

CONTRACT #9
RFS # 401.00-19009
FA # 09-27332

Transportation

VENDOR:
Tyler Construction Engineers,
P.C.



STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
SUITE 700, JAMES K. POLK BUILDING
NASHVILLE, TENNESSEE 37243-0349
(615) 741-2848

GERALD F. NICELY
COMMISSIONER

PHIL BREDESEN
GOVERNOR

March 31, 2010

Mr. James W. White, Executive Director
Tennessee General Assembly
Fiscal Review Committee
8th Floor, Rachel Jackson Building
Nashville, TN 37243

RECEIVED

MAR 31 2010

FISCAL REVIEW

Subject: Amendment One to Contract FA-09-27332
Tyler Construction Engineers, P.C.

Dear Mr. White:

The referenced contract provides business assistance to Disadvantaged Business Enterprises (DBEs) prequalified with TDOT. The Contractor was selected through the RFP process and the contract is entirely funded by the Federal Highway Administration (FHWA). The purpose of this amendment is to extend the contract for an additional year as provided in Section B.2 of the original contract, whose initial term ended March 1, 2010. Funding was not made available from the FHWA to extend the contract term until February 25, 2010 and, therefore, the contract term ended before an amendment could be processed. Only after verification of the needed funds could we in good faith submit any extension request for consideration.

This packet contains the following materials as required by your office:

1. Amendment One which will add one additional year to the contract without using any state funding. A Contract Summary sheet is also provided.
2. The original Contract and Contract Summary Sheet.
3. Approved Rule Exception allowing for an amended term
4. The request for a Non-Competitive Amendment.

Mr. James W. White
March 31, 2010
Page Two

5. Supporting Documents:
- a. Supplemental Documentation Form
 - b. Back-up Documentation of Current Expenditures

Please advise if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald F. Nicely". The signature is written in a cursive style with a large initial "G" and a long, sweeping tail.

Gerald F. Nicely
Commissioner

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	David W. Neese	*Contact Phone:	615-253-1077
*Original Contract Number:	FA-09-27332	* Original RFS Number	40100-19009
Edison Contract Number: (if applicable)	7764	Edison RFS Number: (if applicable)	
*Original Contract Begin Date:	March 2, 2009	* Current End Date:	March 1, 2010
Current Request Amendment Number: (if applicable)	One		
Proposed Amendment Effective Date: (if applicable)	June 1, 2010		
* Department Submitting:	Tennessee Department of Transportation		
* Division:	Civil Rights Office		
* Date Submitted:	March 31, 2010		
* Submitted Within Sixty (60) days:	Yes		
<i>If not, explain:</i>			
* Contract Vendor Name:	Tyler Construction Engineers, P.C.		
* Current Maximum Liability:	\$316,200.00 \$632,400.00 with this amendment		
* Current Contract Allocation by Fiscal Year: (as shown on Most Current Contract Summary Sheet)			
FY: 2009	FY: 2010	FY:	FY:
\$316,200.00	\$316,200.00	\$	\$
* Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)			
FY: 2009	FY:	FY:	FY:
\$316,167.50	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	Contractor came in under budget and remaining funds are to be rolled over into the next contract year.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	\$32.50 surplus (federal funding) available to roll into new fiscal year.		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	N/A		
*Contract Funding Source/Amount:	State:	Federal: 100%	\$632,400
Interdepartmental:	N/A	Other:	N/A
If "other" please define:	N/A		

Supplemental Documentation Required for
Fiscal Review Committee

Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>	Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>
N/A	N/A
Method Of Original Award: (if applicable)	RFP
*What were the projected costs of the service for the entire term of the contract prior to the contract award	\$316,200 per year x 5 years = \$1,581,000.00

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

THIS PAGE IS NOT APPLICABLE AS SECTIONS A AND C.3. WERE NOT CHANGED

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY:	FY:	FY:	FY:	FY:
N/A					

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description:	FY:	FY:	FY:	FY:	FY:
N/A					

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

\$30.35 remainder on contract

DOCUMENT FILE SUMMARY INQUIRY

AGENCY: 00 DOCUMENT: FA0927332 SUF: 00

X DOCUMENT	GLA	DOC AMOUNT	ADJ/ACTUALS	LIQUIDATIONS	BALANCE
FA0927332-00	0015	316,200.00		316,200.00	
FA0927332-00	7550	316,200.00	50,696.00	50,696.00	265,504.00
FA0927332-01	0020	13,331.25		13,331.25	
FA0927332-02	0020	37,364.75		37,364.75	

My Page HR T&L ELM Finance Procurement Logistics

Welcome Audi

[New Window](#) | [Help](#) | [Customize Page](#)

- Review PO Information
 - Purchase Orders
 - Activity Summary
 - PO Accounting Entries
 - Document Tolerance Exceptions
 - Doc Tolerance Override History
 - Print POs
 - Document Status
 - EE Journal Entries

Activity Summary

Unit: 40100 PO Status: Dispatched
 PO ID: FA0927332 Vendor: Tyler Construction Engrs

Lines		Invoice		Matched		RTV	
Line	Item	Item Description	UOM	Amount Only	Amt Invoiced	Currency	Un-invoiced Amount
1		FA0927332	EA	265473.650	265473.650	USD	30.350 USD

- Reports
 - Add/Update Express POs
 - Add/Update POs
 - Approve Amounts
 - Reserve PO IDs

NON-COMPETITIVE AMENDMENT REQUEST:

APPROVED

Commissioner of Finance & Administration

1) RFS #	40100-19009	
2) Procuring Agency :	Tennessee Department of Transportation	
EXISTING CONTRACT INFORMATION		
3) Service Caption :	To provide business assistance to Disadvantaged Business Enterprises prequalified with the Tennessee Department of Transportation	
4) Contractor :	Tyler Construction Engineers, P.C.	
5) Contract #	FA-09-27332-00	
6) Contract Start Date :	March 2, 2009	
7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised)	March 1, 2011 w/ this extension March 1, 2014 w/ all extensions	
8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised)	\$632,400.00 w/this extension \$1,581,000 w/all extensions	
PROPOSED AMENDMENT INFORMATION		
9) Amendment #	One	
10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt)	July 1, 2010	
11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised)	March 1, 2011	
12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 632,400.00	
13) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
14) Description of the Proposed Amendment Effects & Any Additional Service :	Amendment will extend contract to provide business assistance to DBEs	
15) Explanation of Need for the Proposed Amendment :	To continue to provide one-on-one business assistance for training, education and support to DBEs prequalified with TDOT.	
16) Name & Address of Contractor's Current Principal Owner(s) : (not required for a TN state education institution)	Victor C. Tyler, P.C. – Tyler Construction Engineers, P.C., P.O. Box 1012, Madison, TN 37155	
17) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)		

Documentation is ... Not Applicable to this Request Attached to this Request

18) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)

Documentation is ... Not Applicable to this Request Attached to this Request

19) Department of Human Resources Endorsement : (required for state employees training service)

Documentation is ... Not Applicable to this Request Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

None. This is for a one-year extension of the existing competitively procured contract.

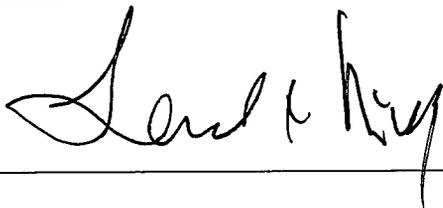
21) Justification for the Proposed Non-Competitive Amendment :

The contractor was selected through the RFP process. The contract end date was March 1, 2010, with four one year options to renew. This contract is federally funded by the FHWA. Funding was not made available until February 25, 2010 and the contract expired before an amendment could be processed

AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

SIGNATURE & DATE



3/31/10



C O N T R A C T A M E N D M E N T

Agency Tracking # 40100-19009	Edison ID 7764	Contract # FA-09-27332	Amendment # 1
---	--------------------------	----------------------------------	-------------------------

Contractor Tyler Construction Engineers, P.C.	Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- V- 030389862-01
---	---

Amendment Purpose/ Effects
To extend contract to provide business assistance to DBEs prequalified with TDOT

Contract Begin Date March 2, 2009	Contract End Date March 1, 2011	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s) 20.205
---	---	---	----------------------------

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2009		316,200.00			316,200.00
2010		316,200.00			316,200.00
TOTAL:		632,400.00			632,400.00

American Recovery and Reinvestment Act (ARRA) Funding – YES NO

— COMPLETE FOR AMENDMENTS —			Agency Contact & Telephone # Audra Colvin (615) 741-2498	
END DATE AMENDED? <input type="checkbox"/> YES <input type="checkbox"/> NO				
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)	
2009	316,200.00			
2010		316,200.00		
TOTAL:	316,200.00	316,200.00	Speed Code	Account Code

— OCR USE —	Procurement Process Summary (non-competitive, FA- or ED-type only)
-------------	---

**AMENDMENT ONE
TO FA-09-27332**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "State" and Tyler Construction Engineers, P.C., hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The Text of Section B.1 is deleted in its entirety and replaced with the following:

B.1. This Contract shall be effective for the period commencing on March 2, 2009 and ending on March 1, 2011. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

2. The text of Contract Section C.1 is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Six Hundred Thirty Two Thousand, Four Hundred Dollars and no cents (\$632,400.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

The revisions set forth herein shall be effective on the date of final approval by the appropriate State officials in accordance with applicable Tennessee State laws and regulations. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

TYLER CONSTRUCTION ENGINEERS, P.C.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF TRANSPORTATION:

GERALD F. NICELY, COMMISSIONER

DATE

TENNESSEE DEPARTMENT OF TRANSPORTATION:

JOHN REINBOLD, GENERAL COUNSEL
APPROVED AS TO FORM AND LEGALITY

DATE

RULE EXCEPTION REQUEST

cy10-156

APPROVED

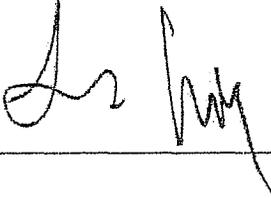
MD Gentry 3/23/10

COMMISSIONER OF FINANCE & ADMINISTRATION

1	REQUEST RFS #	40100-19009	revised request
2	CONTRACT #	FA-09-27332-00	
3	SERVICE	Business assistance to Disadvantaged Business Enterprises prequalified with the Tennessee Department of Transportation.	
4	CONTRACTOR	Tyler Construction Engineers, P.C.	
5	CONTRACT BEGIN DATE	March 2, 2009	
6	CONTRACT END DATE (with ALL options to extend exercised)	March 1, 2011 (first of four options to extend)	
7	CONTRACT MAXIMUM LIABILITY (with ALL options to extend exercised)	\$632,400.00 (this option)	
8	SUBJECT RULE	<input type="checkbox"/> 0620-3-3-.07(5) – prohibiting a contract term greater than five (5) years <input type="checkbox"/> 0620-3-3-.07(8) – prohibiting a contract with a former state employee in within six (6) months of termination <input type="checkbox"/> 0620-3-3-.07(22) – requiring that contractor travel expense reimbursement/compensation shall be subject to the prevailing state Comprehensive Travel Regulations (this request MUST also attach documentation of F&A Budget support of the request) <input type="checkbox"/> 0620-3-3-.05(5) – requiring a contract set forth the prescribed Nondiscrimination provision <input checked="" type="checkbox"/> OTHER - 0620-3-3-07 General Requirements. All service contracting subject to these rules shall follow the policy set forth in the following general requirements. <p>(1) Amendments - A contract amendment is a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract. It shall be the practice of the state to enter only into contracts that are complete and thorough. However, during the course of the contract, it may become necessary to change, add to, or delete from the terms and conditions of the contract.</p> <p>(a) A contract amendment shall meet the requirements of these rules and Department of Finance and Administration Office of Contract Review Policy Guidelines and shall clearly detail the additions, deletions, and modifications to the subject contract.</p> <p>Specifically, Policy .07a-2 Expired or Terminated Contract Amendment - Prohibited</p> <p>If a contract is to be amended, the amendment should always be signed and approvals recorded before the end date of the subject contract.</p>	

RECEIVED

By OCR at 3:14 pm, Mar 23, 2010

1 REQUEST RFS #	40100-19009
9 EXCEPTION REQUESTED <p>Amend contract term (B.1) to add additional year as provided in Term Extension (B.2) but which initial term ended 3/1/2010.</p>	
10 JUSTIFICATION - The contractor was selected through the RFP process. This contract is federally funded by the Federal Highway Administration. Funding was not made available until February 25, 2010 and the current term ended 3/1/10. The Civil Rights Office (CRO) was unaware that a contract could be extended without secured funding (i.e. for time extension only) and amended again when funding was available. The CRO was likewise unaware that the Fiscal Review Committee (FRC) had changed their procedures in late 2008 to include FRC review of a competitively procured contract being amended to add funds. This process should have occurred 60 days prior to contract expiration.....near the end of December 2009. To prevent contract management failure in the future, the CRO will have a minimum of two (2) employees diary their calendar three (3) months prior to the end of a contract term. The CRO will, at that time, contact TDOT's Contract Review Office to ensure all of the proper steps are taken to amend a contract.	
AGENCY HEAD SIGNATURE & DATE (procuring agency head or authorized signatory)  MAR 2 2 2010	

CONTRACT SUMMARY SHEET

021908

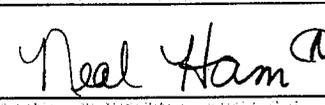
RFS# 40100 - 19009		Contract# FA-09-27332-00	
State/Agency Tennessee Department of Transportation - TDOT		State/Agency/Division Civil Rights Office/Small Business Development Program	
Contractor Name Tyler Construction Engineers, P.C.		Contractor ID# (FEIN or SSN) <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- V- 030389862-01	
Service Description Contractor shall provide business assistance to DBEs prequalified with TDOT.			

Contract Begin Date 2-Mar-09	Contract End Date 1-Mar-10	SUBRECIPIENT or VENDOR? Vendor	CFDA# 20.205
-------------------------------------	-----------------------------------	---------------------------------------	---------------------

<input type="checkbox"/> Contractor is on STARS		<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
Allotment Code 480	Cost Center 88	Object Code 134	Fund 21	Funding Grant Code NA	Funding Subgrant Code NA
FY 2009	State	Federal 316,200.00	Interdepartmental	Other	TOTAL Contract Amount 316,200.00
TOTAL:		316,200.00			316,200.00

COMPLETE FOR AMENDMENTS ONLY		
FY	Base Contract & Prior Amendments	THIS Amendment ONLY
2009		
TOTAL:		
End Date:		

State/Agency Fiscal Contact & Telephone#
Audra Colvin (615) 741-2498

State/Agency Budget Officer Approval


Funding Certification (certification required by T.C.A., §9-4-51-13 that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)

MAR 06 2009

Contractor Ownership (complete for ALL base contracts - N/A to amendments or delegated authorities)

African American
 Person w/ Disability
 Hispanic
 Small Business
 Government
 Asian
 Female
 Native American
 NOT Minority/Disadvantaged
 Other

Contractor Selection Method (complete for ALL base contracts - N/A to amendments or delegated authorities)

RFP
 Competitive Negotiation *
 Alternative Competitive Method *
 Non-Competitive Negotiation *
 Negotiation w/ Government (ID, GG, GU)
 Other *

** Procurement Process Summary (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)

OCR

MAR 05 2009

RECEIVED

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
TYLER CONSTRUCTION ENGINEERS, P.C.**

This Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "State" and Tyler Construction Engineers, P.C., hereinafter referred to as the "Contractor," is for the provision of training and individual business assistance for Disadvantaged Business Enterprises, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.

Contractor Federal Employer Identification or Social Security Number: 03-0389862

Contractor Place of Incorporation or Organization: Tennessee

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. Background Information. Providing educational support programs (training and business assistance) for Disadvantaged Business Enterprises (DBEs) is a vital component of the State's Civil Right's Office, Small Business Development Program.

Certified DBEs are defined by 49 Code of Federal Regulations, Part 26, as for-profit small business concerns that meets the following criteria:

- At least fifty-one percent (51%) is owned by one or more individuals who are both socially and economical disadvantaged or, in the case of a corporation, in which fifty- one percent (51%) of the stock is owned by one or more such individuals; and
 - Management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it
 - Owners must not possess a personal net worth of more than seven hundred fifty thousand (\$750,000)
- A.3. Ten (10) DBEs from across the state shall participate in this educational support program. The ten firms have been selected by the Civil Rights Office through a competitive application process. The names of the firms selected are listed in Attachment Two. The State shall provide additional participant names should the number fall below ten.

Selected Firms will meet the following criteria:

- At least two years experience as a certified Department of Transportation DBE.
- Demonstrated interest in working on State contracts as evidenced by consistently bidding on State work.
- A member of an under-utilized group related to the State's DBE participation.
- An established business structure including an internal bookkeeping system, marketing materials and office administration structure.
- Gross revenues in excess of \$200,000/year.
- Profitable operations in at least two of the previous three years.
- Capable of providing annual financial statements.
- In good standing on all tax obligations.

- A.4. The Contractor shall provide a wide range of training and individual business assistance to the disadvantaged businesses that are prequalified to perform work for The Department of Transportation, Construction Division's prime contractors.
- A.5. The Contractor shall administer this program and coordinate the training on a statewide basis. There are ninety-five (95) counties in Tennessee in which DBE firms have the potential to perform specialty work items for prime contractors. The state is divided into four separate regions from east to west.
- Region 1 = Knoxville
 - Region 2 = Chattanooga
 - Region 3 = Nashville
 - Region 4 = Jackson/Memphis
- A.6. The selected DBE firms will receive services in the areas of bonding, financing and business planning. The following is a list of training and/or individual assistance or services the Contractor will provide; others may be added as needs arise. These services include but are not limited to:
- Joint Venturing/Teaming Assistance
 - Business Planning Assistance
 - Financial Assistance (loan application packaging)
 - Bonding Assistance (bonding application packaging)
 - Marketing Assistance (presentation skills and materials)
 - Bidding/Estimating and Project Management Training
 - Preparation for the General Contractors License or a Specialty License Exam
 - Human Resource Program Development
 - Accounting System and Financing Reporting Assistance
 - Safety and Operations Training
 - Guidance in Diversification and Expansion
 - Information Technology Training
 - Limited Legal Assistance (contracts, legal structure)
- A.7. The Contractor shall track the development of the selected DBE participants for growth. The Contractor will maintain statistical data on the selected certified DBEs obtaining state contracts to assess emerging participation levels.
- A.8. The Contractor shall have a kick-off meeting with the Director of Small Business Development to review plans for the entire scope of work prior to the starting individual assessment.
- A.9. The Contractor shall provide one monthly report (in both hard copy and electronic format) each month detailing the specific services provided to all ten DBE firms, including but not limited to who was consulted, how often, what topics were covered, and what was required for completion of this activity. Reports should also comply with Federal Highway Administration reporting guidelines.
- A.10. The deliverables are detailed below with associated timeline, if applicable.
1. Ten (10) Assessments are expected to be completed at the end of the first month of the contract. The assessments shall provide information on each DBE's strengths and weaknesses, their knowledge of running a business (from day-to-day operations to growing their business), and the areas of training and or individual assistance needed.
- As these assessments will be an evaluation on the DBEs overall business operations, they should be performed on location with each firm. After completing the first Assessment, the Contractor should submit both a hard copy and an electronic copy to the State for feedback before additional assessments are performed on other participants. Upon approval, subsequent assessments should be sent to the State as they are completed, and/or should be included in the monthly report.

2. A Plan of Action (Business Plan) report should be completed on each firm and by the end of the second month of the contract. This should include a detail objective to provide services and shall be approved by the State. It shall include plans to increase competency and grow the business.

After completing the first Business Plan, the Contractor should submit both a hard copy and an electronic copy to the State for feedback before any additional Business Plans are performed on other participants. Upon approval, subsequent business plans should be sent to the State as they are completed, and/or should be included in the monthly report.

3. Implementation (training). This service shall continue through the term of the contract.
4. A Final Report will be provided both in hard copy and in electronic format at least two weeks prior to the end of the contract period.
5. Oral presentation. This presentation will be designed to show an increase in emerging participation by selected DBEs on State highway projects. This presentation shall be made after the final report, above, has been approved, but no later than the last day of the contract period.

Final Report and Oral Presentation. They shall include the following items:

- Success in providing opportunities for DBEs
- Lessons learned from program
- Suggestions for future advancement of the participating DBEs

6. Program administration. This service shall continue through the term of the contract. It includes all administrative duties described as coordination of the training, tracking the development of the DBE's, and preparing the monthly reports.

- A.11. If the contract term is extended, the State will provide the Contractor additional DBE's for training. If any of the original competitively selected DBE's require additional business assistance, the Contractor may continue to provide them training.

B. CONTRACT TERM:

- B.1. This Contract shall be effective for the period commencing on March 2, 2009 and ending on March 1, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

2014 if all extensions

- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract, and shall be based upon payment rates provided for in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Hundred Sixteen Thousand, Two Hundred Dollars and no cents (\$316,200.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees,

overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount
Assessments (10 Assessments)	\$1,000.00 Per Assessment
Plan of Action Reports (10 Reports)	\$1,200.00 Per Report
Implementation (Training)	\$85.00 Per Hour
Final Report (One Report)	\$7,500.00
Oral Presentation (One Presentation)	\$3,000.00
Program Administration	\$85.00 Per Hour

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Tennessee Department of Transportation
Civil Rights Office - Small Business Development Program

505 Deaderick Street
Suite 1800, J.K. Polk Building
Nashville, TN 37243

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
- (1) Invoice/Reference Number (assigned by the Contractor);
 - (2) Invoice Date;
 - (3) Invoice Period (period to which all invoiced charges are applicable);
 - (4) Contract Number (assigned by the State to this Contract);
 - (5) Account Name: Tennessee Department of Transportation – Civil Rights Office Small Business Development Program;
 - (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
 - (7) Contractor Name;
 - (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
 - (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
 - (10) Contractor Remittance Address;
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.
- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) not include any future work but will only be submitted for completed service; and
 - (3) not include sales tax or shipping charges.
- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of

audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services.

a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.

b. Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as

identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment One, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is

authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Cammie Davenport Woodle, Executive Director, Civil Rights Office
Tennessee Department of Transportation
505 Deaderick Street, Suite 1800
Nashville, Tn 37243
Email: cammie.davenportwoodle@state.tn.us
Phone: (615) 741-3681
Fax: (615) 741-3169

The Contractor:

Victor C. Tyler, P.E., President
Tyler Construction Engineers, P.C.
P.O. Box 1012, Madison, Tn 37155
Email Address: www.tyler-engineers.com
Telephone 615-469-5398
Fax: 615-469-7054

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
 - c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.
- E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
 - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
 - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
 - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.

- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.7. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.8. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).

E.9. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.

- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.10. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.11. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

E.12. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

E.13. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

E.14. Lobbying. The Contractor certifies, to the best of its 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 an 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

E.15. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; 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;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

E.16. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-401.00-190 (Attachment 6.3, Section B, Item B.13.) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Business Diversity Enterprise in form and substance as required by said office.

IN WITNESS WHEREOF:

TYLER CONSTRUCTION ENGINEERS, P.C.

 2-18-09

 CONTRACTOR SIGNATURE DATE
 VICTOR C. TYLER, PRESIDENT

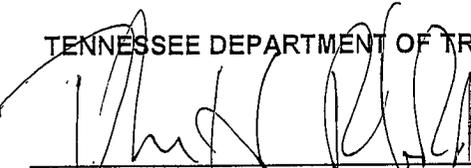
 PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF TRANSPORTATION:

 FEB 23 2009

 GERALD F. NICELY, COMMISSIONER DATE

TENNESSEE DEPARTMENT OF TRANSPORTATION:

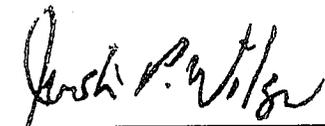
 2/20/09

 JOHN REINBOLD, GENERAL COUNSEL DATE
 APPROVED AS TO FORM AND LEGALITY

APPROVED:

 3/11/09

 M. D. GOETZ, JR., COMMISSIONER DATE
 DEPARTMENT OF FINANCE AND ADMINISTRATION

 3/20/09

 JUSTIN P. WILSON, COMPTROLLER OF THE TREASURY DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	RFP 400.00-190
CONTRACTOR LEGAL ENTITY NAME:	TYLER CONSTRUCTION ENGINEERS, P.C.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	03-0389862

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.



CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

VICTOR C. TYLER, PRESIDENT

PRINTED NAME AND TITLE OF SIGNATORY

2-18-09

DATE OF ATTESTATION

DBE FIRMS SELECTED TO PARTICIPATE	
DBE FIRM	ADDRESS
B & B Lawn Services, LLC	1725 Linden Ave. Knoxville, TN 37917
Lynn Sanford Construction, LLC	311 Ellis Ave. Maryville, TN 37804
J.M. Hanner Construction Co., Inc.	1100 S. Highland Park Ave. Chattanooga, TN 37404
Kimberly, Inc.	3536 Old Bonair Road Sparta TN 38583
CD Steger Construction, Inc.	9000 Church Street East, B-103 Brentwood, TN 37027
Carter Safety Consultants, Inc.	2705 Huntsville Hwy. Fayetteville, TN 37334
Vega Concrete	493 Old Nashville Hwy LaVergne, TN 37086
Charles H. Hill Contractors, Inc.	1956 Dunn Ave. Memphis, TN 38114
GTW Analytical Services, LLC	3715 S. Perkins, Ste. 7 Memphis, TN 38118
Brighter Days and Nites, LLC	2166 Troyer Ave. Memphis, TN 38114