

STATE OF LOUISIANA
Department of Transportation and Development

REQUEST FOR PROPOSALS
FOR
RFP Solicitation No. 3000000783

**LADOTD Compliance DBE/
Project Investigator**

Statewide

December 9, 2011

Proposal Submission Deadline:
Monday, January 9, 2012 by 3:00 p.m. CST

TABLE OF CONTENTS

1.0 General Information	5
1.1 Purpose	5
1.2 Background	5
1.3 Scope of Services	5
1.4 Performance Goals and Measures	6
1.5 Monitoring Plan	6
1.6 Project Manager	6
2.0 Administrative Information	6
2.1 Term of Contract	6
2.2 Pre-proposal Conference	7
2.3 Proposer Inquires	7
2.4 Definitions	7
2.5 Schedule of Events	8
3.0 Proposal Information	8
3.1 Minimum Qualifications of Proposer	8
3.1.1 Desired Qualifications of Proposer	8
3.2 Determination of Responsibility	8
3.2.1 Right to Prohibit Award	9
3.3 RFP Addenda	9
3.4 Waiver of Administrative Informalities	9
3.5 Proposer Rejection/RFP Cancellation	9
3.6 Withdrawal of Proposal	9
3.7 Subcontracting Information	9
3.8 Ownership of Proposal	10
3.9 Proprietary Information	10
3.10 Cost of Preparing Proposals	10
3.11 Errors and Omissions in Proposal	10
3.12 Contract Award and Execution	10
3.13 Code of Ethics	11
4.0 Response Instructions	11
4.1 Proposal Submission	11
4.2 Proposal Format	12
4.3 Cover Letter	12
4.4 Technical and Cost Proposal	12
4.5 Certification Statement	12
5.0 Proposal Content	12
5.1 Executive Summary	12
5.2 Corporate Background and Experience	12
5.2.1 Veteran/Hudson Small Entrepreneurship Program Participation	12
5.3 Proposed Project Staff	13

5.4 Approach and Methodology	14
5.5 Cost Information	14
6.0 Evaluation and Selection	15
6.1 Evaluation Team	15
6.2 Administrative and Mandatory Screening	15
6.3 Clarification of Proposals	15
6.4 Oral Presentations/Discussions	15
6.5 Evaluation and Review	15
6.5.1 Hudson/Veteran Initiative Evaluation Points	16
6.6 Announcement of Successful Proposer	17
7.0 Contractor Requirements	17
7.1 Corporation Requirements	17
7.2 Billing and Payment	17
7.3 Contract Terms and Conditions	18
7.4 Indemnification	18
7.5 Confidentiality	19
Attachment I: Scope of Services	20
1. Overview	20
2. Tasks and Services	20
3. Deliverables	21
4. Functional Requirements	21
5. Technical Requirements	21
6. Project Requirements	21
Attachment II: Certification Statement	22
Attachment III: Consulting Services Contract	23
1. Scope of Services	23
1.1 Concise Description of Services	23
1.1.1 Goals and Objectives	24
1.1.2 Performance Measures	24
1.1.3 Monitoring Plan	24
1.1.4 Deliverables	24
1.1.5 Hudson/Veteran Reporting Requirements	25
1.1.6 Substitution of Key Personnel	25
2. Administrative Requirements	25
2.1 Term of Contract	25
2.2 DOTD Furnished Resources	25
2.3 Taxes	25
3. Compensation and Maximum Amount of Contract	25
3.1 Payment Terms	25
4. Termination	26
4.1 Termination for Cause	26
4.2 Termination for Convenience	26
4.3 Termination for Non-Appropriation of Funds	27

5. Indemnification and Limitation of Liability	27
6. Contract Controversies	28
7. Fund Use	28
8. Ownership	28
9. Assignment	28
10. Right to Audit	29
11. Contract Modification	29
12. Confidentiality of Data	29
13. Cost Records	29
14. Fiscal Funding	30
15. Subcontractors	30
16. Discrimination Clause	30
17. Insurance	30
18. Applicable Law	30
19. Code of Ethics	31
20. Severability	31
21. Complete Contract	31
22. Order of Precedence	31
23. Signatory Page	32

1.0 GENERAL INFORMATION

1.1 Purpose

This Request for Proposals (RFP) is issued by the Louisiana Department of Transportation and Development (herein referred to as the DOTD) to Individual Contractor/Consulting Firms interested in assisting DOTD with the implementation of Contractor Services for Compliance Disadvantaged Business Enterprise (DBE)/Project Investigator.

A Contractor is necessary to perform Commercially Useful Function (CUF) Reviews independently and jointly with Compliance Programs Specialists of certified DBE firms working on federally funded projects and to conduct an investigation of certified DBEs should information come to the attention of the Compliance Programs Office staff that would cause question regarding the firm's certification eligibility; to also assist in Compliance Office investigations of prime contractor's requests to replace DBEs on federally funded projects; to assist in performing on-site reviews of new DBE applicants and to assist in conducting Title VII complaint investigations.

One Contractor shall be selected for this contract. The Contractor may not subcontract the specified services without the prior written agreement of DOTD.

1.2 Background

The purpose of this Request for Proposal (RFP) is to obtain competitive proposals from bona fide, qualified Proposers who are interested in providing Contractor Services for LADOTD Compliance DBE/Project Investigator to the State of Louisiana, Department of Transportation and Development.

1.3 Scope of Services

- Independently and jointly, with Compliance Programs Specialists performs the Commercially Useful Function Reviews of certified Disadvantaged Business Enterprise (DBE) firms that are performing work as a prime contractor or a sub-contractor on federally funded highway construction projects.
- Trains compliance specialist in standard investigative techniques and supplies advice and assistance when dealing with resolution of problem cases.
- Perform full range of investigative work on investigations of a more complicated nature where Compliance Staff question the DBE firms' certification eligibility, which will require a higher degree of knowledge, training and investigative experience, as well as knowledge of the Federal Regulations governing DBE certification.
- Reviews and gathers evidence and takes oral, written, or tape recorded statements from witnesses. Works with DOTD staff to conduct surveillance or administer polygraph examinations.
- Investigate reported violations of state and federal laws, ethics rules, agency policies and procedures.
- Prepare detailed confidential reports and summaries of investigations. Maintain records of investigations and related data.
- Assists Compliance Programs Office staff with investigations of prime contractor's requests to replace DBEs on federally funded projects.
- Assists Compliance Programs Office staff with on-site reviews of new DBE applicants.

- May assist Compliance Programs Office staff with investigations of Title VII investigations.
- Testifies in Civil Service hearings, Ethics Commission hearings, board hearings, criminal and civil court concerning results of investigations.

1.4 Performance Goals and Objectives

Goals and Objectives:

- Ensure compliance with new Federal Regulations that CUF's are performed on every federally funded highway construction project.
- Train Compliance Specialist in standard investigative techniques and investigative report writing.

Performance Measures:

DOTD shall measure the performance of the Contractor by his ability to:

- Work closely with FHWA in a timely and professional manner, to ensure that department is in compliance with all federal regulation requirements on a continuous basis.
- Ensure that the Compliance Specialists receive training and become knowledgeable of the investigative techniques by the end of the contract.

1.5 Monitoring Plan

DOTD will monitor the performance of the contractor by reviewing:

- The Contractor's log of all investigations or CUFs performed on DBEs which is sent to the Compliance Director biweekly.
- Written documentation that is sent to Compliance Director of the coaching/training provided to the Compliance Specialists to increase their competency in the area of investigative techniques and investigative report writing.

1.6 Project Manager

A Project Manager has been named and that information will be provided to the Contractor.

2.0 ADMINISTRATIVE INFORMATION

2.1 Term of Contract

The period of any contract resulting from this RFP will be an initial twelve (12) month period tentatively scheduled to begin on **January 25, 2012** and to end on **January 24, 2013**. DOTD has the right to renew, **at the same terms and conditions**, the contract for additional two

twelve-month periods with the concurrence of the Contractor and all appropriate approvals. In no event shall the contract term exceed 36 months.

2.2 Pre-proposal Conference

NOT APPLICABLE FOR THIS SOLICITATION.

2.3 Proposer Inquiries

Written questions regarding RFP requirements or Scope of Services must be submitted to the RFP Coordinator as listed below by fax to 225-379-1857. Please do not Email inquiries to the RFP Coordinator.

Mr. Alan A. Dale, P.E.
Consultant Contract Services Administrator
1201 Capitol Access Road, **Room 405-T**
Baton Rouge, LA 70802-4438 or
Post Office Box 94245
Baton Rouge, Louisiana 70804-9245
Telephone: (225) 379-1989
Fax: 225-379-1857

This RFP is available in electronic form at
<http://webmail.dotd.state.la.us/AgreStat.nsf/WebView?OpenPage> and
<http://wwwprd.doa.louisiana.gov/osp/lapac/pubmain.asp>

or in printed form by submitting a written request to the RFP Coordinator.

The DOTD will consider written inquiries and requests for clarification of the content of this RFP received from potential proposers. Written inquiries must be received by 3:00 p.m. CST on the date specified in the Schedule of Events. The DOTD reserves the right to modify the RFP should a change be identified that is in the best interest of the DOTD.

Any and all questions directed to the RFP Coordinator shall be deemed to require an official response. Official responses to each of the questions presented by the proposer shall be posted on the DOTD Consultant Contract Services

<http://webmail.dotd.state.la.us/agrestat.nsf/WebAddendums?OpenPage>

and LaPAC websites

<http://wwwprd.doa.louisiana.gov/osp/lapac/pubmain.asp>

as an Addendum to the RFP by the deadline shown in the Calendar of Events.

Only the **RFP Coordinator** has the authority to officially respond to proposer's questions on behalf of the DOTD. Any communications from any other individuals are not binding to the DOTD.

2.4 Definitions

- A. Mandatory Requirements – The terms “shall”, “will”, and “must” denote mandatory requirements.
- B. Permissible Action – The terms “should”, “can” and “may” denote an advisory or allowable action.
- C. Agency – Any department, commission, council, board, office, bureau, committee, institution, agency, government, corporation, or other establishment of the executive

branch of this state authorized to participate in any contract resulting from this solicitation.

2.5 Schedule of Events

<u>Event</u>	<u>Date</u>
Advertise RFP and mail public announcements	December 9, 2011
Deadline for receipt of Written inquiries	December 15, 2011
Issue responses to Written inquiries	December 21, 2011
Deadline for receipt of Proposals	Monday, January 9, 2012
Announce Award of Contractor Selection	January 18, 2012 (on or about)
Contract Execution	January 25, 2012 (on or about)

NOTE: DOTD reserves the right to amend and/or change this schedule of RFP activities, as it deems necessary.

3.0 PROPOSAL INFORMATION

3.1 Minimum Qualifications of Proposer

The proposer shall be, prior to the deadline for receipt of proposals, a:

Licensed Private Investigator with five years of professional experience in Disadvantaged Business Enterprise Certification Process, possessing knowledge of the Federal Regulations governing DBE certification and with over three years conducting investigations, including surveillance, research and writing reports.

3.1.1 Desired Qualifications of Proposer

It is highly desirable that the Proposer should at minimum possess the following qualification at the time of proposal submittal:

Licensed Private Investigator with ten years of professional experience in Disadvantaged Business Enterprise Certification Process, possessing knowledge of the Federal Regulations governing DBE certification and with over five years conducting investigations, including surveillance, research and writing reports. Should also, possess specialized training in Surveillance Techniques, Handwriting Analyses and Investigative Report Writing.

3.2 Determination of Responsibility

Determination of the Proposer's responsibility relating to this RFP shall be made according to the standards set forth in LAC 34: 136. DOTD must find that the Selected Proposer:

- Has adequate financial resources for performance, or has the ability to obtain such resources as required during performance;
- Has the necessary experience, organization, technical qualifications, skills, and facilities, or has the ability to obtain them;

- Is able to comply with the proposed or required time of delivery or performance schedule;
- Has a satisfactory record of integrity, judgment, and performance; and
- Is otherwise qualified and eligible to receive an award under applicable laws and regulations.

Proposers should ensure that their proposals contain sufficient information for the DOTD to make its determination by presenting acceptable evidence of the above to perform the contracted services.

3.2.1 Right to Prohibit Award

In accordance with the provisions of R.S. 39:2192, in awarding contracts after August 15, 2010, any public entity is authorized to reject a proposal or bid from, or not award the contract to, a business in which any individual with an ownership interest of five percent or more, has been convicted of, or has entered a plea of guilty or nolo contendere to any state felony or equivalent federal felony crime committed in the solicitation or execution of a contract or bid awarded under the laws governing public contracts under the provisions of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, professional, personal, consulting, and social services procurement under the provisions of Chapter 16 of Title 39, or the Louisiana Procurement Code under the provisions of Chapter 17 of Title 39.

3.3 RFP Addenda

DOTD reserves the right to change the schedule of events or revise any part of the RFP by issuing an addendum to the RFP at any time.

Addenda, if any, will be posted on the DOTD Consultant Contract Services and LaPac websites: <http://webmail.dotd.louisiana.gov/agrestat.nsf/WebAddendums?OpenPage> <http://wwwprd.doa.louisiana.gov/osp/lapac/pubmain.asp>. It is the responsibility of the proposer to check the website for addenda to the RFP, if any.

3.4 Waiver of Administrative Informalities

DOTD reserves the right, at its sole discretion, to waive minor administrative informalities contained in any proposal.

3.5 Proposal Rejection/RFP Cancellation

Issuance of this RFP in no way constitutes a commitment by DOTD to award a contract. DOTD reserves the right to accept or reject, in whole or part, all proposals submitted and/or cancel this announcement if it is determined to be in DOTD's best interest.

3.6 Withdrawal of Proposal

A proposer may withdraw a proposal that has been submitted at any time up to the date and time the proposal is due. To accomplish this, a written request signed by the authorized representative of the proposer must be submitted to the RFP Coordinator.

3.7 Subcontracting Information

The DOTD shall have a single prime contractor as the result of any contract negotiation, and that prime contractor shall be responsible for all deliverables specified in the RFP and proposal. This

general requirement notwithstanding, proposers may enter into subcontractor arrangements, however, should acknowledge in their proposals total responsibility for the entire contract.

If the proposer intends to subcontract for portions of the work, the proposer should identify any subcontractor relationships and include specific designations of the tasks to be performed by the subcontractor. Information required of the proposer under the terms of this RFP is also required for each subcontractor. The prime contractor shall be the single point of contact for all subcontract work.

Unless provided for in the contract with the DOTD, the prime contractor shall not contract with any other party for any of the services herein contracted without the express prior written approval of the State.

3.8 Ownership of Proposal

All materials submitted in response to this request become the property of DOTD. Selection or rejection of a proposal does not affect this right.

3.9 Proprietary Information

Only information which is in the nature of legitimate trade secrets or non-published financial data may be deemed proprietary or confidential. Any material within a proposal identified as such must be clearly marked in the proposal and shall be handled in accordance with the Louisiana Public Record Act, R.S. 44: 1-44 and applicable rules and regulations. Any proposal marked as confidential or proprietary in its entirety may be rejected without further consideration or recourse.

3.10 Cost of Preparing Proposals

DOTD shall not be liable for any costs incurred by Proposers prior to issuance of or entering into a contract. Costs associated with developing the proposal, preparing for oral presentations, and any other expenses incurred by the proposer in responding to this RFP are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by DOTD.

3.11 Errors and Omissions in Proposal

DOTD shall not be liable for any errors in proposals. DOTD reserves the right to make corrections or amendments due to patently obvious errors in proposals by DOTD or the proposer. DOTD, at its option, has the right to request clarification or additional information from the proposers.

3.12 Contract Award and Execution

DOTD reserves the right to enter into a Contract without further discussion of the proposal submitted based on the initial offer received.

DOTD reserves the right to contract for all or a partial list of services offered in the proposal.

The RFP and proposal of the selected proposer shall become part of any contract initiated by DOTD.

The selected Proposer shall be expected to enter into a contract that is basically the same as the sample contract included in Attachment III. In no event shall a Proposer submit its own standard contract terms and conditions as a response to this RFP. The Proposer should submit with its

proposal any exceptions or exact contract deviations that its firm wishes to negotiate. Negotiations may begin with the announcement of the selected Proposer.

If the contract negotiation period exceeds ten working days or if the selected proposer fails to sign the final contract within ten working days of delivery of it, DOTD may elect to cancel the award and award the contract to the next-highest-ranked proposer.

3.13 Code of Ethics

Proposers are responsible for determining that there will be no conflict or violation of the Ethics Code if their company is awarded the contract. The Louisiana Board of Ethics is the only entity which can officially rule on ethics issues.

4.0 RESPONSE INSTRUCTIONS

4.1 Proposal Submission

Firms/individuals who are interested in providing services requested under this RFP must submit a proposal containing the information specified in this section. The proposal must be received in hard copy (printed) version by the RFP Coordinator on or before 3:00 p.m. Central Daylight Time on the date specified in the Schedule of Events. FAX or e-mail submissions are not acceptable. Proposers mailing their proposals should allow sufficient mail delivery time to ensure receipt of their proposal by the time specified. The proposal package must be delivered at the proposer's expense to:

Mr. Alan A. Dale, P.E.
Consultant Contract Services Administrator
1201 Capitol Access Road, **Room 405-T**
Baton Rouge, Louisiana 70802-4338
Telephone: (225) 379-1989
Fax: (225) 379-1857

It is solely the responsibility of each Proposer to ensure that their proposal is delivered at the specified place and prior to the deadline for submission. Proposals received after the deadline will not be considered.

The proposal should be identified with **RFP Solicitation No. 3000000783 and Project Name: LADOTD Compliance DBE/Project Investigator** and shall be submitted **prior to 3:00 p.m. CST on Monday, January 9, 2012.**

The DOTD requests that **six** of copies of the proposal be submitted to the RFP Coordinator at the address specified. At least **one** copy of the proposal shall contain original signatures of those company officials or agents duly authorized to sign proposals or contracts on behalf of the organization. **A certified copy of a board resolution granting such authority should be submitted if proposer is a corporation.** The copy of the proposal with original signatures will be retained for incorporation in any contract resulting from this RFP. Any proposer failing to submit any of the mandatory information requested in this RFP shall be considered non-responsive.

Name(s) of the Proposer listed must precisely match the name(s) filed with the Louisiana Secretary of State, Commercial Division, Corporations Section, if proposer is a corporation.

4.2 Proposal Format

Proposers should respond to this RFP with a Technical Proposal (as specified in Section 5, Proposal Content) and Cost Proposal (as specified in Section 5.5, Cost Information). No pricing information should be included in the Technical Proposal.

4.3 Cover Letter

A cover letter should be submitted on the Proposer's official business letterhead explaining the intent of the Proposer.

4.4 Technical and Cost Proposal

Proposals should be submitted as specified in Section 5, and should include enough information to satisfy evaluators that the Proposer has the appropriate experience and qualifications to perform the scope of services as described herein. Proposers should respond to all requested areas.

4.5 Certification Statement

The proposer shall sign and submit the Certification Statement shown in Attachment II.

5.0 PROPOSAL CONTENT

5.1 Executive Summary

This section should serve to introduce the purpose and scope of the proposal. It should include administrative information including, at a minimum, response date, Proposer contact name, phone number, email address and the stipulation that the proposal is valid for a time period of *one year* from the date of submission. This section should include a summary of the Proposer's qualifications and ability to meet the DOTD's overall requirements.

It should include a positive statement of compliance with the contract terms. If the Proposer cannot comply with any of the contract terms, an explanation of each exception should be supplied. The Proposer should address the specific language in Attachment III Sample Contract and submit whatever exceptions or exact contract modifications that their firm may seek. While final wording shall be resolved during contract negotiations, the intent of the provisions shall not be substantially altered.

5.2 Corporate Background and Experience

The Proposer should give a brief description of their company including a brief history, corporate structure and organization, number of years in business, and copies of its latest financial statement, preferably audited.

This section should provide a detailed discussion of the Proposer's prior experience in working on projects similar in size, scope, and function to the proposed contract. Proposers should describe their experience in other states or in corporate/governmental entities of comparable size and diversity with references from previous clients including names and telephone numbers.

5.2.1 Veteran/Hudson Small Entrepreneurship Program Participation

Veteran-Owned and Service-Connected Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) Programs Participation

Each Proposer should address how the firm will meet the following:

The State of Louisiana Veteran and Hudson Initiatives are designed to provide additional opportunities for Louisiana-based small entrepreneurship (sometimes referred to as LaVet's and SE's respectively) to participate in contracting and procurement with the state. A certified Veteran-Owned and Service-Connected Disabled Veteran-Owned small entrepreneurship (LaVet) and a Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) small entrepreneurship are businesses that have been certified by the Louisiana Department of Economic Development. All eligible vendors are encouraged to become certified. Qualification requirements and online certification are available at https://smallbiz.louisianaforward.com/index_2.asp.

A current list of certified Veteran-Owned and Service-Connected Disabled Veteran-Owned and Hudson Initiative small entrepreneurship may be obtained from the Louisiana Economic Development Certification System at https://smallbiz.louisianaforward.com/index_2.asp. Additionally, a list of Hudson and Veteran Initiative small entrepreneurship, which have been certified by the Louisiana Department of Economic Development and who have opted to register in the State of Louisiana LaGov Supplier Portal https://lagoverpvendor.doa.louisiana.gov/irj/portal/anonymouse?guest_user=self_reg may be accessed from the State of Louisiana Procurement and Contract (LaPAC) Network <http://wwwprd.doa.louisiana.gov/osp/lapac/vendor/srchven.asp>. When using this site, determine the search criteria (i.e. alphabetized list of all certified vendors, by commodities, etc.) and select Smalle, VSE, or DVSE.

If a proposer is not a certified small entrepreneurship as described herein, but plans to use certified small entrepreneurship(s), proposer shall include in their proposal the names of their certified Veteran Initiative or Hudson Initiative small entrepreneurship subcontractor(s), a description of the work each will perform, and the dollar value of each subcontract.

During the term of the contract and at expiration, the Contractor will also be required to report Veteran-Owned and Service-Connected Disabled Veteran-Owned and Hudson Initiative small entrepreneurship subcontractor or distributor participation and the dollar amount of each.

The statutes (R.S 39:2171 *et. seq.*) concerning the Veteran Initiative may be viewed at <http://www.legis.state.la.us/lss/lss.asp?doc=671504>; and the statutes (R.S 39:2001 *et. seq.*) concerning the Hudson Initiative may be viewed at <http://www.legis.state.la.us/lss/lss.asp?doc=96265>. The rules for the Veteran Initiative (LAC 19:VII. Chapters 11 and 15) and for the Hudson Initiative (LAC 19:VIII Chapters 11 and 13) may be viewed at <http://www.doa.louisiana.gov/osp/se/se.htm>.

5.3 Proposed Project Staff

The Proposer should provide detailed information about the experience and qualifications of the Proposer's assigned personnel considered key to the success of the project.

This information should include education, training, technical experience, functional experience, specific dates and names of employers, relevant and related experience, past and present projects with dates and responsibilities and any applicable certifications. This should also specifically include the role and responsibilities of each person on this project, their planned level of effort, their anticipated duration of involvement, and their on-site availability. Customer references

(name, title, company name, address and telephone number) should be provided for the cited projects in the individual resumes.

- Interested candidates should submit cover letter, resume, and list three professional references (with contact information for each) for key personnel.

If a sub-Contractor will be used, the proposer should clearly identify any sub-Contractor arrangements, and provide similar information as requested for the Contractor's staff.

5.4 Approach and Methodology

Proposers should provide:

- Proposer's understanding of the nature of the project and how its proposal will best meet the needs of the DOTD.
- Its functional approach in providing the services.
- Its functional approach in identifying the tasks necessary to meet requirements.
- A description of the approach to Project Management and Quality Assurance.
- A proposed Project Work Plan that reflects the approach and methodology, tasks and services to be performed, deliverables, timetables, and staffing.

5.5 Cost Information

The proposer shall provide a firm, fixed hourly billable rate which includes labor, overhead and profit.

Proposer shall be reimbursed for travel and all other Direct Expenses. All travel cost will be in accordance with the most current State's Travel Regulations as detailed in the Louisiana Travel Guide. (Travel Guide/PPM 49)

Proposers should use the following as format for providing cost information:

PRICE PROPOSAL

DOTD proposes to reimburse travel as specified in Travel Guide/PPM49) as well as all other Direct Expenses to provide the scope of services as outlined in this RFP. To provide requested services, the proposer proposes a firm fixed hourly billable rate of:

\$ _____ (Total Hourly Billable Rate)

NOTE: Maximum Compensation (excluding Direct Expenses) shall not exceed **\$108,160 per year**.

NOTE: DOTD will provide office space, facilities, equipment, supplies, or other services will be provided by LADOTD to the consultant at the Baton Rouge Headquarters Compliance Programs Section, as needed at no cost to the Consultant.

NOTE: All travel related expenses will be compensated under direct expenses and will be in accordance with Louisiana Office of State Travel regulations found at: <http://www.state.la.us/osp/travel/travelOffice.htm>.

Name of Firm: _____

Address of Firm: _____

Telephone Number:	_____
Signature:	_____
Name and Title:	_____
Date:	_____

6.0 EVALUATION AND SELECTION

6.1 Evaluation Team

The evaluation of proposals will be accomplished by an evaluation team, to be designated by the DOTD, which will determine the proposal most advantageous to the state, taking into consideration price and the other evaluation factors set forth in the RFP.

6.2 Administrative and Mandatory Screening

All proposals shall be reviewed to determine compliance with administrative and mandatory requirements as specified in the RFP. Proposals found not to be in compliance shall be rejected from further consideration.

6.3 Clarification of Proposals

DOTD reserves the right to seek clarification of any proposal for the purpose of identifying and eliminating minor irregularities or informalities.

6.4 Oral Presentations/Discussions May be required

NOT APPLICABLE TO THIS SOLICITATION.

6.5 Evaluation and Review

Proposals that pass the preliminary screening and mandatory requirements review will be evaluated based on information provided in the proposal. The evaluation will be conducted according to the following.

Each proposal shall be rated for categories one through three, with 0 being the lowest score and the highest possible score as shown for each category.

Category 4, Hudson/Veteran Small Entrepreneurship shall be rated as specified in 6.5.1 Veteran-Owned and Service-Connected Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) Programs Participation.

Category 5, Cost shall be rated as follows: The proposer with the lowest hourly rate shall receive 25 points. Other proposers will receive points for price based upon the following formula:

$$\text{Price Score} = \frac{\text{Lowest Proposed Hourly Rate} \times 25}{\text{Contractor's Proposed Hourly Rate}}$$

The Evaluation Team will evaluate and score the proposals using the criteria and scoring as follows:

CRITERIA	MAXIMUM SCORE
Approach and Methodology	15
Experience	25
Staff Qualifications	25
Hudson/Veteran Small Entrepreneurship Program	10
Cost	25
TOTAL SCORE	100

All proposals shall be evaluated as indicated. The proposer’s ratings in each category shall be added to arrive at the proposer’s total score. The Project Evaluation Team shall compile the scores and make a recommendation to the DOTD Secretary based on highest score. The award of a contract is subject to the approval of the Division of Administration, Office of Contractual Review.

6.5.1. Veteran-Owned and Service-Connected Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) Programs Participation (Value of 10% of the total evaluation points)

Please note:

If the proposer is a VHI small entrepreneurship, 10 of the reserve points will be added to their proposal score. If the proposing firm is not a VHI small entrepreneurship but subcontracts with a VHI, **for any amount of work**, then a proration of the 10 points will be added to their proposal score as outlined below. The Veteran or Hudson Initiative small entrepreneurship criteria do not designate a specific percentage of the total contract amount to be completed by a VHI subcontractor to receive reserve points.

Ten percent (10%) of the total evaluation points on this RFP are reserved for proposers who are themselves a certified Veteran or Hudson Initiative small entrepreneurship or who will engage the participation of one or more certified Veteran or Hudson Initiatives small entrepreneurships as subcontractors.

Reserved points shall be added to the applicable proposers’ evaluation score as follows:

Proposer Status and Reserved Points

- Proposer is a certified small entrepreneurship: Full amount of the reserved points
- Proposer is not a certified small entrepreneurship but has engaged one or more certified small entrepreneurships to participate as subcontractors:
 - 1 participating small entrepreneurship: 1/5th of the reserved points
 - 2 participating small entrepreneurships: 2/5ths of the reserved points
 - 3 participating small entrepreneurships: 3/5ths of the reserved points
 - 4 participating small entrepreneurships: 4/5ths of the reserved points
 - 5 or more participating small entrepreneurships: Full amount of the reserved points

6.6 *Announcement of Successful Proposer*

The DOTD will notify the successful Proposer and proceed to negotiate terms for final contract. Unsuccessful proposers will be notified in writing accordingly.

The proposals received(except for that information appropriately designated as confidential in accordance with R.S. 44.1 et seq), selection memorandum along with list of criteria used along with the weight assigned each criteria; scores of each proposal considered along with overall scores of each proposal considered, and a narrative justifying selection shall be made available, upon request, to all interested parties after the Award has been posted to DOTD Consultant Contract Services website:

<http://webmail.dotd.louisiana.gov/agrestat.nsf/WebAwards?OpenPage>

Any proposer aggrieved by the proposed award has the right to submit a protest in writing to the head of the agency issuing the proposal within 14 days after the award has been announced by the agency.

The award of a contract is subject to the approval of the Division of Administration, Office of Contractual Review.

7.0 SUCCESSFUL CONTRACTOR REQUIREMENTS

7.1 *Corporation Requirements*

Upon the award of the contract, if the Contractor is a corporation not incorporated under the laws of the State of Louisiana, the Contractor shall have obtained a certificate of authority pursuant to R. S. 12:301-302 from the Secretary of State of Louisiana prior to the execution of the contract.

Upon the award of the contract, if the Contractor is a for-profit corporation whose stock is not publicly traded, the Contractor shall ensure that a disclosure of ownership form has been properly filed with the Secretary of State of Louisiana.

7.2 *Billing and Payment*

Payments to the Contractor for services rendered for this Project shall be made monthly based on a certified and itemized invoice showing line item costs incurred. Any labor charges for approved services shall include the names of the employees, their classification, and the time worked. These shall be reimbursed at the approved billable rate for that classification.

The invoice shall show the total amount earned to the date of submission, and the amount due and payable as of the invoice including the direct expenses, if applicable.

Note: The Contractor must receive prior approval from DOTD designated Project Manager for any Direct Expense and must include an itemized listing of all expenses or fees, if applicable, (including travel) on invoices submitted. Travel and other allowable expenses shall be reimbursed in accordance with the Division of Administration State General Travel Regulations, within the limits established for State Employees as defined in Division of Administration Policy and Procedure Memorandum No. 49. All out of state travel will be subject to prior approval by the Secretary of the agency or his/her designee.

Travel expenses shall be billed as direct expenses with supporting documentation during the period they are incurred. Prior to incurring any direct expense, Contractor must have approval from DOTD's Project Manager Mr./Ms._____.

The original and two copies of the invoice shall be submitted to the Project Manager. The invoice must be signed and dated by the Contractor.

Upon receipt and approval of each invoice, DOTD shall pay the amount due within 30 calendar days.

7.3 Contract Terms & Conditions

The proposer shall be required to enter into a Contract with DOTD that is **basically the same** as Attachment III. Any changes to those terms shall be negotiated if state law allows such negotiation.

7.4 Indemnification

The Contractor shall indemnify, save harmless and defend DOTD against any and all claims, losses, liabilities, demands, suits, causes of action, damages, and judgments of sums of money growing out of, resulting from, or by reason of any act or omission of the Contractor, its agents, servants, independent contractors, or employees while engaged in, about, or in connection with the discharge or performance of the terms of this Agreement. Such indemnification shall include attorney's fees and court costs. Contractor shall provide and bear the expense of all personal and professional insurance related to its duties arising under this Agreement.

Contractor shall indemnify, defend and hold DOTD and its Authorized Users harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against DOTD in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that DOTD shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, DOTD or its Authorized Users may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) Authorized User's unauthorized modification or alteration of a Product; ii) Authorized User's use of the Product in combination with other products not furnished by Contractor; iii) Authorized User's use in other than the specified operating conditions and environment. In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the Authorized User's exclusive remedy to take action in the following order of precedence: (i) to procure for DOTD the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance,

or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to DOTD up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges rendered by the Contractor under the Contract. Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings. DOTD and Authorized User may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

7.5 Confidentiality

All financial, statistical, personal, technical and other data and information relating to DOTD's operation which are designated confidential by DOTD and made available to the Contractor in order to carry out this contract, or which become available to the Contractor in carrying out this contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to DOTD. The identification of all such confidential data and information as well as DOTD's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by DOTD in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by DOTD to be adequate for the protection of DOTD's confidential information, such methods and procedures may be used, with the written consent of DOTD, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of the paragraph to keep confidential any data or information, which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the contract, or is rightfully obtained from third parties. Under no circumstance is the Contractor to discuss and/or release information to the media concerning this project without prior express written approval of the DOTD.

ATTACHMENT I: SCOPE OF SERVICES

1 Overview

The Contractor shall perform Commercially Useful Function (CUF) Reviews independently and jointly with Compliance Programs Specialists of certified Disadvantaged Business Enterprise (DBE) firms working on federally funded projects and shall conduct an investigation of certified DBEs should information come to the attention of the Compliance Programs Office staff that would cause question regarding the firm's certification eligibility; shall also assist in Compliance Office investigations of prime contractor's requests to replace DBEs on federally funded projects; shall assist in performing on-site reviews of new DBE applicants and shall assist in conducting Title VII complaint investigations, as requested by DOTD.

2 Tasks and Services

The Contractor shall provide the following services:

- Independently and jointly, with Compliance Programs Specialists, perform the Commercially Useful Function Reviews of certified Disadvantaged Business Enterprise (DBE) firms that are performing work as a prime contractor or a sub-contractor on federally funded highway construction projects.
- Train compliance specialists in standard investigative techniques and supply advice and assistance when dealing with resolution of problem cases.
- Perform full range of investigative work on investigations of a more complicated nature where Compliance Staff question the DBE firm's certification eligibility, which will require a higher degree of knowledge, training and investigative experience, as well as knowledge of the Federal Regulations governing DBE certification.
- Review and gather evidence and take oral, written, or tape recorded statements from witnesses. Work with DOTD staff to conduct surveillance or administer polygraph examinations.
- Investigate reported violations of state and federal laws, ethics rules, agency policies and procedures.
- Prepare detailed confidential reports and summaries of investigations. Maintain records of investigations and related data.
- Assist Compliance Programs Office staff with investigations of prime contractor's requests to replace DBEs on federally funded projects.
- Assist Compliance Programs Office staff with on-site reviews of new DBE applicants.
- Assist Compliance Programs Office staff with investigations of Title VII investigations, as requested by DOTD.

Testify in Civil Service hearings, Ethics Commission hearings, board hearings, criminal and civil court concerning results of investigations.

3 Deliverables

To ensure compliance with CFR for conducting on-site Commercially Useful Function Reviews for every DBE firm on every Federally Funded project.

4 Functional Requirements

The Code of Federal Regulations (CFR) was recently revised in February 2011; to require all state DOTs to perform on-site Commercially Useful Function Reviews (CUFs) for every DBE firm working on every Federally Funded project.]

5 Technical Requirements

NOT APPLICABLE TO THIS CONTRACT.

6 Project Requirements

The services provided by the contractor shall be evaluated to determine that these services are provided in a timely and professional manner by:

- *Work closely with FHWA, to ensure that department is in compliance with all CFR requirements on a continuous basis.*
- *Ensure that the Compliance Specialists receive training and become knowledgeable of the investigative techniques by the end of the contract.*

DOTD will monitor the performance of the contractor by:

- *Consultant provides a log of all investigations or CUFs performed on DBEs to the Compliance Director biweekly*
- *Provides written documentation to Compliance Director biweekly of the coaching/training provided to the Compliance Specialists to increase their competency in the area of investigative techniques and investigative report writing.*

ATTACHMENT II
CERTIFICATION STATEMENT

The undersigned hereby acknowledges she/he has read and understands all requirements and specifications of the Request for Proposals (RFP), including attachments.

OFFICIAL CONTACT. DOTD requests that the proposer designate one person to receive all documents and the method in which the documents are best delivered. Identify the Contact name and fill in the information below:

(Print Clearly):

Date: _____ Official Contact Name: _____

A. E-mail Address: (required) _____

B. Facsimile Number with area code: (_____) _____

C. US Mail Address: _____

D. Telephone Number: _____

Proposer certifies that the above information is true and grants permission to DOTD or Agencies to contact the above named person or otherwise verify the information I have provided.

By its submission of this proposal and authorized signature below, Proposer certifies that:

1. The information contained in its response to this RFP is accurate;
2. Proposer complies with each of the mandatory requirements listed in the RFP and will meet or exceed the functional and technical requirements specified therein;
3. Proposer accepts the procedures, evaluation criteria, mandatory contract terms and conditions, and all other administrative requirements set forth in this RFP.
4. Proposer's quote is valid for at least *One Year* from the date of proposal's signature below;
5. Proposer understands that if selected as the successful Proposer, he/she will have 10 business days from the date of delivery of final contract in which to complete contract negotiations, if any, and execute the final contract document.
6. Proposer certifies, by signing and submitting a proposal for \$25,000 or more, that their company, any subcontractors, or principals are not suspended or debarred by the General Services Administration (GSA) in accordance with the requirements in OMB Circular A-133. (A list of parties who have been suspended or debarred can be viewed via the internet at www.epls.gov.)
7. If subcontractors are proposed to be used, the proposer acknowledges total responsibility for the entire contract.

Authorized Signature: _____

Typed or Printed Name: _____

Title: _____

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

SIGNATURE of Proposer's Authorized Representative

/ _____
DATE

ATTACHMENT III: SAMPLE CONTRACT

CONSULTING SERVICES CONTRACT

**STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

**PURCHASE ORDER NO. xxxxxxxxxxxx
PROJECT NAME
STATEWIDE**

PLEASE NOTE: Prior to execution of any contract resulting from RFP, Contractor must be registered as a vendor at:

LaGov Vendor Registration

Registration Link:

<http://wwwprd.doa.louisiana.gov/osp/lapac/Vendor/VndPubMain.asp>

Registration Help Links:

<http://www.doa.louisiana.gov/osp/vendorcenter/regnhelp/index.htm>

Registration Help Desk: (225) 342-6349

On this _____ day of _____, 20xx, the State of Louisiana through the Louisiana Department of Transportation & Development, hereinafter sometimes referred to as “DOTD”, and [Contractor’s name and legal address], hereinafter sometimes referred to as “Contractor”, do hereby enter into a Contract under the following terms and conditions.

1 SCOPE OF SERVICES

1.1 CONCISE DESCRIPTION OF SERVICES

The Contractor shall provide the following services:

- Independently and jointly, with Compliance Programs Specialists, perform the Commercially Useful Function Reviews of certified Disadvantaged Business Enterprise (DBE) firms that are performing work as a prime contractor or a sub-contractor on federally funded highway construction projects.
- Train compliance specialists in standard investigative techniques and supply advice and assistance when dealing with resolution of problem cases.
- Perform full range of investigative work on investigations of a more complicated nature where Compliance Staff question the DBE firm’s certification eligibility, which will require a higher degree of knowledge, training and investigative experience, as well as knowledge of the Federal Regulations governing DBE certification.
- Review and gather evidence and take oral, written, or tape recorded statements from witnesses. Work with DOTD staff to conduct surveillance or administer polygraph examinations.
- Investigate reported violations of state and federal laws, ethics rules, agency policies

- and procedures.
- Prepare detailed confidential reports and summaries of investigations. Maintain records of investigations and related data.
 - Assist Compliance Programs Office staff with investigations of prime contractor's requests to replace DBEs on federally funded projects.
 - Assist Compliance Programs Office staff with on-site reviews of new DBE applicants.
 - Assist Compliance Programs Office staff with investigations of Title VII investigations, as requested by DOTD.
 - Testify in Civil Service hearings, Ethics Commission hearings, board hearings, criminal and civil court concerning results of investigations.

1.1.1 GOALS AND OBJECTIVES

- Ensure compliance with new Federal Regulations that CUF's are performed on every federally funded highway construction project.
- Train Compliance Specialist in standard investigative techniques and investigative report writing.

1.1.2 PERFORMANCE MEASURES

DOTD shall measure the performance of the Contractor by his ability to:

- Work closely with FHWA in a timely and professional manner, to ensure that department is in compliance with all federal regulation requirements on a continuous basis.
- Ensure that the Compliance Specialists receive training and become knowledgeable of the investigative techniques by the end of the contract.

1.1.3 MONITORING PLAN

Ms Stephanie Ducote, Compliance Programs Director will monitor the services provided by the **contractor** and the expenditure of funds under this contract. *Ms Stephanie Ducote, Compliance Programs Director* will be primarily responsible for the day-to-day contact with the **contractor** and day-to-day monitoring of the **contractor's** performance. The monitoring plan is the following:

- Consultant provides a log of all investigations or CUFs performed on DBEs to the Compliance Director biweekly.
- Reports to Compliance Director of the coaching/training provided to the Compliance Specialists to increase their competency in the area of investigative techniques and investigative report writing.

1.1.4 DELIVERABLES

The Contract will be considered complete when Contractor has delivered and DOTD has accepted all deliverables specified in the Statement of Work.

1.1.5 Veteran-Owned and Service-Connected Small Entrepreneurships (Veteran Initiative) and Louisiana Initiative for Small Entrepreneurships (Hudson Initiative) Programs Reporting Requirements

During the term of the contract and at expiration, the Contractor will be required to report Veteran-Owned and Service-Connected Disabled Veteran-Owned and Hudson Initiative small entrepreneurship subcontractor or distributor participation and the dollar amount of each.

1.1.6 SUBSTITUTION OF KEY PERSONNEL

The Contractor's key personnel assigned to this Contract may not be removed, replaced, or substituted without the written consent of the DOTD. Consent shall not be unreasonably withheld or delayed provided an equally qualified replacement is offered. In the event that any Contractor personnel become unavailable due to resignation, illness, or other factors outside of the Contractor's control, excluding assignment to a project outside of the Contract, the Contractor shall be responsible for providing an equally qualified replacement to avoid delays in completing tasks. Any such replacement of key personnel must be approved by DOTD.

2 ADMINISTRATIVE REQUIREMENTS

2.1 TERM OF CONTRACT

This Contract shall begin on [Date] and shall terminate on [Date], unless modified by a fully executed supplemental agreement. Notwithstanding the foregoing, in no event shall this Contract be valid until it has been approved, in writing, by the Director of the Office of Contractual review of the Division of Administration. Such approval authorizes a Contract term for not more than 36 months.

2.2 DOTD FURNISHED RESOURCES

Mr. /Ms. _____ will serve as DOTD Project Manager for this Contract. The DOTD Project Manager shall provide oversight of the activities conducted hereunder. Notwithstanding the Contractor's responsibility for management during the performance of this Contract, the assigned Project Manager shall be the principal point of contact on behalf of the DOTD and will be the principal point of contact for Contractor concerning Contractor's performance under this Contract.

2.3 TAXES

Contractor hereby agrees that the responsibility for payment of taxes from the funds thus received under this Contract and/or legislative appropriation shall be Contractor's obligation and identified under Federal tax identification number _____.

3.0 COMPENSATION AND MAXIMUM AMOUNT OF CONTRACT

3.1 PAYMENT TERMS

In consideration of the services described above, DOTD hereby agrees to pay the Contractor compensation based on a billable rate of \$xxxxxx per hour for a maximum limitation of \$xxxxxxxxx for the actual work performed.

NOTE: All travel related expenses will be compensated under direct expenses and will be in accordance with Louisiana Office of State Travel regulations (PPM No. 49) found at: <http://www.state.la.us/osp/travel/travelOffice.htm>

Payments to the Contractor for services rendered for this Project shall be made monthly based on a certified and itemized invoice showing line item costs incurred. Any labor charges for approved services shall include the names of the employees, their classification, and the time worked. These shall be reimbursed at the approved billable rate for that classification.

The invoice shall show the total amount earned to the date of submission, and the amount due and payable as of the invoice including the direct expenses, if applicable.

Travel expenses shall be billed as direct expenses with supporting documentation during the period they are incurred. Prior to incurring any direct expense, Contractor must have approval from DOTD's Project Manager Mr./Ms._____.

The original and two copies of the invoice shall be submitted to the Project Manager. The invoice must be signed and dated by the Contractor.

Upon receipt and approval of each invoice, DOTD shall pay the amount due within 30 calendar days.

4.0 TERMINATION

4.1 TERMINATION FOR CAUSE

DOTD may terminate this Contract for cause based upon the failure of Contractor to comply with the terms and/or conditions of the Contract; provided that the DOTD shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the DOTD may, at its option, place the Contractor in default and the Contract shall terminate on the date specified in such notice. Failure to perform within the time specified in the solicitation shall constitute a default and may cause cancellation of the Contract. Where the DOTD has determined the Contractor to be in default, the DOTD reserves the right to obtain any or all products or services covered by the Contract on the open market and to charge the Contractor with cost in excess of the Contract price. Until such assessed charges have been paid, no subsequent proposal from the defaulting Contractor shall be considered.

Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the DOTD to comply with the terms and conditions of this Contract provided that the Contractor shall give the DOTD written notice specifying the DOTD's failure and a reasonable opportunity for the DOTD to cure the defect.

4.2 TERMINATION FOR CONVENIENCE

DOTD may terminate the Contract at any time without penalty by giving thirty (30) days written notice to the Contractor of such termination or negotiating with the Contractor an effective date.

Contractor shall be entitled to payment for deliverables in progress; to the extent work has been performed satisfactorily.

4.3 TERMINATION FOR NON-APPROPRIATION OF FUNDS

The continuation of this contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act of Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated.

5.0 INDEMNIFICATION & LIMITATION OF LIABILITY

Contractor shall be fully liable for the actions of its agents, employees, partners or Sub-Contractors and shall fully indemnify and hold harmless DOTD and its Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or Sub-Contractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of DOTD.

Contractor shall indemnify, defend and hold DOTD and its Authorized Users harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against DOTD in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that DOTD shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, DOTD or its Authorized Users may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) Authorized User's unauthorized modification or alteration of a Product; ii) Authorized User's use of the Product in combination with other products not furnished by Contractor; iii) Authorized User's use in other than the specified operating conditions and environment. In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the Authorized User's exclusive remedy to take action in the following order of precedence: (i) to procure for DOTD the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance,

or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to DOTD up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges rendered by the Contractor under the Contract. Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings. DOTD and Authorized User may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

6 CONTRACT CONTROVERSIES

Any claim or controversy arising out of the contract shall be resolved by the provisions of Louisiana Revised Statutes 39:1524-26.

7 FUND USE

Contractor agrees not to use Contract proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

8 OWNERSHIP

All records, reports, documents and other material delivered or transmitted to Contractor by DOTD shall remain the property of DOTD, and shall be returned by Contractor to DOTD, at Contractor's expense, at termination or expiration of this contract. All records, reports, documents, or other material related to this contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of DOTD, and shall, upon request, be returned by Contractor to DOTD, at Contractor's expense, at termination or expiration of this contract.

9 ASSIGNMENT

No Contractor shall assign any interest in this Contract by assignment, transfer, or novation, without prior written consent of the DOTD. This provision shall not be construed to prohibit the Contractor from assigning to a bank, trust company, or other financial institution any money due or to become due from approved Contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the DOTD.

10 RIGHT TO AUDIT

The DOTD Auditor, State Legislative auditor, federal auditors and internal auditors of the Division of Administration, or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to the Contract for a period of five (5) years from the date of the last payment made under this Contract. Records shall be made available during normal working hours for this purpose.

11 CONTRACT MODIFICATION

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

12 CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical and other data and information relating to the DOTD's operation which are designated confidential by the DOTD and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the DOTD. The identification of all such confidential data and information as well as the DOTD's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the DOTD in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the DOTD to be adequate for the protection of the DOTD's confidential information, such methods and procedures may be used, with the written consent of the DOTD, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of the paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the Contract, or is rightfully obtained from third parties.

13 COST RECORDS

The Contractor and its sub-Contractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred relative to this project. Costs shall be accordance with 48 CFR 31 of the (FARS), as modified by DOTD audit guidelines, and which are incorporated herein by reference as if copied in extensor. The FARS is available for inspection through www.transportation.org. Records shall be retained until such as an audit is made by DOTD or the Contractor is released in writing by the DOTD Audit Director, at which time the Contractor may dispose of such records. The Contractor shall, however, retain such records for a minimum of five years from the date of payment of the last estimate under this Contract or the release of all retainage for this Contract, whichever occurs later, for inspection by DOTD and/or Legislative Auditor and the FHWA or General Accounting (GAO) under State and Federal Regulations effective as of the date of this Contract.

14 FISCAL FUNDING

The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

15 SUBCONTRACTORS

The Contractor may, with prior written permission from the DOTD, enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the DOTD for any breach in the performance of the Contractor's duties.

16 DISCRIMINATION CLAUSE

The Contractor agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Contractor agrees not to discriminate in its employment practices, and shall render services under this contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities.

Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

17 INSURANCE

Licensed and Non-Licensed Motor Vehicles: The Contractor will maintain during the life of the contract Automobile Liability Insurance as required by the State of Louisiana.

18 APPLICABLE LAW

This Contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this Contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

19 CODE OF ETHICS

The Contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in this Contract. The Contractor agrees to immediately notify the DOTD if potential violations of the Code of Governmental Ethics arise at any time during the term of this Contract.

20 SEVERABILITY

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

21 COMPLETE CONTRACT

This is the complete Contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this contract. This Contract is entered into with neither party relying on any statement or representation made by the other party not embodied in this Contract and there are no other agreements or understanding changing or modifying the terms. This Contract shall become effective upon final statutory approval.

22 ENTIRE AGREEMENT & ORDER OF PRECEDENCE

This contract together with the RFP and Contractor's proposal which are incorporated herein; shall, to the extent possible, be construed to give effect to all of its provisions; however, where provisions are in conflict, first priority shall be given to the provisions of the contract, excluding the Request for Proposals, its amendments and the Proposal; second priority shall be given to the provisions of the Request for Proposals and its amendments; and third priority shall be given to the provisions of the Contractor's Proposal.

IN WITNESS THEREOF, the parties have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

WITNESSES:

CONTRACTOR

Witness for First Party

BY: _____

Witness for First Party

Typed or Printed Name

Federal Identification Number

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

Witness for Second Party

BY: _____
Secretary

Witness for Second Party

RECOMMENDED FOR APPROVAL:

BY: _____
Division Head