

**CITY OF DURHAM**

DEPARTMENT OF PUBLIC WORKS
101 CITY HALL PLAZA • DURHAM, NC 27701
919.560.4326 • fax 919.560.4316
www.durhamnc.gov

- ☐ Engineering
- ☐ Stormwater Services
- ☐ Street Maintenance
- ☐ Transportation

REQUEST FOR PROPOSAL

PURPOSE OF RFP

This is a Request for Proposal (RFP) to provide Material Testing and Construction Inspection Services for three American Recovery & Reinvestment Act construction projects in the City of Durham.

DATE OF REQUEST FOR PROPOSAL (RFP): January 14, 2010

NOTICES

All notices and communications relating to this project shall be directed to the Project Manager as follows:

Mr. Byron E. Brady, P.E.
The City of Durham
Public Works – Engineering Department
101 City Hall Plaza
Durham, NC 27701
Phone: (919) 560-4326 Ext. 30296
Fax: (919) 560-4316
byron.brady@durhamnc.gov

Through this RFP, the City of Durham is soliciting proposals for testing and construction inspection services related to three proposed City of Durham construction projects.

DEFINITIONS IN THIS RFP

“City” means the City of Durham. “Proposal” is the response of a person, firm, or corporation proposing to provide the services sought by this RFP. “Proposer” is the person, firm, or corporation that submits a proposal. “Consultant” is the Proposer with which the City enters into a contract to provide the services sought by this RFP. “Construction Contract” is the project on which the Proposer will be providing the noted services.

GENERAL INFORMATION

The City of Durham is requesting a proposal for Material Testing and Construction Inspection Services associated with three (3) upcoming construction projects. The **SW-25** project will consist of new sidewalk construction on portions of six (6) streets in the City of Durham. The **ST-246** project will consist of the resurfacing of three (3) existing greenway trails in the City of Durham. The **ST-247** project will consist of the reconstruction on the Miami Boulevard and Geer Street intersection in the City of Durham. This RFP will be to provide inspection services for these three projects and to provide concrete and asphalt testing as needed following the North Carolina Department of Transportation (NCDOT) guidelines. The inspectors shall be certified by NCDOT. The construction contract will be performed in accordance with City of Durham and North Carolina Department of Transportation (NCDOT) standards and specifications.

Project manuals for each project can be found at:

SW-25: http://www.durhamnc.gov/departments/works/project_SW-25.cfm

ST-246: http://www.durhamnc.gov/departments/works/project_ST-246.cfm

ST-247: http://www.durhamnc.gov/departments/works/project_ST-247.cfm

BUDGET

Bids for the construction projects have been opened and accepted by NCDOT totaling approximately \$875,000.00. The estimated budget for this RFP is between a low of 10% and a high of 20% of the construction contract amount. However, this RFP is not required to be negotiated as a percentage fee of the future construction contract.

SCOPE OF SERVICES

The City is soliciting a firm or corporation (referred to hereafter as the Consultant) to perform the following work:

General Inspection Duties

- Inspectors shall ensure project is constructed in accordance with Project Manual, Plans, and NCDOT Specifications, sampling & testing in accordance with NCDOT's Minimum Sampling Guide.
- Inspectors shall keep a daily report of construction activities by using NCDOT Inspector's Daily Report.
- Inspectors shall record materials used on the project by using NCDOT's Material Received Report.
- Inspectors shall review, send back to Contractor with comments if necessary, & approve Contractor's daily reports in Primavera through the City's web site.
- **The Consultant shall provide inspection services per the minimum inspections required by NCDOT.**
- **The Consultant shall also submit the name of their inspectors along with the NCDOT Technician Certification numbers.**

Concrete Quality Control

- Provide inspection services for installation of concrete work (curb & gutter, sidewalk, etc.).
- Provide inspectors that are currently certified as a Concrete Field Technician by NCDOT.
- Approve subgrade prior to placement of concrete (ex. Check grade, density, etc.)
- Visually check the concrete in each truck as it arrives on site for proper slump and observe general placement procedures.
- Sample and test concrete to include slump tests, air content, and temperature of concrete and air temperature.
- Make and cure 4 inch by 8 inch concrete cylinder test specimens for compressive strength testing per specifications.
- Do compressive strength testing per specifications.
- Report test results
- **The Consultant shall provide testing services per the minimum test required by NCDOT.**

Asphalt Quality Control

- Inspectors shall ensure paving operations are done in accordance with NCDOT current QMS Manual.
- Inspectors shall be NCDOT certified as QMS Roadway Technician & QMS Nuclear Density Technician.
- Approve subgrade prior to placement of asphalt in areas where trail is widened & for pavement repairs (ex. Check grade, density, etc.)
- Inspectors shall inspect paving operations as described in NCDOT's QMS Manual.
- **The Consultant shall provide testing services per the minimum test required by NCDOT.**

NOTES:

1. NCDOT personnel will conduct all QA testing for mix design & mix verification tests.
2. The ARRA projects must be managed as a NCDOT project. The link to their Construction Manual is as follows:

http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/formsmanuals/construction/

The consultant shall be familiar with this process.

REPORTS AND STATEMENTS

The consultant is to provide daily reports of construction activities as noted above. The consultant is to maintain and provide all measurements for unit price bid items. The consultant is to perform and provide quality assurance testing and test report results. The consultant is to

provide a review of reports and tests performed by the construction contractor by a licensed Professional Engineer. The consultant is to provide progress information in a format suitable for application to the City of Durham's web site for the public to view. The consultant is to provide a certification that the work has been inspected and is in compliance with the construction contract requirements. The consultant is to provide written recommendations regarding proposed changes in contract and specification system to be used for future construction contracts. These daily reports shall be reported using the City's Primavera software.

SUBCONTRACTING

The consultant may use subcontractors to perform work as outlined in this proposal subject to their meeting the required experience or professional qualifications. Qualifications and experience of subcontractors proposed shall be submitted as a part of the proposal. The proposal shall clearly note the type of work they will be performing and the approximate percentage of the total work.

BONDS

This contract does not require bid, performance or payment bonds.

LICENSE REQUIREMENTS

Certain aspects of the work performed under this contract shall require the review of a licensed professional engineer. "The City may reject proposals from any firm if it does not comply with State-required licensure for architecture and engineering. The City may reject proposals from a firm that is not current on City property taxes. The City may reject proposals from a firm that lacks a privilege license for the proposed services.

EXPERIENCE REQUIREMENTS

The consultant is to provide individuals experienced in performing similar work and with performing such daily inspections. Individuals shall have a minimum of six (6) years of specialized experience in field construction and control testing of similar work. Individuals responsible for management of field construction and inspection operations shall have appropriate NCDOT certifications for HMA/QMS operations. The City expects that the successful proposal will be provided by a firm that has experience performing these and similar services for North Carolina Department of Transportation roadway construction projects and Local Government Street construction projects.

INSURANCE REQUIREMENTS

Upon selection as the successful consultant, the consultant shall provide and maintain insurance not less than the following requirements:

Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damage
- explosion, collapse, and underground hazards if the hazards exist in the performance of this contract
- contractual liability

- independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

Automobile Liability Insurance, covering

- owned, hired, or borrowed vehicles
- employee vehicles, if used in performance of this contract
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract)
- employers' liability, any limit.

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 60 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:
City of Durham, North Carolina
attention: Finance Director
101 City Hall Plaza
Durham, NC 27701
- Both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before consultant can begin any work under this contract.

If your firm wishes to submit a proposal that does not comply with the standards as discussed above, it is recommended that you also submit one that does comply in addition to the one that does not comply so that your “non-compliant” version can be considered as an alternative if the City is interested in it. This will allow your firm’s compliant version to be considered if the City remains steadfast on applying the standards discussed above.

The City anticipates that the conclusion of the RFP process will be a contract between the City and the Consultant under which the Consultant shall provide the goods and services described above.

DISCRETION OF THE CITY

The City of Durham reserves the right to reject any or all proposals. NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any firm proposing to do the work with respect to any term, condition, or provision in this document and/or in any proposals, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for the work with one or more firms that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion.

PROPOSALS

a) **Submission**

Proposals should all be received at the following address, on or before **4:00 PM on January 29, 2010**. Proposals shall be enclosed in a sealed envelope directed to:

Mr. Byron E. Brady, PE

The City of Durham

Public Works – Engineering Department

101 City Hall Plaza, 3rd Floor

Durham, NC 27701

- b) **Proposal Cover Letter Requirements:** The proposal should contain a cover letter, signed by a principal in the firm, indicating his or her title that he or she has authority to submit the proposal on behalf of the firm, including the cover letter. Please note that failure to provide the following statements in the proposal may be a factor in deciding on the award of the contract.

- The cover letter should contain the following statement:

The undersigned has the authority to submit this proposal on behalf of **name of company** in response to the above Request for Proposal dated **January 14, 2010** for providing engineering, quality control, testing and construction management services for a construction contract pertaining to the asphalt pavement repairs and resurfacing of various streets throughout the City of Durham.

- The cover letter should contain one of the following two paragraphs:

With respect to all Trade Secrets that the “Proposer’s” may submit to the City in connection with this proposal or the contract, if the contract is awarded to the “Proposer”, the “Proposer” shall comply with the section of the RFP titled “Trade Secrets and Confidentiality,” including but not limited to all of its subsections, such as the subsection titled “Defense of City.” The “Proposer” acknowledges that the City will rely on the preceding sentence.

-or-

The "Proposer" is not submitting, and shall not submit any Trade Secrets to the City, in connection with this proposal or the contract, if the contract is awarded to the "Proposer". The "Proposer" acknowledges that the City will rely on the preceding sentence.

- The cover letter should contain the following statement to be considered an offer meeting the terms of this Request for Proposal:

This proposal is a firm offer on the part of the proposer, irrevocable until **4:00 PM on April 29, 2010 or 90 days after the date of receipt of proposals** unless specifically waived in writing by the City.

- The cover letter shall acknowledge any addenda relating to the proposal that has been provided by the City. Failure to acknowledge any addenda that have been provided by the City can be cause for rejection of the proposal.

c) **Proposal Requirements:** The proposal should include sections, numbered as follows, with appropriate information for consideration in the offer. The proposal should also clearly indicate the capability to perform each item of work as outlined in the Scope of Work:

- 1) **Qualifications and References.** This should include the firm's experience in similar projects and should include references and contact information. If licensing is required or appropriate, please set forth the licensing that your firm has. It is expected that the Proposer that will be awarded the contract will have experience of at least six (6) years of specialized experience in field construction and control testing of similar work. Evaluations and recommendations from other firms and owners pertaining to recent projects shall be included.
- 2) **Project Team.** The proposal shall list and state the qualifications of the individuals who will have responsibility for this project. The proposals are to state to what extent, if any, the services to be performed may be subcontracted. Services to be performed by a licensed Professional Engineer are to be clearly indicated. The testing services to be performed by a laboratory shall clearly indicate capability of the laboratory to perform the testing as required by the City of Durham and the North Carolina Department of Transportation. Appropriate NCDOT certifications shall be indicated for individuals proposed for field construction and quality management.
- 3) **Understanding of the Project.** Include a comprehensive narrative statement that illustrates the understanding of the requirements of the project and the project schedule constraints.
- 4) **Methodology Used for the Project.** Include a narrative statement that sets out the methods they intend to employ and which illustrates how their plan will serve to accomplish the work as required by this RFP.

- 5) **Management Plan.** Include a narrative statement that sets out the management plan the consultant intends to follow and which illustrates how their plan will serve to accomplish the work and meet the City's project schedule.
- 6) **Cost Proposal and Compensation. Do not include costs with this proposal. Once the City selects the most qualified firm, negotiations will take place and, at that time, a proposal will be requested from the consultant.** The consultant must then provide an itemized list of all direct and indirect costs associated with the performance of this contract including, but not limited to, total number of hours at various hourly rates, direct expenses, payroll, materials, supplies, overhead assigned to each person working on the project, percentage of each person's time devoted to the project, and profit. This proposal shall also outline proposed compensation methods. It is anticipated that the City will prefer compensation methods that are structured in a simple fashion such as lump sum, hourly, percentage of something, each, etc. The proposal shall clearly note what expenses are reflected in those proposed charges. Option charges shall also be clearly indicated if included as a part of the proposal. The City will provide compensation to the consultant on a frequency of either a monthly or quarterly basis once work begins.
- 7) **Assumptions regarding City of Durham Actions and Participation.** The City of Durham does not anticipate providing any inspection or administration resources for the work outlined in this proposal. The consultant shall be capable of providing measurements and quantity information for payment by the City of Durham to the construction contractor.
- 8) **Methods and Procedures.** The proposal is to include information stating how the proposer will accomplish the work, including coordination of field testing and construction inspections, reporting of progress, and all items of as outlined in the Scope of Work. The proposer shall also address the capability of performing services at possible multiple work sites by the construction contractor.
- 9) **SDBE.** It is the policy of the City to provide equal opportunities for City contracting for small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.

The goals are 1% M/SDBE and 0% W/SDBE.

In accordance with the Ordinance, all contractors are required to provide information requested in the "SDBE Professional Services Forms" package. It is the intention of the City that proposals that do not contain the appropriate,

completed "Professional Services Forms" will be deemed non-responsive and ineligible for consideration and that the "Declaration of Performance," "Participation Documentation," Managerial Profile," "Equal Employment Opportunity Statement" and the "Employee Breakdown" documents are required of all contractors. In lieu of the "Employee Breakdown," contractors may submit a copy of the current EEO-1 form (corporate basis). The "Letter of Intent to Perform as a Sub-consultant/Subcontractor" must be completed for SDBEs proposed to perform on a contract. This form must be submitted with the proposal. The "SDBE Goals Not Met/Documentation of Good Faith Efforts" form must be submitted if the goals are not met. The "Post Proposal Submission SDBE Deviation" form is not applicable at this time.

The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about "SDBE Professional Services Forms" should be referred to Deborah Giles or other department staff at (919) 560-4180.

- 10) **Non-collusion.** This RFP constitutes an invitation to bid or propose. Include and sign the following with your response:

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I, _____ affirm that I have not engaged in collusion with any City employee(s), other person, corporations or firms relating to this bid, proposals or quotations. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

Signature: _____

- 11) **Format:** The proposal shall be in written format and shall not include more than 15 pages, excluding resumes. Tables, graphs and spreadsheets may be used to present the information. An electronic copy of the proposal may be provided in Microsoft Office software component format. The proposal shall be provided in four (4) copies. The proposals are to be provided in 8-1/2" x 11" 3-ring binder notebooks with all materials suitable for Xerox copy. The content of the proposal is at the discretion of the Proposer subject to addressing the requirements of this RFP.

EVALUATION OF PROPOSALS

All proposals will be evaluated using the criteria set out below. The City will use an evaluation committee to evaluate all proposals. The following key information will be used as selection and evaluation criteria based on the information provided in the proposals.

- Demonstrated construction management knowledge and experience
- Specialized experience, registration and technical competence in the performance of similar projects.
- Qualified personnel in the areas of testing, reporting, and documentation

- Capability to perform concurrent inspection and testing operations at several locations as dictated by the construction contractor
- Quality of work, recommendations or performance evaluations from recent projects
- Financial strength and longevity of the firm or firms involved in the proposal
- Compensation and method of payment.
- Satisfactory completion and execution of contract terms

The selection committee, once reviewing all proposals will select a consultant. There will not be a short list or interviews. **A contract for the firm chosen must be in place by March 15, 2010.**

NEGOTIATION AND EVALUATION PROCEDURE

The City will use a selection committee to evaluate all proposals. The establishment of the committee is at the discretion of the City. The Evaluation Criteria as outlined in this RFP are intended to be used to make a recommendation to the entity or individuals who will negotiate and award the contract. It is anticipated that applicants will be screened based on their proposals and evaluation criteria. The top rated firm from the evaluation will be asked to submit a detailed cost and price proposal. Based on the evaluation rankings, the firm with the highest ranking will be selected with which further or final negotiations will be conducted. If the selected consultant fails to negotiate a contract acceptable to the City in a timely fashion as determined by the City, negotiations may be terminated with subject consultant and the City may begin negotiations with the next highest ranked responder. The City reserves the right to vary from this procedure as it determines to be in the City's interest.

SELECTION AND EVALUATION CRITERIA

Selection of the desired consultant with which to enter final negotiations will be based on the following evaluation criteria. The evaluation is based on a 100 Point system. The proposal with the highest total point score will be selected. Criteria to be used in the evaluation follow:

1. Understanding of the Project Requirements —20%. Proposals will be evaluated against the questions set out below. Four points for each question.

- a) How well has the responder demonstrated a thorough understanding of the purpose and scope of the project?
- b) How well has the responder identified pertinent issues and potential problems related to the project?
- c) How well has the responder demonstrated that it understands the deliverables the City expects it to provide?
- d) How well has the responder demonstrated that it understands the City's time schedule and can meet it?
- e) How well has the responder demonstrated that it can adherence to the City's M/WBE program?

2. Methodology Used for Demonstrating Compliance with the Project — 20%. Proposals will be evaluated against the questions set out below. Four points for each question.

- a) How well does the methodology depict a logical approach to fulfilling the requirements of the RFP?

- b) How well does the methodology match and contribute to achieving the objectives set out in the RFP?
- c) How well does the methodology interface with the time schedule in the RFP?
- d) How well does the methodology provide information relating to the quality, frequency and type of supervision and project documentation that will be provided as set out in the RFP?
- e) How well does the methodology outline the contract and specification development application as set out in the RFP?

3. Management Plan for Meeting the Project Objectives — 20%. Proposals will be evaluated against the questions set out below. Two points for each question

- a) How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP
- b) How well is individual and firm accountability completely and clearly defined?
- c) Is the organization of the project team clear?
- d) How well does the management plan illustrate the lines of authority and communication?
- e) To what extent does the offeror already have the hardware, equipment, experience and licenses necessary to perform the contract?
- f) How well does it appear that the offeror can meet the schedule set out in the RFP?
- g) Has the consultant offered alternate deliverables and gone beyond the minimum tasks necessary to meet the objectives of the RFP?
- h) Is the proposal practical, feasible, and within budget?
- i) How well have any potential problems been identified?
- j) Is the proposal submitted responsive to all material requirements in the RFP?

4. Experience and Qualifications — 40%. Proposals will be evaluated against the questions set out below. Four points for each question.

- a) Do the individuals assigned to the project have experience on similar projects?
- b) Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?
- c) How extensive is the applicable education and experience of the personnel designated to work on the project.
- d) How knowledgeable are the offeror's personnel of the local area and how many individuals have worked in the area previously?

Questions regarding the firm:

- e) How well has the firm demonstrated experience in completing similar projects on time and within budget?
- f) How successful is the general history of the firm regarding timely and successful completion of projects?
- g) Has the firm provided letters of reference from previous clients?
- h) How reasonable are the firm's cost estimates?
- i) If a subcontractor will perform work on the contract, how well do they measure up to the evaluation used for the offeror?
- j) How effective has the firm been pertaining to the management and coordination of subcontractors and suppliers?

FINAL NEGOTIATIONS

Overall a firm is selected from the above process, a detailed cost and price proposal that includes estimated durations and rates for all services as outlined in this proposal is to be provided. A City of Durham privilege license is required to be obtained by the selected consultant in order to enter into a contract with the City of Durham. The consultant is forewarned that the time line as outlined in this RFP for completion of negotiations is necessary in order to provide services in advance of the construction contract being awarded. Should negotiations with the selected firm not be successful, the next highest ranked firm from the selection process will be asked to enter negotiations. The consultant is advised that the untimely or incomplete furnishing of a detailed price proposal within the time frame specified in this RFP may result in the City immediately proceeding to the next highest ranked firm for negotiations in order to meet its obligations to the citizens.

TRADE SECRETS AND CONFIDENTIALITY

All proposals and other material submitted become the property of the City of Durham. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and before the time a Notice of Intent to Award is issued. Thereafter, proposal will become public information.

As a general rule, all submissions to the City are available to any member of the public. However, if materials qualify as provided in this section, the City will take reasonable steps to keep Trade Secrets confidential.

(a) Designation of Confidential Records. The terms “Trade Secrets” and “record” are defined in (a) (1) (Definitions). To the extent that the Proposer wishes to maintain the confidentiality of Trade Secrets contained in materials provided to the City that will or may become a record, the Proposer shall prominently designate the material as “Trade Secrets” at the time of its initial disclosure to the City. The Proposer shall not designate any material provided to the City as Trade Secrets unless the Proposer has a reasonable and good-faith belief that it contains a Trade Secret. When requested by the City, the Proposer shall promptly disclose to the City the Proposer’s reasoning for designating individual materials as Trade Secrets. In providing materials to the City, the Proposer shall make reasonable efforts to separate those designated as Trade Secrets from those not so designated, both to facilitate the City’s use of records and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a Trade Secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only Trade Secret information on a page and nothing else on that page. To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated “Trade Secrets” in accordance with this section. Whenever the Proposer ceases to have a good-faith belief that a particular record contains a Trade Secret, it shall promptly notify the City.

(1) Definitions.

“Trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

- a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

“Record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the City of Durham in connection with the Proposer’s proposal.

(b) Request by Public for Access to Record. When any person requests the City to provide access to a record designated as Trade Secrets in accordance with subsection (a), the City may

- (1) decline the request for access,
- (2) notify the Proposer of the request and that the City intends to provide the person access to the record because applicable law requires that the access be granted, or
- (3) notify the Proposer of the request and that the City intends to decline the request.

Before declining the request, the City may require the Proposer to give further assurances so that the City can be certain that the Proposer will comply with subsection (c) (Defense of City).

(c) Defense of City. If the City declines the request for access to a record designated as Trade Secrets in accordance with subsection (a), the Proposer shall defend, indemnify, and save harmless Indemnities from and against all Charges that arise in any manner from, in connection with, or out of the City’s non-disclosure of the records. In providing that defense, the Proposer shall at its sole expense defend Indemnities with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney. Definitions. As used in this subsection (c), “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys’ fees, and interest. Indemnities” means the City, and officers, officials, independent contractors, agents, and employees, of the City. “Indemnities” does not include the Proposer. The City may require the Proposer to provide proof of the Proposer’s ability to pay the amounts that may reasonably be expected to become monetary obligations of the Proposer pursuant to this section. If the Proposer fails to provide that proof in a timely

manner, the City shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the City to require any natural person to be imprisoned or placed in substantial risk of imprisonment as a result of alleged nondisclosure of records or for alleged noncompliance with a court order respecting disclosure of records. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the City and the Proposer.

SCHEDULE

The anticipated and desired schedule of events resulting from this proposal follows:

- Date of Proposal – **January 14, 2010**
- Proposal Submission Deadline – **January 29, 2010 – on or before 4:00 PM**
- Selection and Negotiations – Completed by **February 19, 2010**
- City Manager Approval – **March 1, 2010**
- Contracts executed by both parties – **March 15, 2010**
- Consultant Begins – **March 15, 2010**

It is desired that a contract resulting from this proposal be in existence prior to the issuance of the Notice to Proceed for Construction for the three construction projects. The City may change this schedule as appropriate.

NOTICE OF INTENT TO AWARD

After the completion of contract negotiations, the Project Manager will issue a Notice of Intent to Award (NIA) and send copies to all offeror's. The NIA will set out the list of responders and identify the proposal selected for award. The scores and placement of the responders will not be a part of the NIA.

CONTRACT

It is the City's intention to use the contract that is attached as **EXHIBIT A** to this RFP. If your firm objects to any of the terms in the contract, please state the objections in writing with your proposal.

LIMIT ON CLAIMS.

No proposer will have any claims or rights against the City for participating in the proposal process, including without limitation submitting a proposal. The only rights and claims any proposer will have against the City arising out of participating in the proposal process will be in the contract with the selected proposer

Exhibit A to RFP

CONTRACT FOR PROFESSIONAL SERVICES FOR THE SW-25, ST-246, and ST-247 PROJECTS

This contract is made and entered into as of the ____ day of _____, 20____, by the City of Durham ("City") and [name of firm] ("Consultant"), [Indicate type of entity, for instance: a corporation organized and existing under the laws of [name of State]; a professional corporation organized and existing under the laws of [name of State]; a professional association organized and existing under the laws of [name of State]; a limited partnership organized under the laws of [name of State]; a sole proprietorship; or a general partnership].

Sec. 1. Background and Purpose.

Sec. 2. Services and Scope to be Performed. The Consultant shall [state the services to be provided and the schedule for those services.]. In this contract, "Work" means the services that the Consultant is required to perform pursuant to this contract and all of the Consultant's duties to the City that arise out of this contract.

Sec. 3. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Consultant shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 4. Compensation. The City shall pay the Consultant for the Work as follows: [Describe the timing of payments, how amounts are calculated, etc. List the kinds of expenses, if any, that the City will reimburse.]. The City shall not be obligated to pay the Consultant any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 5. Consultant's Billings to City. The Consultant shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. [City staff - Add any special requirements or detail needed in the invoices.] Within twenty days after the City receives an invoice, the City shall send the Consultant a check in payment for all undisputed amounts contained in the invoice.

Sec. 6. Insurance. [Consult Risk Management.]

Sec. 7. Performance of Work by City. If the Consultant fails to perform the Work in accordance with the schedule referred to in section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Consultant notice of its intention. The Consultant shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 8. Exhibits. The following exhibits are made a part of this contract:

Exhibit A [Insert title of exhibit] containing [insert number] page(s).

Exhibit B [Insert title of exhibit] containing [insert number] page(s).

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 9. Termination for Convenience ("TFC"). (a) *Procedure.* Without limiting any party's right to terminate for breach, the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Consultant written notice that refers to this section. TFC shall be effective at the time indicated in the notice. The City Manager may terminate under this section without City Council action. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged

except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality shall remain in force. At the time of TFC or as soon afterwards as is practical, the Consultant shall give the City all Work, including partly completed Work. In case of TFC, the Consultant shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay the Consultant an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Consultant. Within 20 days after TFC, the City shall pay the Consultant a one hundred dollar TFC fee and for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Consultant shall not be entitled to any payment except as stated in this section because of TFC, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 10. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Byron E. Brady, PE
City of Durham Public Works Department
101 City Hall Plaza
Durham, NC 27701
The fax number is (919) 560-4316.

To the Consultant:

[Insert name and address]

The fax number is _____.

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Trade Secrets and Confidentiality. The request for proposals section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Consultant's responses to the RFP). This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Consultant under this contract. The word "Proposer" used in that section shall mean the "Consultant." Sec. 12. Indemnification. (a) To the maximum extent allowed by law, the Consultant shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Consultant or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Consultant shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) *Definitions*. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders

-- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Consultant (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Consultant under this contract. (e) Limitations of the Consultant's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Consultant to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 13. Miscellaneous

(a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way stop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Consultant shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Consultant and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Consultant's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Consultant the right to assign, it is agreed that the duties of the Consultant that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Consultant shall comply with all applicable law.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONSULTANTS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Consultant agrees as follows: (1) The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Consultant shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be

limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Consultant shall in all solicitations or advertisement for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Consultant shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Consultant's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Consultant ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Consultant shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Consultant shall comply with all applicable provisions of Chapter 26 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Consultant to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Consultant. Section 26-10(f) of that chapter provides, in part, "If the City Manager determines that the Consultant has failed to comply with the provisions of the Contract, the City Manager shall notify the Consultant in writing of the deficiencies. The Consultant shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Consultant's alleged violations of its obligations under Chapter 26 and not to the Consultant's alleged violations of other obligations.

(j) Prompt Payment to Subcontractors. Within 7 days of receipt by the Consultant of each payment from the City under this contract, the Consultant shall pay all subcontractors (which term includes subcontractors and suppliers) based on work completed or service provided under the subcontract. Should any payment to the subcontractor be delayed by more than 7 days after receipt of payment by the Consultant from the City under this contract, the Consultant shall pay the subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Consultant, but not against the City of Durham. If the City's Project Manager [*City staff – if your contract uses another title for "Project Manager," you would substitute it here and in the rest of this section. –RW*] determines that it is appropriate to enforce this subsection (a), the City of Durham may withhold the sums estimated by the Project Manager to be sufficient to pay this interest from progress or final payments to the Consultant. (b) Nothing in this section shall prevent the Consultant at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Consultant or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%. (c) The City's Project Manager may require, as a prerequisite to making progress or final payments, that the Consultant provide statements from any subcontractors designated by the Project Manager regarding the

status of their accounts with the Consultant. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

(k) No Third Party Rights Created. This contract is intended for the benefit of the City and the Consultant and not any other person.

(l) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(m) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

IN WITNESS WHEREOF, the City and the Consultant have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.
[signature and notarization sections to be inserted]



CITY OF DURHAM SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

PROFESSIONAL SERVICES FORMS

Revised 06/08



Mailing Address:

**101 City Hall Plaza
Durham, North Carolina 27701
Phone: 919-560-4180
Facsimile: 919-560-4513**

Street Address:

**302 East Pettigrew Street, C-180
Durham, North Carolina 27701**

The Department of Equal Opportunity/Equity Assurance
Good Things Are Happening In Durham

CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

Policy Statement

It is the policy of the City to provide equal opportunities for City contracting to small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination.

Goals

To increase the dollar value of all City contracts for goods and services awarded to small disadvantaged business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of socially and economically disadvantaged individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equal Opportunity/Equity Assurance Director shall establish project specific goals for each project or contract based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

Equal Business Opportunity Ordinance SDBE Participation Documentation

If applicable information is not submitted with your proposal, your proposal will be deemed non-responsive.

Declaration of Performance must be completed and submitted with your proposal.

SDBE Participation Documentation must be used to document participation of Small Disadvantaged Business Enterprise (SDBE) on Professional Services projects. All SDBEs must be certified by the City of Durham's Equal Opportunity/Equity Assurance Department prior to submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

Managerial Profile must be used to list the managerial persons in your workforce who will be participating in this project.

Equal Employment Opportunity Statement for your company must be completed and submitted with your proposal.

Employee Breakdown must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

Letter of Intent to Perform as a Sub-consultant/Subcontractor must be completed for SDBEs proposed to perform on a contract. This form must be submitted with the proposal.

Post Proposal Submission SDBE Deviation

Post proposal submission SDBE deviation participation documentation must be used to report and deviation from SDBE participation either prior to or subsequent to startup of the project. The Equal Opportunity/Equity Assurance Department must be notified if the proposed sub-consultant/subcontractor is unable to perform and for what reasons. Substitutions of sub-consultants/subcontractor, both prior to and after awarding of a contract, are subject to City approval.

SDBE Goals Not Met/Documentation of Good Faith Efforts

It is the responsibility of consultants/contractors to make good faith efforts. Good Faith Efforts means the sum total of efforts by a particular business to provide equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors. Whenever contract alternatives, amendments or extra work orders are made individually or in the aggregate, which increase the total value of the original contract, the consultant must make a good faith effort to increase SDBE participation such that the amounts subcontracted are consistent with the established goals.

SELECTION OF CONSULTANTS/CONTRACTORS FOR ARCHITECTURAL/ENGINEERING AND OTHER PROFESSIONAL SERVICES

Goal

The purpose is to provide Small Disadvantaged Businesses equal opportunities for participation on City of Durham contracts.

Definition of the Scope of the Selection Policy

The Equal Opportunity/Equity Assurance Director shall establish SDBE participation goals for each contract to be awarded by the City. Project specific goals for each project or contract will be based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

In addition to SDBE's specifically certified by the City and listed in a database maintained by the EO/EA Department, the City of Durham may consider a formal certification of another entity to determine whether an applicant meets requirements of the Equal Business Opportunity Program, provided that the City Manager or designee determines that the certification standards of such entity are comparable to those of the City. The City of Durham has determined that the following certifications are comparable to its own and may be used by bidders/proposers: North Carolina Department of Transportation (N.C. DOT), United States Small Business Administration (U.S. SBA) and Raleigh-Durham Airport Authority (RDU).

In lieu of SDBE's listed in its SDBE System, the City of Durham will accept women and minority firms certified by N.C. DOT, U.S. SBA and RDU as meeting its SDBE goal requirements provided the bidder/proposer submits evidence that the firm is currently certified by one of the stated entities at the time of bid/proposal. Failure to provide evidence of certification may disqualify the firm's participation for the purpose of meeting SDBE goals.

Any firm submitted in this manner will be contacted and urged to complete an abbreviated certification process with the City of Durham. For purposes of this document and associated forms, any reference to a "City Certified SDBE," an "SDBE certified by the City" or similar reference shall include reference to a qualified women or minority owned firm certified and approved in accordance with the above paragraphs, even where specific reference is made to the City SDBE database.

Small Disadvantaged Business Proposal Requirements

The prime consultant/contractor shall submit a proposal in accordance with the City of Durham's request for Proposal. In addition, the prime consultant/contractor must submit all required Professional Services SDBE Forms.

Selection Committee for Professional Services

A selection committee shall be established to be composed of the following: City Manager or a designated representative of this office; Director of Finance or a designated representative of this office; department head responsible for the project; City Engineer if engineering services are involved; the Equal Opportunity/Equity Assurance Director and Purchasing Manager. Other representatives shall be called upon as needed based on their areas of expertise.

The committee shall screen the proposals based on the following criteria:

1. Firms; interest in the project;
2. Current work in progress by firm;
3. Past experience with similar projects;
4. General proposal for carrying out the required work;
5. Designation of key personnel who will handle the project, with resume for each;
6. Proposed associate consultants/contractors, SDBE subconsultants;
7. Indication of capability for handling project;
8. Familiarity with the project;
9. Fees that have been charged for recent comparable projects;
10. References;
11. SDBE Participation; and
12. Documentation of Good Faith efforts.

After ranking the firms presenting proposals based on the above criteria, interviews will be conducted by the selection committee with the top ranked firms (3-5). The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council including the following:

1. Description and scope of the project;
2. Recommended firm;
3. Contract cost;
4. Time limits;
5. Basis for selection;
6. Source for funding;
7. Equal Business Opportunity Ordinance compliance; and
8. Recommendation that the contract be approved by the City Council.

Contract Award

A provision must be written in each contract with an architect or engineer requiring them to work with Equal Opportunity/Equity Assurance Department in creating and identifying separate work.

Project Evaluation

An evaluation shall be made of each contract after its completion to be used in consideration of future professional services contracts. The evaluation shall cover appropriate items from the check list for ranking applicants. A copy of the evaluation shall be given to the consultant, and any comment he/she cares to make shall be included in the files.

DECLARATION OF PERFORMANCE BY CONSULTANT/CONTRACTOR

Briefly address each of the following items:

1. A brief synopsis of the company and the products/services it provides:
2. Describe the normal procedure used on a bid of this type, giving the flow of purchase from the company to the ultimate purchaser:
3. List anyone outside of your company with whom you will contract on this bid:

The undersigned consultant/contractor certifies that: (check appropriate box)

- a) _____ It is the normal business practice of the consultant/contractor to perform all elements of the contract with its own workforce without the use of subcontractors/vendors; and
- b) _____ That the above documentation demonstrates this *firm's* capabilities to perform all elements of the contract with its own work force or without the use of subcontractors/vendors.
- c) _____ The vendor/contractor will use a subconsultant(s) in the fulfillment of this scope of work.

Date

Authorized Signature

**PARTICIPATION DOCUMENTATION
(TO BE COMPLETED BY PRIME CONSULTANT/CONTRACTOR ONLY)**

**Names of all firms
Project (including
prime and
subconsultants/sub-
Project
contractors)**

Location

**SDBE
Firm**

Yes/No

**Nature
of**

Participation

% of

Work

TOTAL _____

Name - Authorized Officer of Prime Consultant/Contractor Firm (Print/Type)

Signature - Authorized Officer of Prime Consultant/Contractor Firm

Date

Managerial Profile

Name of Firm: _____

Contact Person: _____

Title: _____

Address: _____

Telephone No.: _____

Date: _____

List the managerial persons in your work force who will be participating in this project, including name, position, and whether the individuals are minority or woman within the definition* of the City of Durham's Equal Business Opportunity Ordinance.

Managerial Employees

NAME	POSITION	SOCIALLY/ECONOMICALLY DISADVANTAGED* (YES/NO)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

* M-Minority(African American) W-Woman Other-H-Hispanic, AI-American Indian,
AS-Asian American, Handicapped

EQUAL EMPLOYMENT OPPORTUNITY STATEMENT
(You may submit your organization's EEO policy in lieu of this sheet)

Part A – Employee statistics for the primary location.

[illegible]

Part B – Employee statistics for the consolidated company. (See instructions for this form on whether this part is required.)

[illegible]

Letter of Intent to Perform as a Sub-Consultant

The undersigned intends to perform work in connection with the above project as a SDBE:

Minority (African American) • Woman • Hispanic
•
American Indian • Asian American • Handicapped
•

The SDBE status of the undersigned is certified by the City of Durham as identified by the attached copy of certification or the attached SDBE Contractor Identification List supplied by the EO/EA Department.

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>ITEMS</u>	<u>PROJECTED COMMENCEMENT DATE</u>	<u>PROJECTED COMPLETION DATE</u>

The undersigned will subcontract _____% of the dollar value of this contract to a SDBE subconsultant/subcontractor and/or non-SDBE subconsultant/subcontractor.

The undersigned will enter into a formal agreement in the amount of \$_____ for the above work with you, conditioned upon your execution of a contract with the City of Durham.

Name_____Title_____

Company_____Telephone_____

Address_____

Signature_____

REQUEST TO CHANGE SDBE PARTICIPATION

Project: _____

Name of bidder or consultant: _____

Name and title of representative bidder or consultant: _____

Address (including zip code): _____

Telephone number: _____ Fax number: _____

Email address: _____

Total amount of original contract, before any change orders or amendments: _____

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: _____

Dollar amount of changes proposed in this form: _____

The proposed change (*check one*) ☐ **increases** ☐ **decreases** the dollar amount of the bidder's/consultant's contract with the City.

Does the proposed change decrease the SDBE participation? (*check one*) ☐ **yes** ☐ **no**

If the answer is **yes**, complete the following:

BOX A. For the subcontract proposed to be changed (increased, reduced, or eliminated):

Name of subconsultant: _____

Goods and services to be provided before this proposed change: _____

Is it proposed to eliminate this subcontract? ☐ yes ☐ no

If the subcontract is to be increased or reduced, describe the nature of the change (*such as adding \$5,000 in environmental work and deleting \$7,000 in architectural*): _____

Dollar amount of this subcontract before this proposed change: _____

Dollar amount of this subcontract after this proposed change: _____

This subconsultant is (*check one*):

☐ 1. City-certified Black-owned SDBE

☐ 2. City-certified Women-owned SDBE

3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as

3(a) ☐ Black-owned SDBE

3(b) ☐ Women-owned SDBE

☐ 4. not a City-certified SDBE

BOX B. Proposed subcontracts other than the subcontract described in Box A above

Name of subcontractor for the new work: _____

Goods and services to be provided by this proposed subcontract: _____

Dollar amount proposed of this proposed subcontract: _____

This subcontractor is (*check one*):

☐ 1. City-certified Black-owned SDBE

☐ 2. City-certified women-owned SDBE

3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as

3(a) ☐ Black-owned SDBE

3(b) ☐ Women-owned SDBE

☐ 4. not a City-certified SDBE

Add additional sheets as necessary.

SDBE GOALS NOT HAVING BEEN MET. The following information must be presented by the consultant concerning good faith efforts taken.

It is the responsibility of consultants to make good faith efforts. Any act or omission by the City shall not relieve them of this responsibility. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors. The City Manager shall apply the following criteria, with due consideration of the quality, quantity, intensity and timeliness of efforts of consultants/contractors, in determining good faith efforts to engage SDBEs along with other criteria that the City Manager deems proper:

Name of Bidder:

*If you find it helpful, feel free to attach pages to explain your answers. **How many pages is your firm attaching to this questionnaire?** _____ (Don't count the 2 pages of this questionnaire.)*

If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.

1. SOLICITING SDBEs.

(a) Did your firm solicit, through all reasonable and available means, the interest of all SDBEs certified

(that is, in the City's database) in the scope of work of the contract? ☐ **yes** ☐ **no**

(b) In such soliciting, did your firm advertise? ☐ **yes** ☐ **no** Are you attaching copies to this

questionnaire, indicating the dates and names of newspaper or other publication for each ad if that

information is not already on the ads? ☐ **yes** ☐ **no**

(c) In such soliciting, did your firm send written (including electronic) notices or letters? Are you

attaching one or more sample notices or letters? ☐ **yes** ☐ **no**

(d) Did your firm attend the pre-bid conference? ☐ **yes** ☐ **no**

(e) Did your firm provide interested SDBEs with timely, adequate information about the plans, specifications, and requirements of the contract? ☐ **yes** ☐ **no**

(f) Did your firm follow up with SDBEs that showed interest? ☐ **yes** ☐ **no**

(g) With reference to the SDBEs that your firm notified of the type of work to be subcontracted, did

your firm tell them:

(i) the specific work your firm was considering for subcontracting? ☐ **yes** ☐ **no**

(ii) that their interest in the contract is being solicited? ☐ **yes** ☐ **no**

(iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? ☐ **yes** ☐ **no**

2. BREAKING DOWN THE WORK.

- (a) Did your firm select portions of the work to be performed by SDBEs in order to increase the likelihood that the goals would be reached? ☐ **yes** ☐ **no**
- (b) If **yes**, please describe the portions selected. **ANSWER:**

3. NEGOTIATION. In your answers to 3, you may omit information regarding SDBEs for which you are providing Form E-105.

(a) What are the names, addresses, and telephone numbers of SDBEs that you contacted? **ANSWER:**

(b) Describe the information that you provided to the SDBEs regarding the plans and specifications for the work selected for potential subcontracting. **ANSWER:**

(c) Why could your firm not reach agreements with the SDBEs that your firm made contact with? Be specific. **ANSWER:**

4. ASSISTANCE TO SDBEs ON BONDING, CREDIT, AND INSURANCE.

(a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance?

☐ **yes** ☐ **no** (Note: In most projects, the City has no such requirement for subcontractors.)

(b) If the answer to (a) is **yes**, did your firm make efforts to assist SDBEs to obtain bonds, lines of credit, or insurance? ☐ **yes** ☐ **no** If **yes**, describe your firm's efforts. **ANSWER:**

(c) Did your firm provide alternatives to bonding or insurance for potential subcontractors? ☐ **yes** ☐ **no** If **yes**, describe. **ANSWER:**

5. GOODS AND SERVICES. What efforts did your firm make to help interested SDBEs to obtain goods or services relevant to the proposed subcontracting work? **ANSWER:**

6. USING OTHER SERVICES.

(a) Did your firm use the services of the City to help solicit SDBEs for the work? ☐ **yes** ☐ **no**

Please explain. **ANSWER:**

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit SDBEs for the work? ☐ **yes** ☐ **no**
Please explain. **ANSWER:**

The next two pages are listings of SDBE Inspection Firms.

Name	Mailing Address	City	State	Zip code	Gender/ Race ID	Contact	Phones	Services	Licenses
BREE & Associates, Inc.	PO Box 675	Durham	NC	27702	M	Robert Lancaster	919-469-3330; fax919-469-3370; breeinc@bellsouth.net ; 919-696-3338	Construction Administration and Management; Cost Estimating; Claims; Scheduling; Planning; Inspections; Civil Engineering; Traffic Engineering and Transportation Planning, Studies & Data Collection; CEI; Design Support Activities; AutoCAD & Drafting	City of Durham Privilege License; NC Board of Examiners for Engineers & Surveyors Lic. #C-2125
Capstone Civil Group	PO Box 44434	Charlotte	NC	28215	M	Charles Brown	704-567-0769; fax704-567-0974; cbrown@capstonecivilgroup.eng.pro	Civil engineering; geotechnical Engineering, Constr. Mat. Testing	Engineering
Ed Aguirre & Associates, Inc.	4501 New Bern Avenue	Raleigh	NC	27610	H	Edward G. Aguirre	919-510-5969; fax919-510-5901; egaguirre@edaguirre.com	engineering geology; construction materials testing and inspection; environmental geology; groundwater assessment; site feasibility; Phase I Environmental Site Assessments (PHI ESA) for Real Estate Transactions; Phase II ESAs; Landfill Compliance Issues	NC Licensed Geologist

H. Richardson & Company, Inc.	5104 Sky Lane Drive	Durham	NC	27704	M	Henry Richardson	919-530-1900; fax 919-530-1770; jrichards54@nc.rr.com	General Contracting (Highway); Construction Inspection; Technical Assistance Provider to Engineers and Land Surveyors, such as: Field Testing , Data Collection ; traffic control ; erosion control ; asphalt or pavement repair; steel fabrication	General Contracting License #49668; Highway Construction: Limited
NFE Technologies, Inc.	117 International Drive	Morrisville	NC	27560	AS	Dr. Vinnie Goel	919-469-4800; fax919-319-8400; vgoel@nfetech.com	Geotechnical; Drilling; Inspection; Laboratory Materials Testing; Civil, Structural & Environmental Engineering and Design Services; General Construction and Management; Demolition and; Renovations; Information Technology and Computer Related Services	NC P.E. Certificate No. 18283; NC Engineer License C-1031
TriMat Materials Testing, Inc.	5908 Triangle Drive	Raleigh	NC	27617	W	Chris Bacchi	919-532-2211; fax919-532-2212; service@trimattes.com ; 291-7099	Construction Testing and Inspection Services	