary costs, other direct costs, indirect costs and fixed fee as set forth in 48 CFR Chapter 1, Part 31, incorporated herein by reference. The total cost for direct salary costs, other direct costs and indirect costs shall not exceed the sum of _____ and ___/100 Dollars (\$_____. ____). The fixed fee, to cover profit, shall be _____ and ___/100 Dollars (\$_____. ____). This fixed fee will not vary irrespective of final PROJECT costs except in the event of a material and substantial change to the PROJECT scope.

4. The total cost of the services by the CONSULTANT shall not exceed the sum of _____ and ___/100 Dollars (\$_____. ____), which includes the fixed fee.

5. Travel costs will be reimbursed at the current rates allotted to state employees.

6. The CONSULTANT shall be reimbursed for the use of company vehicles at the current rate allotted to State Employees. There are no additional reimbursable vehicle charges above or beyond this rate.

7. When requested by the DEPARTMENT, the CONSULTANT shall schedule its own airline and rental car reservations by the most economical means for reimbursement. Original receipts for airfare and rental cars must be submitted with the "Claim for Travel Expense". The DEPARTMENT is not responsible for payment of any premium, deductible or assessments on insurance policies purchased by the CONSULTANT for a rental vehicle.

ARTICLE V - SCHEDULE OF PAYMENTS

1. The CONSULTANT shall submit a signed invoice monthly for all services rendered along with one copy of substantiating documentation. The invoice must be submitted on the CONSULTANT's stationery using the DEPARTMENT's format or submitted on the DEPARTMENT's standard invoice form. The DEPARTMENT will utilize its normal accounting procedure in the payment of the invoices submitted. The Fixed Fee shall be paid monthly and shall be calculated as a percentage of the direct salary plus overhead costs of that month's invoice until the full agreed fee is paid.

2. Payment will be made for one hundred percent (100%) of the amount of each invoice, until a maximum of ninety percent (90%) of the total Agreement costs have been billed by the CONSULTANT. Thereafter payment for the remaining ten percent (10%) of the total Agreement costs shall be withheld by the DEPARTMENT until such time as the professional services delivered by the CONSULTANT have been completely accepted by the DEPARTMENT. The final audit shall be performed after the release of the retained amount and may cause an adjustment of payments to the DEPARTMENT or to the CONSULTANT. No interest shall be paid to the CONSULTANT on this retained amount or any adjustment of payments.

3. The DEPARTMENT reserves the right to inspect and approve the professional services performed before payment is made to the CONSULTANT. Payment will be withheld for deliverables and professional services the DEPARTMENT determines to be unsatisfactory in that they have not been provided in a workmanlike manner consistent with standards in the trade, profession or industry. Payment shall remain unpaid until the professional services are completed in accordance with the standards and work requirements defined in this Agreement. In such an event, the DEPARTMENT will provide the CONSULTANT with a written explanation as to why payment has been withheld.

4. The total cost of services for this Agreement is the negotiated amount identified in Article IV, Paragraph 4. This amount was based upon the CONSULTANT's costs and fixed fee as well as the costs and fixed fees, if any, of all subconsultants. If a subconsultant does not expend all funds allocated to it for services identified in its agreement with the CONSULTANT, a copy of which shall be provided to the DEPARTMENT prior to issuance of the Notice to Proceed, the CONSULTANT shall not redistribute or expend such funds without the prior written approval of the DEPARTMENT. Failure to notify the DEPARTMENT prior to the use of such funds will constitute grounds for denial of reimbursement for such expenditures.

5. In accordance with Chapter 338.155 of the Nevada Revised Statutes, prompt payment, interest penalties and discounts shall be paid as follows:

a. The CONSULTANT shall be paid within sixty (60) calendar days of postmarked invoice which is complete, correct and undisputed by the DEPARTMENT.

b. The DEPARTMENT shall have twenty (20) calendar days after postmark of an invoice to dispute any or all of the charges on that invoice. The undisputed amount shall be paid to the CONSULTANT within sixty (60) calendar days of the date of postmark. The disputed amount shall be negotiated and resolved in good faith by both parties and paid within forty (40) calendar days after the date the corrected invoice is received by the DEPARTMENT or is approved by both parties for payment.

c. If the DEPARTMENT fails to pay the CONSULTANT the undisputed

amount within sixty (60) calendar days after the postmark date of the invoice, the interest penalty assessed to the DEPARTMENT shall be one percent (1%) of the undisputed amount per month, not to exceed One Thousand and no/100 Dollars (\$1,000.00).

d. Payment of penalties shall not apply to the final payment or bill pertaining to this Agreement as determined by the post audit.

6. The prevailing party in an action to enforce this Agreement is entitled to reasonable attorney's fees and costs.

ARTICLE VII - MISCELLANEOUS PROVISIONS

1. The CONSULTANT shall be responsible for and shall comply with all applicable federal, state, and local government obligations and the DEPARTMENT policies and procedures. The CONSULTANT will be responsible for and shall pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of the CONSULTANT in accordance with NRS Chapter 361.157 and 361.159. The CONSULTANT warrants that it has a valid business license. The CONSULTANT agrees to be responsible for and shall pay any such government obligations not paid by its subconsultants during performance of this Agreement. The DEPARTMENT may set-off against consideration due any delinquent government obligation.

2. It is expressly understood that the CONSULTANT is an independent contractor, and is subject to all statutes and laws, including Section 284.173 of the Nevada Revised Statutes, relating to independent contractors. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the DEPARTMENT whatsoever with respect to the indebtedness, liabilities, and obligations of the CONSULTANT or any other party. Neither the CONSULTANT nor its employees, agents or representatives shall be considered employees, agents or representatives of the DEPARTMENT.

3. The CONSULTANT shall be solely responsible for its own employees, and the DEPARTMENT shall have no obligation with respect to:

- a. Withholding of income taxes, FICA or any other taxes or fees;
- b. Industrial insurance coverage;
- c. Participation in any group insurance plans available to employees of the DEPARTMENT;
- d. Participation or contributions by either the CONSULTANT or the DEPARTMENT to the Public Employees Retirement System;
- e. Accumulation of vacation leave or sick leave; or
- f. Unemployment compensation coverage provided by the DEPARTMENT.

The CONSULTANT shall indemnify and hold the DEPARTMENT harmless from, and defend the DEPARTMENT against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees.

4. Unless expressly provided in this Agreement, the CONSULTANT shall not engage or use the devices and/or services of the DEPARTMENT's personnel without the prior written consent of the DEPARTMENT.

5. The CONSULTANT shall, before commencing professional services under the provisions of this Agreement, furnish to the DEPARTMENT proof of worker's compensation insurance as required by Nevada Revised Statutes.

6. The CONSULTANT shall furnish a Certificate, Declarations Page and an Endorsement designating the DEPARTMENT as an additional insured evidencing Commercial General Liability Insurance with a minimum limit of One Million and No/100 Dollars (\$1,000,000.00) per occurrence. These policies shall be maintained for the entire period of the Agreement. The policies shall include 30-days advance written notice of any cancellation of said policies. The CONSULTANT shall furnish the DEPARTMENT with certificates of such insurance prior to commencement of professional services.

7. All insurance required by this Agreement shall be placed with insurers with a rating from the current issue of Best's Key Rating Guide of no less than A-: VII.

8. The DEPARTMENT has the option of requesting, at any time, a meeting with the CONSULTANT or his authorized representative to discuss and review PROJECT status and the CONSULTANT shall furnish thereafter a copy of the minutes of such meetings to the DEPARTMENT.

9. The CONSULTANT has total responsibility for the accuracy and correctness of data prepared under the terms of this Agreement, and shall check all such material accordingly for completeness, missing items, correct multipliers and consistency. The deliverables shall be reviewed by the DEPARTMENT for conformity with the DEPARTMENT's procedures and contract terms. The CONSULTANT acknowledges that review by the DEPARTMENT does not include detailed review or checking of major components and related details or the accuracy of such deliverables, and the DEPARTMENT'S review shall not relieve the CONSULTANT of its total responsibility for the accuracy and correctness of data prepared under the terms of the Agreement.

10. The CONSULTANT shall appear as an expert witness on behalf of the DEPARTMENT in any subsequent court action which involves any of the services required by this Agreement. Compensation for services rendered in this regard will be paid at the CONSULTANT's current rate at the time such services are necessary.

11. The CONSULTANT agrees that any reports, materials, studies, photographs, negatives, drawings or other documents prepared by the CONSULTANT in the performance of its obligations under this Agreement shall be the exclusive property of the DEPARTMENT. The CONSULTANT shall remit all such documents to the DEPARTMENT upon completion, termination or cancellation of this Agreement. The CONSULTANT shall not use, willingly allow or cause to have such documents used for any purpose other than performance of the CONSULTANT's obligation under this Agreement without the prior written consent of the DEPARTMENT.

12. The CONSULTANT and all successors, executors, administrators, and assigns of the CONSULTANT's interest in the professional services or the compensation herein provided shall be bound to the DEPARTMENT to the full legal extent to which the CONSULTANT is bound with respect to each of the terms of this Agreement.

13. The CONSULTANT warrants that they have not employed or retained any company or persons (other than a bona fide employee working solely for the CONSULTANT) to solicit or secure this Agreement and that he has not paid or agreed to pay any company or

persons (other than a bona fide employee working solely for the CONSULTANT) any fee, commission, percentage, brokerage fee, or any other gifts contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the DEPARTMENT shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. Any dispute arising under this Agreement as to performance, compensation, and the interpretation of satisfactory fulfillment of the terms of this Agreement shall be decided by the DEPARTMENT. It is the intent of the DEPARTMENT to resolve disputes at the lowest level possible. Nothing herein contained shall impair the parties' rights to file suit in the state district courts of the State of Nevada.

15. During the performance of this Agreement, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:

a. Compliance with Regulations: The CONSULTANT shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

b. Nondiscrimination: The CONSULTANT, with regard to the professional services performed by it during the Agreement, shall not discriminate on the grounds of race, color, age, religion, sex, creed, handicap, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurement of Materials, and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for professional services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, age, religion, sex, creed, handicap or national origin.

d. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its facilities as may be determined by the DEPARTMENT or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the DEPARTMENT, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this Agreement, the DEPARTMENT shall impose such Agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CONSULTANT under the Agreement until the CONSULTANT complies, and/or

2. Cancellation, termination or suspension of the Agreement, in whole or in part.

f. Agreements with subconsultants will include provisions making all subconsultant records available for audit by the DEPARTMENT or the FHWA.

g. Incorporation of Provisions: The CONSULTANT will include the provisions of Paragraphs (a) through (e) in every subcontract including procurement of materials and leases of equipment, unless exempt by Regulations, order, or instructions issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract or procurement as the DEPARTMENT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant 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 DEPARTMENT, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

16. In the event federal funds are used for payment of all or part of this Agreement, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

a. Debarment and/or Suspension: The CONSULTANT certifies that neither it nor its subconsultants, nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

b. ADA: The CONSULTANT and subconsultant shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1980, as amended, and regulations adopted thereunder contained in 49 CFR, Part 27, and any relevant program-specific regulations.

c. Civil Rights: The CONSULTANT and subconsultant shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or person offered employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition, including AIDS and AIDS-related conditions.

17. Each party agrees to keep and maintain under generally accepted accounting principles full, true and complete records and documents pertaining to this Agreement and present, at any reasonable time, such information for inspection, examination, review, audit and copying at any office where such records and documentation are maintained. It is expressly understood that the duly authorized representatives of the DEPARTMENT and the FHWA shall have the right to inspect/audit the professional services and charges of the CONSULTANT whenever such representatives may deem such inspection to be desirable or necessary. Such records and documentation shall be maintained for three (3) years after final payment is made.

18. To the fullest extent permitted by law, the CONSULTANT shall defend, indemnify and hold harmless the State of Nevada, and the employees, officers and agents of the State of Nevada from any liabilities, damages, losses, claims, actions or proceedings, including, without

limitation, reasonable attorney's fees, that are caused by the negligence, errors, omissions, reckless or intentional misconduct of the CONSULTANT or the employees or agents of the CONSULTANT in the performance of this Agreement.

19. The CONSULTANT shall use its own vehicles and the DEPARTMENT is not responsible for the payment of any premiums, deductible or assessments on any insurance policies purchased by the CONSULTANT.

20. The CONSULTANT is required to register as a vendor with the Nevada State Controller's office. The Registration Substitute IRS Form W-9 can be accessed at http://controller.nv.gov/Vendor_Services.html. The CONSULTANT will follow the Registration Instructions, complete the Registration Substitute IRS Form W-9 and submit it to the State Controller's Office.

21. The CONSULTANT hereby agrees that, prior to any sale, transfer, business name change, change in principals or any other occurrence that alters this Agreement in any way between the CONSULTANT and the DEPARTMENT, the CONSULTANT shall notify the DEPARTMENT of their intent at least seven (7) days prior to making said change.

22. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth below:

FOR DEPARTMENT: Susan Martinovich, P.E., Director
Attn: Kent Cooper; Assistant Director, Engineering
Nevada Department of Transportation
1263 South Stewart Street
Carson City, NV 89712
Phone (775) 888-7440

FOR CONSULTANT: **[Name
Agency/Company
Mailing Address, City, State Zip Code
Physical Address, City, State Zip Code
Phone:
Fax:
E-mail:]**

23. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the exclusive jurisdiction of the Nevada state district courts for enforcement of this Agreement.

24. As used herein the term "CONSULTANT" shall include the plural as well as the singular, and the feminine as well as the masculine.

25. Neither party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including, without limitation, strikes, inmate disturbances, acts of God, civil or military authority, act of public enemy, or accidents, fires, explosions, earthquakes, floods, winds, failure of public

transportation, or any other similar serious cause beyond the reasonable control of either party. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated promptly to perform in accordance with the terms of the Agreement after the intervening cause ceases.

26. In connection with the performance of work under this Agreement, the CONSULTANT agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including without limitation apprenticeship. The CONSULTANT further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

27. The CONSULTANT shall keep confidential all information, in whatever form, produced, prepared, observed or received by the CONSULTANT to the extent that such information is confidential by law or otherwise required by this Agreement.

28. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

29. The CONSULTANT shall provide a minimum of fifty-one percent (51%) of the combined value of all items of work covered by this Agreement. The CONSULTANT shall not assign or subcontract any of the work performed under this Agreement without the prior written approval of the DEPARTMENT. The CONSULTANT shall, prior to obtaining written approval from the DEPARTMENT, provide the DEPARTMENT with a copy of the contract or agreement for said work. Any attempted assignment of rights or delegation of duties under this Agreement, without the prior written consent of the DEPARTMENT, shall be void.

30. The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement shall be construed as if such provision did not exist. The unenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

31. Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, the recovery of actual damages, and to the prevailing party's reasonable attorney's fees and costs.

32. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

33. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement and that the parties are authorized by law to perform the services set forth herein.

34. This Agreement constitutes the entire Agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

IN WITNESS WHEREOF, the CONSULTANT has signed and the DEPARTMENT has caused its name to be signed hereon on the date first above written.

CONSULTANT: **[Name]**

State of Nevada, acting by and through its
DEPARTMENT OF TRANSPORTATION

Director

Name (Print)

Approved as to Legality and Form:

Title (Print)

Deputy Attorney General

OR
R
A
T
E
D

Attachment A
AFFIDAVIT REQUIRED UNDER SECTION 112(c)
of Title 23 United States Code, Act of August 27, 1958
and
Part 29 of Title 49, Code of Federal Regulations,
November 17, 1987.

STATE OF _____ }
COUNTY OF _____ } SS

I, _____ (Name of party signing this affidavit and the Proposal Form) _____ (title).
being duly sworn do depose and say: That _____

(name of person, firm, association, or corporation) has not, either directly or indirectly, entered into agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract; and further that, except as noted below to the best of knowledge, the above named 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 paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(Insert Exceptions, attach additional sheets)

The above exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility and whether or not the Department will enter into contract with the party. For any exception noted, indicate on an attached sheet to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. The failure to furnish this affidavit and required exceptions if any shall disqualify the party.

Signature

Title

Sworn to before me this _____ day of _____, 20 _____

Signature

(SEAL)

Notary Public, Judge or other Official

**Per Diem Rates Allowed State Employees
(For Information Only)**

- 1) Effective July 1, 2007 all State employees will be required to use the GSA per diem rates for in-state and out-of-state travel. The website address is www.gsa.gov and click on Per Diem Rates for the most current rates and information. Rates do vary by season; therefore rates should be verified prior to all travel.
- 2) Meals will be reimbursed in accordance with the meals and incidental expense (M&IE) allowance for the primary destination.
- 3) Employees must deduct the M&IE allowance for all meals that are included in registration or conference fees. The breakdown for the M&IE can be found on the GSA website under Meals and Incidental Expense Breakdown.
- 4) Receipts will be required for all lodging. The maximum allowance for lodging is the amount the employees are eligible to be reimbursed; therefore, all taxes and fees are included in the maximum lodging allowance.
- 5) If the GSA website does not recognize the county in which the employee is traveling, the rate defaults to the standard CONUS location reimbursement rate. These rates may vary, please verify all rates prior to employee travel.
- 6) A copy of the current GSA allowance for lodging and M&IE must be included with the employee travel claim.

DRAFT