



STATE OF MONTANA REQUEST FOR PROPOSAL (THIS IS NOT AN ORDER)

RFP Number:
#HWY- 309984-RP

RFP Title:
ASSESSING THE EXTENT AND DETERMINATES OF INDUCED GROWTH

RFP Due Date and Time:
MAY 3, 2011
3:00 pm, Local Time

Number of Pages: 48

ISSUING AGENCY INFORMATION

Procurement Officer:
RICHELE PARKHURST

Issue Date:
MARCH 29, 2011

PURCHASING SERVICES SECTION
MONTANA DEPARTMENT OF TRANSPORTATION
P.O. BOX 20437
BILLINGS, MT 59104-0437

Phone: (406) 657-0274
Fax: (406) 256-6487

TTY Users:
1-800-335-7592 or (406) 444-7696

Website: <http://vendor.mt.gov/>

INSTRUCTIONS TO OFFERORS

COMPLETE THE INFORMATION BELOW AND
RETURN THIS PAGE WITH YOUR SEALED
BID AND ANY REQUIRED DOCUMENTS TO:

#HWY-309984-RP
PURCHASING SERVICES SECTION
MONTANA DEPARTMENT OF TRANSPORTATION
2701 PROSPECT AVENUE
P.O. BOX 201001
HELENA, MT 59601-1001

Mark Face of Envelope/Package:

RFP Number: #HWY-309984-RP
RFP Response Due Date: MAY 3, 2011

SEALED PROPOSALS will be received and publicly
opened in the Administrative Division at 3:00 pm.

IMPORTANT: SEE STANDARD TERMS AND CONDITIONS

OFFERORS MUST COMPLETE THE FOLLOWING

Offeror Name/Address:

Authorized Offeror Signatory:

(Please print name and sign in ink)

Offeror Phone Number:

Offeror FAX Number:

Offeror Federal I.D. Number:

Offeror E-mail Address:

OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE

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INSTRUCTIONS TO OFFERORS

It is the responsibility of each offeror to:

Follow the format required in the RFP when preparing your proposal. Provide point-by-point responses to all sections in a clear and concise manner.

Provide complete answers/descriptions. Read and answer all questions and requirements. Don't assume the State or Evaluation Committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the State. The proposals are evaluated based solely on the information and materials provided in your responses.

Use the forms provided, i.e., cover page, certification forms, etc.

Submit your proposal on time. Note all the dates and times listed in the Schedule of Events and within the document, and be sure to submit all required items on time. Late proposals are never accepted.

The following items MUST be included in the proposal package to be considered responsive. Failure to include any of these items may result in a non-responsive determination.

Signed Cover Sheet

Signed Addenda (if appropriate)

Point-by-Point response to all sections and subsections (per Section 1.6.1.)

Response to Appendices A and B (per Section 1.6.1.)

Complete answers to all requirements of Sections 3, 4, and 5

Correctly executed State of Montana "Affidavit for Trade Secret Confidentiality" form if claiming information to be confidential or proprietary (per Section 2.2.3)

SCHEDULE OF EVENTS

<u>EVENT</u>	<u>DATE</u>
RFP Issue Date.....	3/29/11
Deadline for Receipt of Written Questions	4/12/11
Deadline for Posting of Written Answers to the State's Website	4/19/11
RFP Response Due Date	5/03/11
Review of Proposals Open to the Public..... (Trade Secret Information is not public, see Sec. 2.2.2)	5/06/11
Notification of Offeror Presentations/Discussions and/or Product Demonstrations.....	5/18/11
Offeror Interviews/Product Demonstrations	6/08/11
Date of Funding Approval (Based on RRC Authorization)	6/29/11
Intended Date for Contract Award	7/15/11

SECTION 1: PROJECT OVERVIEW AND INSTRUCTIONS

1.0. PROJECT OVERVIEW

The STATE OF MONTANA, Department of Transportation (hereinafter referred to as “the State”) is seeking a contractor to develop practical refinements to the State’s current analysis method for evaluating potential induced growth impacts associated with transportation projects. A more complete description of the services sought for this project is provided in Section 3.0, Scope of Project. Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein.

1.1. CONTRACT TERM

The contract term will be determined based on the offeror’s response to this RFP as described in Appendix B; Section 2.1., Contract Term.

1.2. SINGLE POINT OF CONTACT

Except at the direction in writing of Richele Parkhurst, the procurement officer in charge of the solicitation, from the date this Request for Proposal (RFP) is issued until an offeror is selected and the selection is announced by the procurement officer, **offerors are not allowed to communicate with any state employee or official regarding this procurement**. Any unauthorized contact may disqualify the offeror from further consideration. Contact information for the single point of contact is as follows:

Procurement Officer: Richele Parkhurst
Address: Purchasing Services Section
Montana Department of Transportation
424 Morey Street
PO Box 20437
Billings, Montana 59104-0437
Telephone Number: (406) 657-0274
Fax Number: (406) 256-6487
E-mail Address: rparkhurst@mt.gov

1.3. DEFINITION OF TERMS

- **“CONTRACTOR”**: Until a proposal is accepted by execution of the contract, a person responding to the RFP is an offeror. Once the contract is signed by MDT and the offeror, the offeror becomes the Contractor.
- **“EVALUATION COMMITTEE”** means the group of people who will be reviewing and evaluating the responses received for this RFP.
- **“MCA”**: Shall mean the Montana Code Annotated as now in effect or as hereafter amended.
- **“OFFEROR”** means the individual, organization, or corporation interested in providing services as stated in this RFP.
- **“PRINCIPAL INVESTIGATOR”** means that individual, representing the offeror, who is responsible for successful completion of the project, if a contract is awarded.
- **“REFERENCE QUESTIONNAIRE”** means a professional reference completed by clients for whom a similar contract has been awarded.
- **“RFP”** means the Request for Proposal process.

- **“RRC”** (Research Review Committee) means the committee that approves or rejects final project funding. The Technical Panel will present the top offeror’s proposal to the State’s RRC for final funding approval. The RRC meets at most once per month, on the last Wednesday of each month. In order to be placed on that month’s RRC agenda for final funding approval, at least two weeks prior to the scheduled RRC meeting, a proposal must be in final form, including the state and federal fiscal year budget breakdowns as described in Section 5.1 of this RFP, and must have a positive recommendation from the Technical Panel .
- **“STATE”** means the Montana Department of Transportation.
- **“TECHNICAL PANEL”** means the group of people who are assigned to oversee this research project. Technical Panel members will be members of the “Evaluation Committee”.

1.4. REQUIRED REVIEW

1.4.1. REVIEW RFP. Each offeror should review carefully the instructions, mandatory requirements, specifications, standard terms and conditions (Appendix A), and contract (Appendix B) set out in this RFP and promptly notify, in writing, the procurement officer identified above of any ambiguity, inconsistency, unduly restrictive specifications, or error which offeror discovers upon examination of this RFP. This should include any terms or requirements within the RFP that either preclude the offeror from responding to the RFP or add unnecessary cost.

This notification must be accompanied by an explanation and suggested modification and must be received by the deadline set forth below for receipt of written or e-mailed inquiries. The State will make any final determination of changes to the RFP.

1.4.2. FORM OF QUESTIONS. Offerors with questions, requiring clarification, or interpretation of any section within this RFP must address these questions in writing to the procurement officer on or before April 12, 2011. Each question must provide clear reference to the section, page, and item in question. Questions received after the deadline will not be considered.

1.4.3. STATE’S ANSWERS. By the deadline set forth in Section 1.4.2., the State will provide an official written answer by April 19, 2011 to all questions received. The State’s response will be by formal written addendum. Any other form for interpretation of, correction of, or change to this RFP will not be binding upon the State. By 5:00 p.m., Mountain Time, on the date listed in this section; any formal written addendum will be posted on the State’s website alongside the posting of the RFP at [HTTP://GSD.MT.GOV/OSBS/RESULTS.ASP?AGENCYID=TRANS1](http://GSD.MT.GOV/OSBS/RESULTS.ASP?AGENCYID=TRANS1).

1.4.4. ACKNOWLEDGMENT OF ADDENDA. For any addendum issued pursuant to Section 1.4.3., the offeror must sign and return the addendum with the offeror’s proposal.

1.5. GENERAL REQUIREMENTS

1.5.1. ACCEPTANCE OF STANDARD TERMS AND CONDITIONS/CONTRACT. By submitting a proposal in response to this RFP, offeror acknowledges an understanding of the RFP and agrees to acceptance of and compliance with the standard terms and conditions (Appendix A) and contract (Appendix B) as set out in Appendices A and B of this RFP. Much of the language included in the standard terms and conditions and contract reflects requirements of Montana and federal law.

1.5.2. EXCEPTIONS. Requests for additions or exceptions to the standard terms and conditions, contract terms, including waiver of any necessary licenses, or any added provisions must be submitted to the procurement officer by the date for receipt of written questions and must be accompanied by an explanation of why the exception or waiver is being sought and what specific effect it will have on the offeror's ability to respond to the RFP or perform the contract. Any material exception to the standard terms and conditions or contract language will be addressed in a formal written addendum issued for this RFP and will apply to all offerors submitting a proposal in response to this RFP. The State, in its sole discretion, will make any final determination of changes to the standard terms and conditions and/or contract.

1.5.3. CONTRACT NEGOTIATION. During contract negotiation, the State reserves the right to address with the highest-scoring offeror non-material requests for exceptions. If the proposal is revised during the proposal review, clarification, or negotiation stages, a revised proposal must be submitted electronically in PDF format within one (1) business day of request. All revisions to the proposal must be highlighted in an accompanying letter.

1.5.4. RESULTING CONTRACT. The resulting contract, attached as Appendices A and B, contains the contract terms and conditions, which will form the basis of the contract between the State and the highest-scoring offeror. The resulting contract shall include this RFP with appendices; any addenda; the offeror's proposal, including any amendments; a best and final offer; and the State's clarification of any questions raised by the offeror.

1.5.5. PRIME CONTRACTOR/SUBCONTRACTORS. If a contract is awarded, the highest-scoring offeror will be the prime contractor and shall be responsible, in tota, for all work of any subcontractor. All subcontractors, if any, must be listed in the proposal. The State reserves the right to approve all subcontractors. The Contractor shall be responsible to the State for the acts and omissions of all subcontractors and agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. Further, nothing contained within this document or any contract documents created as a result of any contract award derived from this RFP shall create any contractual relationship between any subcontractor and the State.

All subcontractors must be informed of and comply with all terms and conditions of the contract created as a result of this RFP.

1.5.6. OFFEROR'S SIGNATURE. Each proposal must be signed in ink by an individual legally authorized to bind the offeror. The offeror's signature on a proposal in response to this RFP guarantees that the offer has been made without acts or omissions prohibited by Title 2, Chapter 2, MCA (Montana Code Annotated); price fixing; restraint of trade; or effort to preclude the State from obtaining the best possible supply or service. On request, proof of authority of the person signing the RFP response must be furnished.

1.5.7. OFFER IN EFFECT FOR 180 DAYS. Unless the offeror or its key personnel becomes unavailable to complete a contract, a proposal may not be modified, withdrawn or canceled by the offeror for a 180-day period following the deadline for proposal submission as defined in the Schedule of Events, or receipt of best and final offer, if required, and offeror so agrees in submitting the proposal. Any inability to complete a contract shall be communicated in writing to the procurement officer as soon as reasonably practicable.

1.5.8. AUTHORITY TO CONTRACT. Proof of each signator's authority to bind a business entity shall be provided with the proposal. Sample forms are provided in Appendix C.

1.6. SUBMITTING A PROPOSAL

1.6.1. ORGANIZATION OF PROPOSAL. Each offeror must organize the proposal into sections that follow the format of this RFP, with tabs separating each section. A point-by-point response to all numbered sections, subsections, and appendices (Section 1.0 through Section 6.0 and Appendix A through Appendix E) is required. Except in response to Section 4.1., if no explanation or clarification is required in the offeror's response to a specific subsection, the offeror shall so indicate in the point-by-point response or utilize a blanket response for the entire section with the following statement:

“(Offeror's Name)” understands and will comply.

An offeror making the statement, such as “Refer to our literature...” or “Please see www...com” may be deemed non-responsive or receive point deductions. If making reference to materials located in another section of the proposal, specific page numbers and sections must be noted. The Evaluation Committee is not required to search through literature or another section of the proposal to find a response.

For further guidance on proposal preparation, see Research, Development, and Technology Transfer Guidelines for the Montana Department of Transportation (<http://www.mdt.mt.gov/research/docs/rmuguide.pdf>) Appendix F, which is incorporated herein by reference. The instructions in Appendix F should be followed, and information required by Appendix F should be placed in the proposal where the offeror determines it is most appropriate.

1.6.2. FAILURE TO COMPLY WITH INSTRUCTIONS. An offeror failing to comply with instructions may be subject to point deductions. The State may also choose not to evaluate, may deem non-responsive, and/or may disqualify from further consideration any proposal that does not follow this RFP format, is difficult to understand, is difficult to read, or is missing any requested information, including completed reference questionnaires.

1.6.3. MULTIPLE PROPOSALS. An offeror, at offeror's option, may submit multiple proposals, in which case each proposal shall be evaluated as a separate offering.

1.6.4. COPIES REQUIRED AND DEADLINE FOR RECEIPT OF PROPOSALS. For each proposal, the offeror must submit to the Purchasing Services Section two (2) original proposals and 5 copies. Each proposal must be sealed and labeled on the outside of the package to indicate clearly that it is in response to RFP #HWY-309984-RP. Each proposal package must include a copy of the proposal on CD in PDF format. *Proposals must be received at the Purchasing Services Section, Administrative Division prior to 3:00 pm, Mountain Time, May 3, 2011.* No facsimile or email response sent directly to the State will be accepted; however, facsimile or email responses sent to a 3rd party will be accepted when printed and delivered to the State in a properly addressed, sealed envelope.

1.6.5. LATE PROPOSALS. *Regardless of cause, late proposals will not be accepted and will be disqualified automatically from further consideration.* It shall be the offeror's sole risk to assure delivery at the designated office by the designated time. Late or disqualified proposals will not be opened and will be destroyed.

1.6.6. ADDRESSING OF PROPOSALS. Proposals **MUST** be submitted in a sealed package and marked as shown below:

#HWY-309984-RP
Purchasing Services Section
Montana Department of Transportation
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59601

Proposals that are not submitted in a sealed package, with the Request for Proposal Number clearly labeled on the outside WILL BE DISQUALIFIED.

1.7. COST OF PREPARING A PROPOSAL

1.7.1. STATE NOT RESPONSIBLE FOR PREPARATION COSTS. All costs for developing and delivering a proposal responsive to this RFP, and all costs for any presentation of the proposal as requested by the State are entirely the responsibility of the offeror. The State is not liable for any expense incurred by the offeror in the preparation and presentation of the proposal or for any other costs incurred by the offeror prior to execution of a contract.

1.7.2. ALL TIMELY SUBMITTED MATERIALS BECOME STATE PROPERTY. All materials submitted in response to this RFP become the property of the State.

SECTION 2: RFP STANDARD INFORMATION

2.0. AUTHORITY

This RFP is issued under the authority of Section 18-4-304, MCA (Montana Code Annotated) and ARM 2.5.602 (Administrative Rules of Montana). The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. No evaluation criteria, other than as outlined in the RFP, will be used.

2.1. OFFEROR COMPETITION

The State encourages free and open competition among offerors. Whenever possible and consistent with the State's need to procure technically sound, cost-effective services and supplies, the State will design specifications, proposal requests, and conditions to accomplish this objective.

2.2. RECEIPT OF PROPOSALS AND PUBLIC INSPECTION

2.2.1. PUBLIC INFORMATION. With the exceptions listed in this section, all information received in response to this RFP, including copyrighted material, is deemed public information and will be made available for public viewing and copying shortly after the time for receipt of proposals has passed. The party requesting copies is liable for the cost of their production.

2.2.2. EXCEPTIONS. Unless prior written consent to disclosure has been given by the offeror, the following are not public information : (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, which the offeror has marked, separated, and documented; (2) matters involving individual safety as determined by the State; (3) any company financial information requested by the State to determine offeror's responsibility as set out in Section 18-4-308, MCA, ; and (4) other constitutional protections. See 18-4-304, MCA.

2.2.3. PROCUREMENT OFFICER REVIEW OF PROPOSALS. Upon opening the proposals received in response to this RFP, the procurement officer will review the proposals and separate out and retain in a secure location any information that meets the referenced exceptions in Section 2.2.2 above, providing the following conditions have been met:

- Confidential information is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the budget section.
- An affidavit from an offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the General Services Division's website at: <http://gsd.mt.gov/procurement/forms.asp> or by contacting the procurement officer.

Information separated out under this process will be available for review only by the procurement officer, the Evaluation Committee members, and limited other designees. In the event of a "right to know" (open records) request, the offeror claiming confidentiality shall pay all legal costs and fees associated with defending confidentiality.

The claim of a trade secret must be reasonable. If materials or information that is not reasonably considered a "trade secret" is included in a request for the trade secret exception, the proposal will be rejected as non-responsive and will not be considered. In such cases, an offeror will not be given an opportunity to revise the proposal.

2.3. CLASSIFICATION AND EVALUATION OF PROPOSALS

2.3.1. INITIAL CLASSIFICATION OF PROPOSALS AS RESPONSIVE OR NON-RESPONSIVE.

Initially, all proposals will be classified as either “responsive” or “non-responsive,” in accordance with ARM 2.5.602(8). Proposals may be found non-responsive at any time during the procurement process if any of the required information is not provided; the proposal budget is found to be excessive or inadequate as measured by criteria stated in the RFP; or the proposal is not within the plans and specifications described and required in the RFP. If a proposal is found to be non-responsive, it will not be considered further.

2.3.2. DETERMINATION OF RESPONSIBILITY. The procurement officer will determine whether an offeror has met the standards of responsibility in accordance with ARM 2.5.407. Such a determination may be made at any time during the evaluation process and through contract negotiation if information surfaces that could result in a determination of non-responsibility. If an offeror is found to be non-responsible, the determination must be in writing, be made a part of the procurement file, and be mailed to the affected offeror.

2.3.3. EVALUATION OF PROPOSALS. The Evaluation Committee will evaluate the remaining proposals and recommend either (a) to award the contract to the highest-scoring offeror, or (b) to seek discussion/negotiation or a best and final offer in order to determine the highest-scoring offeror. All responsive proposals will be evaluated based on stated evaluation criteria. In scoring against stated criteria, the State may consider such factors as accepted industry standards and a comparative evaluation of all other qualified proposals in terms of differing budget, quality, and contractual factors. These scores will be used to determine the offering that is most advantageous to the State. If the Evaluation Committee meets to deliberate and evaluate the proposals, the public may attend and observe the Evaluation Committee deliberations.

2.3.4. COMPLETENESS OF PROPOSALS. Selection and award will be based on the offeror’s proposal and other items outlined in this RFP. Unless specifically requested by the State, submitted proposals may not include references to information located elsewhere, such as Internet websites or libraries. Information or materials presented by an offeror outside of the formal response, subsequent discussion/negotiation, or a “best and final offer” will not be considered, will have no bearing on any award, and may result in the proposal being disqualified from further consideration.

2.3.5. OPPORTUNITY FOR DISCUSSION AND/OR ORAL PRESENTATION/PRODUCT DEMONSTRATION. After receipt of all proposals and prior to the determination of the award, should clarification be necessary, the State may initiate discussions with one or more offerors. An offeror may be required to make an oral presentation/discussion and/or product demonstration to clarify the offeror’s proposal or to define further the offer. In any case, offerors should be prepared to send to Helena, Montana, qualified personnel to discuss technical and contractual aspects of the proposal. Oral presentations/discussions and product demonstrations, if requested, shall be at the offeror’s expense.

Oral Presentations/Discussions, if required, will be evaluated and will constitute up to an additional 100 points. At the sole discretion of the State, interviews may be offered to the offerors who have scored the most points through the RFP evaluation process.

2.3.6. BEST AND FINAL OFFER. If additional information is required to make a final decision, the State, in its sole discretion, may request a “best and final offer” from one or more offerors. Offerors may be contacted asking that they submit their “best and final offer,” which must include any and all discussed and/or negotiated changes. A “best and final offer” request may be based solely on budget.

2.3.7. EVALUATOR/EVALUATION COMMITTEE RECOMMENDATION FOR CONTRACT AWARD. The contract shall be awarded to the offeror that achieves the highest score. The Evaluation Committee will provide to the procurement officer a written recommendation for contract award, which shall contain the scores, justification, and rationale for its decision. Before concurring in the Evaluation Committee’s recommendation, the procurement officer will review the recommendation to ensure its compliance with the RFP process and criteria.

2.3.8. REQUEST FOR DOCUMENTS NOTICE. Upon concurrence with the Evaluation Committee's recommendation, the procurement officer will issue to the chosen offeror a "Request for Documents Notice" to obtain the required documents/information, such as insurance documents, contract performance security, an electronic copy of any requested material and including a corporate resolution or similar documentation for any other business entity. Receipt of the "Request for Documents Notice" does not constitute a contract and **no work may begin until a contract is signed by all parties**. The procurement officer will notify all other offerors of the State's selection.

2.3.9. CONTRACT EXECUTION. Upon receipt of all required materials requested in the "Request for Documents Notice," a formal contract will be provided by letter. If the executed contract is not received by the procurement officer within ten (10) business days of the date on the letter, the State may move to the next ranked offeror, or in its sole discretion, cancel the RFP. Work under the contract may not begin until the contract is fully executed by all parties.

2.4. STATE'S RIGHTS RESERVED

While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State to award and execute a contract. Upon a determination that such action would be in its best interest, the State, in its sole discretion, may:

- cancel or terminate this RFP (18-4-307, MCA);
- reject any or all proposals received in response to this RFP (ARM 2.5.602);
- waive any undesirable, inconsequential, or inconsistent provisions of this RFP which would not have significant impact on any proposal (ARM 2.5.505);
- not award if it is in the best interest of the State not to proceed with contract execution (ARM 2.5.602); or
- terminate any contract if the State determines adequate state funds are not available.

SECTION 3: SCOPE OF PROJECT

3.0. PURPOSE AND BACKGROUND

In order to satisfy requirements of the National and Montana Environmental Policy Acts (NEPA and MEPA), State environmental documents must consider potential direct, indirect, and cumulative impacts of a proposed transportation project. Direct impacts are relatively straightforward to assess. They are directly caused by the action and occur at the same time and place. Indirect effects, on the other hand, are more complex to assess. The NEPA regulations define indirect effects at 40 CFR 1508.8(b) as, "Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." Evaluating the potential for induced growth associated with a proposed State transportation project is a complex proposition without a clearly delineated cause-and-effect relationship.

Currently, the State does not have a defined, uniform process that is specific to Montana for assessing induced growth. The State is sponsoring this research study in order to identify Montana-specific criteria that may be used as indicators of potential for induced growth, and to develop a corresponding assessment methodology to evaluate whether growth is likely to occur in response to a proposed transportation project, and if so, where the growth will likely occur and to what extent. Specifically, reasonably foreseeable changes to land use patterns, population density, and growth rates (physical and economic) resulting from a proposed project need to be assessed.

If this project results in a phased effort, the State may elect to either continue with a recommended next phase, discontinue the project, or choose to solicit another offeror for this work.

3.1. SCOPE

A business case for this research project needs to be included in the proposal. It should describe how the results of this project provide value and benefit to the State. It should address such items as: will the problem continue unless research is done; can or should the research be postponed to another year; what real world costs are associated with the problem; does future State activity depend upon this research; what savings in money or time might result from the research; what improvements could be made from the research (safety, efficiency, services); would the research be completed prior to a major implementation (timeliness); and who would benefit from this research project. Listed below are desired possible expectations for this research project.

3.1.1. RESEARCH EXPECTATIONS. Improved project assessment methodologies/tools are expected to result in time and cost savings due to process improvement, increased legal defensibility, improved resource/regulatory agency coordination, and enhanced public disclosure.

3.1.1.1. Process Improvements- Process refinement of current State practices is expected to increase efficiency and effectiveness.

3.1.1.2. Legal Defensibility-In order to withstand legal challenge, the State must be knowledgeable in the current methods used to analyze induced growth, as well as any deficiencies that have been identified in terms of litigation.

3.1.1.3. Resource/Regulatory Agency Involvement- By involving resource/regulatory agencies in the development of specific criteria and methodologies applicable to Montana for assessing induced growth, the review of future environmental documents should be streamlined, resulting in time and cost savings, as well as improved interagency interaction.

3.1.1.4. Public Involvement- Improved analysis and projections regarding potential for induced growth will aid in the State's efforts to provide full disclosure of potential impacts to the public and other stakeholders.

The ultimate goal of this research project is to develop practical refinements to the State's current analysis method for evaluating potential induced growth impacts associated with transportation projects. This research effort will include a synthesis of relevant case law in order to identify deficiencies related to induced growth assessments, as well as identification and evaluation of other state and federal practices currently utilized to predict and assess the potential for induced growth and its associated impacts. Identified state and federal practices should be evaluated for conformance with relevant case law and appropriateness to Montana. Consultation and communication with various resource/regulatory agencies will also be necessary in order to identify potential concerns with and/or suggestions for assessing potential induced growth and its impacts and to aid in the development of a comprehensive tool that incorporates stakeholder input.

3.1.2. THE OBJECTIVES FOR THIS RESEARCH PROJECT ARE TO:

3.1.2.1. Develop an assessment methodology/tool that can be used to evaluate the potential for induced growth impacts as a result of future transportation projects. This assessment methodology should be legally defensible and should include Montana-specific criteria for use as indicators to predict the likelihood of induced growth occurring and the location. Specifically, the proposed methodology should address reasonably foreseeable changes to land use patterns, population density, and growth rates (physical and economic) resulting from a proposed project. The assessment methodology should be tiered to address the level of environmental documentation required, the complexity of the proposed project, and project location (graduated to address urban, fringe, and rural settings, as well as the geographical location within Montana).

3.1.2.2. Obtain regulatory/resource agency support of the proposed methodology by seeking input during the development process.

3.1.2.3. Develop an adaptive management strategy/plan for the proposed induced growth impact analysis methods.

3.2. TASKS

The Contractor may consider these tasks or propose others of similar effect to meet the project objectives:

3.2.1. Research and review relevant NEPA and MEPA case law in order to identify deficiencies related to induced growth assessments.

3.2.2. Complete a literature review of policies, regulations, and practices on assessing induced growth applicable to transportation projects.

3.2.3. Review current State policies and practices for assessing induce growth.

3.2.4. Identify and evaluate other state and Federal agency policies, regulations, and practices for assessing induced growth.

3.2.5. Develop criteria to be used for evaluation that will be reviewed concurrently by the technical panel before finalization.

3.2.6. Review Montana state statutes regarding land use.

3.2.7. Identify Montana-specific criteria and applicable methodologies/tools that can be used to predict and analyze induced growth. Possible criteria may or may not include such factors as current land use, zoning, access, availability of water/sewer, employment opportunities, plat approvals for subdivisions, etc. In consultation with the State, coordinate and consult with various regulatory/resource agencies (e.g., USFS, USFWS, USACOE, DEQ, DNRC, etc.) throughout the development process to ensure identified criteria are appropriate and defensible.

Note: The instrument (survey, interview questions, etc.) and the specific contact list will need to be reviewed and approved in advance by the project technical panel.

3.2.8. Develop an adaptive management strategy/plan to ensure the recommended methodology/tool remains valid for future projects.

3.3. MEETINGS AND DELIVERABLES

3.3.1. For each item in Sections 3.3.3. through 3.3.10., it is expected that the proposal will state the offeror's plans, proposed project budget, and direct costs. After the contract is awarded, if the State, in its sole discretion, deems unnecessary any of these items, the cost of said item will be deducted from the project budget.

3.3.2. Time is of the essence; the proposal must include realistic timeframes for completing each task and deliverable, and the project as a whole. After the contract is awarded, the Contractor will exhibit due diligence in adhering to the proposed schedule.

3.3.3. Once the contract is executed, the Contractor's principal investigator for this project shall meet in Helena with the technical panel members and other concerned individuals to review and fine-tune the current scope and timeline. Two weeks prior to this meeting, with input from the State's Research Project Manager and Technical Panel Chair, the Contractor will prepare and submit to the State the agenda and meeting materials. Within two weeks after the meeting, the Contractor will submit the minutes of the meeting.

3.3.4. Based on the complexity of the project, interim meetings may be proposed. Offerors will add interim meetings to their proposals, as appropriate, based on the research approach and complexity of the project. Two weeks prior to any interims meetings, with input from the State's Research Project Manager and Technical Panel Chair, the Contractor will prepare and submit to the State the agenda and meeting materials. Within two weeks after the meeting, the Contractor will submit minutes of the meeting.

3.3.5. A final meeting in Helena is required to present formally the finished product to the State and interested individuals. Two weeks prior to this final presentation, the Contractor will prepare and submit to the State any meeting materials that will facilitate understanding of the presentation.

3.3.5. Progress reports must be submitted to the State monthly.

3.3.6. Task reports will be submitted within one month following the completion of each task, as appropriate.

3.3.7. Based on the complexity of the project, other interim reports may be proposed. Offerors will add interim reports to their proposals, as appropriate, based on the research approach and complexity of the project.

3.3.8. A Desk manual, with support documentation, detailing the proposed induced growth assessment methodology and adaptive management strategy must be submitted along with the final report. It should include a minimum of:

3.3.8.1. A description of the criteria and methodology to assess induced growth impacts. Specific, tiered directions should be provided so that the user can complete an induced growth assessment.

3.3.8.2. An adaptive management strategy to evaluate and tailor the recommended methodology as necessary in the future.

3.3.8.3. A compilation of the research efforts conducted to develop the methodology/tool, including, but not limited to the deliverables required above.

3.3.9. A final report must be submitted as described in Appendix B, Contract Section 3.1.

3.3.10. A project summary report must be submitted. The Contractor will only provide the text and graphics for the project summary report; the State's Research staff will incorporate the Contractor's text and graphics into the appropriate format. Sections to be included in this summary report are:

- ★ introduction,
- ★ what we did,
- ★ what we found, and
- ★ what the researchers recommend.

An example project summary report can be found at:

http://www.mdt.mt.gov/research/docs/reconfig/project_summary.pdf.

3.3.11. All products from this project are considered draft until reviewed and accepted in writing by the State. All reports submitted by the Contractor to the State are to be delivered in both MS Word and Adobe PDF electronic formats.

3.3.12. Products are expected to be of exceptional quality. Draft deliverables are the research team's vision of the complete and final deliverables. All draft deliverables must be spell checked and reviewed by a person. All proposals must address deliverable quality and how quality will be guaranteed (i.e., use of editing staff and/or peer reviewer).

3.3.13. All reports should be prepared as described in MDT Research Programs Report Requirements (http://www.mdt.mt.gov/research/docs/report_guidelines.pdf) and in Section 6.1, Project Level Reporting, of the March 2011 Research, Development, and Technology Transfer Guidelines for the Montana Department of Transportation (<http://mdtinfo/research/docs/rmuguide.pdf>).

3.3.14. Ongoing communication between the research team and State staff and project QA/QC are critical to the success of the project. The proposal must include a description of the steps the research team will take to ensure QA/QC and regular communication occurs with the State's Research Programs staff and the Technical Panel throughout the project.

3.3.15. If test methods are to be developed and proposed as national standards, the order of submittal shall be first to American Association of State Highway and Transportation Officials (AASHTO), in cooperation with the State. If the test method or specification is not adopted through the AASHTO process, the Contractor will be free to submit to American Society for Testing and Materials (ASTM) or other national standard organizations.

SECTION 4: OFFEROR QUALIFICATIONS

4.0. STATE'S RIGHT TO INVESTIGATE AND REJECT

The State may make such investigations as deemed necessary to determine the ability of the offeror to provide the supplies and/or perform the services specified. The State reserves the right to reject any proposal if the evidence submitted by, or investigation of the offeror fails to satisfy the State that the offeror is qualified to carry out the obligations of the contract. *This includes the State's ability to reject the proposal based on negative references.*

4.1. OFFEROR QUALIFICATIONS/INFORMATIONAL REQUIREMENTS

In order for the State to determine the offeror's capabilities to provide the supplies and/or perform the services specified in Section 3.0 above, the offeror must respond to the following requests for information regarding its ability to meet the State's requirements. **THE RESPONSE, "(OFFEROR'S NAME) UNDERSTANDS AND WILL COMPLY," IS NOT APPROPRIATE FOR THIS SECTION.**

4.1.1. REFERENCES. For the offeror and each subcontractor, offeror shall provide a minimum of three references, validating the ability to perform the type of services required in this RFP. Note: Since reference questions are based on a contractual relationship, the optimal reference is one that has participated in a contractual relationship with the offeror and/or subcontractor. The references may include governments or universities to which the offeror and/or subcontractor successfully has provided services of the type referenced in this RFP. All references must have comprehensive knowledge about the services provided. References should be for services provided within the last 5 years. All reference questionnaires must be completed using "SurveyMonkey" link: <http://www.surveymonkey.com/s/CBS3Q88>. The offeror must facilitate the reference process by providing to each person giving a reference for the offeror and each subcontractor:

- This link: <http://www.surveymonkey.com/s/CBS3Q88>
- The identity of the offeror
- The identity of the offeror's employees who will perform work on the project
- The identity of the each proposed subcontractor
- The identity of the employees who will perform work on the project on behalf of each subcontractor

The questionnaires must be completed by the RFP due date and time. The questionnaire link will be closed at that date and time. No points for references will be awarded if the questionnaires are not received. It is the offeror's responsibility to ensure timely completion of questionnaires.

The State reserves the right to verify the validity of references and any reference information it receives. These references may be contacted to verify offeror's ability to perform the contract. The State reserves the right to use any information or additional references deemed necessary to establish the ability of the offeror to perform the conditions of the contract. Negative references may be grounds for proposal disqualification. If multiple employees of any entity such as a state or federal department of transportation are used as references, they will be considered as one reference.

Appendix D contains the questionnaire, and Appendix E contains a sample e-mail to potential references.

If there are problems with the questionnaire link, questionnaire, or an alternate format is needed, offeror should contact in writing the procurement officer, referencing RFP # HWY-309984-RP.

4.1.2. RESUMES/COMPANY PROFILE AND EXPERIENCE. Offeror shall specify how long and under what name(s) the offeror has been in the business of providing services similar to those sought in this RFP. For all key personnel who will be involved with any aspects of the contract, offeror should provide a complete description of any relevant past projects, including qualifications, work experience, education, skills, etc., which emphasizes previous experience, Offeror shall provide an example of a final report in either electronic (preferred), such as MSWord format, PDF format, or hardcopy (submit the same number of copies as indicated in Section 1.6.4.). This final report example must be authored by the same person(s) who will be responsible for authoring the final report for the project.

4.1.3. METHOD OF PROVIDING SERVICES. To convincingly demonstrate to the State what the offeror intends to do, offeror should provide and describe:

- 4.1.3.1. a work plan;
- 4.1.3.2. the methods to be used;
- 4.1.3.3. the timeframes necessary to accomplish the work; and
- 4.1.3.4. how the work will be accomplished to meet the contract requirements as more specifically detailed in Section 3.0.

4.1.4. Offeror must prove that sufficient resources are available to complete this project. This should be done by describing for all key project personnel the present and predicted workload, including this project through the duration of this project.

SECTION 5: COST PROPOSAL

5.0. SUBMITTAL OF PROPOSED BUDGET

The proposed budget must be submitted in a separate, sealed envelope.

For all services identified in this RFP, the proposed budget must include a breakdown of all costs for each task, item and deliverable. The proposed budget must be itemized, including, at a minimum:

- the cost for each task and deliverable,
- the number of hours of each staff person assigned to the project,
- the hourly rates for each staff person,
- the fringe benefit rates for each staff person,
- the overhead rate (proof of federally audited rate should be provided); and
- all other direct and indirect costs, including profit. .

The proposed budget must include a total project cost. Payment is based on cost reimbursement up to the total project cost. Within one day of request, but before final funding is approved, the successful offeror shall submit a project budget, for the duration of the project, with a breakdown by each individual state (July 1-June 30) and federal (October 1-September 30) fiscal year. Even if this fiscal year breakdown was provided in the proposal, depending on the time it takes to review proposals, within one day of request, it may be necessary for the successful offeror to revise the breakdown.

5.1. PROJECT FUNDING

The State has no “set” funding for this project. The funding will be based upon the offeror’s budget necessary to complete the project. Accordingly, it is essential that the budget be based on the offeror’s understanding and approach to the project, experience, staff assigned to the project, and the time that it will take the offeror to complete the project.

5.2. BUDGET REVISIONS

If at any time during the project, the proposed state and federal fiscal year expenditures, as described in Section 5.1., change, revised estimated expenditures for each state and federal fiscal year for the duration of the project must be provided.

SECTION 6: EVALUATION CRITERIA

6.0. EVALUATION CRITERIA

The evaluation committee will review and evaluate the proposals according to the following criteria based on a total of 250 points.

The **references, resumes/company profile and experience, ability to meet supply specifications, and method of providing services** portions of the offer will be evaluated based on the following Scoring Guide.

SCORING GUIDE

In awarding points to the evaluation criteria, the Evaluation Committee will consider the following guidelines:

Superior Response (90-100%): A superior response is highly comprehensive and excellent meeting all of the requirements of the RFP. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency.

Good Response (75-89%): A good response meets all the requirements of the RFP and demonstrates in a clear and concise manner a thorough knowledge and understanding of the project, with no deficiencies noted.

Fair Response (60-74%): A fair response minimally meets most requirements set forth in the RFP. The offeror demonstrates some ability to comply with guidelines and requirements of the project, but knowledge of the subject matter is limited.

Failed Response (0-59%): A failed response does not meet the requirements set forth in the RFP. The offeror has not demonstrated knowledge of the subject matter or adequate resources or abilities to complete the project.

References		50 points possible
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Category	Section of RFP	Point Value
A. References Included with Offeror's Response	4.1.1.	50

Resumes/Company Profile and Experience		75 points possible
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Category	Section of RFP	Point Value
A. Years of Experience, Applicability of Experience with Private/Public Sector, Staff and Company Qualifications	4.1.2.	75

Method of Providing Services		125 points possible
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Category	Section of RFP	Point Value
A. Methods, Work Plan, Reporting Methods, Work Load	3.0., 4.1.3.	125

APPENDIX A: STANDARD TERMS AND CONDITIONS

By submitting a proposal the offeror agrees to acceptance of the following Standard Terms and conditions, which are incorporated into the contract by reference.

ACCEPTANCE/REJECTION OF PROPOSALS: The State reserves the right to accept or reject any proposal, wholly or in part, and to make awards in any manner deemed in the best interest of the State.

ALTERATION OF RFP DOCUMENT: Unless an exception has been adopted pursuant to Section 1.5.2. in the RFP, if there are inconsistencies or contradictions between language contained in the State's RFP document and an offeror's response, the language contained in the State's original RFP document will control. At the State's sole discretion, manipulation and/or alteration of RFP document language may result in the offeror's disqualification and possible debarment.

AUTHORITY: The contract is issued in accordance with Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

CONFORMANCE WITH CONTRACT: Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense.

DISABILITY ACCOMMODATIONS: The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to the procurement officer or the State's Civil Rights Bureau. Persons seeking accommodation should provide as much advance notice as possible.

FAILURE TO HONOR PROPOSAL: If an offeror to whom a contract is awarded refuses to accept the award or fails to deliver in accordance with the contract terms and conditions, the State may, in its sole discretion, take action to recover its damages and/or suspend that offeror for a period of time from entering into any contracts with the State.

REGISTRATION WITH THE SECRETARY OF STATE: Any entity awarded a contract must register with the Secretary of State; this includes business entities that are formed pursuant to the laws of another state or country. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov/>

SEVERABILITY CLAUSE: A declaration by any court, or any other binding legal authority, that any provision of the contract is illegal or void shall not affect the legality and enforceability of any other provision of the contract. This exception to severability shall not apply to provisions that are mutually dependent, as defined by 28-1-404, MCA.

SHIPPING: Unless the contract specifies otherwise, all shipping is prepaid by the Contractor, F.O.B. Destination.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes. The State's Federal Employer Identification # is 81-0302402.

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, subcontractors, employees of subcontractors, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA.) For more information concerning non-visual access standards, contact the State procurement officer.

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE AND CHOICE OF LAW: This solicitation is governed by the laws of Montana, as now in existence or hereafter amended. The parties agree that any litigation concerning the RFP or RFP response must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

WARRANTIES: The Contractor warrants that work product and/or services will conform to the specifications requested, will be fit and sufficient for the purpose manufactured, will be of good material and workmanship and free from defect. Unless otherwise specified by the RFP, work product components must be new and unused and of the latest model or manufacture. They shall be equal in quality and performance to those indicated in the RFP. Descriptions and specifications used in the RFP are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Non-conforming work product or services will be rejected.

WRITTEN or IN WRITING: Whenever an action is required to be written or in writing, email directed to the procurement officer shall satisfy the requirement.

APPENDIX B: CONTRACT

- 1.0 Parties
- 2.0 Effective Date, Duration and Renewal
- 3.0 Services and/or Supplies
- 4.0 Consideration/Payment
- 5.0 Access and Retention of Records
- 6.0 Assignment, Transfer and Subcontracting
- 7.0 Hold Harmless/Indemnification
- 8.0 Required Insurance
- 9.0 Force Majeure
- 10.0 Compliance with Workers' Compensation Act
- 11.0 Independent Contractor
- 12.0 Compliance with Laws
- 13.0 Non-Discrimination Notice
- 14.0 Federal Aid Requirements
- 15.0 Intellectual Property
- 16.0 Contract Termination
- 17.0 Liaison and Service of Notices
- 18.0 Meetings
- 19.0 Contractor Performance Assessments
- 20.0 Transition Assistance
- 21.0 Choice of Law and Venue
- 22.0 Scope, Amendment and Interpretation
- 23.0 Execution

CONTRACT # _____

1.0. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana, Department of Transportation (hereinafter referred to as “the State”), whose address and phone number are 2701 Prospect Avenue, Helena, MT 59620, (406) **PHONE #** and **CONTRACTOR NAME**, (hereinafter referred to as the “Contractor”), whose nine digit Federal ID Number, address and phone number are **TAX ID, ADDRESS** and **PHONE NUMBER**.

IN CONSIDERATION OF THE MUTUAL BENEFITS HEREIN OBTAINED, THE PARTIES AGREE AS FOLLOWS:

2.0. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1. Contract Term. This contract shall take effect on **START DATE, 20YEAR**. The Contractor will provide the State a draft final report and draft project summary report no later than the times and dates indicated in Section 3.1. below. After the Contractor has provided the State with these draft reports, the State internal review process will be in effect. Once the State has accepted the final report and project summary report, the Contractor and State, upon mutual agreement, will schedule the final presentation conference to be held within three (3) months of such acceptance. The completion of the final presentation will formally end the contract. Pursuant to 18-4-313, MCA, and the terms contained herein, this contract may be terminated earlier. In the event the Contractor requests a contract extension, approval, at the State’s option, may be contingent upon submittal of the work product completed to date.

3.0. SERVICES AND/OR SUPPLIES

For the total consideration of \$_____, Contractor agrees to develop practical refinements to the State’s current analysis method for evaluating potential induced growth impacts associated with transportation projects.

Before any changes in key project personnel are made, the State must be advised and must approve said changes. In some cases the State may require the Contractor, out of the contractor’s project budget, to subcontract with the key project personnel until the State is satisfied that the change in personnel will not jeopardize the project.

3.1. REPORTS. Progress (monthly and, task), other interim (as detailed in the proposal), and final reports will be prepared by the Contractor and submitted to the State to document work progress and to record project findings, conclusions, developments and results, as follows:

3.1.1. Monthly progress reports will be prepared and submitted electronically to the State by 12:00 pm (Mountain Time) on or before the 15th of the month following the month which the progress report covers. The second draft monthly progress reports will be submitted within two weeks following receipt of the State’s comments on the first draft reports. For all future revisions, the monthly progress reports will be submitted no later than one week following receipt of the State’s comments.

Monthly progress reports will, at a minimum, include the following information: discussion of each of the major tasks outlined in the work plan and whether they have been completed or are still in progress; planned and actual time schedule for each of the tasks, including the overall percent complete, using the expended versus planned budget; discussion of financial, staff, equipment and technical problems as they affect the individual tasks, as well as their resolution or attempts at resolution; discussion of major accomplishments or discoveries and their significance especially with respect to implementation; and fiscal expenditures.

3.1.2. Task reports will be prepared for each task, as appropriate. These reports will detail each task sufficiently that they can essentially be compiled to prepare the final report. These reports will be prepared and submitted electronically to the State by the end of the month following the completion of each task. The second draft task reports will be submitted within two weeks following receipt of the State's comments on the first draft task reports. For all future revisions, the task reports will be submitted no later than one week following receipt of the State's comments.

3.1.3. The draft final report and a final report cover picture will be prepared and submitted to the State no later than 12:00 pm (Mountain Time) on _____. This report will describe the tasks performed as outlined in the proposal and must include, at a minimum, the following information:

- Title page;
- Technical report documentation page (<http://www.mdt.mt.gov/research/docs/techreport.pdf>, see page 2 of http://www.mdt.mt.gov/research/docs/report_guidelines.pdf for link to Word document);
- Disclaimer (<http://www.mdt.mt.gov/research/disclaimer.shtml>);
- ADA alternative format statement (<http://www.mdt.mt.gov/research/disclaimer.shtml>);
- Table of contents;
- Summary or abstract, including a brief description of the work and conclusions;
- introduction, including the problem, its background and a concise history of research;
- work plan, including the data collection, description of sites and activities, and an analysis of the data (all data should be expressed in metric units with the English units following in parentheses or a metric-English conversion chart must be included in the final report);
- Findings and conclusions;
- Recommendations, based on the findings and conclusions;
- Implementation plan, defining the procedure to introduce the results into practice; and
- Literature cited or references.

The final report must include the following statement on the title page:

“Prepared for the
MONTANA DEPARTMENT OF TRANSPORTATION
in cooperation with the
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION”

3.1.4. A draft project summary report will be prepared and submitted to the State no later than 12:00 pm (Mountain Time) on _____. The Contractor will submit only the text and graphics. The text will include the following sections: introduction, what we did, what we found, and what the researcher's recommend. See an example project summary report at: http://www.mdt.mt.gov/research/docs/reconfig/project_summary.pdf

3.1.5. The second draft final reports (includes draft project summary report) will be submitted within one month following receipt of the State's comments on the first draft reports. For all future revisions, the final reports will be submitted no later than two weeks following receipt of the State's comments.

3.1.6. A line item response to each comment is required for all deliverables.

3.1.7. A final oral presentation based on the final report, will be made by the Contractor to the State.

3.1.8. All reports are considered draft until the State's internal review process has been completed; this process includes review of all products by the State, revised report(s) submitted by the Contractor, and acceptance of products as final by the State. All reports submitted by the Contractor to the State are to be delivered in both MS Word and Adobe Acrobat electronic formats. Reports will be prepared as described in the Montana Department of Transportation's Report Writing Requirements, which can be found at http://www.mdt.mt.gov/research/docs/report_guidelines.pdf and Section 6.1, Project Level Reporting, of the March 2011 Research, Development, and Technology Transfer Guidelines for the Montana Department of Transportation, which can be found at: <http://www.mdt.mt.gov/research/docs/rmuguide.pdf>

3.1.9. Time is of the essence. These reports, and their on-time submission, are an important part of this agreement. If the reports are delinquent or not provided, then the contract work has not been completed, and payment may not be made. If a contract extension is granted for the project, the progress reporting requirement will continue during any such extension.

3.2. SUPPLIES, EQUIPMENT & INSTRUMENTATION.

3.2.1. Purchases of supplies or non-major items of apparatus and equipment listed as a lump sum in the proposal and for which reimbursement is sought will not exceed such lump sum unless approved in writing in advance by the State.

3.2.2. Major items of apparatus and equipment for which reimbursement is sought and which are not identified specifically in the proposal and approved as part of this contract must be approved in writing by the State prior to purchase. A major item of apparatus or equipment is one not consumed in the work on the project and costing \$5,000.00 or more.

3.2.3. All apparatus, equipment and non-expended supplies will be returned to the State at the end of the contract.

4.0. CONSIDERATION/PAYMENT

4.1. PAYMENT SCHEDULE. The State shall pay according to the following schedule:

Progress payments shall not exceed 85% of the total contract budget. Payment to the Contractor will be on a cost reimbursement basis for actual direct and indirect costs incurred in the performance of the terms and conditions as set forth in this contract. Invoices with backup documentation detailing the charges and expenses incurred for each task will be submitted at the completion of each task. Payment will be made when the task deliverables are accepted by the State. Unless otherwise noted in the proposal, the State is allowed thirty (30) days following acceptance of the deliverables for each task to pay such invoices. Reimbursement will not be made for any costs not clearly and accurately supported by the Contractor's records and not submitted within sixty (60) days of task completion. Progress billings must be identified by the designation "Progress" and the final billing by the designation "Final." No payment of the final 15% of the contract amount will be made until all products are accepted as final by the State or other authority with final approval of the product.

4.2. WITHHOLDING OF PAYMENT. The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the estimated additional cost to the State caused by the lack of performance.

5.0. ACCESS AND RETENTION OF RECORDS

5.1. ACCESS TO RECORDS. The Contractor agrees to provide the State, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. (18-1-118, MCA.)

5.2. RETENTION PERIOD. The Contractor agrees to create and retain records supporting the services as detailed herein for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception taken by the State of Montana or a third party arising out of this contract.

6.0. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer, or subcontract any portion of this contract without prior express written consent of the State. (18-4-141, MCA.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors, agents, or persons directly or indirectly employed by the Contractor or subcontractors. No contractual relationships exist between any subcontractor and the State.

7.0. HOLD HARMLESS/INDEMNIFICATION

Contractor agrees to defend, protect, indemnify, and save harmless the State against and from all claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorney fees), and losses to it from any cause whatever (including patent, trademark and copyright infringements) arising from the contract and its execution.

This agreement to indemnify includes any suits, claims, actions, losses, costs, or damages of any kind, including the State's legal expenses, arising out of, in connection with, or incidental to the contract, but does not include any such suits, claims, actions, costs, or damages which are solely the result of the negligent acts or omissions or the misconduct of the State or its employees.

The Contractor assumes all responsibility for ensuing and enforcing safe working conditions and compliance with all safety-related rules and regulations for the benefit of its own employees, the employees of any subcontractor, and the public. That responsibility includes all duties related to safety, regardless of whether any such duties are, or are alleged to be, "non-delegable" (e.g., Construction Site Health and Safety, Title 50, Chapter 77).

8.0. REQUIRED INSURANCE

8.1. GENERAL REQUIREMENTS. For the duration of the contract, at its cost and expense, the Contractor shall maintain the insurance required herein.

8.2. PRIMARY INSURANCE. The Contractor's insurance coverage shall be primary and shall apply separately to each project or location.

8.3. SPECIFIC REQUIREMENTS FOR COMMERCIAL GENERAL LIABILITY. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$100,000 per occurrence and \$500,000 aggregate per year to cover such claims as may be caused by any negligent or wrongful act or omission of the Contractor or its officers, agents, representatives, assigns, or subcontractors.

8.4. ADDITIONAL INSURED STATUS. On all insurance policies, the State, its officers, officials, employees, interns, and volunteers are to be covered and listed as additional named insureds.

8.5. SPECIFIC REQUIREMENTS FOR PROFESSIONAL LIABILITY. The Contractor shall purchase and maintain professional liability occurrence coverage with combined single limits of \$500,000 per occurrence and \$1,000,000 aggregate per year to cover such claims as may be caused by any negligent or wrongful act or omission of the Contractor or its officers, agents, representatives, assigns, subcontractors, or employees of subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three year tail for claims that are made after the cancellation or expiration date of the policy.

8.6. SELF-INSURED RETENTIONS. Any self-insured Contractor, at the expense of the Contractor, shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

8.7. CERTIFICATE OF INSURANCE/ENDORSEMENTS. No contract will be issued until a certificate of insurance along with a copy of the insurance policy from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, is received by the procurement officer. The Contractor must notify the procurement officer immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at any time.

9.0. FORCE MAJEURE

Neither the State nor the Contractor shall be responsible for failure to fulfill its obligations directly or indirectly due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes. A defense of "Force Majeure" is valid as long as the non-performing party is using best efforts to remedy and mitigate such failure, non-performance, or delays; and provides reasonable notice to the State.

10.0. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with all provisions of the Montana Workers' Compensation Act. Contractor shall enforce this same provision against each subcontractor. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the procurement officer upon expiration.

11.0. INDEPENDENT CONTRACTOR

An individual who is presently a Montana State employee will not be considered for potential award of the contract. A successful bidder, who, during the post-bid period or during the term of the contract, becomes a Montana State employee, must immediately notify in writing the State's Research Project Manager, as described in Section 17 of this contract. Contractor agrees that, if it becomes a Montana State employee during those periods, or if it hires a Montana State employee to perform more than 50% of the work under the contract, the contract is subject to immediate termination.

It is expressly agreed that the Contractor in fulfilling the terms of this contract is not an employee of the State, but is solely an INDEPENDENT CONTRACTOR.

12.0. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision.

In accordance with Section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

13.0. NON-DISCRIMINATION NOTICE

Contractor understands and agrees that the following "Non-Discrimination Notice" contains crucial provisions that must be followed by the Contractor, Contractor's employees and agents, subcontractors, and the agents and employees of subcontractors. It is the responsibility of the Contractor to assure that a copy of the following notice, (inserting the name of each subcontractor) shall be included in every subcontract.

During the performance of this Agreement, CONTRACTOR (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

- (1) **Compliance with Regulations:** The Party shall comply with all Regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) **Non-discrimination:** The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.

- (3) **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to non-discrimination.
- (4) **Information and Reports:** The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives.

Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.

- (5) **Sanctions for Noncompliance:** In the event of the Party's non-compliance with the non-discrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
- (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) **Incorporation of Provisions:** The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for non-compliance:

Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA

In accordance with Section 49-3-207, MCA, "the Party" agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

- (1) "The Party" will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) "The Party" will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "The Party" will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by "the Party." In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call "the Party."
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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

14.0. FEDERAL AID REQUIREMENTS

Some of the product of this contract may be purchased with Federal Aid Funds. Therefore, the following provisions will apply to this contract.

A. MONTANA PREFERENCES

The Montana bid preferences will not apply.

B. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality performance in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law.

To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice applies to all activities under this contract. It shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS 18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

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

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

Shall be fined under this title or imprisoned not more than five years, or both."

C. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions
(Applicable to all Federal-aid contracts - 49 CFR 29)
 - a. By submitting the proposal and signing this contract, the Contractor provides the certification set out below.
 - b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
 - c. The certification in this section is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, such contractor shall be in default of this contract. In addition to other remedies available to the federal government or the State may, in its sole discretion, terminate this contract for cause.
 - d. If any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, the Contractor shall provide immediate written notice to the State.
 - e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the procurement officer for assistance in obtaining a copy of these regulations.

- f. Unless specifically authorized in writing by the procurement officer, the Contractor shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in any affected program.
- g. In all lower tier covered transactions and in all solicitations for lower tier covered transactions Contractor shall include without modification the section titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction".
- h. Unless it knows that the certification is erroneous, a participant in a covered transaction may rely upon the Contractor's certification that a prospective participant in a lower tier covered transaction is not debarred, suspended, ineligible, or voluntarily excluded from any affected program. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant shall check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, a participant in a covered transaction who knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation any affected program is in default of this contract. In addition to other remedies available to the federal government, the State may terminate this transaction for cause.

D. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--PRIMARY COVERED TRANSACTIONS

The Contractor certifies to the best of its knowledge and belief, for itself and for each of its principals that:

1. None are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the State or by any federal department or agency;
2. Within a 3-year period preceding the submission of the proposal, none has been convicted of or has had a civil judgment rendered against it/him/her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; or violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. None is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph C.1.b. of this certification; and
4. Within a 3-year period preceding submission of the proposal, none has been in default of one or more public (federal, state or local) transaction.
5. Within a 3-year period preceding submission of the proposal, none has had one or more public (federal, state or local) transactions terminated for cause.

E. INSTRUCTIONS FOR CERTIFICATION - LOWER TIER COVERED TRANSACTIONS

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

1. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

F. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

G. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. 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.
 - b. 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 Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. 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 is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. 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.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

15.0. INTELLECTUAL PROPERTY

In the event that a patentable discovery or invention is produced as a result of the performance of this contract, the State hereby grants to the Contractor all rights necessary to obtain such patents and any related rights in exchange for which the Contractor grants to the State and to the FHWA irrevocable, non-transferable, non-exclusive royalty-free licenses to practice, use, refine, modify, dispose of and/or manufacture any material, invention, report, data or other product of this contract. Contract shall bear all costs arising from any attempt to obtain intellectual property rights.

All data, summaries, charts, records, materials, manuals, etc., collected, developed, and prepared as a result of this contract are the property of the State for its exclusive use. The State may duplicate and alter the materials without consent from the Contractor.

Without prior written approval from the State, the Contractor may not publish any information derived from this contract. To obtain approval, the Contractor shall provide the State with not less than sixty (60) days review time. All published materials must give credit to the State.

15.1. THIRD PARTY CLAIM. In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify the Contractor. Contractor shall defend such claim, in the State's name or in its own name, as appropriate, but at the Contractor's sole expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

15.2. PRODUCT SUBJECT OF CLAIM. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then the Contractor shall, at its option, either procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State is prevented by injunction, the State, in its sole discretion, will determine if the contract has been breached.

16.0. CONTRACT TERMINATION

16.1. TERMINATION FOR CAUSE. The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform a term or provision of this contract. Contractor understands that the State may terminate the contract for the refusal of a non-state entity to allow access to records as required by law. Any termination for cause shall not subject the State to liability for any outstanding portion of the contract.

16.2. REDUCTION OF FUNDING. The State, at its sole discretion, may by written notice to the Contractor, terminate or reduce the scope of this contract if available funding is reduced for any reason.

16.3. NOTICE TO CURE. At the option of the State, the Contractor may be given written notice of the stated failure or default, demanding performance of the stated failure or correction of the default within a specified period of time of not less than thirty (30) days. If the demanded performance is not completed within the specified period, the termination is automatically effective at the end of the specified period.

17.0. LIAISON AND SERVICE OF NOTICES

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's Research Project Manager. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of the Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's Research Project Manager and the Contractor's liaison. Written notices, requests, or complaints will first be directed to the following:

- _____ will be the State Research Project Manager for the State.
- _____ (Address)
- _____ (City, State, ZIP)
- _____ (Telephone #)
- _____ (Cell Phone #)
- _____ (Fax #)
- _____ (E-mail)

_____ will be the liaison for the Contractor.
_____ (Address)
_____ (City, State, ZIP)
_____ (Telephone #)
_____ (Cell Phone #)
_____ (Fax #)
_____ (E-mail)

The State's Research Project Manager or The Contractor's liaison may be changed by written notice to the other party.

18.0. MEETINGS

At no additional cost to the State, the Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by the Contractor and the State in the performance of their respective obligations. Meetings will be coordinated by the State Research Project Manager and will occur as often as problems arise.

The Contractor will be given a minimum of three full working days' notice of the meeting date, time, and location. Face-to-face meetings are preferred. However, at the State's sole option and the Contractor's sole expense, a conference call meeting may be substituted. Consistent failure to participate in problem-resolution meetings, two consecutive missed or rescheduled meetings, or failure to make a good-faith effort to resolve problems, may result in a cause termination of the contract.

19.0. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may conduct assessments of the Contractor's performance. Contractor will have the opportunity to respond to poor performance assessments. Performance assessments may be considered in future solicitations.

20.0. TRANSITION ASSISTANCE

If this contract is not renewed at the end of the primary term, if it is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees, the Contractor must provide for a reasonable period of time (at least 60 days) after the termination of the project or this contract, all reasonable transition assistance requested by the State.

Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract. The State shall pay the Contractor at the most current rates provided by the contract for any resources utilized in performing such transition assistance. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset from any damages the State may have otherwise accrued as a result of said termination, the cost of paying the Contractor for the additional resources the Contractor utilizes in providing transition assistance.

21.0. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana as now in existence or hereafter amended. The parties agree that any litigation concerning this contract must be brought in the Montana First Judicial District, Lewis and Clark County. Each party shall pay its own costs and attorney fees.

22.0. SCOPE, AMENDMENT AND INTERPRETATION

22.1. CONTRACT. This contract consists of # OF PAGES pages and the following documents, which are intended to be complementary, and in the event of a conflict, shall control in the same order: contract (including any amendments), RFP written response clarification, RFP (including any addenda), and the RFP response.

22.2. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is the same as 22.1.

22.3. AMENDMENT. Time is of the essence. The contractor is expected to stay on scope, time, and budget. This agreement period may be extended by written request of the Contractor for the extension only under extenuating circumstances. Such extension will be subject to the approval of the MDT.

22.4. ENTIRE AGREEMENT. The documents described in 22.1 contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

23.0. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

DEPARTMENT OF TRANSPORTATION

CONTRACTOR NAME

BY: _____
(Name/Title)

BY: _____
(Name/Title)

BY: _____
(Signature)

BY: _____
(Signature)

DATE: _____

DATE: _____

BY: _____
(Name/Title)

BY: _____
(Signature)

DATE: _____

Approved as to Legal Content:

Approved as to Form:

Legal Counsel

Procurement Officer

Approved as to Civil Rights Language

Civil Rights Bureau

The Montana Department of Transportation attempts to provide reasonable accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this document will be provided upon request. For more information or to arrange special accommodations for disabilities, please call Richele Parkhurst at (406) 657-0274 Voice or 1-800-335-7592 TTY or (406) 444-7696 TTY.

APPENDIX C: PROOF OF AUTHORITY

CORPORATE RESOLUTION

[INSERT NAME OF CORPORATION]

THIS RESOLUTION is made this ____ day of _____, 20__, by the undersigned, being all of the members of the Board of Directors of [Insert name of corporation] (the "corporation"). The undersigned waive any requirement that a special meeting be held for the transaction of the business resolved hereby.

WHEREAS, Article [Insert], Section [Insert] of the By-Laws of the corporation provides:

[Quote from By-Laws]; and

WHEREAS, the [Insert name of corporation] has provided to the Montana Department of Transportation (MDT) a proposal in response to RFP #HWY-309984-RP; and

WHEREAS, it is in the best interest of the corporation to enter into said contract;

NOW THEREFORE BE IT RESOLVED:

That the President and Secretary of the corporation are authorized to execute the contract documents on behalf of the corporation.

DATED beneath the signatures of the Directors.

[Insert signature lines for all directors; get from last corporation annual report].

_____, Director
Dated:

_____, Director
Dated:

_____, Director
Dated:

AUTHORITY OF LIMITED LIABILITY COMPANY

[INSERT NAME OF LIMITED LIABILITY COMPANY]

STATE OF _____)
County of _____)
ss.

COMES NOW [Insert name of Managing Member], after first being duly sworn, and affirms that the document attached hereto entitled [Insert title of limited liability company operating agreement] is a true and correct copy of the current existing operating agreement of [Insert Name of Limited Liability Company].

Section [insert section number], starting on page [insert page number] identifies the name(s) of the individual(s) who have the authority to bind the limited liability company. The partners understand that each individual identified therein must sign the contract and give his/her personal guarantee for completion of any contract resulting from acceptance of the limited liability company’s proposal in response to RFP #HWY-309984-RP.

[Insert name of Managing Member]
Managing Member

Sworn and subscribed before me by [Insert name of managing partner] this ____ day of _____, 20__.

[Printed Name of Notary]
Notary Public for the State of _____
Residing at: _____
My commission expires: _____

[NOTARIAL SEAL]

AUTHORITY OF LIMITED LIABILITY PARTNERSHIP

[INSERT NAME OF LIMITED LIABILITY PARTNERSHIP]

STATE OF _____)
)
ss.
County of _____)

COMES NOW [Insert name of Managing Partner], after first being duly sworn, and affirms that the document attached hereto entitled [Insert title of limited liability partnership operating agreement] is a true and correct copy of the current existing operating agreement of [Insert Name of Limited Liability Partnership].

Section [insert section number], starting on page [insert page number] identifies the name(s) of the individual(s) who have the authority to bind the limited liability partnership. The partners understand that each individual identified therein must sign the contract and give his/her personal guarantee for completion of any contract resulting from acceptance of the limited liability partnership's proposal in response to RFP #HWY-309984-RP.

[Insert name of Managing Partner]
Managing Partner

Sworn and subscribed before me by [Insert name of managing partner] this ___ day of ____, 20__.

[Printed Name of Notary]
Notary Public for the State of _____
Residing at: _____
My commission expires: _____

[NOTARIAL SEAL]

APPENDIX D: REFERENCE QUESTIONNAIRE

Instructions

The reference questionnaire found at [HTTP://WWW.SURVEYMONKEY.COM/S/CBS3Q88](http://www.surveymonkey.com/s/CBS3Q88) is for a research project titled *Assessing the Extent and Determinates for Induced Growth* for which the Montana Department of Transportation (MDT) has issued a request for proposal. The scope of this project is to develop practical refinements to MDT's current analysis method for evaluating induced growth impacts associated with transportation projects. You have been sent this questionnaire to provide a reference for the contractor or subcontractor responding to MDT's request.

The individual responding to this questionnaire must be a responsible party of the organization for which the services were provided and have comprehensive knowledge about the services provided.

While completing this survey, you will be allowed to go back and forth between the survey pages. Before clicking on the previous page button to review or change responses, please make sure to save responses on current page by clicking on next. Once you submit the survey, you will not be able to reenter the survey.

If there are problems with this survey or an alternate format is needed, please contact:

Procurement Officer-

Richele Parkhurst

Address-

Purchasing Services Section

Montana Department of Transportation

424 Morey Street

PO Box 20437

Billings, MT 59104-0437

Telephone-

(406) 657-0274

Fax-

(406) 256-6487

E-mail: rparkhurst@mt.gov

The individual responding to this must be a responsible party of the organization for which the services were provided and have comprehensive knowledge about the services provided.

You and Your Organization

Please provide your contact information so that we may contact you for additional information if necessary.

What is your title?

Name:

Company:

Email Address:

Phone Number:

Contractor Information

Please answer the following questions about the firm or individual (contractor) for which you are providing a reference.

1. For what firm or individual are you providing a reference?

If you indicated this reference is for a subcontractor, what firm or individual is the prime contractor (Again, this should be identified in the email requesting your reference)?

2. Is this firm or individual the prime or subcontractor for the MDT research project (This should be identified in the e-mail requesting your reference)?

3. What were the contractor's (identified in question #1) dates of service for your project(s)?

4. What services did the contractor provide?

5. What skills were necessary to perform these services?

6. Did the contractor provide skilled and qualified staff to perform the job?

7. Were there any changes in key personnel? If yes, please explain the situation (including who requested the change(s), did change(s) affect the project, and how were any issues resolved) and describe any related issues.

8. Are you familiar with any of the key project personnel identified in the e-mail requesting your reference? If yes, please indicate which person(s) and describe how they were able to facilitate successfully completing contracted project(s).

Please take a few minutes to complete these questions on the quality of service the contractor or subcontractor provided. We welcome your feedback and appreciate your honesty.

1. Please select your criteria for choosing this organization (select all that apply).

- Industry/marketplace knowledge
- Length of time in business
- Consultative capabilities
- Technology and Tools provided
- Personal Referral
- Lowest rate
- Responsiveness to requests
- Value-added services
- Other (please specify)

2. Please rate the following for the contractor.

Excellent Above Average Average Below Average Poor N/A

Overall, what is your assessment of the following?

- Their work was timely.
- Their work was accurate.
- They kept you informed of progress and made efforts to maintain contact regarding progress.
- They addressed your questions and concerns.
- The quality of responses to your questions and concerns.
- The timeliness of response to your needs.
- Their knowledge level.
- The products and services they provided met your objectives.
- Their writing ability was sufficient to provide quality products.
- They delivered the project within contract budget.
- They were easy to work with.
- Performance
- Final Product(s)

Please add any additional comments or concerns below. An average or below rating should include an explanation in this section.

Follow-up

1. Where there project extensions granted?
2. If yes, please explain why and at whose request.
3. Were there any conflicts, disputes, or other problems?
4. To what extent was the contractor's product implemented? Please explain why if not implemented or limited implementation.
5. Do you feel you received benefits that correspond to the project cost?
6. If given a choice, would you hire the contractor again?
7. Any additional comments?

Please provide your contact information so that we may contact you for additional information if necessary.

APPENDIX E: REFERENCE QUESTIONNAIRE SAMPLE E-MAIL

Greetings

I/Our company have/has submitted a proposal to the Montana Department of Transportation (MDT) Request for Proposal for [Insert title/name of project]. As part of my/our proposal package, a completed reference questionnaire is required. Having worked with you on the [Insert project(s) and date(s) of project(s)], you are familiar with my/our skills and ability to successfully complete MDT's project. Therefore, the purpose of this e-mail is to request that you complete MDT's reference questionnaire no later than [Insert date and time] by clicking on the following link: [Insert link].

The following information will help you complete this reference questionnaire:

- Your reference is for [Insert your name or company name, as appropriate. This may or may not be the same as the prime contractor].
- Prime contractor is [Insert the prime contractor].
- All members of the proposed research team are: [Insert all proposed research team members and their affiliation].

I/We appreciate your time in considering my/our request. Please contact me/us by phone or by e-mail, if you have questions, want to discuss this request, or cannot complete this questionnaire by the above-stated deadline.