



City of Kirkland

Request for Proposal

Kirkland Mode Split Survey

Job # 61-17-PW

Issue Date: Monday October 2, 2017

Due Date: October 23, 2017– 3:00 p.m. (Pacific Time)

REQUEST FOR PROPOSALS

Notice is hereby given that proposals will be received by the City of Kirkland, Washington (City), for:

Kirkland Mode Split Survey

File with Purchasing Agent, Finance Department, 123 - 5th Ave, Kirkland WA, 98033

Proposals received later than **3:00 p.m. PDT October 23, 2017 will not be considered.**

A copy of this Request for Proposal (RFP) may be obtained from City's web site at <http://www.kirklandwa.gov/>. Click on the Business tab at the top of the page and then click on the Request for Proposals link found under "Doing Business with the City".

The City of Kirkland reserves the right to reject any and all proposals, and to waive irregularities and informalities in the submittal and evaluation process. This RFP does not obligate the City to pay any costs incurred by proposers in the preparation and submission of a proposal. Furthermore, the RFP does not obligate the City to accept or contract for any expressed or implied services.

A response that indicates that any of the requested information in this RFP will only be provided if and when the proposer is selected as the apparently successful Service Provider is not acceptable, and, at the City's sole discretion, may disqualify the proposal from consideration.

The City of Kirkland in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation Subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin, or sex in consideration for an award.

In addition to nondiscrimination compliance requirements, a Service Provider ultimately awarded a contract shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, protection of public and employee safety and health; disabilities; environmental protection; waste reduction and recycling; the protection of natural resources; permits; fees; taxes; and similar subjects.

Dated this 2nd Day of October, 2017.

Greg Piland
Purchasing Agent

Kirkland Mode Split Survey

JOB NO. 61-17-PW

City Profile: The City is located in the Seattle metropolitan area, on the eastern shore of Lake Washington and approximately 10 miles east of downtown Seattle. It has a population of approximately 84,680, and is the thirteenth largest city in the State of Washington and the sixth largest city in King County, Washington. Since its incorporation in 1905, Kirkland has grown in geographic size and now occupies 18 square miles.

PROJECT DESCRIPTION: The City of Kirkland is seeking proposals from qualified individuals or firms for the development and conducting a market research on mode split and travel surveys to measure the outcome of the Kirkland Green Trip. The survey shall provide mode split data for employees and residents in the City of Kirkland overall and two subareas- the Totem Lake Urban Center and Downtown Kirkland. The estimated cost of this project is \$40,000 to \$70,000. This program will be funded with Federal and local grant money.

NOTICE IS HEREBY GIVEN: The City of Kirkland will receive sealed proposals in the office of the Purchasing Agent, City Hall, 123 Fifth Avenue, Kirkland, Washington, by 3:00 p.m. on October 23, 2017.

The complete RFP may be viewed on the City's website at <http://www.kirklandwa.gov/> (click on "City Purchasing"). This RFP provides complete information on the equipment being sought and the submittal requirements. Copies of the RFP may be downloaded directly from this site. Those who wish to automatically receive any addenda or a notice of cancellation should provide contact information by emailing Greg Piland, Purchasing Agent, at gpiland@kirklandwa.gov. Those who do not provide contact information are solely responsible for monitoring the City's website for any addenda to the RFP or a notice of cancellation. This Request for Proposal may be canceled at the discretion of the Purchasing Agent.

No supplier may withdraw his proposal within 45 days after the actual date of the opening.

Small businesses and minority-owned businesses are specifically invited to submit proposals.

In the award of proposals, consideration shall be given to such matters as supplier integrity, record of past performance, financial and technical resources, local experience, the ability to meet the February 31, 2017 survey deadline. The consultant selected should be able to quickly develop and conduct the survey by December 31, 2017. The City of Kirkland reserves the right to reject any and all proposals, to waive any informality in the proposal process, and to make the award to the lowest responsible supplier as determined by the City.

Any questions regarding the specifications or intended use of requested items need to be addressed to Greg Piland, Purchasing Agent, at gpiland@kirklandwa.gov.

TENTATIVE SCHEDULE OF EVENTS:

RFP issued	October 2, 2017
Deadline for questions	October 10, 2017
Questions answered	October 13, 2017
Proposals due	October 23, 2017
Proposals evaluated	October 24 to 30, 2017

QUESTIONS REGARDING THIS RFP: ALL questions must be submitted in writing (Email will suffice) to the RFP coordinator. Questions and answers will be forwarded to all proposing suppliers who provide contact information. In order to make information available to all proposing suppliers, no questions will be entertained after October 10, 2017.

RFP COORDINATOR:

Thang Nguyen, Transportation Engineer
City of Kirkland
E-mail: tnguyen@kirklandwa.gov

DISTRIBUTION OF RFP DOCUMENT AND ADDENDA: This RFP can be downloaded directly from the City of Kirkland's website at www.kirklandwa.gov (Click on "Request For Proposals" under "Doing Business with the City".) Those who wish to automatically receive any addenda or a notice of cancellation should provide contact information by emailing Greg Piland, Purchasing Agent, at gpiland@kirklandwa.gov. Those who choose not to submit contact information will be solely responsible for monitoring the City's website for any addenda or a notice of cancellation.

PROPOSAL PREPARATION: Firms submitting proposals shall be responsible for any and all costs and/or expenses associated with preparing such proposal.

SUBMISSION OF PROPOSALS: Proposals must be received by no later than **3:00 pm** on October 23, 2017.

We prefer that proposals be submitted by email. Emailed proposals should include "Proposal-Job #61-17-PW" in the subject line and be addressed to: purchasing@kirklandwa.gov. (Emailed proposals must be in MS Word or PDF format and cannot exceed 20MB).

As an alternate to email, proposals can be mailed or delivered to:

City of Kirkland
Attn: Greg Piland – Job #61-17-PW
123 5th Avenue
Kirkland, WA 98033

If submitting a paper proposal, the original plus four (4) copies of all proposals in printed form must be submitted in a sealed envelope or box with the following words

clearly marked on the outside of the envelope, Mode Split Survey RFP. The proposer's name and address must be clearly indicated on the envelope. Sealed proposals should contain an original and three (3) printed copies of the proposal. Sealed proposals must be mailed or delivered to:

City of Kirkland
Attn: Greg Piland, Purchasing Agent
RFP No. 61-17-PW
123 5th Ave
Kirkland, WA 98033

It is the responsibility of the supplier to be sure the proposals are sent sufficiently ahead of time to be received **no later than 3:00 pm** on the due date. Proposals received after the deadline will not be considered for award of contract.

EVALUATION PROCEDURES: City of Kirkland staff will review the proposals. Based on the scores resulting from criteria outlined in the attached proposal scoring sheet and recommendations from the reviewers, we will be selecting two eligible firms by the end of the week of October 30, 2017. Firms that are selected as finalists during the initial review process may be contacted for additional information and clarification. After the finalist firms have completed and open questions have been resolved the review team will make their final selection.

It is important that the responses be clear and complete so that the evaluators can adequately understand all aspects of the proposal. The evaluators will consider how well the supplier's proposed solutions meet the needs of the City.

The City of Kirkland reserves the right to reject any or all proposals and to waive informalities or irregularities with respect thereto.

CONTRACT: The contract shall consist of the following documents: The Request for Proposals (RFP), the accepted proposal, the Professional Services Agreement with attachments (sample attached) executed with the City and any agreed upon written changes to any of the foregoing documents. The contract documents are complimentary and what is called for in any one document shall be binding as if called for by all.

COOPERATIVE PURCHASING: RCW 39.34 allows cooperative purchasing between public agencies (political subdivisions) in the State of Washington. Public agencies which have filed an Intergovernmental Cooperative Purchasing Agreement with the City of Kirkland may purchase from City of Kirkland contracts, provided that the supplier agrees to such participation. The City of Kirkland does not accept any responsibility for purchase orders issued by other public agencies.

COMPLIANCE WITH LAWS: The Consultant shall comply with all applicable State, Federal, and City laws, ordinances, regulations, and codes. Contractor must obtain a City of Kirkland business license or otherwise comply with Kirkland Municipal Code Chapter 7.02.

The consultant and/or its contractors must not be on the Federal/State/City of Kirkland debarred list.

SCOPE OF WORK:

Project Description

This RFP is for conducting a mode split travel survey of residents and employees in the City of Kirkland. In addition to mode split, the study will measure commute frequency, distance, origin/destination and commute behaviors. The survey will provide commute data for the entire City of Kirkland, Downtown Kirkland and for the Totem Lake Urbans Center area within the City. The survey will help provide the effectiveness of the Kirkland Green Trip program and gauge the awareness of the program, barriers to participating and potential improvements or incentives for increasing alternative mode usage.

Sampling shall be done for employers with more than 50 employees, 10 to 50 employees, less than 10 employees and Kirkland residents. To help with facilitate the survey, gift cards will be available for data collection.

The mode split report shall compare the current mode split with the most recent WSDOT mode split survey. The mode split report shall also compare CTR-Affected employees, TMP sites and employees not affected by CTR and are not TMP sites.

Stakeholders and Roles

City of Kirkland

The City of Kirkland will serve as the lead agency for this project and will coordinate work between contractors working on the TDM project.

GENERAL REQUIREMENTS FOR RFP

All proposals should contain:

- The firm's name and size
- Client list with a minimum of five (5) references
- Samples of recent work (created in the last 3 years) including site URLs (local work preferred)
- Proposed scope of work, methodology and sample reports
- A project timeline and estimate
- Estimates should contain fixed or hourly pricing with a not to exceed figure

At a minimum the response to the RFP should include the following:

- Approach and methodology for resident and employee surveys
- Services included
- Sampling Methodology including the number of interviews for the City as a whole and for the sub-areas
- A sample of survey questions and sample design
- Cost estimate for the survey including staff assignments and staff billing rates
- Implementation plan and schedule for each survey
- A description of experience in mode split/travel survey
- Description survey analysis and reporting
- A description of how the project would be managed (progress reports, invoices, communication)
- A description of how the project would be managed (progress reports, invoices, communication)
- Three (3) work references relating to mode split/travel survey
- Must not be listed on the Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds list.

PROPOSAL PREPARATION: Firms submitting proposals shall be responsible for any and all costs and/or expenses associated with preparing such proposal.

SELECTION CRITERIA

Selection will be based on the following:

Selection Criteria	Points
Familiarity and experience with mode split/ travel survey sampling	20
Amount of quality of relevant experience	30
Local experience with commute trip reduction & travel demand Management	10
Project management skills/plan schedule	20

Project Cost	20
Total	100

PROPOSAL SUBMISSION AND EVALUATION: Proposals should be no longer than 15 pages and will be evaluated based on the criteria in the selection criteria section of this document. Finalists will be contacted by phone and may be required to present their concept in front of a review committee. The City reserves the right to reject any or all proposals.



PROFESSIONAL SERVICES AGREEMENT

Sample

The City of Kirkland, Washington, a municipal corporation (hereinafter the "City") and _____, whose address is _____ (hereinafter the "consultant"), agree and contract as follows:

I. SERVICES BY CONSULTANT

- A. The Consultant agrees to perform the services described in Attachment _____ to this Agreement, which attachment is incorporated herein by reference.
- B. All services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and completely and in accordance with professional standards of conduct and performance.

II. COMPENSATION

- A. The total compensation to be paid to Consultant for these services shall not exceed \$_____, as detailed in Attachment _____.
- B. Payment to Consultant by the City in accordance with the payment ceiling specified above shall be the total compensation for all work performed under this Agreement and supporting documents hereto as well as all subcontractors' fees and expenses, supervision, labor, supplies, materials, equipment or the use thereof, reimbursable expenses, and other necessary incidentals.
- C. The Consultant shall be paid monthly on the basis of invoices submitted. Invoicing will be on the basis of percentage complete or on the basis of time, whichever is applicable in accordance with the terms of this Agreement.
- D. The City shall have the right to withhold payment to Consultant for any work not completed in a satisfactory manner until such time as consultant modifies such work to the satisfaction of the City.
- E. Unless otherwise specified in this Agreement, any payment shall be considered timely if a warrant is mailed or is available within 45 days of the date of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

III. TERMINATION OF AGREEMENT

The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, by giving ten (10) days notice to Consultant in writing. In the event of termination, all finished or unfinished reports, or other material prepared by the Consultant pursuant to this Agreement, shall be provided to the City. In the event the City terminates prior to completion without cause, consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on the project prior to the date of suspension or termination, not to exceed the payment ceiling set forth above.

IV. OWNERSHIP OF WORK PRODUCT

- A. Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled or produced as a result of this Agreement, whether or not completed, shall be vested in the City. Any reuse of these materials by the City for projects or purposes other than those which fall within the scope of this contract or the project to which it relates, without written concurrence by the Consultant will be at the sole risk of the City.

The City acknowledges the Consultant's plans and specifications as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of any reuse of such plans and specifications by any third party without the written authorization of the Consultant.

- B. Methodology, materials, software, logic, and systems developed under this contract are the property of the consultant and the City, and may be used as either the consultant or the City sees fit, including the right to revise or publish the same without limitation.

V. GENERAL ADMINISTRATION AND MANAGEMENT

The _____ for the City of Kirkland shall review and approve the Consultant's invoices to the City under this Agreement, shall have primary responsibility for overseeing and approving services to be performed by the Consultant, and shall coordinate all communications with the Consultant from the City.

VI. COMPLETION DATE

The estimated completion date for the consultant's performance of the services specified in Section I is _____.

Consultant will diligently proceed with the work contracted for, but consultant shall not be held responsible for delays occasioned by factors beyond its control which could not reasonably have been foreseen at the time of the execution of this Agreement. If such a delay arises, Consultant shall forthwith notify the City.

VII. SUCCESSORS AND ASSIGNS

The Consultant shall not assign, transfer, convey, pledge, or otherwise dispose of this Agreement or any part of this Agreement without prior written consent of the City.

VIII. NONDISCRIMINATION

Contractor shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.

IX. HOLD HARMLESS/INDEMNIFICATION

Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

X. LIABILITY INSURANCE COVERAGE

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. A failure to obtain and maintain such insurance or to file required certificates and endorsements shall be a material breach of this Agreement.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability

coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

F. Claims-made Coverage

Any policy of required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under the contract and filed within three (3) years following completion of the services so to be performed.

XI. COMPLIANCE WITH LAWS/BUSINESS LICENSE

The Consultant shall comply with all applicable State, Federal, and City laws, ordinances, regulations, and codes. Contractor must obtain a City of Kirkland business license or otherwise comply with Kirkland Municipal Code Chapter 7.02.

XII. FUTURE SUPPORT

The City makes no commitment and assumes no obligations for the support of Consultant activities except as set forth in this Agreement.

XIII. INDEPENDENT CONTRACTOR

Consultant is and shall be at all times during the term of this Agreement an independent contractor and not an employee of the City. Consultant agrees that he is solely responsible for the payment of taxes applicable to the services performed under this Agreement and agrees to comply with all federal, state, and local laws regarding the reporting of taxes, maintenance of insurance and records, and all other requirements and obligations imposed on him as a result of his status as an independent contractor. The Consultant is responsible for providing the office space and clerical support necessary for the performance of services under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance of unemployment compensation programs or otherwise assuming the duties of an employer with respect to the Consultant, or any employee of consultant.

XIV. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with all attachments and addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties hereto.

XV. ADDITIONAL WORK

The City may desire to have the Consultant perform work or render services in connection with the project other than provided for by the express intent of this contract. Any such work or services shall be considered as additional work, supplemental to this contract. Such work may include, but shall not be limited to,

Additional work shall not proceed unless so authorized in writing by the City.

Authorized additional work will be compensated for in accordance with a written supplemental contract between the Consultant and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below:

CONSULTANT:

CITY OF KIRKLAND:

By: _____

By: _____
Marilynn Beard, Deputy City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

Kirkland City Attorney

Date: _____

Attachment A

Attachment to Professional Services Agreement

Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the City of Kirkland and Consultant are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the City. Copies of said records shall be furnished to the State and/or Federal Government upon request.

Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the City of Kirkland and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, and Office of Management and Budget circulars A-102, A-87 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The City of Kirkland shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The City of Kirkland shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The City shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the City for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in the federal Office of Management & Budget (OMB) circular A-87, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the City for that portion of State costs which were not reimbursed by the Federal Government.

1. Project Construction Costs

Project financing will be accomplished by the following method as indicated in this agreement:

Method C – The City will submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the City

maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the City for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the City/Consultant will provide documentation of all costs incurred on the project.

The State shall bill the City for all costs incurred by the State relative to the project. The State shall also bill the City for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation.

Single Audit Act

The City, as a subrecipient of federal funds, shall adhere to the federal Office of Management and Budget (OMB) Circular A-133 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of OMB Circular A-133. Upon conclusion of the A-133 audit, the City shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

Traffic Control, Signing, Marking, and Roadway Maintenance

The City/Consultant will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The City will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The City will, at its own expense, maintain the improvement covered by this agreement.

Nondiscrimination Provision

No liability shall attach to the State or Federal Government except as expressly provided herein.

The City or Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The City/Consultant shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City/Consultant of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the

matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The City hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The City/Consultant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The City/Consultant also agrees:

- (1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.
- (2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- (3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.
- (4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order

In addition, the City/Consultant agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the City or Consultant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the City or Consultant; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

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

DEBARMENT & SUSPENSION

Executive Order 12549--Debarment and Suspension

Source: The provisions of Executive Order 12549 of Feb. 18, 1986, appear at 51 FR 6370, 3 CFR, 1986 Comp., p. 189, unless otherwise noted.

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs, it is hereby ordered that:

Section 1. (a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect. (b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees. (c) This Order does not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement, or Federal employment.

Sec. 2. To the extent permitted by law, Executive departments and agencies shall: (a) Follow government-wide criteria and government-wide minimum due process procedures when they act to debar or suspend participants in affected programs. (b) Send to the agency designated pursuant to Section 5 identifying information concerning debarred and suspended participants in affected programs, participants who have agreed to exclusion from participation, and participants declared ineligible under applicable law, including Executive Orders. This information shall be included in the list to be maintained pursuant to Section 5. (c) Not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in an affected program. An agency may grant an exception permitting a debarred, suspended, or excluded party to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from this Presidential policy. However, I intend that exceptions to this policy should be granted only infrequently.

Sec. 3. Executive departments and agencies shall issue regulations governing their implementation of this Order that shall be consistent with the guidelines issued under Section 6. Proposed regulations shall be submitted to the Office of Management and Budget for review within four months of the date of the guidelines issued under Section 6. The Director of the Office of Management and Budget may return for reconsideration proposed regulations that the Director believes are inconsistent with the guidelines. Final regulations shall be published within twelve months of the date of the guidelines.

Sec. 4. There is hereby constituted the Interagency Committee on Debarment and Suspension, which shall monitor implementation of this Order. The Committee shall consist of representatives of agencies designated by the Director of the Office of Management and Budget.

Sec. 5. The Director of the Office of Management and Budget shall designate a Federal agency to perform the following functions: maintain a current list of all individuals and organizations excluded from program participation under this Order, periodically distribute the list to Federal agencies, and study the feasibility of automating the list; coordinate with the lead agency responsible for government-wide debarment and suspension of contractors; chair the Interagency Committee established by Section 4; and report periodically to the Director on implementation of this Order, with the first report due within two years of the date of the Order.

Sec. 6. The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines.

Sec. 7. The Director of the Office of Management and Budget shall report to the President within three years of the date of this Order on Federal agency compliance with the Order, including the number of exceptions made under Section 2(c), and shall make recommendations as are appropriate further to curb fraud, waste, and abuse.

Implementation in the SRF Programs

A company or individual who is debarred or suspended cannot participate in primary and lower-tiered covered transactions. These transactions include SRF loans and contracts and subcontracts awarded with SRF loan funds.

Under 40 C.F.R. 32.510, the SRF agency must submit a certification stating that it shall not knowingly enter into any transaction with a person who is proposed for debarment, suspended, declared ineligible, or voluntarily excluded from participation in the SRF program. This certification is reviewed by the EPA regional office before the capitalization grant is awarded.

A recipient of SRF assistance directly made available by capitalization grants must provide a certification that it will not knowingly enter into a contract with anyone who is ineligible under the regulations to participate in the project. Contractors on the project have to provide a similar certification prior to the award of a contract and subcontractors on the project have to provide the general contractor with the certification prior to the award of any subcontract.

In addition to actions taken under 40 C.F.R. Part 32, there are a wide range of other sanctions that can render a party ineligible to participate in the SRF program. Lists of debarred, suspended and otherwise ineligible parties are maintained by the General Services Administration and should be checked by the SRF agency and all recipients of funds directly made available by capitalization grants to ensure the accuracy of certifications.

Additional References

C 40 C.F.R. Part 32: EPA Regulations on Debarment and Suspension.