

## **STANDARD FEDERAL PROVISIONS – FEDERAL HIGHWAY ADMINISTRATION NON-CONSTRUCTION**

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### **I. COMPLIANCE WITH FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS**

This Agreement is subject to a financial assistance contract between the San Diego Association of Governments (SANDAG) and Federal Highway Administration (FHWA). All references to "Contractor" herein shall refer to "Consultant" as defined in the Agreement.

### **II. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD-PARTIES**

The federal government shall not be subject to any obligations or liabilities to any third-party contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement between SANDAG and FHWA in connection with the performance of this Agreement. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party contract, the federal government continues to have no obligations or liabilities to any party, including Consultant or any other third-party contractor.

### **III. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. 3801 et seq. and United States DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. 31, apply to its actions pertaining to this contract. Accordingly, by signing the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claims, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the federal government deems appropriate.

The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with an urbanized area formula Project financed with federal assistance authorized by 49 U.S.C. 5307, the government reserves the right to impose on the Contractor the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1), to the extent the federal government deems appropriate.

### **IV. TITLE VI COMPLIANCE**

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

- A. Compliance with Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT"), 49 C.F.R. 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 Contract.

- B. **Nondiscrimination.** The Contractor, with regard to the work performed by it during the term of the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor 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 Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color sex, age, or national origin.
- D. **Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the recipient, or 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 Contractor's noncompliance with the nondiscrimination provisions of this contract, the recipient shall impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
1. Withholding of payments to the Contractor under the Agreement until the Contractor complies, and/or
  2. Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. **Incorporation of Provisions.** The Contractor shall include the provisions of paragraphs A through F of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as SANDAG or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request that SANDAG enter into such litigation to protect the interests of SANDAG, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## V. LABOR

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

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. Such action 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 selection for training, including apprenticeship. The Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
- C. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of the Contractor's commitments under Section 202 of Executive Order (EO) 11246 (Johnson, 1965), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of EO 11246 and with the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by EO 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 FHWA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part. The Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.
- G. The Contractor will include the provisions of paragraphs A through F herein, in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of EO 11246. Such provisions shall be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Labor or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- H. Attention also is directed to the requirements of the California Fair Employment and Housing Act (Government Code Sections 12900 through 12996 - Stat. 1980, Chapter 992), to the

regulations promulgated by the Fair Employment and Housing Commission to implement said Act, and to the nondiscrimination, affirmative action and equal employment opportunity requirements in this Agreement.

## **VI. STANDARD EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

- A. In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin. The Contractor shall ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. Such action 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 selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
- B. As used in this exhibit:
1. "Director" means the SANDAG Executive Director.
  2. "Employer Identification Number" means the federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  3. "Minority" includes:
    - a. African American (all persons having origins in any of the African American racial groups not of Hispanic origin);
    - b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands [this area includes China, Japan, Korea, the Philippine Islands, and Samoa]); and
    - d. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- C. A single goal for minorities and a separate single goal for women may have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- D. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

- E. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to EO 11246.
- F. The Contractor shall carry out such sanctions and penalties for violation of the provisions in this exhibit and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by SANDAG. If Contractor fails to carry out such sanctions and penalties it shall be in violation of the Agreement and EO 11246 as amended.
- G. If the Contractor fails to comply with the requirements of the Executive Order, the Implementing Regulations, or the Agreement, SANDAG will retain an amount equal to ten percent (10%) of the estimated value of the work performed during the previous month (exclusive of mobilization) from the next monthly estimate, except that such retention shall not exceed \$10,000, nor be less than \$1,000. The retention for failure to comply with this section will be released on a monthly estimate for partial payments following the date that the Contractor fulfills its obligations under the provisions of this exhibit.
- H. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company Equal Employment Opportunity policy is being carried out, to submit reports relating to the provisions hereof and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractor shall not be required to maintain separate records.
- I. Nothing herein provided shall be construed as a limitation upon the application of other laws that establish different standards of compliance.

## **VII. DISADVANTAGED BUSINESS ENTERPRISES**

- A. SANDAG is a subrecipient of FHWA funds through the California Department of Transportation (Caltrans). In conformance with 49 C.F.R. 26, and directives and guidance issued by Caltrans, SANDAG is required to implement a minority-conscious Disadvantaged Business Enterprise (DBE) program of limited application.

There is no DBE Contract Goal for this Agreement, however, Contractor is encouraged to support DBE participation in subcontracting opportunities via minority-neutral means.

- B. This Project is subject to 49 C.F.R. 26.13(b) which states:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.”

Contractor shall take necessary and reasonable steps to ensure that DBEs have an opportunity to participate in the Agreement (49 C.F.R. 26).

- C. Although FRA, FHWA and FTA are U.S. DOT agencies they have different DBE programs and requirements and SANDAG has separate goals for the three programs. This exhibit contains the SANDAG DBE program requirements for FHWA only. FTA and FRA DBE program requirements, if any, are set forth in a separate exhibit to the Agreement.
- D. Contractor must make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers. It is the Contractor's responsibility to verify that the DBE firm is certified as a DBE at date of proposal submittal. For a list of DBEs certified by the California Unified Certification Program, go to:

[www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

- E. Credit for materials or supplies Contractor purchases from DBEs counts towards the goal in the following manner:
  - 1. One hundred percent (100%) counts if the materials or supplies are obtained from a DBE Manufacturer.
  - 2. Sixty percent (60%) counts if the materials or supplies are obtained from a DBE Regular Dealer.
  - 3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a Manufacturer nor Regular Dealer. 49 C.F.R. 26.55(e) defines "Manufacturer" and "Regular Dealer."
- F. At the time of award, the Consultant did not commit to utilize DBE(s) in the performance of this Agreement. In the event DBEs are utilized in the performance of this Agreement, however, Consultant shall comply with all contractual and regulatory reporting requirements.
- K. Whether or not Consultant committed to utilize DBEs in the performance of this Agreement, Consultant shall have minority-conscious DBE Reporting Requirements following execution of the Agreement.
- L. Consultant shall complete and submit the following DBE reporting forms and/or documents at the times specified:
  - 1. If a DBE subconsultant is decertified during the term of the Agreement, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Project, the subconsultant shall notify the Consultant in writing with the date of certification. The Consultant shall furnish the written documentation to SANDAG. A DBE Certification Status Change Form CEM-2403(F), Standard Services Agreement – Exhibit I, indicating the DBEs' existing certification status, shall be signed and certified correct by Consultant and shall be furnished to SANDAG within ninety (90) days from the change in certification status.

2. Consultant is advised not to count the participation of DBE subconsultants until the dollar amount being counted toward the DBE participation has been paid to the DBE.
3. The Consultant shall submit to SANDAG copies of all executed DBE subcontracts and/or DBE purchase orders (PO) within fourteen (14) working days after Consultant executes its subcontract or PO with the DBE firm. Consultant shall include in all executed DBE and non-DBE subcontracts the nondiscrimination statements set forth in this exhibit.
4. Upon completion of the term of the Agreement [or Task Order], Consultant must submit to SANDAG a Final Report – Utilization of Underutilized/Disadvantaged Business Enterprises (U/DBE) and Small Business (SB), First Tier Subconsultants Form, Standard Services Agreement – Exhibit H and certified correct by the Consultant’s authorized representative, and shall be furnished to SANDAG. The form shall be furnished to SANDAG within ninety (90) days from the date of contract acceptance. The amount of \$10,000 will be withheld from payment until a satisfactory form is submitted. Failure to submit required DBE reports may result in the delay of processing Consultant’s invoices for payment.
5. The subconsultant listed by Consultant in its Subconsultant List – RFP Attachment 5 shall list therein the name and address of each subconsultant to whom Consultant proposed to subcontract portions of the work in an amount in excess of one-half of one percent of the total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. Consultant should be familiar with other provisions of the Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subconsultants or by making unauthorized substitutions.
6. DBEs must perform work or supply materials as listed in Exhibit K – Consultant Contract U/DBE Commitment Information. Consultant shall not terminate a DBE listed subconsultant for convenience and perform the work with its own forces or obtain materials from other sources without prior written authorization from SANDAG.
7. SANDAG will grant authorization to substitute other forces or sources of materials if Consultant submits a request to SANDAG that establishes any of the following justifications:
  - a. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the Project
  - b. Consultant stipulates that a bond is a condition of executing the subcontract and the listed DBE fails to meet the bond requirements
  - c. Work requires a contractor’s license and listed DBE does not have a valid license under Contractor’s License Law
  - d. Listed DBE fails or refuses to perform the work or furnish the listed materials
  - e. Listed DBE’s work is unsatisfactory and not in compliance with its Contract

- f. Listed DBE delays or disrupts the progress of the work
  - g. Listed DBE becomes bankrupt or insolvent
8. Consultant will need to follow the procedures below to substitute DBE subconsultants so that the DBE commitment can be met.
- a. Attempt to locate DBE firms that are certified to perform one or more of the types of work in the proposed scope
  - b. Obtain proposed fee amounts and qualifications information for the scope of work that each proposed DBE firm could provide
  - c. Check the California Unified Certification Program (CUCP) database to ensure the proposed firms are DBE certified for the associated DBE categories and types of work North American Industry Classification System (NAICS) codes in the scope of work
  - d. Provide SANDAG with the qualifications and fee information that was used for analysis and selection
  - e. If a listed DBE subconsultant is terminated, you must make good faith efforts to find another DBE subconsultant to substitute for the original DBE. For more detailed information, see Notice to Proposers Regarding Disadvantaged Business Enterprise Requirements and Instructions – RFP Attachment 15. The substitute DBE must perform at least the same amount of work as the original DBE to the extent needed to meet the DBE goal. The substitute DBE must be certified as a DBE at the time of request for substitution. SANDAG does not pay for work or material unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section.
9. Consultant should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or subcontractors without prior written approval from SANDAG. Consultant must request and justify the need for the substitution and obtain approval from SANDAG prior to use of a different subcontractor. The proposed substituted person or firm must be as qualified as the original, and at the same or lower cost. For engineering types of consultant contracts, the Consultant's Project Manager must be a registered Engineer in the State of California.
10. DBE Crediting Provisions
- a. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto
  - b. A DBE may participate as the Consultant, subconsultant, joint venture partner or supplier. A proposed DBE must be responsible for a commercially useful function (i.e., a distinct element of the actual scope of work) and must carry out its responsibility by actually performing, managing, and supervising such work; in order to be credited toward DBE participation



- c. Only work proposed to be performed by a DBE's own workforces (including cost of supplies, materials, and equipment leases) obtained by the DBE for the work of under the Agreement, except supplies and equipment the subconsultant purchases and/or leases from Consultant or its affiliate may be counted
- d. When a DBE subcontracts part of its Agreement work to another firm, the value of the subcontracted work may be counted only if the DBE subconsultant is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm cannot be credited. A DBE shall perform at least 30 percent (30%) of the total cost of its contract with its own workforce
- e. When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces towards DBE participation.
- f. Consultant must calculate credit for participation of DBE vendors of equipment, materials, and supplies, as follows:
  - i. Sixty percent (60%) of expenditures(s) for equipment, materials and supplies required under the contract, obtained from a Regular Dealer; or
  - ii. One hundred percent (100%) of expenditure(s) for equipment, materials, and supplies, obtained from a DBE Manufacturer.

For purposes of this section, a DBE Manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

A DBE Regular Dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

Credit for materials or supplies purchased from a DBE that is neither a Manufacturer nor a Regular Dealer will be limited to the entire amount of the fees or commission charged for assistance in the procurement of the materials and supplies or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services. The cost of materials or supplies is not counted in this instance.

- g. The following types of fees or commissions paid to DBE subconsultants, brokers, and packagers may be counted, provided that the fee or commission is reasonable,

and not excessive, as compared with fees or commissions customarily allowed for similar work including:

- i. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract;
- ii. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the Manufacturer of, or a Regular Dealer in, the material and supplies.
- iii. Fees and commissions charged for providing any insurance specifically required for performance of the Contract.

A. Additional Assurances and Consultant Obligations

1. Consultant shall include in each subcontract the Consultant signs with a subcontractor language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes
2. In the event the Consultant identifies additional DBE subconsultants not previously identified by Consultant for minority-conscious DBE participation, Consultant shall notify SANDAG in writing in a timely manner. Such notification will enable SANDAG to capture all minority-conscious DBE participation. Consultant shall submit, for each DBE identified after execution of the Agreement, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work
3. Consultant shall not make any falsification of a subcontract agreement as to subconsultant's name, subcontract amount, and/or actual work to be performed by DBE firms
4. As with all subconsultants, Consultant shall make timely payments of all monies due and owing to DBE subconsultants in accordance with the prompt payment provisions
5. Consultant is responsible for verifying and monitoring the eligibility certification status of its DBE subconsultants and suppliers during the term of the Agreement
6. Noncompliance by the Consultant with the requirements of the Regulations is a material breach of this Agreement and may result in termination of the Agreement or other such remedy as SANDAG deems appropriate
7. Consultant and subconsultants are encouraged to use services offered by financial institutions owned and controlled by DBEs

B. Commercially Useful Function Standards

1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, SANDAG will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement [or Task Order] is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or Project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, SANDAG must examine similar transactions, particularly those in which DBEs do not participate.
3. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own workforce, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.
4. When a DBE is presumed not to be performing a commercially useful function as provided in the previous bullet, the DBE may present evidence to rebut this presumption. SANDAG may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
5. SANDAG's decisions on commercially useful function matters are subject to review by FHWA and Caltrans.

O. DBE "Fronts" and Frauds

Only legitimate DBEs are eligible to participate in any federally funded contract. Therefore, Proposers are cautioned against knowingly and willingly using "fronts" or doing business with DBEs in a manner, which could compromise the DBE's continued eligibility and DBE participation credit. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse or mismanagement of federal funds should be immediately reported to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline (800) 424-9071.

**VIII. MISCELLANEOUS**

A. Taxes

SANDAG is not exempt from sales taxes.

B. Environmental Violations

For all contracts and subcontracts in excess of \$100,000, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(H)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11378 (Johnson, 1967), and Environmental Protection Agency (EPA) regulations (40 C.F.R. 15) which prohibit the use under nonexempt federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities. Contractor shall report violations to FHWA and to the USEPA Assistant Administrator for Enforcement (EN0329).

The Contractor and suppliers shall submit evidence that the governing air pollution criteria will be met. This evidence will be retained for on-site examination by FHWA.

C. Energy Efficiency

The Contractor shall comply with the California State Energy Conservation Act issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

D. Prohibited Interests

No member, officer, or employee of a local public body, during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising there from.

E. Buy America

Contractor should be familiar with the "Buy America" requirements of the Surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a), and the regulations adopted pursuant thereto and set forth in Federal Form 1273. Information on "Buy America" requirements is available for review at the SANDAG office. In conformance with the law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this Project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to the "Buy America" requirements.

A Certificate of Compliance shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall specifically certify that all manufacturing processes for the materials occurred in the United States, except for the above exceptions.

The requirements imposed by the law and regulations do not prevent a minimal use of foreign steel and iron materials if the total combined cost of the materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. The Contractor shall furnish the Engineer acceptable documentation of the quantity and value of the foreign steel and iron prior to incorporating the materials into the work.

F. Cargo Preference – Use of United States Flag Vessels

Contractor agrees:

1. To utilize privately owned United States flag commercial vessels to ship at least 50 percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whether shipping any equipment, materials, or commodities pursuant to this Section, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.
2. To furnish within thirty (30) days following the date of loading for shipment originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 1 above to the Project Manager (through the prime contractor in case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20230, marked with appropriate identification of the Project.
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this clause.

G. Statement of Eligibility

Contractor shall execute the Eligibility Certificate for Federally Funded Projects which is Part 1 of the Certifications for Federally Funded Contracts – RFP Attachment 10. The Contractor also shall have executed by its subcontractors a Subconsultant's Statement of Eligibility, which is Part 4 of the Certifications for Federally Funded Contracts – RFP Attachment 10 for each designated subcontractor. All Subcontractor's Statement of Eligibility forms will be made a part of the Agreement.

H. Clean Air and Water Requirements

Contractor shall comply with Section 508 of the federal Clean Water Act and Section 306 of the federal Clean Air Act.

I. Debarred Bidders (49 C.F.R. 29)

Contractor, including any of its officers or holders of a controlling interest, is obligated to inform the recipient whether or not it is or has been on any debarred bidder's list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this Project, it shall so inform SANDAG.

Contractor shall include in all contracts with designated subcontractors, an obligation to declare whether or not the subcontractor, including any of its officers or holders of a controlling interest, is or has been on any debarred bidder's list maintained by the United States Government. Should a subcontractor be included on such a debarred bidder's list in the past, is now on such a list, or is placed on such a list during the performance of this

Agreement, it shall so inform the Contractor. Contractor shall notify SANDAG of any subcontracts with debarred contractors.

J. Audit and Inspection of Records

Contractor agrees that SANDAG, the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts with regard to the Project. Further, Contractor agrees to maintain all required records for at least three (3) years after grantees make final payments and all other pending matters are closed.

K. Privacy

To the extent that Contractor at any tier, any subcontractor at any tier, or their employees administers any system of records on behalf of the federal government, the contractor at any tier, and their employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. 552.

L. Energy Conservation

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.

M. Access Requirements for Persons with Disabilities

Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 49 U.S.C. 5301(d); and the following federal regulations, including any amendments thereto:

1. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. 37
2. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. 27
3. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for transportation Vehicles," 49 C.F.R. 38
4. DOT regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. 35
5. DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. 36
6. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. 101-119

7. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. 1630
8. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. 64(F)

N. Federal Changes

Contractor shall at all times comply with all applicable FHWA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in Federal Form 1273 or this Agreement, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.

O. Subletting or Assigning the Contract

1. Contractor shall perform with its own organization contract work amounting to not less than thirty percent (30%) (or a greater percentage if specified elsewhere in the contract) of the total original Agreement price, excluding any specialty items designated by SANDAG or Caltrans. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by its own organization (23 C.F.R. 635).
  - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
  - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The Agreement amount upon which the requirements set forth in this subsection are computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. Contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the Agreement requirements, and is in charge of all construction operations (regardless of who performs the work); and (b) such other of its own organizational resources (supervision, management, and engineering services) as the Director determines is necessary to assure the performance of the Agreement.
4. No portion of the Agreement shall be sublet, assigned or otherwise disposed of except with the written consent of the Director, or authorized representative, and such consent when given shall not be construed to relieve Contractor of any responsibility for the

fulfillment of the Agreement. Written consent will be given only after the Director has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the Agreement.

P. Safety: Accident Prevention

1. In the performance of this Agreement, Contractor shall comply with all applicable federal, state, and local laws governing safety, health, and sanitation (23 C.F.R. 635). Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SANDAG Project Manager may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the Agreement.
2. It is a condition of this Agreement, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this Agreement, that Contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 C.F.R. 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 C.F.R. 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

Q. False Statements Concerning Highway Projects

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on federal-aid highway Projects, it is essential that all persons concerned with the Project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the Project is a violation of federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each federal-aid highway project (23 C.F.R. 635) in one or more places where it is readily available to all persons concerned with the Project:

**NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

*"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to*



*be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*

*Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*

*Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

R. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

By signing and submitting its proposal, Contractor provided the certification set out below and reaffirms it by executing the Agreement. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this Agreement. The prospective participant 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 determination of SANDAG whether to enter into this Agreement. Contractor's failure to furnish a certification or an explanation shall disqualify such firm/person from participation in this Agreement.

1. The certification in this subsection is a material representation of fact upon which reliance was placed when SANDAG determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, Caltrans, or SANDAG may terminate this Agreement for cause of default.
2. Contractor shall provide immediate written notice to SANDAG if at any time Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. 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 subsection and the Debarment and Suspension Certificate, which is Part 3 of the Certifications for Federally Funded Contracts – RFP Attachment 10, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order (EO) 12549 (Reagan, 1986). Contractor may contact SANDAG for assistance in obtaining a copy of those regulations.
4. Contractor agrees that 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 Agreement, unless authorized by SANDAG.

5. Contractor further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided in this Agreement, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
  6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that 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 nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
  7. 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 clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  8. Except for transactions authorized by SANDAG, 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, SANDAG may terminate the Agreement for cause or default.
- S. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Primary Covered Transactions

Consultant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three (3)-year period preceding submission of its 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;
3. 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; and
4. Have not within a three (3)-year period preceding submission of its proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

5. Where Contractor is unable to certify to any of the statements in this certification, such prospective participant shall provide SANDAG a written explanation prior to execution of the Agreement.

T. Instructions for Certification - Lower Tier Covered Transactions:

**(Applicable to all subcontracts, purchase orders, and other lower-tier transactions of \$25,000 or more - 49 C.F.R. 29)**

1. The certification in this clause is a material representation of fact upon which reliance was placed when this Agreement or a related contract was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, Caltrans or SANDAG with which this Agreement originated may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to the person to which its bid/proposal was submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing EO 12549.
4. The prospective lower tier participant agrees by submitting its bid/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 SANDAG.
5. The prospective lower tier participant further agrees by submitting a bid/proposal that it will include this clause 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.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that 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 Nonprocurement List.
7. 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 clause. The knowledge and information of participant is not required to exceed that

which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized by SANDAG, 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, Caltrans, or SANDAG may pursue available remedies, including suspension and/or debarment.

U. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its bid/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 its bid/proposal.