

ARKANSAS STATE POLICE
HIGHWAY SAFETY OFFICE

GENERAL PROVISIONS AND
SUBGRANT AGREEMENT/CONTRACT TERMS

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I. GLOSSARY OF DEFINITIONS

This glossary defines those terms whose meanings may be unclear in the subgrant agreement/contract in which they are used. These definitions are meant to apply only to the usage of these terms in this subgrant agreement/contract.

Activity - Elements of work that accumulate to accomplish contract objectives.

Activity Number - A number assigned by the HSO for internal management.

Actual - The attained state of resources expended and/or accomplishments.

Ark. Stat. Ann. - Arkansas Statutes Annotated.

ASP - Arkansas State Police.

Authorizing Official - The Contractor's or Subgrantee legally appointed person authorized to commit the organization to contract or subgrant agreement.

Budgeted - The estimated level of expenditure set up in the contract.

CFR - Code of Federal Regulation.

Contractor - The State agency, county, city, quasi-public organization, private individual, or corporation entering into a contract with the HSO.

Contract Director - The duly authorized representative of the Contractor charged with the responsibility of executing the contract.

Contract Period - The period of time in which all activities specified in the contract must be performed.

Coordinator/Administrator - The State official appointed by the Governor's Representative for Highway Safety to be responsible for the Highway Safety Program.

Cost Incurred - Costs are considered incurred on the date that goods/services are received and accepted.

DOT - Department of Transportation.

Evaluation - A process that involves measuring the success or failure of an activity in achieving predetermined objectives; a judgment of value of worth.

FHWA - Federal Highway Administration, U.S. Department of Transportation.

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FY - Fiscal Year. Federal Fiscal Year starts October 1st and ends September 30 of each year.
State Fiscal Year starts July 1st and ends June 30 of each year.

Funding Period - The period of time in which the Subgrantee/Contractor can incur costs eligible for reimbursement.

Governor's Highway Safety Representative - The State official who is responsible to and represents the Governor in the conduct of the Statewide Highway Safety Program (Director - Arkansas State Police).

Grantor Agency - Arkansas State Police.

Highway Safety Manager - A staff member authorized by the Governor's Representative for Highway Safety to oversee the day to day activities of the Highway Safety Program.

HSO - Highway Safety Office.

HSP - Highway Safety Plan as required by NHTSA and DOT.

NHTSA - National Highway Traffic Safety Administration, U.S. Department of Transportation.

OMB - Office of Management and Budget.

Obligated - The proposed level of accomplishments that are budgeted and funded.

PM - Program Module.

PSP - Problem Solution Plan.

Political Subdivision - A generally recognized governmental unit below the State level having a defined geographic area of the State.

Program Manager - A staff member authorized by the Coordinator to act as the liaison between the HSO and the Subgrantee/Contractor in all matters pertaining to a subgrant agreement/contract.

Project Period (Period of Performance) - The time during which the non-Federal entity may incur new obligations to carry out the work authorized under the award.

Standard Number - A number assigned to one of the 18 highway safety program areas as developed by NHTSA and promulgated by the Secretary, U.S. Department of Transportation.

State Agency - An administrative division of State Government.

Subgrantee - The State agency, county, city, quasi-public organization, private individual, or corporation entering into a subgrant agreement with the HSO.

Subgrant Director - The duly authorized representative of the Subgrantee charged with the responsibility of executing the subgrant agreement.

USC - United States Code.

YTD - Year to date.

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II. CHANGES

- A. Any change to this subgrant agreement/contract document must be requested by written notice 30 days prior to the anticipated effective date of the proposed change. Upon request, a Subgrant Agreement/Contract Change Order form will be furnished to the Subgrantee/Contractor, which must be submitted with the Authorizing Official's signature. Upon receipt of the Subgrant Agreement/Contract Change Order, the HSO will review and either approve or disapprove this change within 10 working days.
- B. Likewise, any change in this subgrant agreement/contract document initiated by the HSO will require notice to the Subgrantee/Contractor of the proposed change 30 days prior to the anticipated effective date of same. The Subgrantee/Contractor will be given 10 working days to review and either concur or contend to the proposed change.
- C. Any disputes or disagreements arising from A or B above will be arbitrated as set forth in Contract Subgrant Agreement/Term III.

III. DISPUTES

- A. Except as otherwise provided in this subgrant agreement/contract, any dispute concerning a question of fact arising under this subgrant agreement/contract which is not disposed of by agreement shall be decided by the Coordinator/Administrator, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Subgrantee/Contractor. The decision of the Coordinator/Administrator shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Subgrantee/Contractor mails or otherwise furnishes to the Coordinator/Administrator a written appeal addressed to the HSO. The decision of the HSO or its authorized representative for the determination of such appeals shall be final and conclusive unless it is determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Subgrantee/Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his/her appeal. Pending final decision of a dispute hereunder, the Subgrantee/Contractor shall proceed diligently with the performance of the subgrant agreement/contract and in accordance with the HSO's decision.
- B. This "DISPUTES" clause does not preclude consideration of law questions in connection with decisions provided for in Paragraph A above, and nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

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IV. CONDITIONS FOR TERMINATION PRIOR TO COMPLETION

If, through any cause other than acts of God or the public enemy, flood, or quarantine restrictions, the Subgrantee/Contractor should fail to fulfill in timely or proper manner the obligations of this agreement/contract, the HSO may terminate this agreement/contract by giving written notice to the Subgrantee/Contractor at least 7 days prior to the effective date of termination and by specifying the effective date of termination. All furnished or unfurnished documents, data, studies, surveys, reports, maps, drawings, models, and photographs prepared by the Subgrantee/Contractor shall, at the option of the HSO, become the property of the HSO and the Subgrantee/Contractor shall be entitled to receive only reasonable and equitable compensation for the satisfactory work completed, and only in proportion to the monetary consideration covenanted and agreed upon in the contract for the completed scope of the work.

At their convenience, the principals to this agreement may terminate this agreement by one giving to the other, or each giving to the other, written notice at least 30 days prior to the effective date of termination, and by specifying the effective date of termination.

Upon termination of this agreement/contract, whether for cause or at the convenience of one or both principals, the Subgrantee/Contractor shall be reimbursed for the portion of out-of-pocket expenses (not otherwise reimbursed prior thereto) incurred by the Subgrantee/Contractor during the project/contract period which are directly attributable to the incompleting portion of the services covered by this agreement. The Subgrantee/Contractor shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Subgrantee/Contractor.

V. EXCUSABLE DELAYS

Except with respect to defaults of Subcontractors, the Subgrantee/Contractor shall not be in default by reason of any failure in performance of this agreement/contract in accordance with its terms (including any failure by the Subgrantee/Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failures arise out of causes beyond the control and without the fault or negligence of the Subgrantee/Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Subgrantee/Contractor. If the failure to perform is caused by the failure of a Subcontractor to perform or make progress, and if such failure arises out of cause beyond the control of the Subgrantee/Contractor and Subcontractor, and without the fault or negligence of either of them, the Subgrantee/Contractor shall not be deemed to be in default, unless (a) the supplies or services to be furnished by Subcontractor were obtainable from other sources, (b) the Coordinator shall have ordered the Subgrantee/Contractor in writing to procure such supplies or services from other sources, or (c) the Subgrantee/Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Coordinator shall ascertain the facts and extent of such failure, and if he/she shall determine that any failure to perform was occasioned by one or more of the said causes, the delivery schedule shall be revised accordingly.

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VI. NON-COLLUSION

The Subgrantee/Contractor warrants that he has not employed or retained any company or person, other than a bonafide employee working for the Subgrantee/Contractor, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than a bonafide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the HSO shall have the right to annul this agreement without liability, or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

VII. COST PROVISIONS

2 CFR Part 225 - Cost Principles for State, Local, and Indian Tribal Governments (OMB A-87), 2 CFR Part 220 – Cost Principles for Educational Institutions (OMB A-21), 2 CFR Part 230 - Cost Principles for Non-Profit Organizations (OMB A-122), 45 CFR Subtitle A – Appendix E to Part 74 – Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals, and 48 CFR Part 31 - Cost Principles for For-Profit Organizations other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular, are hereby incorporated as part of this agreement and shall govern allowability of costs where appropriate. **Note: The cost principles are now consolidated under the OMB Super Circular as 2 CFR Part 200.** The electronic version can be found at <http://www.ecfr.gov>.

VIII. UNIFORM ADMINISTRATIVE REQUIREMENTS

2 CFR Part 1201 and 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards which can be found at <http://www.ecfr.gov>.

IX. METHOD OF PAYMENT

Under the Standard Method of Payment, the Subgrantee/Contractor agrees to perform the work previously stated and to accept as payment reimbursement(s) for actual costs incurred, in accordance with the terms of the agreements/contract.

Other methods which may be used to pay Consultants are as follows; (1) lump sum, (2) cost per unit of work, (3) cost plus a fixed fee amount, or (4) specific rates of compensation. The specific rates of compensation method should be considered only if all other methods have been found to be inappropriate.

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Each of the acceptable Consultant methods of payment is discussed below:

- A. Lump Sum By this method, the Consultant undertakes to perform the services stated in the agreement for an agreed amount of compensation.

This method of payment is appropriate only if the extent, scope, complexity, character, and duration of the work to be required has been established to a degree that just compensation can be determined and evaluated by all parties at the time of negotiations.

When submitted for approval, each proposed agreement wherein payment is to be by a lump sum shall be accompanied by a copy of an estimate prepared by the Consultant showing a statement of his probable costs for the several elements of the work and his expected net fee. The Consultant's statement is to include a supported breakdown of the costs, direct and indirect which the firm expects to incur. The Consultant's method of dividing the project into work units is to be such that the estimate can be intelligently reviewed.

To be considered for Federal-aid reimbursement, the lump sum amount proposed must be found by the Governor's Representative or appropriate State agency to be a just and equitable compensation, and must be supported by documentation as to the basis for such findings.

The agreement should contain provisions for the adjustment of the lump sum amount in the event of changes in the work to be performed.

- B. Cost Per Unit of Work By this method, the Consultant is paid on the basis of the unit of work performed. This method is appropriate when the related unit cost of the work can be determined in advance with reasonable accuracy, but the extent of the work is indefinite. A proposal utilizing this method payment is to be supported in the same manner as that specified for the lump sum method.
- C. Cost Plus a Fixed Fee By this method, the Consultant is reimbursed for his costs and receives in addition a predetermined amount as a fixed fee.

When at the time of negotiations with the Consultant, it is found not feasible to establish payment on the basis of the lump sum or cost per unit of work method, payment should be on the basis of reimbursement of the acceptable costs incurred by the Consultant plus a predetermined amount. This method of payment is appropriate when the extent, scope, complexity, character, or duration is indeterminable at the time of negotiations, or where the work is of a nature that the State agency does not have the experience or knowledge to permit an evaluation of the Consultant's proposal as required to support a lump sum amount.

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- D. Specific Rates of Compensation By this method the Consultant is paid at an agreed and supported specific fixed hourly or daily rate for each class of employee directly engaged in the work. Such rates of pay include the Consultant's estimated costs and net fee. This method of payment should be considered only on those occasions where none of the three methods of payment described under method 1, 2., or 3. can be used. It should be considered only for relatively minor items of work of indeterminable extent over which control is maintained of the class of employee to be used and the extent of such use. The specific rates of compensation are to include, and the agreement or referenced supporting data shall specifically identify and set forth separately, the direct salary costs, salary additives, indirect costs, and the fixed fee. Other direct costs may be set forth as an element of the specific rate or may be included as independent cost items. The specific rates so determined are to be established by the Consultant and found by the Governor's Representative to be reasonable and proper.

Consultant agreements providing that payment is to be based or adjusted on a prescribed percentage of estimated or actual cost times a multiplier, will not be accepted for Federal-aid reimbursement.

When the method of payment for Consultant services is other than a lump sum, the agreement must specify an upper limit of compensation. There should be recognition, however, that the reasons underlying the selection of the method of payment preclude arriving at a realistic estimate of the total anticipated costs of the service. The basis for establishment of the amount specified as the upper limit should be documented and provisions should be made to permit adjustment in the upper limit when the Consultant is able to establish, to the satisfaction of the governmental agency and Governor's Representative, that there has been or is to be a significant change in the (1) scope, complexity, or character of the services to be performed, (2) conditions under which the work is required to be performed, or (3) duration of work. In the case of the Cost-Plus Fixed Fee method, an appropriate adjustment in the predetermined net fee shall be considered.

X. TERMS AND CONDITIONS OF PAYMENT

- A. Unless otherwise specified in the agreement/contract Work Statement, the Subgrantee/Contractor agrees to bill the ASP at monthly intervals only, using the forms and format specified. The maximum amount of the total subgrant agreement/contract is specified in the agreement/contract.
- B. The Subgrantee/Contractor agrees to submit the final bill no later than 30 days after the termination of the funding period.
- C. The Subgrantee/Contractor agrees to submit no bill for work performed or material delivered unless such bill is accompanied by a report which complies with the requirements of the Work Statement.

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XI. INSPECTION/MONITORING

The ASP, (including, as an adjunct thereto, agents of the Federal Government when Federal funds are involved) has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises on which it is being performed. If any inspection or evaluation is made by the HSO on the premises of the Subgrantee/Contractor or a Subcontractor, the Subgrantee/Contractor shall provide and shall require his Subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the HSO personnel in their duties. All inspections and evaluation shall be performed in such a manner as will not unduly delay the work.

XII. PROPERTY MANAGEMENT

See 2 CFR Part 1201 and 2 CFR Part 200

XIII. RECORD RETENTION

See 2 CFR Part 1201 and 2 CFR Part 200

XIV. OWNERSHIP OF DATA AND CREATIVE MATERIAL

The ownership of material, discoveries, inventions, and results developed, produced, or discovered by this agreement/contract is governed by the terms of 2 CFR Part 1201 and 2 CFR Part 200.

XV. REPORTS

- A. Before publication or printing, the final draft of any report(s) required under the agreement/contract schedule shall be submitted to the HSO for review and concurrence. Review and approval by the National Highway Traffic Safety Administration will be coordinated by the ASP prior to returning comments or approvals to the Subgrantee/Contractor. All recorded information which is produced in the performance of this agreement shall be the sole property of the Arkansas State Police, Highway Safety Office, and reports or other such information are to be regarded as material in the public domain and shall not be copyrighted or restricted as to the distribution and reproduction. The Subgrantee/Contractor shall furnish the ASP with the quantity of copies of the report(s) specified in the agreement/contract.
- B. Each report covered by Paragraph A must include the following statements on the cover page:
 - 1. This report was prepared for the HSO, in cooperation with DOT's NHTSA or DOT's FHWA.
 - 2. The conclusions and opinions expressed in this document are those of the author, and do not necessarily represent those of the State of Arkansas, ASP, DOT or any other agency of the State or Federal Government.

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XVI. EQUAL OPPORTUNITY

The Subgrantee/Contractor assures and certifies:

- A. The Subgrantee/Contractor will comply with Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, handicap, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance, and the Subgrantee/Contractor will immediately take any measures necessary to effectuate this agreement.
- B. The Subgrantee/Contractor will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

XVII. SUBCONTRACTUAL

- A. The Subgrantee/Contractor shall give advance notice to the HSO of any proposed subcontract hereunder, and the Subgrantee/Contractor shall not, without prior written approval of the Administrator, enter into such subcontract. (See Paragraph B. below.)
- B. NHTSA or FHWA may require approval of any contract for professional services prior to issuance and initiation of work. This review may take up to 30 days and shall consider, in part, the following matters:
 - 1. Determination of the Consultant's qualifications;
 - 2. Manner of selection from those qualified to perform the service;
 - 3. Necessity for subcontracting;
 - 4. Review of the contract, to ensure that minimum terms of the prime contract have been incorporated into the subcontract;
 - 5. Pre-award audit has been performed for contracts in excess of \$25,000.00; and,
 - 6. The Subgrantee/Contractor's price breakdown includes costs (if any) for personal services, subcontracts, commodities, other direct costs, indirect costs, and profit.

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XVIII. UTILIZATION OF SMALL BUSINESS CONCERNS

- A. It is the policy of the United States Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.
- B. The Subgrantee/Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Subgrantee/Contractor finds to be consistent with the efficient performance of this agreement/contract.

XIX. ORDER OF PRECEDENCE

In the event of an inconsistency between provisions of this agreement/contract, the inconsistency shall be resolved by giving precedence in the following order:

- A. Subgrant Agreement/Contract Document
- B. Work Statement
- C. Subgrant Agreement/Contract Terms

XX. SUBGRANTEE/CONTRACTOR'S LIABILITY

- A. The Subgrantee/Contractor shall be liable for any loss of, or injury to, any material developed or serviced under this agreement/contract which is caused by the Subgrantee/Contractor's failure to exercise such care in regard to said material as a reasonably careful owner of similar materials would exercise.
- B. Subgrantee/Contractor shall provide commercial insurance or equivalent method acceptable to the HSO office for replacement or repair of damaged or lost equipment. Subgrantee/Contractor shall reimburse the HSO office for residual value of equipment sold or otherwise disposed of.

XXI. SAVE HARMLESS

It is expressly agreed and understood that the Subgrantee/Contractor is an independent Subgrantee/Contractor and not an agent, servant, or employee of the State, and the Subgrantee/Contractor shall save harmless the State and representatives thereof from all suits, actions, or claims of any kind brought on account of any person or property in consequence of any neglect in safeguarding the work, or on any act or omission by the Subgrantee/Contractor or its employees, or from any claims or amounts arising or recovered under Worker's Compensation Laws or any other law, by-law, ordinance, regulation, order, or decree. The Subgrantee/Contractor shall be responsible for all damage to property and personal injury of any kind resulting from any act, omission, neglect, or misconduct of any employee or agent of said Subgrantee/Contractor in the manner or method of performing the work for the period of the agreement/contract.

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XXII. TAX AND COMPENSATION LIABILITY

Nothing herein contained shall be construed as incurring for the State any liability for Worker's Compensation, F.I.C.A., Withholding Tax, Unemployment, or any other payment which would be required to be paid by the State if the State and the Subgrantee/Contractor were standing in an employer-employee relationship, and the Subgrantee/Contractor hereby agrees to assume and pay all such liabilities.

XXIII. REIMBURSEMENT OF ELIGIBLE EXPENDITURES

- A. It is mutually agreed and promised that upon written application by the Subgrantee/Contractor and approval by the State, the State shall obligate funds for reimbursement of eligible expenditures as set forth in the application.
- B. It is mutually agreed and promised that the Subgrantee/Contractor shall reimburse the State for any ineligible or unauthorized expenditures for which Federal and/or State funds have been claimed and payment received as determined by a State or Federal audit.
- C. It is further agreed and promised that where reimbursement is made to the Subgrantee/Contractor in installments, the State shall have the right to withhold any installments to make up reimbursement received for any ineligible or unauthorized expenditures until such time as the ineligible claim is made up or corrected by the Subgrantee/Contractor.

XXIV. APPLICATION OF HATCH ACT

The subgrantee/contractor will comply with the provisions of the Hatch Act which limit the political activities of employees.

XXV. STANDARDS FOR SUBGRANTEE/CONTRACTOR FINANCIAL MANAGEMENT SYSTEMS

This item prescribes standards for financial management systems of subgrant agreement/contract-supported activities of state and local governments. Subgrantee/Contractor financial management systems shall provide for:

- A. Accurate, current, and complete disclosure of the financial results of each subgrant agreement/contract activity in accordance with the HSO reporting requirements;
- B. Records which identify adequately the source and application of funds for subgrant agreement/contract activities. These records shall contain information pertaining to grant awards and authorizations, obligations, commitments, assets, liabilities, outlays, and income;
- C. Effective control over and accountability for all funds, property, and other assets. Subgrantee/Contractor shall adequately safeguard all such assets, and shall assure that they are used solely for authorized purposes;

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- D. Comparison of actual with budgeted amounts for each agreement/contract. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the HSO;
- E. Procedures to minimize the time elapsing between the transfer of funds from the State Treasury and the disbursement by the Subgrantee/Contractor whenever funds are advanced by the HSO;
- F. Procedures for determining the allowability and allocability of costs in accordance with the provisions of 2 CFR Part 200;
- G. Accounting records which are supported by source documentation;
- H. Audits to be made by the Subgrantee/Contractor or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws, regulations, and administrative requirements. The Subgrantee/Contractor will schedule such audits with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity; and,
- I. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

XXVI. PROCUREMENT PROCEDURES

- A. State of Arkansas Procurement Law and Rules, will govern purchasing.

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B. A summary of the various requirements is as follows:

<u>PURCHASES</u>	<u>BIDDING REQUIREMENTS</u>	<u>PRE-PURCHASE DOCUMENTS REQUIRED</u>
<p>(a) <u>Formal Bid</u> All purchases where cost is <u>\$50,000 or more</u> when grouped into biddable classes.</p>	<ol style="list-style-type: none"> 1. Develop Specifications for each item bid. 2. Invitation to bid mailed to all eligible prospective bidders. 3. Insertion in newspaper with general circulation not less than five (5) days nor more than thirty (30) days prior to opening date. 4. Open and tabulate bids at time and date indicated. 	<ol style="list-style-type: none"> 1. Copy of Invitation to Bid. 2. Copy of Bidders List. 3. Certified copy of proof of publication. 4. Copy of Tabulation of Bids. 5. <u>Copy of Purchase Order or Contract</u> Resulting from bid. 6. <u>Letter of Justification when other than low bid is to be purchased.</u>
<p>(b) <u>Quotation Bid</u> All purchases where cost is \$10,000 but <u>less than \$50,000.00</u> When grouped into biddable classes</p>	<ol style="list-style-type: none"> 1. Obtain at least three (3) bids. 2. Bids must be received at least one (1) day prior to date of purchase. 3. Bids must be recorded and signed by person receiving same. 	<ol style="list-style-type: none"> 1. Copy of Tabulation of Bids. 2. Copy of Purchase Order. 3. <u>Letter of Justification when other than low bid is to be purchased.</u>
<p>(c) <u>Open Market</u> All purchases where cost is <u>less than \$10,000</u></p>	<p>None - Agency Purchasing Official's best judgment.</p>	<ol style="list-style-type: none"> 1. Copy of Purchase Order.

C. Splitting of item or items with the intent to use a less restrictive requirement is not permitted.

D. Descriptions and specifications must be sufficiently restricted or specific so as to exclude cheap or inferior commodities which are not suitable or practicable for the purpose for which they are to be used, but at no time should they be so specific in detail as to restrict or eliminate competitive bidding of any items of comparable quality and coming within a reasonably close price range.

E. Arkansas preference does not apply.

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XXVII. PROCUREMENT PROCEDURES - BREATH TESTING EQUIPMENT

- A. These items are usually exempt from bidding requirements because of one or several of the following:
 - 1. Single source of supply items;
 - 2. Scientific and technical equipment and parts thereof required by an employee by reason of his profession or training; and
 - 3. Items requiring standardization and interchangeability of parts with existing equipment.

- B. The records required for reimbursement are as follows:
 - 1. Copy of Purchase Order giving description of item purchased:
 - 2. Statement, approved by the Project Director, explaining reason for purchasing on an exempt basis without any bids;
 - 3. Standard payment documentation, as follows:
 - a. Copy of vendor's invoice showing receiving approval by project personnel,
 - b. Copy of document showing payment for goods, and,
 - c. Paid receipt or endorsement on payment document; and,
 - 4. Statement for each item purchased showing the following:
 - a. Serial number,
 - b. Model number, and,
 - c. Property control number (if any).

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XXVIII. MINORITY BUSINESS ENTERPRISE

The recipient of this subgrant agreement/contract agrees to adopt by reference the Minority Business Enterprise Program that has been approved by DOT for the HSO, or to show evidence of approval of the recipient's own Minority Business Enterprise Program by a cognizant agency of the Federal government.

The recipient of this subgrant agreement/contract agrees to include the following statement in all subsequent contracts which are financed in whole or in part with Federal funds provided under the agreement with the recipient:

A. Required MBE Contract Clauses

1. Policy It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23, apply to this agreement.
2. MBE Obligation The recipient or its subcontractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

XXIX. PAYROLL PROCEDURES

A. Personal Services compensation is allowable if:

1. For services rendered during the contract period,
2. Reasonable for services rendered,
3. Personnel appointed in accordance with state or local government rules,
4. Based on payrolls documented and approved in accordance with generally accepted business practices, and
5. Supported by time and attendance records signed by both employee and supervisor.

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- B. Employee Benefits are allowable if:
1. Provided pursuant to a leave system,
 2. Employer contribution or expense for:
 - a. Social Security
 - b. Employee Health Insurance
 - c. Unemployment Insurance
 - d. Worker's Compensation Insurance
 - e. Pension Plans
 3. The cost is equitably allocated to all activities.
- C. The records required are as follows:
1. Time sheets showing employee names, daily hours, activities, and signatures of employee and supervisor;
 2. Payroll record showing rate of pay, gross wages, itemized deductions, net pay, and signature of proper official; and,
 3. Benefit Plan(s) records showing rates and amount paid by the employer.

XXX. TRAVEL PROCEDURES

Travel costs are allowable for the following actual expenses incurred by project employees while traveling on official project business: transportation, lodging, meals and other related expenses. An itemized travel report, with receipts for all items **including meals**, is required, and should be signed by the traveler and the supervisor. Out-of-State travel must have **prior written approval** of the HSO. Current daily limits for meals and lodging are set out in State Travel Regulations promulgated by the Arkansas Department of Finance and Administration.

Regards State of Arkansas Employees:

Travel costs are limited to the State of Arkansas Travel maximums according to current State Travel Regulations. (Airfare is always limited to less-than-first-class airfare when less-than-first-class air accommodations are available). Reimbursement is for **actual expenses** up to the maximum allowed per federal per diem rates established by the General Services Administration (GSA). Guidance is provided on the GSA website at www.gsa.gov/portal/content/10518 for deducting meal amounts from reimbursement claims for meals furnished by the government or other sources. Receipts are required for all expenses **including meals**.

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Regards Other Travelers:

Travel costs are limited to the lesser of local regulations, actual costs, or State travel maximums. Lodging may exceed State travel maximums only in instances where the maximum allowable lodging rate for that area is not available to the traveler (the traveler must make every effort to obtain the allowable State rate) or when the hotel rate where the conference or meeting is held exceeds the maximum allowable lodging rate for that area. Reimbursement is for **actual expenses** up to the maximum allowed per federal per diem rates established by the GSA. Guidance is provided on the GSA website at www.gsa.gov/portal/content/10518 for deducting meal amounts from reimbursement claims for meals furnished by the government or other sources. Receipts are required for all expenses, **including meals**.

XXXI. CONFIDENTIALITY REQUIREMENTS

We have researched the question on confidentiality and have identified the following salient items which are relevant to our agreements/contracts:

- A. NHTSA Order 210-1, Chapter I, Section B, Subsection (7) (a) states that the Contractor or any employee of the such Contract shall be considered to be employees of the NHTSA for purposes of the requirements of the Privacy Act of 1974 (P.L. 93-579, 5 U.S.C.
- B. Section 3, Subsection (b) (1) of the July 1, 1975, Privacy Act Guidelines states that disclosures "To those officers and employees of the agency which maintains the records who have a need for the records in the performance of their duties;" is a permissible disclosure (Section 552a of U.S.C.5, P.L. 93-579).
- C. Section 408, Subsection (b) (1) (b) of the regulations on Confidentiality of Alcohol and Drug Abuse Patient Records states that records may be released to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner (P.L. 93-282, 2.1 U.S.C. 1175). A copy of the confidentiality requirements is available upon request.

XXXII. PROFESSIONAL SERVICES CONTRACT

See 49 CFR Part 18, Subpart C, attached.

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XXXIII. INDIRECT COSTS

Indirect costs are those: Incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefitted cost objectives on basis that will produce an equitable result in consideration of relative benefits derived.

See Section VII, Cost Provisions of these terms for applicable cost regulations.