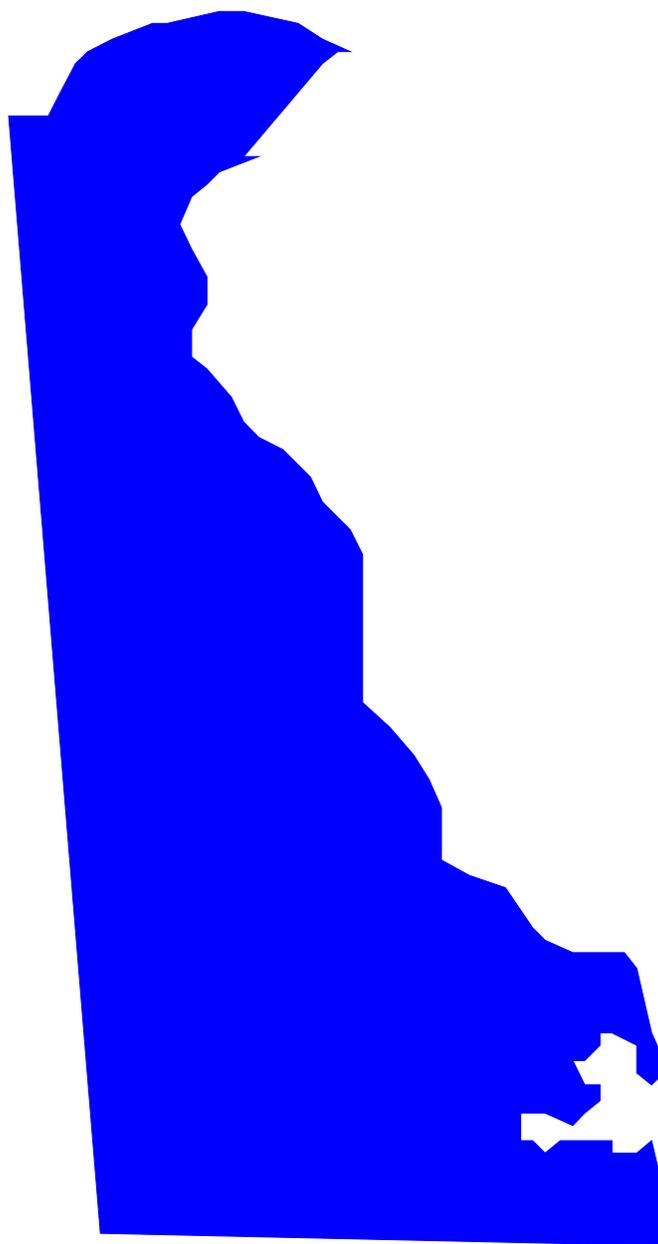


# Delaware Department of Transportation



## Professional Services Procurement Manual

2016





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Questions or suggestions regarding consultant contracting should be directed to [dot.profservices@state.de.us](mailto:dot.profservices@state.de.us)



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# 1. Introduction and Authority

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*Excellence in Transportation – Every Trip • Every Mode • Every Dollar • Everyone*, is the mission of the Delaware Department of Transportation (DelDOT). A contributing factor to the success of the mission is the procurement of professional services to fill a variety of Department needs.

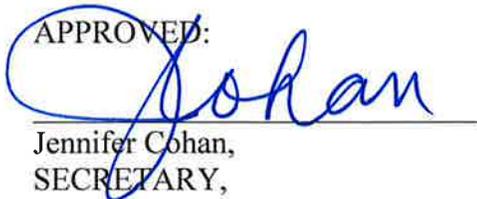
"Professional services" or "Consultant" means services which generally require specialized education, training or knowledge and involve intellectual skills. Examples of professional services include, but are not limited to, engineering, environmental engineering, environmental monitoring, land surveying, landscape architecture, geology, architectural, archaeologists, architectural historians, historians, educational consultants, management, medical, teaching, planning, computer information management, financial, accounting, auditing, construction management and arbitration services; or those services performed by persons engaged in the above-mentioned professions in connection with their professional employment or practice. Procurement of attorneys is not considered a professional service, and requires the approval of the Attorney General and the Governor.

This Professional Services Procurement Manual addresses registration, solicitation, evaluation, selection, contracting and monitoring of the Department's professional services' procurements. Each use of professional services must be contracted, authorized, funded, negotiated, fiscally monitored, technically evaluated and contractually administered. The Manual outlines administrative procedures for Department employees and firms desiring to provide professional services to the Department, regardless of the size of effort, cost, or procurement method utilized.

The Department utilizes funding from; the State of Delaware, the Federal Highway Administration, the Federal Transit Administration, and other federal agencies. As such, these policies and procedures are developed in compliance with the Delaware Code and federal regulations.

The Delaware Code requires the Department to establish publicly available written administrative procedures for evaluating interested firms. The Federal Highway Administration requires the Department to prepare and maintain written policies and procedures for the procurement, management, and administration of engineering and design related consultant services, and the FHWA shall approve the written policies and procedures. To this end, the Department has adopted the procedures as described herein.

APPROVED:



Jennifer Cohan,  
SECRETARY,  
Delaware Department of Transportation

APPROVED:



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## 2. Overview

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### UPDATES TO THE MANUAL

This Manual is only available on the Department's Website;

[http://www.deldot.gov/information/pubs\\_forms/manuals/professional\\_services/index.shtml](http://www.deldot.gov/information/pubs_forms/manuals/professional_services/index.shtml).

The Manual will be updated as needed. A listing of updates and effective dates will be available at the above Website. Professional service firms are encouraged to check the updates frequently and subscribe to the Delaware Notification Service at; <https://denotificationservices.bbcportal.com/Entry>.

Federal regulations 23 CFR part 1-999; 49 CFR part 600-699; and 2 CFR part 200; and all other required federal and Delaware laws and regulations will be followed even if not expressly included in this Manual.

### EXCEPTIONS

Request for exception to any process or procedure described in this Manual must be requested via e-mail to the Consultant Control Coordinator (CCC). The request must include a recommended alternative procedure that meets the Delaware Code, and federal regulations when utilizing federal funds. Exception requests will be reviewed and may be approved on a single solicitation basis only.

### STANDARDS OF CONDUCT

The Department's Standards of Conduct governs the conduct of employees, officers, or agents of the Department engaged in the award and administration of engineering and design related services and contracts. The purpose of this policy is to prevent, identify, and mitigate conflicts of interest in accordance with the above referenced regulations. The Standards of Conduct and Conflicts of Interest document is contained in *Exhibit A*.

### REGULATORY OVERVIEW - State

29 Del.C. Chapter 69

Section § 6904(a) of the Delaware Code may have broad application to solicitations and agreements, but are not specifically called out elsewhere within this Manual:

“If any provision of this chapter conflicts or is inconsistent with any statute, rule or regulation of the federal government applicable to a project or activity, the cost of which is to be paid or reimbursed in whole or in part by the federal government, and due to such conflict or inconsistency the availability of federal funds may be jeopardized, such provision shall not apply to such project or activity.”

### REGULATORY OVERVIEW - Federal

23 CFR part 1-999; 2 CFR part 200; 2 CFR part 1201; 40 U.S.C. 1101–1104; 49 CFR part 600-699

The following federal regulations may have broad application to solicitations and agreements, but are not specifically called out elsewhere within this Manual:

23 CFR § 172.7(b)(1)(i) - STAs or other recipients and their subrecipients shall comply with procurement requirements established in State and local laws, regulations, policies, and procedures that are not addressed by or are not in conflict with applicable Federal laws and regulations, as specified in 2 CFR part 1201.



23 CFR§ 172.7(b)(1)(ii) - When State and local procurement laws, regulations, policies, or procedures are in conflict with applicable Federal laws and regulations, a contracting agency shall comply with Federal requirements to be eligible for Federal-aid reimbursement of the associated costs of the services incurred following FHWA authorization, as specified in 2 CFR 200.102(c).

**FEDERALLY FUNDED CONTRACTS FOR ENGINEERING AND DESIGN RELATED SERVICES FOR PROJECTS RELATED TO CONSTRUCTION** (23 CFR 172.1)

*(directly related to a highway construction project and utilizing FAHP funds)*

This part prescribes the requirements for the procurement, management, and administration of engineering and design related services under 23 U.S.C. 112 and as supplemented by the Uniform Administrative Requirements For Federal Awards rule. The Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards rule (2 CFR part 200) shall apply except where inconsistent with the requirements of this part and other laws and regulations applicable to the Federal-aid highway program (FAHP). The requirements herein apply to federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) (related to construction) and are issued to ensure that a qualified consultant is obtained through an equitable qualifications- based selection procurement process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost. State transportation agencies (STA) (or other recipients) shall ensure that subrecipients comply with the requirements of this part and the Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards rule. Federally funded contracts for services not defined as engineering and design related, or for services not in furtherance of a highway construction project or activity subject to the provisions of 23 U.S.C. 112(a), are not subject to the requirements of this part and shall be procured and administered under the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards rule and procedures applicable to such activities.

**PROGRAM MANAGEMENT AND OVERSIGHT** (23 CFR 172.5)

*(directly related to a highway construction project and utilizing FAHP funds)*

The Department shall develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design related consultant services, reimbursed in whole or in part with FAHP funding, as specified in 23 U.S.C. 302(a). Responsibilities shall include the following:

- (1) Preparing and maintaining written policies and procedures for the procurement, management, and administration of engineering and design related consultant services in accordance with 23 CFR 172.5 (c);
- (2) Establishing a procedure for estimating the level of effort, schedule, and costs of needed consultant services and associated agency staffing and resources for management and oversight in support of project authorization requests submitted to FHWA for approval, as specified in 23 CFR 630.106;
- (3) Procuring, managing, and administering engineering and design related consultant services in accordance with applicable Federal and State laws, regulations, and approved policies and procedures, as specified in 23 CFR 1.9(a).

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## 3. Initiating Professional Services

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### **DEPARTMENT PROJECT MANAGER (PM)**

A Department PM is designated to be responsible and accountable for managing projects both technically and financially—and to prepare the supporting justification for procuring outside services.

The Department's assigned PM is in responsible charge of the project. Responsible charge is defined as a full-time employee of the Department qualified to ensure that the work delivered under contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. A PM may serve in responsible charge of multiple projects and the Department may use multiple employees to fulfill monitoring responsibilities.

The PM's responsibilities shall include:

- (i) Administering inherently governmental activities including, but not limited to, contract negotiation, contract payment, and evaluation of compliance, performance, and quality of services provided by the consultant;
- (ii) Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
- (iii) Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;
- (iv) Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
- (v) Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
- (vi) Evaluating and participating in decisions for contract modifications; and
- (vii) Documenting contract monitoring activities and maintaining supporting contract records, as specified in 2 CFR 200.333, and 23 CFR part 172 when applicable.
- (viii) Preparing a consultant's performance evaluation yearly, and when services are completed.
- (ix) Notifying and coordinating with the Department's Finance and Audit section the closing-out of the consultant agreements as specified in 2 CFR 200.343.

### Identification of Desired Professional Services

The PM is responsible for identifying professional services needed for project delivery. Professional services must be anticipated, defined, and secured in such a manner as to not adversely impact project delivery. PM's must conform to the policies and procedures defined in this manual when they require professional services.

To obtain outside services, the PM must evaluate the project needs in some depth. The initial evaluation of desired services should include the following:

- A project description and scope of services, including any anticipated phasing or critical milestones.
- The most critical project features.
- Any special or specific criteria or specifications.
- Any project specific standards to be followed.
- Identification of any unusual problems— technical or otherwise.
- A preliminary cost estimate for consultant services including estimated hours by employee classification, or by type of service provided.



### Request for Professional Services

Once the PM has identified the requirements for professional services, the *Initial Request for Professional Services* form is filled out completely and submitted to Contract Administration. The Consultant Control Coordinator (CCC) will review the document and discuss any concerns or follow-up issues with the PM.

### Solicitation Approval

When the CCC receives an acceptable *Initial Request for Professional Services* document and attachments, the CCC will request approval to procure professional services from the responsible division Director.

### Independent Estimate

Prior to receipt or review of a consultant's cost proposal, the PM will prepare a detailed independent estimate with an appropriate breakdown of anticipated labor hours for each employee classification required, other direct costs, and consultant's indirect cost and fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation. (2 CFR 200.323)

### Consultant Management Support Role

When Federal-aid funds participate in a contract to provide consultant services in a management role (such as managing a project or overseeing other consultants) relating to highway construction, prior approval of FHWA is needed unless an alternate approval procedure has been approved. If approved, notify Contract Administration. Refer to 23 CFR part § 172.7(b)(5) for more detailed information.

## **CONSULTANT CONTROL COORDINATOR (CCC)**

The Department has assigned the responsibility for monitoring and administering the procurement of professional services to the Finance Division; Contract Administration, under the direction of the CCC.

The CCC is responsible for coordinating the consultant procurement process and administering the quality control program associated with the process. The CCC's duties and responsibilities include:

- Selecting the agreement type, payment method, contract provisions, and certifications;
- Maintaining the integrity of the selection, agreement, and notice to proceed process;
- coordinating activities from advertising through execution of the agreement;
- ensuring compliance with all laws, regulations and procedures;
- serving as Chairman and non-voting member of the Shortlist and Selection Committees;
- overseeing completion and distribution of required information and documentation;
- overseeing appropriate and equitable criteria for evaluation and rating of consultants;
- developing and implementing standards for preparing legal agreements;
- reviewing and approving all solicitations and agreements;
- providing quality control of consultant agreements;
- developing, recommending, and implementing revisions to this Manual;
- ensuring price proposals are analyzed for reasonableness, costs, etc.;
- provides the PM and committee members with guidance;
- development of the solicitation documents;
- development of the agreement document;
- retaining supporting documentation of the complete process;
- successful procurement of professional services; and
- upon request, the CCC will debrief non-selected firms in an effort to assist them in future procurement activities, and to maintain transparency in the procurement process.

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<sup>1</sup> required only if agreement services are related to highway construction and utilize FAHP funds

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## 4. Doing Business with DelDOT

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### **CONSULTANT REGISTRATION** (prime consultants)

Professional service firms desiring to do business with DelDOT are required to register with the Department. This is not a prequalification, but rather a listing of professional service firms that have provided requested information to the Department. Registration, or application for registration, is required prior to the closing date of a competitive solicitation.

Registration is required only one time and is to be updated when contact information, ownership, or senior personnel listed on the application has changed. No company brochures or promotional materials are to be submitted with the registration material

The burden of conformance with all licensing, regulatory, and statutory requirements to perform work for the Delaware Department of Transportation is the responsibility of the firm applying for registration.

The registration packet is located on our Website at;

[http://www.deldot.gov/information/business/proservs/consultants\\_registration.shtml](http://www.deldot.gov/information/business/proservs/consultants_registration.shtml).

### **INDIRECT COST RATE** (prime consultants, subconsultants) (23 CFR 172.11)

In order to do business with the Department you must complete and submit the *Internal Control Questionnaire (ICQ) for Consulting Engineers* document to the Department's External Audit section. This should be submitted well in advance of preparing your first cost proposal for consideration by the Department. The information will be used to review compliance with FAR Part 31 requirements.

The ICQ form and additional information is located on our Website at;

<http://www.deldot.gov/information/business/> under External Audit.

### Consultant Indirect Cost Rates

Consultant's indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. The Department will accept a consultant's or subconsultant's indirect cost rate(s) established for a 1- year applicable accounting period by a cognizant agency prepared in accordance with Federal cost principles.

Indirect cost rate proposals for the consultant's 1-year applicable accounting period shall not be accepted and no agreement shall be made to establish final indirect cost rates, unless the costs have been certified by an official of the consultant as being allowable in accordance with the Federal cost principles. The certification requirement shall apply to all indirect cost rate proposals submitted by consultants and subconsultants for acceptance. Each consultant or subconsultant is responsible for certification of its own indirect cost rate and may not certify the rate of another firm.

The certifying official shall be an individual executive or financial officer of the consultant's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the indirect cost rate proposal submitted for acceptance.

### Consultant Cost Certification

The certification of final indirect costs shall read as follows:



Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) of title 48, Code of Federal Regulations (CFR), part 31; and
2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR of 48 CFR Part 31.

Firm: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Name of Certifying Official: \_\_\_\_\_ Title: \_\_\_\_\_ Date of Execution: \_\_\_\_\_

A lower indirect cost rate may be accepted for use on a contract if submitted voluntarily by a consultant; however, the consultant’s offer of a lower indirect cost rate shall not be a condition or qualification to be considered for the work or contract award.

A consultant’s accepted indirect cost rate for its 1-year applicable accounting period will be applied to contracts; however, once an indirect cost rate is established for a contract, it may be extended beyond the 1-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or contract award.

If an indirect cost rate established by a cognizant agency is in dispute, the Department does not have to accept the rate. The Department may perform its own audit or other evaluation of the consultant’s indirect cost rate for application to the specific contract, until or unless the dispute is resolved. The Department may alternatively negotiate a provisional indirect cost rate for the specific contract and adjust contract costs based upon an audited final rate.

The Department, FHWA, and subrecipients of FAHP funds may share audit information in complying with the recipient’s or subrecipient’s acceptance of a consultant’s indirect cost rates provided that the consultant is given notice of each use and transfer.

Audit information shall not be provided to other consultants or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the recipient’s or subrecipient’s acceptance of a consultant’s indirect cost rates without the written permission of the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance; however, should a release be required by law or court order, such release shall make note of the confidential nature of the data.

**DIRECT SALARY RATES** (prime consultants, subconsultants)

Billing rates for new projects and new tasks are authorized up to the consultant’s actual direct salary rates, and will be used for estimation, negotiation, administration, and payment of tasks, projects and new contracts. Professional service firms are required to submit certified, notarized payroll rates for all employees working on Department projects, on a yearly basis. For firms authorized to invoice certain tasks on a loaded rate basis, an additional submittal is required upon a change to the firms’ Indirect Cost Rate approved by the Department. The Department may require submittal of billing rates in additional formats or timing.

Consultants shall be responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with Federal cost principles.



**FIXED FEE** (prime consultants, subconsultants)

The determination of the amount of fixed fee considers the scope, complexity, contract or task duration, degree of risk borne by the consultant, amount of subcontracting, and professional nature of the services as well as the size and type of contract. The establishment of fixed fee is contract or task order specific. Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist.

The Fixed-Fee is stated as a fixed-dollar amount. Fixed-Fee expressed as a percentage cannot be used. The Departmental guideline for negotiating the Fixed-Fee dollar amount consists of weighting factors based on complexity, risk, and schedule; combined with overhead weighting factors. Fixed-Fee for sub consultants are treated independently of the prime consultant using the same guidelines.

There are two approaches to computing the task-related weighting factors – one for construction inspection and one for all other tasks. The total fixed fee weighting factor guideline is the sum of the overhead-related factor and the task-related factor.

**Overhead-related Weighting Factors:**

115% and less	15%
> 115% - 120%	12%
> 120% - 125%	10%
> 125% - 130%	8%
> 130% - 135%	6%
> 135% - 140%	5%
> 140% - 150%	4%
> 150% - 160%	2%
> 160%	1%

**Task-related Weighting Factors:**

		Inspection	Other
Complexity	Low	0%	2%
	Normal	1%	4%
	High	2%	6%
Risk	Low	0%	2%
	Normal	0%	4%
	High	0%	8%
Schedule	Normal	0%	2%
	Expedited	0%	4%
	Emergency	0%	6%

**Fixed-Fee Calculation Definitions:**

The Fixed Fee Calculation guideline is designed where the majority (80%) of work performed falls within the “normal” category. The following definitions provide guidance in determining when tasks are outside the “normal” category.

- Complexity
  - Low: Tasks with a limited scope of work. Examples of low complexity tasks are construction inspection, restoration, resurfacing.
  - High: Tasks with unusual, multi-disciplined, and highly specialized requirements/tasks.
- Risk
  - Low: Tasks with a low risk of claims or lawsuits. Examples of low risk tasks are studies, surveys, inspections, IT services, landscaping.
  - High: Tasks with a high risk of claims or lawsuits. Examples of high risk tasks are experimental designs, bonus/penalty tasks.
- Schedule
  - Expedited: Tasks on which DelDOT requests a schedule to be reduced by more than 20% from the normal time periods.
  - Emergency: Tasks that require initiation of work with less than two days’ notice.

**DIRECT EXPENSES** (prime consultants, subconsultants)

The Department shall use the Federal cost principles in determining the reasonableness, allowability, and allocability of direct contract costs.



### Lodging and Subsistence

Lodging and subsistence (meals & incidental expenses) when necessary and pre-approved should be accomplished at the most economical and reasonable means possible. Reimbursement will be made at actual cost not to exceed CONUS (Continental United States) Per Diem rates set for the location by the U.S. General Services Administration.

Mileage for the use of privately owned vehicles on a project will be reimbursed in accordance with the Consultant's written policy, up to the current U.S. General Services Administration (GSA) rate established for the year in which work is being performed. Company vehicle use will be reimbursed at the demonstrated cost per mile of the vehicle, up to the U.S. General Services Administration (GSA) rate established for the year in which work is being performed.

Commuting to the Department's work location on a routine basis serving as a proxy for Department personnel is not chargeable to the Department.

Typical rates for common direct expenses will be requested by the Department upon contract negotiation and submittal of proposals. Provide the unit costs for the various elements of expense that are consistently billed.

### **PAYMENT METHODS** (prime consultants)

The methods of payment shall be: cost plus fixed fee, cost per unit of work, specific rates of compensation, or Lump sum. A single contract may contain different payment methods as appropriate for compensation of different elements of work. The Department will determine the payment method. Consultants must also utilize these payment methods for payments to their subconsultants. There is no mark-up or administrative cost allowable on direct expenses or subconsultant/subcontractor costs.

### Maximum Amount Payable

When the method of payment is other than lump sum, the contract shall specify a maximum amount payable which shall not be exceeded unless adjusted by a contract modification.

### Specific Rates of Compensation

The specific rates of compensation payment method provides for reimbursement on the basis of direct labor hours at specified fixed hourly rates, including direct labor costs, indirect costs, and fixed fee, plus any other direct expenses or costs, subject to an agreement maximum amount. This payment method shall only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. This specific rates of compensation payment method is limited to contracts or components of contracts for specialized or support type services where the consultant is not in direct control of the number of hours worked, such as construction engineering and inspection. When using this payment method, the Department shall manage and monitor the consultant's level of effort and classification of employees used to perform the contracted services.

### Lump Sum

The lump sum payment method shall only be used when the Department has established the extent, scope, complexity, character, and duration of the work to be required to a degree that fair and reasonable compensation, including a fixed fee, can be determined at the time of negotiation.

### **CONSULTANT RECORDS** (prime consultants, subconsultants)

Consultants shall be responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with Federal cost principles and Department requirements. The



consultant must retain all required records for not less than 3 years after the Department makes final payment and all other pending matters are closed.

Access to Records (prime consultants, subconsultants)

Access is required by the Department, FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

**ALLOWABLE COSTS - OVERSIGHT** (prime consultants, subconsultants)

The Department's Audit section provides reasonable assurance that consultant costs on contracts are allowable in accordance with state and federal cost principles and consistent with the contract terms considering the contract type and payment method through Risk-based analysis. This oversight ensures allowability of direct contract costs, and addresses the evaluation and acceptance of consultant and subconsultant indirect cost rates for application to contracts. This Risk-based oversight process consists of the following:

Risk Assessments.

Conducting and documenting an annual assessment of risks of noncompliance with state and federal cost principles for consultants doing business with the agency, considering the following factors:

- A. Consultant's contract volume within the Department;
- B. Number of States in which the consultant operates;
- C. Experience of consultant with Department, FHWA, and FAHP contracts;
- D. History and professional reputation of consultant;
- E. Audit history of consultant;
- F. Type and complexity of consultant accounting system;
- G. Size (number of employees or annual revenues) of consultant;
- H. Relevant experience of certified public accountant performing audit of consultant;
- I. Assessment of consultant's internal controls;
- J. Changes in consultant organizational structure; and
- K. Other factors as appropriate.

Risk Mitigation.

Allocating resources, as considered necessary based on the results of the annual risk assessment, to provide reasonable assurance of compliance with the Federal cost principles through application of the following types of risk mitigation and evaluation procedures appropriate to the consultant and circumstances:

- A. Audits performed in accordance with generally accepted government audit standards to test compliance with the requirements of the Federal cost principles;
- B. Certified public accountant or other cognizant agency work paper reviews;
- C. Other analytical procedures;
- D. Consultant cost certifications; and
- E. Consultant and certified public accountant training on the Federal cost principles.

**CONFLICTS OF INTEREST**

The Department's Consultant Conflict of Interest Policy governs the conduct and roles of consultants in the performance of services under contract to the Department, in order to prevent, identify, and mitigate conflicts of interest in accordance with federal regulations. This policy applies to consultants, subconsultants, and all professional services firms providing, or seeking to provide, services to the Department. The Consultant Conflict of Interest policy is contained in *Exhibit B*.



A consultant in a management support role is precluded from providing additional services for projects, activities, or contracts under its oversight due to potential conflicts of interest. These services include performance of work and review or evaluation of work done by their firm on behalf of the contracting agency. This is addressed in the Department's Standards of Conduct policy.

No person performing services for the Department in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than their employment with a firm retained by the Department, in any contract or subcontract in connection with such project. No officer or employee of a firm retained by the Department shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed in writing to the Department, and such officer, employee or person has not participated in such acquisition for and in behalf of the Department or the State.

### **DISPUTES**

A letter of dispute may be submitted by a participating firm during the procurement, management, and administration of engineering and design related consultant services. The letter must be submitted within seven (7) days of the occurrence of the disputed event, state the facts and reasons for the dispute, and advise the resolution being sought. The letter is to be emailed to [www.dot-ask@state.de.us](mailto:www.dot-ask@state.de.us) and 'DISPUTE' is to be entered in the subject line. The Contract Services Administrator will review the issue, and if the issue cannot be resolved the dispute will be forwarded to the Director of the Contract Administration section. The Director will respond to the submitter with their findings. Appeals that meet these conditions will be reviewed and answered in consultation with the Secretary.

Pursuant to 17 Del. C. § 152, the execution and performance of all contracts awarded by the Department shall be under the charge of the Secretary of Transportation, and the Secretary's decision shall be final in all matters concerning the performance of the work and compliance with the terms of the contract.

### **SANCTIONS AND PENALTIES** (prime consultants, subconsultants)

The Department shall consider administrative, contractual and legal remedies and sanctions in accordance with Federal and State laws and regulations where consultants knowingly violate or breach contract terms and conditions. Remedies to be pursued could include, but are not limited to, specific contract provisions, State vendor suspension and federal suspension and debarment.

Consultant agreements are required to contain the Department's Errors and Omissions Policy.

The Department shall pursue appropriate remedies and sanctions when a consultant has been found to have knowingly charged unallowable costs to a federally funded contract. Where consultants knowingly charge unallowable costs to a FAHP funded contract:

- (i) The Department shall pursue administrative, contractual, or legal remedies and provide for such sanctions and penalties as may be appropriate; and
- (ii) Consultants are subject to suspension and debarment actions as specified in 2 CFR part 1200 and 2 CFR part 180, potential cause of action under the False Claims Act as specified in 32 U.S.C. 3729-3733, and prosecution for making a false statement as specified in 18 U.S.C. 1020.

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## 5. Subrecipient Requirements

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### Regulatory References

23 CFR Part 172; 2 CFR Part 200

*Subrecipient* means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

*Subaward* means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

**Note:** This process should also be considered when utilizing subrecipients on state funded projects.

### Overview

If the Department transfers money to another state agency or city/town/county for the activities covered by 23 CFR 172, the Department must ensure that the subrecipients are following 23 CFR 172.

Subrecipients are typically local governments or other entities that enter into a contract with the Department to receive a subaward from the Department to carry out a project, or part of a project, utilizing FHWA funds. These requirements apply to both the Department and the subrecipient for procurement of engineering and design related services for projects related to construction. The purpose is to ensure that a qualified consultant is obtained through an equitable qualifications-based selection procurement process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost.

The Department and its subrecipients shall comply with procurement requirements established in State and local laws, regulations, policies, and procedures that are not addressed by or are not in conflict with applicable Federal laws and regulations, as specified in 2 CFR part 1201.

### Department Responsibilities

The Department is required to ensure subrecipients comply with the requirements of 23 CFR part 172 and 2 CFR part 200. Projects not defined as engineering and design related, or for services not in furtherance of a highway construction project are not subject to 23 CFR part 172, but shall be procured and administered under the requirements of 2 CFR part 200.

The Department is required to administer subawards in accordance with State laws and procedures as specified in 2 CFR part 1201, and the requirements of 23 U.S.C. 106(g)(4), and 2 CFR 200.331. Administering subawards includes providing oversight of the procurement, management, and administration of engineering and design related consultant services by subrecipients to ensure compliance with applicable Federal and State laws and regulations. The Department is not relieved of its responsibility under laws and regulations applicable to the FAHP for the work performed under any consultant agreement or contract entered into by a subrecipient.

The Department shall approve the written policies and procedures, including all revisions to such policies and procedures, of a subrecipient to assess compliance with applicable requirements. These policies and procedures shall address, as appropriate for each method of procurement a contracting agency proposes to use, the items contained in 23 CFR 172.5 (c) to ensure compliance with Federal and State laws, regulations, and the requirements of 23 CFR part 172.



Subrecipient Responsibilities

Subrecipients shall develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design related consultant services. Responsibilities shall include the following:

- (1) Adopting written policies and procedures prescribed by the Department for the procurement, management, and administration of engineering and design related consultant services in accordance with applicable Federal and State laws and regulations; or when not prescribed, shall include:
  - (i) Preparing and maintaining its own written policies and procedures in accordance with 23 CFR 172.5 (c); or
  - (ii) Submitting documentation associated with each procurement and subsequent contract to the Department for review to assess compliance with applicable Federal and State laws, regulations, and the requirements of this part;
- (2) Procuring, managing, and administering engineering and design related consultant services in accordance with applicable Federal and State laws, regulations, and approved policies and procedures, as specified in 23 CFR 1.9(a).
- (3) Compliance with general procurement standards 2 CFR §200.318 through §200.326.

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## 6. Request for Qualifications (RFQ)

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### Regulatory References

29 Del. C. §§ 6981, 6982

23 CFR Part 172; 2 CFR Part 200; 49 CFR 600-699

### Overview

Two Phase Solicitation; Two Committees; One or Multiple Contracts.

This is a two phase solicitation process utilizing separate committees for each phase. Phase 1 is the public advertisement of a RFQ, whereby responding consultants are ranked by a Shortlist Committee based upon the listed criteria and each firm's submitted Statement of Qualifications (SOQ). Phase 2 is the issuance of a Request for Proposals (RFP) offered to the most highly qualified (shortlisted) consultants as determined by the rankings of the Shortlist Committee. The RFP is to be specific to the project for evaluation of a consultant's specific technical approach and qualifications.

### Contract Type – IDIQ, Multiphase, Project-Specific, or State

**IDIQ:** An indefinite delivery/ indefinite quantity contract is utilized for the performance of services for a number of projects under task orders issued on an as-needed basis, for a maximum five (5) year contract period and a pre-set maximum contract dollar amount.<sup>2</sup> IDIQ contracts are intended for smaller projects or for performance of routine or specialized services on a number of projects. As such, only services which fall within the advertised scope, funding, and schedule limitations of the established IDIQ contract may be awarded to the consultant.

**Multiphase:** A project-specific agreement where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

**Project-Specific:** An agreement between the Department and consultant for the performance of services and defined scope of work related to a specific project or projects.

**State:** An agreement between the Department and consultant for the performance of services as defined in the public advertisement of the RFQ. This solicitation and contract follows only the Delaware Code and Department procedures. Federal funds cannot be utilized on this contract at any time.

### Phase 1 - RFQ Preparation

The RFQ is prepared by the Consultant Control Coordinator (CCC) utilizing the *RFQ template* and combining the information provided by the PM in the *Initial Request for Professional Services* document. The CCC will review the document and discuss any concerns with the Project Manager (PM).

The RFQ shall provide all information and requirements necessary for interested consultants to provide a response to the RFQ and compete for the solicited services. The RFQ shall include the following:

- A. When utilizing federal funds, goals for participation of Disadvantaged Business Enterprises (DBEs) are required. The CCC submits the *Initial Request for Professional Services* to the DBE

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<sup>2</sup> required only if agreement services are related to highway construction and utilize FAHP funds



office to review the required services and determine the DBE attainment goal for the Agreement. The DBE goal is to be included in the advertised RFQ.

- B. The number of Agreements to be awarded; listed in the *Initial Request for Professional Services*.
- C. Indicate an RFP will be issued to the most highly qualified consultant(s) following submission and evaluation of Statements of Qualifications. Advise the number of firms that may be selected (shortlisted) to receive the RFP, and that discussions may be held with the shortlisted firms, as defined in the RFP when issued. [*The number of eligible firms is determined by the number of agreements to be awarded according to the following; 1 Agreement, 3 firms eligible; more than 1 Agreement, number of Agreements advertised plus 2 (i.e. 5 Agreements, 7 firms shortlisted)*].
- D. Identify the anticipated timing for any discussions.
- E. Provide a clear, accurate, and detailed description of the scope of work, technical requirements and qualifications of consultants necessary for the services to be rendered. To the extent practicable, the scope of work should detail the purpose and description of the project, services to be performed, complexity, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications, and policies.
- F. The criteria used for evaluation and their importance will vary on a project by project basis. The CCC will discuss the criteria to be used with the PM. Identify evaluation criteria including their relative weight of importance. Criteria used for evaluation, ranking, and selection of consultants must assess the demonstrated competence and qualifications for the type of professional services solicited. These qualifications-based factors may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance. Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
- G. When utilizing federal funds, in-State or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement for the minimum qualifications and competence of a consultant to perform the solicited services.

When utilizing federal funds related to highway construction, the following nonqualifications-based evaluation criteria are permitted under the specified conditions and provided the combined total of these criteria do not exceed a nominal value of 10 percent of the total evaluation criteria to maintain the integrity of a qualifications-based selection.<sup>3</sup>

1. A local presence may be used as a nominal evaluation factor where appropriate. This criteria shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner,

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<sup>3</sup> Only allowed if agreement services are related to highway construction and utilize FAHP funds



such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.<sup>4</sup>

2. The participation of qualified and certified Disadvantaged Business Enterprise (DBE) subconsultants may be used as a nominal evaluation criterion where appropriate in accordance with 49 CFR part 26 and a contracting agency's FHWA-approved DBE program.<sup>4</sup>
- H. The qualifications and information to be submitted in response to the RFQ may vary from project to project and the CCC will discuss the requirements with the PM. Describe and list the required information to be included in the responses to the RFQ.
- I. Include a description of the scoring and ranking process to be used.
- J. When utilizing federal funds, specify the contract type and method of payment anticipated.
- K. Identify any special provisions or contract requirements associated with the solicited services.
- L. Provide an estimated schedule for the procurement process and establish a submittal deadline for responses to the RFQ that provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal.
- M. Proposal evaluations shall consider the qualifications of the consultant and any subconsultants identified within the proposal with respect to the scope of work and established criteria.
- N. When utilizing federal funds for services related to highway construction, IDIQ RFQ's require additional information be included:<sup>5</sup>
1. Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions, which in total shall not exceed 5 years;
  2. Specify a maximum total contract dollar amount for each contract that may be awarded.
  3. If multiple consultants are to be selected and multiple IDIQ contracts awarded through a single solicitation for specific services:
    - a. Specify the procedures to be used in competing and awarding task orders among the selected, qualified consultants. [Task orders shall not be competed and awarded among the selected, qualified consultants on the basis of costs].
    - b. Each specific task order shall be awarded to the selected, qualified consultants:
      - i. Through an additional qualifications-based selection procedure, which may include, but does not require, a formal IDIQ RFP; or
      - ii. On a regional basis whereby the State is divided into regions and consultants are selected to provide IDIQ services for an assigned region(s) identified within the solicitation.

### **RFQ Advertisement**

Refer to Section 8 Advertisement.

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<sup>4</sup> Only allowed if agreement services are related to highway construction and utilize FAHP funds  
<sup>5</sup> required if agreement services are related to highway construction and utilize FAHP funds



**RFQ Submissions** – Statement of Qualifications

SOQ's received by the date and time required will be accepted for review. SOQ received after the required date and time will be rejected, the firm notified, and the SOQ returned or destroyed. The CCC may make exceptions based upon documented reasonable efforts of the firm to meet the required date and time. Such exceptions are to be notated in the file. Accepted SOQ are checked for suspension and debarment actions, eligibility status of consultants and subconsultants, and reviewed to ensure they meet minimum requirements as stated in the RFQ. The CCC will note any SOQ not in the correct format or not meeting minimum requirements, then distribute to the RFQ Shortlist Committee.

The Department does not routinely request concealed cost proposals be submitted prior to award. In the event a sealed cost proposal is submitted when not requested, the CCC will contact the firm and either destroy or return the sealed document to the firm. If sealed cost proposals are requested, the procedures described in the RFQ will be followed.

When utilizing federal funds related to highway construction, a minimum of three (3) SOQ's are expected. In instances where only two qualified consultants respond to the solicitation, the Department may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition. Alternatively, the Department may pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to re-compete under a new solicitation.<sup>6</sup>

**RFQ Shortlist Committee**

The *Initial Request for Professional Services* document identifies the recommended Shortlist Committee.

The RFQ Shortlist Committee is responsible for evaluating the SOQ's received in response to a RFQ. SOQ evaluations shall consider the qualifications of the consultant and any subconsultants identified within the SOQ with respect to the qualifications, scope of work and established criteria.

In addition to the CCC, who acts as the non-voting chairman, the Shortlist Committee consists of three people, two of which must be Department employees. Participation of a supervisor and a direct-report employee is discouraged. Use of consultant employees are not recommended, must be pre-approved by the CCC, and may be required to submit additional statements of confidentiality, conflict of interest, etc. If necessary, Shortlist Committee members may be replaced with Director Approval if they are not available for the scheduled meeting, or if there is an apparent conflict of interest with any of the responding consultants or their subconsultants.

Upon advertisement of the RFQ, and again upon acceptance of the SOQ's, the Shortlist Committee is notified of the date, time and location for the Shortlist Committee meeting and sent a copy of the *Conflict of Interest* statement for signature. Depending on the number of responses, the committee meeting should be held approximately three weeks after receipt of the SOQ, unless the CCC determines otherwise.

Upon return of the signed *Conflict of Interest* statement, the CCC distributes the following to each Shortlist Committee member for thorough review prior to, and reference during, discussions at the Shortlist Committee meeting; a copy of the advertised RFQ; a copy of all processed SOQ; submitting

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<sup>6</sup> required if agreement services are related to highway construction and utilize FAHP funds



firms' Performance Evaluations on Department agreements; and a preliminary RFQ ranking worksheet to be completed and returned prior to the meeting, for use as reference during the meeting.

### **RFQ Shortlist Meeting**

The RFQ ranking and scoring process will be addressed by the CCC. The Committee discusses the qualifications of each processed SOQ. At this meeting there is to be no indication given by any member of the Committee as to their anticipated scoring, rather a general discussion of areas of importance that may not have been met by any of the Proposals can be discussed. The CCC, as the non-voting Chairperson, guides the committee's discussions. The PM may be requested to attend and provide insight of the project to the committee.

Although the contract will be with the consultant, SOQ evaluations shall consider the qualifications of the consultant and any subconsultants identified within the proposal with respect to the qualifications, scope of work, and established criteria.

### **RFQ Shortlist Determination**

Immediately following the Shortlist Committee meeting, the CCC will send each Committee member a blank RFQ Scoresheet with instructions and a due date/time to be returned. Firms are rated, in confidence, by each committee member. The Shortlist Committee members are also required to submit comments on each firm's SOQ, presenting both positive and negative comments to assist the firm in preparation of future proposals. This information will be used in the event a debriefing is requested. The results of this scoresheet will determine the most highly qualified consultants to perform the solicited services based on the established criteria. The CCC will request approval of the Committee's ranking from the initiating section's Director.

### **RFQ Shortlist Notification**

After approval by the initiating Director, the CCC notifies the shortlisted firms, via email, of their Shortlist status. Either included with the Shortlist status notification, or shortly afterward, the shortlisted firms are sent a RFP and advised in writing of the next steps in the process, as previously determined by the Selection Committee. At this same time, all remaining unsuccessful firms are so notified via email and advised the names of the Shortlisted firms. The Shortlist Committee is to be notified as well, as a courtesy. Selection Committee members will be sent the names of the shortlisted consultants and their subconsultants and a *Conflict of Interest* statement for review, signature, and return to the CCC.

### **Phase 2 - RFQ Selection Committee**

The *Initial Request for Professional Services* document contains the recommended Selection Committee.

The RFQ Selection Committee is responsible for setting the criteria and evaluating the shortlisted consultants' responses to the RFP. SOQ evaluations shall consider the qualifications of the consultant and any subconsultants identified within the SOQ with respect to the qualifications, scope of work and established criteria.

In addition to the CCC, who acts as the non-voting chairman, the RFQ Selection Committee consists of five people, three of which must be DelDOT employees. Anyone serving on the RFQ Shortlist Committee cannot serve on the RFQ Selection Committee. Participation of a supervisor and a direct-report employee is discouraged. Use of consultant employees are not recommended, must be pre-approved by the CCC, and may be required to submit additional statements of confidentiality, conflict of interest, etc. If necessary, RFQ Selection Committee members may be replaced with Director Approval



if they are not available for the scheduled meeting(s), or if there is an apparent conflict of interest with any of the responding consultants or their subconsultants.

Upon advertisement of the RFQ, the Selection Committee is contacted and advised of the anticipated date of the RFQ Selection Committee meeting. The committee meeting should be held soon after advertisement of the RFQ and prior to receipt of the SOQ, unless the CCC determines otherwise. The RFQ Selection Committee is notified of the date, time and location for the Selection Committee meeting and sent a copy of the advertised RFQ for review prior to the meeting. The PM may be requested to provide insight of the project to the committee at the meeting.

### **RFQ Selection Committee Planning Meeting**

At this meeting the committee must determine what information is to be included in the RFP that is sent to the shortlisted firms. At the beginning of the meeting, each RFQ Selection Committee member will review and sign the *Conflict of Interest* statement. This statement will be supplemented by a list of shortlisted firms when available. A RFP specific to the project is required for evaluation of a consultant's specific technical approach and qualifications. The RFP shall provide all information and requirements necessary for the shortlisted consultants to provide a response to the RFP and compete for the solicited services. The RFP shall:

- A. Identify the requirements for any group pre-proposal meeting or discussions (technical proposals, questions and answers, and/or oral interviews) that may be conducted with the shortlisted consultants. Discussions may be written, by telephone, video conference, or by oral presentation and shall be with all shortlisted consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFP. If using questions of the shortlisted firms, the same questions should be asked of each firm and the CCC should ensure any follow-up questions are fair and appropriate. Committee members will also provide what they consider to be the most appropriate responses to the questions they prepare. If the questions are based on submittals made at the request of the Selection Committee, the questions do not need to be the same for all firms, but should probe to the same level of detail for all shortlisted firms.
- B. Determine if there will be required submissions and define the requirements, and/or define how the meetings with the shortlisted firms will be handled.
- C. Determine anticipated dates for discussions and/or required submissions. For any discussions held with individual shortlisted firms, any firm that is less than thirty minutes late for its assigned beginning time is allowed to make its presentation. Unless there are extreme circumstances, any firm that is more than thirty minutes late is disqualified.
- D. Identify evaluation factors including their relative weight of importance.

Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

### **RFP Preparation**

The RFP is prepared by utilizing the standard *RFQ/RFP template* and including the project information provided by the Selection Committee. The CCC will review the draft RFP and discuss any concerns with the Selection Committee or PM. At this point, the RFP is confidential and held by the CCC until distribution.

The number of Agreements to be awarded is listed in the *Initial Request for Professional Services*.

The anticipated dates for any meeting with the shortlisted firms and the RFQ Selection Committee are confirmed with all Selection Committee members.



A copy of the RFP score sheet, including a description of the scoring and ranking process to be used for selection is to be included.

When utilizing federal funds, goals for participation of Disadvantaged Business Enterprises (DBEs) are required. The Disadvantaged Business Enterprise office (DBE) has previously determined the DBE attainment goal for the Agreement. The DBE goal is to be included in the advertised RFP.

### **RFP Distribution**

The RFP is distributed to the Shortlisted firms and the RFQ Selection Committee upon approval of the Shortlist selection. The RFP includes the dates of any required responses from the Shortlisted firms, and advises the date of any meetings that were determined by the RFQ Selection Committee. A separate cover letter is distributed to each Shortlisted firm advising them of the date and time of any meetings, and requesting confirmation of receipt.

### **RFP Responses**

Responses to the RFP, if any were requested, are to be received by the date and time required, and in the format as indicated in the RFP. The responses are forwarded to the RFQ Selection Committee for their thorough review. Responses are confidential, and are to be returned to the CCC after scoring completed.

RFP responses received after the specified date and time or not in the correct format will be considered by the Selection Committee if received prior to the RFQ Selection Committee Discussion meetings, however, it is understood it will be reflected throughout the scoring process.

The Department does not routinely request concealed cost proposals be submitted prior to award. In the event a sealed cost proposal is submitted when not requested, the CCC will contact the firm and either destroy or return the sealed document to the firm. If sealed cost proposals are requested, the procedures described in the RFP will be followed.

Although the contract will be with the consultant, proposal evaluations shall consider the qualifications and approach of the consultant and any subconsultants identified within the proposal with respect to the scope of work and established criteria.

### **RFQ Selection Committee Discussion Meetings**

Depending upon the process determined at the RFQ Selection Committee Planning meeting, the CCC will prepare meeting notices to the Committee and to the Shortlisted firms as needed. Scoresheets may also be required and will be distributed just prior to the meeting.

### **RFQ Selection Committee Final Meeting**

After all meetings and any submitted proposals have been reviewed, the RFQ Selection Committee meets for a general discussion of the information presented by the Shortlisted firms. At this meeting, there is to be no indication given by any member of the Committee as to their anticipated scoring, rather a general discussion of areas of importance that may not have been met by any of the Shortlisted firms can be discussed. The CCC, as the non-voting Chairperson, coordinates the committee's discussions. The score sheet and scoring process will be addressed by the CCC.

Immediately following the final RFQ Selection Committee meeting, the CCC will send each RFQ Selection Committee member a blank scoresheet with instructions and a due date/time to be returned. Firms are rated, in confidence, by each committee member. The RFQ Selection Committee members are also required to submit comments on each firm's technical proposal and oral presentation (if applicable).



Each member is requested to present both positive and negative comments in their evaluations. This information will be used in the event a debriefing meeting is requested.

**Ranking**

Upon return of the scoresheets, the CCC will combine each committee member's individual ranking to reveal the committee's ranking for selection, in order of preference. The CCC will request approval of the RFQ Selection Committee's ranking from the initiating section's Director, noting the number of firms to be awarded. A consultant's ranking may become very important during the negotiation process. If the Department cannot reach agreement with the highest ranked firm, the Department terminates negotiations and begins negotiations with the next highest ranked firm, and so on until an agreement is reached.

**Award**

After approval by the initiating Director, the CCC notifies via email the awarded firm(s) of the opportunity to enter into an agreement with the Department. This notification also includes information on the next steps for the agreement process.

At this same time, the unsuccessful firms from the RFQ and RFP phases are so notified via email, and advised the final ranking of the shortlisted firms. The RFQ Shortlist and RFQ Selection Committees are also notified as a courtesy.

The Department will retain supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant.

**Agreement**

Refer to Section 9 Agreement Process - Competitive.

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## 7. Request for Proposal (RFP)

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### Regulatory References

29 Del. C. §§ 6981, 6982

23 CFR Part 172; 2 CFR Part 200; 49 CFR 600-699

### Overview

Single Phase solicitation; One Committee; One or Multiple Contracts.

This is a single phase solicitation process utilizing one committee, with the availability for discussions with the most highly qualified firms. The decision to hold discussions can be made prior to, or after, receipt of proposals. Following public advertisement of a RFP and based upon the listed criteria and each firm's submitted proposal, the Selection Committee may decide if discussions with the most highly qualified consultants will be held.

### Contract Type – IDIQ, Multiphase, Project-Specific or State

**IDIQ:** An indefinite delivery/ indefinite quantity contract utilized for the performance of services for a number of projects under task orders issued on an as-needed basis, for a maximum five (5) year contract period and a pre-set maximum contract dollar amount.<sup>7</sup> IDIQ contracts are intended for smaller projects or for performance of routine or specialized services on a number of projects. As such, only services which fall within the advertised scope, funding, and schedule limitations of the established IDIQ contract may be awarded to the consultant.

**Multiphase:** A project-specific agreement where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

**Project-Specific:** An agreement between the Department and consultant for the performance of services and defined scope of work related to a specific project or projects.

**State:** An agreement between the Department and consultant for the performance of services as defined in the public advertisement of the RFQ. This solicitation and contract follows only the Delaware Code and Department procedures. Federal funds cannot be utilized on this contract at any time.

### RFP Preparation

The RFP is prepared by the Consultant Control Coordinator (CCC) utilizing the *RFP template* and combining the information provided by the PM in the *Initial Request for Professional Services* document. The CCC will review the document and discuss any concerns with the Project Manager (PM).

The RFP shall provide all information and requirements necessary for interested consultants to provide a response to the RFP and compete for the solicited services. The RFP shall include the following:

- A. When utilizing federal funds, goals for participation of Disadvantaged Business Enterprises (DBEs) are required. The CCC submits the *Initial Request for Professional Services* to the DBE office to review the required services and determine the DBE attainment goal for the Agreement. The DBE goal is to be included in the advertised RFP.
- B. The number of Agreements to be awarded; listed in the *Initial Request for Professional Services*.

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<sup>7</sup> required only if agreement services are related to highway construction and utilize FAHP funds



- C. Indicate if a discussion with the most highly qualified consultants following submission and evaluation of proposals is either; possible; or definite; and advise the number of firms eligible for discussion. [*The number of eligible firms is determined by the number of agreements to be awarded according to the following; 1 Agreement, 3 firms eligible; more than 1 Agreement, number of Agreements advertised plus 2 (i.e. 5 Agreements, 7 firms shortlisted)*].
- D. Identify the requirements and anticipated timing for any discussions that may be conducted. [*Discussions with the most highly qualified consultants is not required if proposals contain sufficient information for evaluation of technical approach and qualifications.*]
- E. Provide a clear, accurate, and detailed description of the scope of work, technical requirements and qualifications of consultants necessary for the services to be rendered. To the extent practicable, the scope of work should detail the purpose and description of the project, services to be performed, complexity, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications, and policies.
- F. The criteria used for evaluation and their importance will vary on a project by project basis. The CCC will discuss the criteria to be used with the PM, and identify evaluation criteria including their relative weight of importance. Criteria used for evaluation, ranking, and selection of consultants must assess the demonstrated competence and qualifications for the type of professional services solicited. These qualifications-based factors may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance. Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
- G. When utilizing federal funds, in-State or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement for the minimum qualifications and competence of a consultant to perform the solicited services.

When utilizing federal funds for an agreement directly related to a highway construction project, the following nonqualifications-based evaluation criteria are permitted under the specified conditions and provided the combined total of these criteria do not exceed a nominal value of 10 percent of the total evaluation criteria to maintain the integrity of a qualifications-based selection:<sup>8</sup>

1. A local presence may be used as a nominal evaluation factor where appropriate. This criteria shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.<sup>8</sup>
2. The participation of qualified and certified DBE subconsultants may be used as a nominal evaluation criterion where appropriate in accordance with 49 CFR part 26 and a contracting agency's FHWA-approved DBE program.<sup>8</sup>

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<sup>8</sup> only allowed if agreement services are related to highway construction and utilize FAHP funds



- H. The information to be submitted in response to the RFP will vary from project to project and the CCC will discuss the requirements with the PM. Describe and list the required information to be included in the responses to the RFP.
- I. Include a description of the scoring and ranking process to be used.
- J. When utilizing federal funds, specify the contract type and method of payment anticipated.
- K. Identify any special provisions or contract requirements associated with the solicited services.
- L. Provide an estimated schedule for the procurement process and establish a submittal deadline for responses to the RFP that provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal.
- M. Proposal evaluations shall consider the qualifications of the consultant and any subconsultants identified within the proposal with respect to the scope of work and established criteria.
- N. When utilizing federal funds, IDIQ RFP's require additional information be included:<sup>9</sup>
  - 1. Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions, which in total shall not exceed 5 years;
  - 2. Specify a maximum total contract dollar amount for each contract that may be awarded.
  - 3. If multiple consultants are to be selected and multiple IDIQ contracts awarded through a single solicitation for specific services:
    - a. Specify the procedures to be used in competing and awarding task orders among the selected, qualified consultants. [Task orders shall not be competed and awarded among the selected, qualified consultants on the basis of costs].
    - b. Each specific task order shall be awarded to the selected, qualified consultants:
      - i. Through an additional qualifications-based selection procedure, which may include, but does not require, a formal IDIQ RFP; or
      - ii. On a regional basis whereby the State is divided into regions and consultants are selected to provide IDIQ services for an assigned region(s) identified within the solicitation.

### **RFP Advertisement**

Refer to Section 8 Advertisement.

### **RFP Responses** - Proposals

RFP Responses received by the date and time required will be accepted for review. Proposals received after the required date and time will be rejected, the firm notified, and the Proposal returned or destroyed. The CCC may make exceptions based upon documented reasonable efforts of the firm to meet the required date and time. Such exceptions are to be notated in the file. Accepted Proposals are checked for suspension and debarment actions, eligibility status of consultants and subconsultants, and reviewed to ensure they meet minimum requirements as stated in the RFP. The CCC will note any Proposal not in the correct format or not meeting minimum requirements, then distribute to the Selection Committee.

The Department does not routinely request concealed cost proposals be submitted prior to award. In the event a sealed cost proposal is submitted when not requested, the CCC will contact the firm and either destroy or return the sealed document to the firm. If sealed cost proposals are requested, the procedures described in the RFP will be followed.

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<sup>9</sup> only required if agreement services are related to highway construction and utilize FAHP funds



When utilizing federal funds related to highway construction, a minimum of three (3) Proposals are expected. In instances where only two qualified consultants respond to the solicitation, the Department may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition. Alternatively, the Department may pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to re-compete under a new solicitation.<sup>10</sup>

### **RFP Selection Committee**

The *Initial Request for Professional Services* document identifies the recommended Selection Committee.

The Selection Committee is responsible for evaluating the Proposals. Proposal evaluations shall consider the qualifications of the consultant and any subconsultants identified within the proposal with respect to the qualifications, scope of work and established criteria.

In addition to the CCC who acts as the non-voting chairman, the Selection Committee normally consists of five people, three of which must be Department employees. Participation of a supervisor and a direct-report employee is discouraged. Use of outside consultants is not recommended, must be pre-approved by the CCC, and may require additional statements of confidentiality, conflict of interest, etc. If necessary, Selection Committee members may be replaced with Director Approval if they are not available for the scheduled meeting(s), or if there is an apparent conflict of interest with any of the responding consultants or their subconsultants.

Upon advertisement of the RFP, and again upon acceptance of the Proposals, the Selection Committee is notified of the date, time and location for the Selection Committee meeting and sent a copy of the *Conflict of Interest* statement for signature.

Upon receipt of the signed *Conflict of Interest* statements, the following is distributed to each Selection Committee member for thorough review prior to, and reference during, discussions at the Selection Committee meeting; a copy of the advertised RFP; a copy of all accepted Proposals; submitting firms' Performance Evaluations on Department agreements; and a non-binding preliminary scoresheet to be completed and returned prior to the meeting for use as reference during the meeting.

### **Selection Committee Meeting**

At this meeting there is to be no indication given by any member of the Committee as to their anticipated scoring, rather a general discussion of areas of importance that may not have been met by any of the Proposals can be discussed. The CCC, as the non-voting Chairperson, coordinates the committee's discussions. The PM may be requested to attend and provide insight of the project to the committee.

The scoring process will be addressed by the CCC. The Committee will review the non-binding preliminary scoresheet results and determine if discussions (technical proposals; oral interviews; and/or questions and answers) will be requested of the most highly qualified consultants. Unless otherwise stated in the RFP, it is not required to hold discussions if Proposals contain sufficient information for evaluation of technical approach and qualifications.

*continued on following page*

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<sup>10</sup> required only if agreement services are related to highway construction and utilize FAHP funds

A. If discussions are to be held;

If it is determined to hold discussions, the Committee must determine;

1. By consensus, the most highly qualified consultants;
2. What form of discussions to hold; and
3. What information to provide to the eligible consultants to prepare for the discussions.

Discussions may be written, by telephone, video conference, or by oral presentation/interview to clarify the technical approach, qualifications, and capabilities provided in response to the RFP.

If the discussions will include questions of the consultants, the same questions should be asked of each firm and the CCC should ensure any follow-up questions are fair and appropriate. Committee members are to provide what they consider to be the most appropriate responses to the questions they prepare (for the Selection Committee's reference for scoring). If the questions are based on submittals made at the request of the Selection Committee, the questions do not need to be the same for all firms, but should probe to the same level of detail for all firms.

The CCC will handle all communication with the Selection Committee and with the consultants. Arrangements will be made for coordination of information flow to and from the Committee. The CCC is responsible for setting procedures and details for meetings and communications for all involved.

The CCC will arrange discussion dates and times with the consultants and the Committee. Instructions for preparation of discussions and a copy of the RFP Final Scoresheet will be sent to the most highly qualified consultants. Any responses requested of the firms must be received in the CCC's office on or before the date and time designated. Each response is officially logged in by date and time of receipt. Responses received after the designated date and time will be considered by the Selection Committee if received prior to the scoring of other responses, however, it is understood lateness will be reflected in the scores.

After discussions have been completed with the eligible firms, the Final RFP Scoresheet with due date/time to be returned will be sent to the Selection Committee members. The Selection Committee members are to individually score the criteria for each of the most highly qualified consultants. The individual Committee Member scoring determines each Committee member's ranking.

B. If discussions will not be held;

If it is determined not to hold discussions with the most highly qualified consultants, the Committee will be requested to individually evaluate and score all Proposals received.

**Ranking**

Immediately following the Selection Committee process defined above, the CCC will send each Selection Committee member a blank RFP Final Scoresheet with instructions and a due date/time to be returned.

Firms are scored and ranked, in confidence, by each committee member. The Selection Committee members are also required to submit comments on each firm's Proposal and discussions (if applicable), presenting both positive and negative comments to assist the firm in preparation of future proposals. This information will be used in the event a debriefing is requested.



All Committee member RFP Final Scoresheet rankings will be combined to determine the Department's ranking, in order of preference, of the most highly qualified consultants to perform the solicited services based on the established criteria.

### **Selection**

Upon return of the scoresheets, the CCC will combine each committee member's individual rankings to reveal the committee's ranking for selection, in order of preference. The CCC will request approval of the Selection Committee's ranking from the initiating section's Director, noting the number of firms to be awarded. A consultant's ranking may become very important during the negotiation procedure. If the Department cannot reach agreement with the highest ranked firm, the Department terminates negotiations and begins negotiations with the next highest ranked firm, and so on until an agreement is reached.

### **Award**

After approval by the initiating Director, the CCC notifies via email the awarded firm(s) of the opportunity to enter into an agreement with the Department. This notification also includes information on the next steps for the agreement process.

At this same time, all unsuccessful firms are so notified via email, and advised the final ranking of the three most highly qualified consultants (in the event of multiple awards, the ranking of all awarded firms). The Selection Committee is also notified as a courtesy.

The Department will retain supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant.

### **Agreement** – Contract

See Section 9 Agreement Process.

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## 8. Advertisement

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### Regulatory References

29 Del. C. §§ 6981, 6982

23 CFR Part 172; 2 CFR Part 200; 49 CFR 600-699; FTA Circular 4220.1F

### Overview

The Department shall use the competitive negotiation method for the procurement of engineering and design related services. The solicitation, evaluation, ranking, selection, and negotiation shall comply with the qualifications-based selection procurement procedures for architectural and engineering services, commonly referred to as the Brooks Act.

### Public Advertisement

The public advertisement of professional services solicitations are posted on the State's Bid Solicitation Directory Website ([www.bids.delaware.gov](http://www.bids.delaware.gov)). Solicitations are posted for a minimum of two weeks for state funded solicitations and three weeks for federally funded solicitations. Depending upon the complexity of the solicitation, they may be posted for longer periods of time.

The solicitation contains information and instructions to be used by prospective firms to demonstrate their qualifications, understanding of required services, their ability to provide resources to accomplish the work, and prepare their statement of qualifications for submittal. Unless addressed specifically in the solicitation, failure to follow the instructions does not immediately disqualify a firm's submission, but will be used as a consideration in the evaluation process.

The solicitation includes, at a minimum, the following;

- Agreement number,
- Project name,
- Description and scope of the project,
- Location,
- Deadline for submission of letters of interest, or statements of qualifications,
- Criteria for selection, including any special criteria,
- Identify evaluation factors including their relative weight of importance,
- Indication of how interested professionals can apply for consideration,
- The intention to award to more than 1 firm, if applicable, and
- A description of the selection process to be used,
- Requirements for discussions that may be conducted with the most highly qualified consultants following submission and evaluation of proposals;
- Specify the contract type and method(s) of payment anticipated,
- Require that submission of any requested cost proposals or elements of cost be in a concealed format and separate from technical/qualifications proposals, since these shall not be considered in the evaluation, ranking, and selection phase.

If utilizing federal funds, the solicitation will also include;

- Qualifications of consultants necessary for the services to be rendered,
- Deliverables to be provided,
- Estimated schedule for performance of the work,
- DBE goals, if applicable
- FTA requirements and provisions per Circular 4220.1F or current, if utilizing FTA funds.



**Addendums to Advertisement**

If needed, Addendums will be issued and posted on-line with the solicitation.

If needed, Extension of the date for receipt of responses will be posted with an Addendum.

**Consultant Registration**

Submitting firms are requested to register with the Department on an annual basis, while awarded firms are required to register each year they have an active project with the Department. Information on how to register is included in the advertised solicitation.

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## 9. Agreement Process - Competitive

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### Regulatory References

29 Del. C. §§ 6981, 6982

23 CFR Part 172; 2 CFR Part 200; 49 CFR 600-699

### Overview

The Department utilizes the following types of Agreements;

- (1) **IDIQ**: An indefinite delivery/ indefinite quantity contract is utilized for the performance of services for a number of projects under task orders issued on an as-needed basis, for a maximum five (5) year contract period and a pre-set maximum contract dollar amount<sup>11</sup>. IDIQ contracts are intended for smaller projects or for performance of routine or specialized services on a number of projects. As such, only services which fall within the advertised scope, funding, and schedule limitations of the established IDIQ contract may be awarded to the consultant.
- (2) **Multiphase**: A project-specific agreement where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.
- (3) **Project-Specific**: An agreement between the Department and consultant for the performance of services and defined scope of work related to a specific project or projects.
- (4) **State**: An agreement between the Department and consultant for the performance of services as defined in the public advertisement of the RFQ. This solicitation and contract follows only the Delaware Code and Department procedures. Federal funds cannot be utilized on this contract at any time.

### **AGREEMENT INITIATION**

Upon a Director's approval to award, the Consultant Control Coordinator (CCC) notifies the highest ranked firm, via e-mail, they are awarded the opportunity to enter into an agreement with the Department.

### **CONSULTANT NOTIFICATION**

The award notification includes information on the next steps in the Agreement process. The award notification generally includes requests for the consultant's; proof of insurance, required professional licenses, Delaware business license, certified payroll, indirect cost rate and consultant cost certification, other standard direct costs, and other items depending upon the solicitation and type of agreement. If subconsultants are to be utilized, the same information must be provided to the Department, and subconsultants are not to be utilized unless they are included in a Department Notice to Proceed.

The notification also includes a Scope of Work for services similar to those in the solicitation, and a request for the consultant to prepare a cost proposal. The Scope of Work may be an actual need for the project, or a sample need for negotiation purposes. Department approved forms for consultant cost proposals will be included. The Project Manager (PM) will provide any additional information needed for a price proposal to the CCC. The CCC may arrange a scoping meeting with the PM and consultant if needed.

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<sup>11</sup> required only if agreement services are related to highway construction and utilize FAHP funds



## **NEGOTIATION**

A consultant's ranking may become very important during the negotiation procedure. If the Department cannot reach agreement with the highest ranked firm, the Department may terminate negotiations and begin negotiations with the next highest ranked firm.

### Scope of Work

During the selection process, the Project Manager (PM) prepares a detailed scope of work for the awarded consultant to utilize in preparing a cost proposal. Depending upon the type of solicitation and agreement, this scope of work may encompass the entire project, the first phase of a project, or the first task of an IDIQ agreement. This detailed scope of work is provided to the awarded consultant for them to generate their cost proposal. Upon recommendation of the Department's PM, a scoping meeting with the consultant may be arranged by the CCC.

### Independent Estimate

Prior to receipt or review of the most highly qualified consultant's cost proposal, the Department's PM prepares a detailed independent estimate of the scope of work with an appropriate breakdown of the work, classifications of labor required, estimated labor hours, other direct costs, and consultant's estimated fixed fee. The independent estimate shall serve as the basis for negotiation. The Department has established elements of contract costs that are used in preparing the independent estimate. The use of the independent estimate shall ensure contracts for consultant services are obtained at a fair and reasonable cost.

### Consultant Cost Proposal

Upon receipt, the CCC will forward the proposal to the Audit section and, upon completion of the independent estimate, to the Department's PM. The PM will review the proposal in detail, including labor hours and classifications of labor required. The CCC will assist in the review of direct salary rates and other direct costs.

### Allowable Costs

The Department's Audit section will review the consultant's cost proposal to ensure all costs are allowable in accordance with Department, state, and Federal cost principles. The Audit section will notify the PM and CCC of any discrepancies.

### Review of Cost Proposal

The PM and CCC will review the Audit section comments and discuss their reviews of the consultant's cost proposal. The PM and the CCC will determine if the consultant's cost proposal is fair and reasonable considering the scope, complexity, professional nature, and estimated value of the services to be rendered. If changes in the cost proposal are needed, either the PM or the CCC will notify the consultant.

## **AGREEMENT PREPARATION**

Consultant agreement language should be fully prepared prior to award, and shall include the provisions outlined in 23 CFR 172.9(c). The proper agreement template should be utilized to reduce potential errors, and ensure required provisions are included. The CCC is responsible for preparing the agreement, with input from the PM. It is the Department's intent to treat all consultants equally and apply requirements, restrictions, and provisions evenly across the Department. For this reason, and to maintain compliance with state and federal requirements, requested changes to contract boilerplate language will be reviewed by Contract Administration for necessity and may be denied.



## **IDIQ ADDITIONAL PROVISIONS**

IDIQ agreements are required to include the following additional provisions:

- Specify a reasonable maximum length of the agreement period, including the number and period of any allowable agreement extensions, all of which shall not exceed 5 years.
- Specify a maximum total agreement dollar amount that may be awarded under the agreement.
- Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services.
- If multiple consultants are to be selected and multiple IDIQ agreements awarded through a single solicitation for specific services:

Specify the procedures the contracting agency will use in competing and awarding tasks among the selected, qualified consultants. Tasks shall not be competed and awarded among the selected, qualified consultants on the basis of costs under IDIQ contracts for services procured with competitive negotiation procedures. Under competitive negotiation procurement, each specific task shall be awarded to the selected, qualified consultants:

- 1) Through an additional qualifications-based selection procedure, which may include, but does not require, a formal RFP; or
- 2) On a regional basis divided into regions and consultants are selected to provide IDIQ tasks for an assigned region(s) identified within the solicitation.

## **SPONSORING AGENCY APPROVAL**

When projects are jointly sponsored with another agency, the participating agency must be kept informed and involved in the process. Depending on the particular agreement, the other agency may be a signatory to the agreement. The participating agency is also included in any supplemental agreement changes that are considered.

## **AGREEMENT EXECUTION**

When the agreement has been fully prepared and the negotiation process has been concluded, the agreement is ready to be executed.

### Suspension and Debarment

Prior to forwarding the agreement to the consultant for signature, the CCC will verify suspension and debarment actions and eligibility status of consultants and subconsultants.

The following listings will be verified; System for Award Management: <https://www.sam.gov>; and the Delaware Department of Labor Prevailing Wage Debarment List: <https://dia.delawareworks.com/labor-law/documents/Prevailing%20Wage%20Debarment%20List.pdf>?

Once the consultant's document submittals have been reviewed, their cost proposal approved, and their eligibility status verified, the CCC will email, in secured pdf format, the agreement to the consultant for their signature.

The consultant is to review and concur by initialing each page and having the agreement signed where indicated by an executive officer of the consultant's organization at a level no lower than a Vice President, or equivalent, who has the authority to make legal commitments for the consultant. A separate consultant employee is to sign, attesting to the authority of the executive officer to sign contracts on behalf of the consultant. The signed agreement is then scanned and emailed to the Department.



## **AGREEMENT AUTHORIZATION**

Upon receipt of the consultant's signatures, the CCC will review the agreement and consultant's signature and sign the agreement 'Recommended as to Process' verifying the solicitation, selection, and agreement processes have been followed. The CCC will then attain the 'Approval as to Form' signature of the Deputy Attorney General, signature on behalf of the Department by the responsible Division Director, and the signature of the Director of Finance with imprint of the Department's seal.

All consultant agreements must be authorized and signed by either; the Department's Cabinet Secretary; Deputy Secretary; division Director; the CEO of the Delaware Transit Corporation; or their authorized delegate. The official agreement execution date occurs upon signature of one of the preceding personnel.

## **EXECUTED AGREEMENTS**

The fully signed agreement is then scanned and emailed to the consultant. With this notification the consultant is reminded that all work and individual projects or assignments must be preapproved by a Notice to Proceed issued in accordance to the terms in their agreement. This email is also sent via cc to; the Department PM, Finance, Audit, and DBE sections.

## **RECORDS**

The CCC retains electronic documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract in accordance with the provisions of 2 CFR 200.333. Also retained are supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant. This documentation includes the consultant cost certification and documentation supporting the acceptance of the indirect cost rate to be applied to the contract.

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## 10. Small Agreements

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### Regulatory References

29 Del. C. § 6980

23 CFR Part 172; 2 CFR Part 200; FTA Circular 4220.1F

### Overview

Single Phase procurement; No Committee; One Contract; value less than \$50,000.

This process allows for procurement of professional services when the fees, including reimbursable expenses and amendments, are less than the established threshold of \$50,000.00. This threshold shall apply for tasks that are both state and federally funded (23 CFR 172.7 (a)(2)). This is a single phase method of procurement of engineering and design related services where an adequate number of qualified sources are reviewed<sup>12</sup> and the total contract costs are less than the established simplified acquisition threshold of Fifty Thousand Dollars (\$50,000).

### Contract Type – IDIQ, Multiphase, Project-Specific or State

**IDIQ:** An indefinite delivery/ indefinite quantity contract is utilized for the performance of services for a number of projects under task orders issued on an as-needed basis, for a maximum five (5) year contract period and a pre-set maximum contract dollar amount less than \$50,000. IDIQ contracts are intended for smaller projects or for performance of routine or specialized services on a number of projects. As such, only services which fall within the scope, funding, and schedule limitations of the established IDIQ contract may be awarded to the consultant.

**Multiphase:** A project-specific agreement where the services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

**Project-Specific:** An agreement between the Department and consultant for the performance of services and defined scope of work related to a specific project or projects.

**State:** An agreement between the Department and consultant for the performance of services as defined in the Scope of Work. This solicitation and contract follows only the Delaware Code and Department procedures. Federal funds cannot be utilized on this contract at any time.

### Administrative Procedures

Upon determination that a need for professional services can be satisfied under the specified threshold, the PM shall forward an *Initial Request for Professional Services* document and Scope of Work to the Consultant Control Coordinator (CCC), who will review the document and discuss any concerns with the PM. To the extent practicable, the scope of work should detail the purpose and description of the project, services to be performed, complexity, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications and policies and clearly defined costs.

The consultant's proposal should provide a clear, accurate, and detailed description of the scope of work and technical requirements necessary for the services to be rendered.

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<sup>12</sup> Adequate number is defined as at least three (3) and this is required only if agreement services are related to highway construction and utilize FAHP funds



Following the CCC's review, the *Initial Request for Professional Services* along with the Scope of Work will be forwarded to the appropriate Director for approval. Once approved, the final agreement shall be prepared and attached to the proposal. The agreement (with the attached proposal) will be forwarded to the Audit Department so that a pre-award review of the fee proposal may be performed.

Once the agreement is fully executed and funding is available, the PM will issue the Notice to Proceed as explained in Section 14 NTP Process.

### **Additional Requirements**

1. When utilizing federal funds, a minimum of three consultants are required to satisfy the adequate number of qualified sources reviewed. In instances where only two qualified consultants respond to the solicitation, the Department may proceed with evaluation and selection if it is determined the solicitation did not contain conditions or requirements which arbitrarily limited competition. Alternatively, a contracting agency may pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to re compete under a new solicitation as specified in § 172.7(a)(3)(iii)(C).<sup>13</sup>
2. When utilizing federal funds, prior to receipt or review of the consultant's cost proposal, the Department's PM prepares a detailed independent estimate of the scope of work with an appropriate breakdown of the work, classifications of labor required, estimated labor hours, other direct costs, and consultant's estimated fixed fee. The independent estimate shall serve as the basis for negotiation. The Department has established elements of contract costs that are used in preparing the independent estimate. The use of the independent estimate shall ensure contracts for consultant services are obtained at a fair and reasonable cost.<sup>13</sup>
3. When utilizing federal funds, agreement costs may be negotiated in accordance with State small purchase procedures; however, the ability to allow costs shall be determined in accordance with the Federal cost principles.
4. When utilizing federal funds, the full amount of any contract modification or amendment that would cause the total contract amount to exceed the established simplified acquisition threshold is ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if it is modified or amended above the applicable established simplified acquisition threshold.
5. 29 Del. C. § 6903, Violation and Penalties, applies specifically to professional services that fall under the small services procurement process. It states '*Any person, who, with intent to avoid compliance with the Chapter, willfully fragments or subdivides any contract for the purchase of material, non-professional services, public works or professional services, shall be subject to the penalties listed in this Section.*' The scope of work, project phases, and contract requirements must not be broken down into smaller components merely to permit the use of small purchase procedures.

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<sup>13</sup> required only if agreement services are related to highway construction and utilize FAHP funds

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# 11. Emergency and Critical Need Procedure

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## Regulatory References

29 Del. C. § 6907(b)

23 CFR § 172.7(a) (3), 2 CFR 200.320(f), FTA Circular 4220.1F

## Overview

Single Phase procurement; No Committee; One or Multiple Contracts.

This process allows for the Department's Secretary to waive any or all provisions of the State Code regarding procurement of professional services to meet a critical need of the agency as required by an emergency or other condition where it is determined to be in the best interest of the agency. The Secretary may determine a critical need exists by reason of conditions or contingencies that could not reasonably be foreseen and guarded against. A critical need creates a need for professional services that cannot be met through normal procurement methods.

- (1) Any procurement pursuant to this subsection shall be limited to those professional services necessary to satisfy the critical need.
- (2) A copy of each critical need determination processed under this procedure shall be kept on file by the agency.

When utilizing federal funding, the Federal awarding agency must expressly authorize noncompetitive proposals in response to a written request from the Department due to an emergency which will not permit the time necessary to conduct competitive negotiations.

## Contract Type – IDIQ, Multiphase, Project-Specific or State

**IDIQ:** An indefinite delivery/ indefinite quantity contract is utilized for the performance of services for a number of projects under task orders issued on an as-needed basis, for a maximum five (5) year contract period and a pre-set maximum contract dollar amount<sup>14</sup>. IDIQ contracts are intended for smaller projects or for performance of routine or specialized services on a number of projects. As such, only services which fall within the advertised scope, funding, and schedule limitations of the established IDIQ contract may be awarded to the consultant.

**Multiphase:** A project-specific agreement where the services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

**Project-Specific:** An agreement between the Department and consultant for the performance of services and defined scope of work related to a specific project or projects.

**State:** An agreement between the Department and consultant for the performance of services as defined in the Scope of Work. This solicitation and contract follows only the Delaware Code and Department procedures. Federal funds cannot be utilized on this contract at any time.

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<sup>14</sup> required only if agreement services are related to highway construction and utilize FAHP funds



### **Administrative Procedures**

A procedural waiver received under this provision does not exempt contracting and administrative requirements of the Department's procurement process. The waiver allows these processes to be completed immediately following the emergency being brought to a suitable level in which completing these processes does not affect the welfare and safety of the public.

As soon as possible, the PM shall forward an *Initial Request for Professional Services* document and a Scope of Work that provides a clear, accurate, and detailed description of work to be rendered. To the extent practical, the scope of work should detail the purpose and description of the project, services performed and/or to be performed, deliverables, and estimated schedule for performance of the work. This Scope of Work should cover only the portion of work needed until a more clearly defined and prepared internal estimate and consultant proposal can be prepared.

Include the Secretary's critical need waiver approving the exemption from the normal procedure.

Following the CCC's review, the *Initial Request for Professional Services* document will be forwarded to the appropriate Director for approval. Once approved, an agreement shall be prepared. The agreement (with the attached proposal) will be forwarded to the Audit Department so that a review of the fee proposal may be performed.

The Agreement Process is explained in Section 13 Agreement Process – Non-Competitive. Once the agreement is fully executed and funding is available, Contract Administration will issue the Notice to Proceed as explained in Section 14 NTP Process.

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## 12. Sole Source Professional Services

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### Regulatory References

29 Del. C. § 6985

23 CFR § 172.7(a)(3), 2 CFR § 200.320(f), FTA Circular 4220.1F

### Overview

Single Phase procurement; No Committee; One Contract.

This process allows for procurement of professional services without competition, if the Secretary, prior to the procurement, determines, in writing, that there is only one source for the required professional service. Sole source procurement shall not be used unless there is sufficient evidence that there is only one (1) source for the required professional service and that no other type of professional service will satisfy the requirements of the Department.

### Contract Type – IDIQ, Multiphase, Project-Specific or State

IDIQ: An indefinite delivery/ indefinite quantity contract is utilized for the performance of services for a number of projects under task orders issued on an as-needed basis, for a maximum five (5) year contract period and a pre-set maximum contract dollar amount<sup>15</sup>. IDIQ contracts are intended for smaller projects or for performance of routine or specialized services on a number of projects. As such, only services which fall within the advertised scope, funding, and schedule limitations of the established IDIQ contract may be awarded to the consultant.

Multiphase: A project-specific agreement where the services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

Project-Specific: An agreement between the Department and consultant for the performance of services and defined scope of work related to a specific project or projects.

State: An agreement between the Department and consultant for the performance of services as defined in the Scope of Work. This solicitation and contract follows only the Delaware Code and Department procedures. Federal funds cannot be utilized on this contract at any time.

### Administrative Procedures

The PM seeking Sole Source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need.

The PM will request, through their supervisor, the Secretary's written approval of the Sole Source determination (PM should request a form for this purpose from the CCC).

The PM shall negotiate with the single supplier, to the extent practicable, pricing advantageous to the Department.

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<sup>15</sup> required only if agreement services are related to highway construction and utilize FAHP funds



If federal funds are utilized, the PM shall submit justification to, and receive approval from FHWA.

Upon receipt of the Secretary's written approval, (and FHWA approval if applicable) the PM shall forward an *Initial Request for Professional Services* document, Scope of Work, FHWA approval, and the Secretary's Sole Source determination letter to the CCC who will review the documents and discuss any concerns with the PM. The Scope of Work must provide a clear, accurate, and detailed description of the work and technical requirements necessary for the services to be rendered. To the extent practicable, the scope of work should detail the purpose and description of the project, services to be performed, complexity, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications, and clearly defined costs.

Following the CCC's review, the *Initial Request for Professional Services* and approval letters will be forwarded to the appropriate division Director for approval. Once approved, the final agreement shall be prepared and attached to the proposal by the CCC. The agreement (with the attached proposal) will be forwarded to the Audit Department so that a pre-award review of the proposal may be performed.

If federal funds are utilized, the CCC will forward the proposal to the Disadvantaged Business Enterprises (DBE) section to determine a DBE attainment goal.

The Agreement Process is explained in Section 13 Agreement Process – Non-Competitive. Once the agreement is fully executed and funding is available, Contract Administration will issue the Notice to Proceed as explained in Section 14 NTP Process.

### **Additional Information**

TITLE 29

State Government

Budget, Fiscal, Procurement and Contracting Regulations

CHAPTER 69. STATE PROCUREMENT

Subchapter VI. Professional Services

§ 6985 Sole source procurement.

(a) A contract may be awarded for professional service without competition if the agency head, prior to the procurement, determines in writing that there is only 1 source for the required professional service. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required professional service and that no other type of professional service will satisfy the requirements of the agency. The agency shall examine cost or pricing data prior to an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency on the basis for the sole source procurement shall be included in the contract file.

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## 13. Agreement Process – Noncompetitive

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### Regulatory References

29 Del. C. §§ 6981, 6982

23 CFR Part 172; 2 CFR Part 200; 49 CFR 600-699, FTA Circular 4220.1F

### Overview

Single Phase procurement; No Committee; One Contract.

Noncompetitive means the method of procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procurement methods. There are specific conditions that exist allowing solicitation and negotiation to take place with a single consultant. These conditions are;

- (A) The service is available only from a single source;
- (B) There is an emergency or Critical Need which will not permit the time necessary to conduct competitive negotiations; or
- (C) After solicitation of a number of sources, competition is determined to be inadequate.

### **Contract Type – IDIQ, Multiphase, Project-Specific or State**

**IDIQ:** An indefinite delivery/ indefinite quantity contract is utilized for the performance of services for a number of projects under task orders issued on an as-needed basis, for a maximum five (5) year contract period and a pre-set maximum contract dollar amount<sup>16</sup>. IDIQ contracts are intended for smaller projects or for performance of routine or specialized services on a number of projects. As such, only services which fall within the scope, funding, and schedule limitations of the established IDIQ contract may be awarded to the consultant.

**Multiphase:** A project-specific agreement where the services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

**Project-Specific:** An agreement between the Department and consultant for the performance of services and defined scope of work related to a specific project or projects.

**State:** An agreement between the Department and consultant for the performance of services as defined in the Scope of Work. This solicitation and contract follows only the Delaware Code and Department procedures. Federal funds cannot be utilized on this contract at any time.

### **Administrative Procedures**

A Department Director may authorize selection and negotiation with a single consultant under the above conditions, following the process outlined in the applicable Section of this manual.

Upon determination that a need meets the above conditions, the PM shall forward an *Initial Request for Professional Services* document and Scope of Work to the Consultant Control Coordinator (CCC), who will review the document and discuss any concerns with the PM. To the extent practicable, the scope of

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<sup>16</sup> required only if agreement services are related to highway construction and utilize FAHP funds



work should detail the purpose and description of the project, services to be performed, complexity, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications and policies and clearly defined costs.

Independent Estimate (when utilizing federal funds)

Prior to receipt of the consultant's cost proposal, the Department's PM prepares a detailed independent estimate of the scope of work with an appropriate breakdown of the work, classifications of labor required, estimated labor hours, other direct costs, and consultant's estimated fixed fee. The independent estimate shall serve as the basis for negotiation. The Department has established elements of contract costs that are used in preparing the independent estimate. The use of the independent estimate shall ensure contracts for consultant services are obtained at a fair and reasonable cost.<sup>17</sup>

The PM then negotiates with the consultant and requests a written cost proposal. The consultant's proposal should provide a clear, accurate, and detailed description of the scope of work and technical requirements necessary for the services to be rendered.

Suspension and Debarment

Prior to forwarding the agreement to the consultant for signature, the CCC will verify suspension and debarment actions and eligibility status of consultants and subconsultants.

The following listings will be verified; System for Award Management: <https://www.sam.gov>; and the Delaware Department of Labor Prevailing Wage Debarment List: <https://dia.delawareworks.com/labor-law/documents/Prevailing%20Wage%20Debarment%20List.pdf>

Director Approval

The CCC emails the *Initial Request for Professional Services* along with the Scope of Work and cost proposal to the appropriate Director for approval. Once approved, the final agreement shall be prepared by the CCC and attached to the proposal. The agreement (with the attached proposal) will be forwarded to the Audit Department so that a review of the fee proposal may be performed. The Department's Audit section will review the consultant's cost proposal to ensure all costs are allowable in accordance with Department, state, and Federal cost principles. The Audit section will notify the PM and CCC of any discrepancies.

**SPONSORING AGENCY APPROVAL**

When projects are jointly sponsored with another agency, the participating agency must be kept informed and involved in the process. Depending on the particular agreement, the other agency may be a signatory to the agreement. The participating agency is also included in any supplemental agreement changes that are considered.

**CONSULTANT NOTIFICATION**

Once the consultant's document submittals have been reviewed, their cost proposal approved, and their eligibility status verified, the CCC will email, in secured pdf format, the agreement to the consultant for their signature. The consultant is to review and concur by initialing each page and having the agreement signed where indicated by an executive officer of the consultant's organization at a level no lower than a Vice President, or equivalent, who has the authority to make legal commitments for the consultant. A separate consultant employee is to sign, attesting to the authority of the executive officer to sign contracts on behalf of the consultant. The signed agreement is then scanned and emailed to the Department.

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<sup>17</sup> required only if agreement services are related to highway construction and utilize FAHP funds



The notification to the consultant includes a request for required documentation. This generally includes requests for the consultant's; proof of insurance, required professional licenses, Delaware business license, certified payroll, indirect cost rate and consultant cost certification, other standard direct costs, and other items depending upon the type of agreement. If subconsultants are to be utilized, the same information must be provided to the Department, and subconsultants are not to be utilized unless they are included in a Department issued Notice to Proceed.

### **AGREEMENT EXECUTION**

Upon receipt of the consultant's signatures, the CCC will review the agreement and consultant's signature and sign the agreement 'Recommended as to Process' verifying the agreement processes have been followed. The CCC will then attain the 'Approval as to Form' signature of the Deputy Attorney General. The signature by the responsible Division Director or Deputy Secretary, and the signature of the Director of Finance with imprint of the Department's seal is obtained.

The official agreement execution date occurs upon signature of the Division Director or Deputy Secretary.

### **EXECUTED AGREEMENTS**

The fully signed agreement is then scanned and emailed to the consultant. With this notification the consultant is reminded that all work and individual projects or assignments must be preapproved by a Notice to Proceed issued in accordance to the terms in their agreement. This email is also sent via cc to; the Department PM, Finance, Audit, and DBE sections.

Once the agreement is fully executed and funding is available, the Notice to Proceed will be issued as directed in the agreement, then as defined in Section 14 NTP Process.

### **RECORDS**

The CCC retains electronic documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract in accordance with the provisions of 2 CFR 200.333. Also retained are supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant. This documentation includes the consultant cost certification and documentation supporting the acceptance of the indirect cost rate to be applied to the contract.

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## 14. Notice to Proceed Process

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### **Regulatory References**

29 Del. C. § 6982

23 CFR Part 172; 2 CFR Part 200; 49 CFR 600-699

### **Overview**

The Notice to Proceed (NTP) document is a written authorization issued by the Department that allows a consultant under contract with the Department to begin working on a particular DelDOT project. The date of the NTP is the earliest date on which work may begin. The Department retains the right to disallow payment of fixed fee on any task initiated by the consultant prior to receipt of a Notice to Proceed.

### **Preparation of Scope of Work and Independent Estimate**

Prior to issuance of a NTP, a Scope of Work and an independent estimate of cost is prepared by the Department's PM. This gives a basis to determine if the consultant's proposal is in-line with the Department's needs.

The task estimate is to ensure we are providing adequate oversight of consultant costs. The Department must have a general idea of the cost and time required for a task before requesting an outside firm to submit a cost proposal to complete the task. This gives a basis to determine if the consultant is including items we do not need, and it gives an opportunity to understand the elements involved in the proposed pricing to be received from the consultant.

The consultant is contacted to request a written proposal. The proposal must contain a work plan, cost proposal, and schedule to be approved by the Department for all work to be performed. This proposal is compared to the Department's prepared scope of work and independent estimate to ensure all requested areas are addressed before forwarding it to the Consultant Control Coordinator's (CCC) office for review.

### **NTP Issuance Process**

Following receipt of the proposal by the CCC, all proposals are forwarded to the Audit Department for a Pre-Award Review. If there are federal funds involved with the task, the proposal is also reviewed by the Disadvantaged Business Enterprises (DBE) section so that a goal can be set for the task.

If there are no financial errors in the proposal, and the value of the task does not reach the Audit group's mandatory review threshold, a Risk Assessment is distributed to the CCC and the Department's PM.

If the monetary value of the task is above the mandatory threshold or if other issues are involved, a Memorandum or Report is issued and both the CCC and PM are copied. It is expected that any findings in the Pre-Award Review Memorandum or Report be addressed by changes to the consultant's proposal.

Upon completion of the Audit Review, DBE goal review, and authorization of funding approval for the task has been received, the CCC will issue the Notice to Proceed to the firm and cc the PM.

### **Scope of Work Changes**

**Increase in the scope of work.** Should it be determined that additional work outside the initial scope is needed, a new proposal must be submitted. This proposal should have all of the elements of the initial



proposal (i.e. work plan, cost proposal, schedule) and be submitted to CCC for review. The NTP Issuance process noted above is performed so that an NTP for the additional work may be issued. Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost plus fixed-fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee or lump sum reimbursed contracts.

**Reduction in the scope of work.** If after approval of the proposal and issuance of the NTP, it is determined that a percentage of the work requested will not be needed, the proposal must be revised. If the task hours, for whatever reason, are significantly reduced (20% different than the original proposal), an adjusted proposal is needed.

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# Definitions

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**CCC** means the Department's Consultant Control Coordinator.

**Competitive negotiation** means qualifications-based selection procurement procedures complying with 40 U.S.C. 1101–1104, commonly referred to as the Brooks Act. (23 CFR §172.3)

**Engineering and design related services** means:

- (1) Program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or architectural related services with respect to a highway construction project subject to 23 U.S.C. 112(a) as defined in 23 U.S.C. 112(b)(2)(A); and
- (2) Professional services of an architectural or engineering nature, as defined by State law, which are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide the services with respect to a highway construction project subject to 23 U.S.C. 112(a) and as defined in 40 U.S.C. 1102(2). (23 CFR §172.3)

**Federal cost principles** means the cost principles contained in 48 CFR part 31 of the Federal Acquisition Regulation for determination of allowable costs of commercial, for-profit entities. (23 CFR §172.3)

**Fixed fee** means a sum expressed in U.S. dollars established to cover the consultant's profit and other business expenses not allowable or otherwise included as a direct or indirect cost. (23 CFR §172.3)

**IDIQ** means indefinite delivery/ indefinite quantity. A contract for the performance of services for a number of projects, under task orders issued on an as-needed basis, for an established contract period. (23 CFR §172.9)

**Management support role** means performing engineering management services or other services acting on the contracting agency's behalf, which are subject to review and oversight by agency officials, such as a program or project administration role typically performed by the contracting agency and necessary to fulfill the duties imposed by title 23 of the United States Code, other Federal and State laws, and applicable regulations. (23 CFR §172.3)

**Multiphase.** A project-specific contract where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

**Noncompetitive** means the method of procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procurement methods. (23 CFR §172.3)

**Non-Federal entity** means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. (2 CFR §200.69)

**Pass-through entity** means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program. (2 CFR §200.74)



**PM** means the Department's Project Manager.

**Project-specific.** A contract between the contracting agency and consultant for the performance of services and defined scope of work related to a specific project or projects. (23 CFR §172.9)

**Recipient** means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. See also Non-Federal entity. (2 CFR §200.86)

**Small purchases** means the method of procurement of engineering and design related services where an adequate number of qualified sources are reviewed and the total contract costs do not exceed an established simplified acquisition threshold. (23 CFR §172.3)

**Sole source** procurement means:

- (a) A contract may be awarded for professional service without competition if the agency head, prior to the procurement, determines in writing that there is only 1 source for the required professional service. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required professional service and that no other type of professional service will satisfy the requirements of the agency. The agency shall examine cost or pricing data prior to an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency on the basis for the sole source procurement shall be included in the contract file.
- (b) An agency seeking a sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need. The agency may, for confirmation, submit this documentation to the Section for review and comment prior to the intended date of award.
- (c) The agency shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the agency. The agency shall enter into a formal contract stating the terms and conditions of the procurement. (29 Del. C. § 6985)

**Subaward** means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. (2 CFR §200.92)

**Subrecipient** means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. (2 CFR §200.93)



Delaware Department of Transportation

**Exhibit A - STANDARDS OF CONDUCT - CONFLICTS OF INTEREST**

**Regulatory References**

29 Del. C. Ch. 58 - Laws Regulating the Conduct of Officers and Employees of the State

23 CFR §172.7(b)(4); 2 CFR §200.112; 23 CFR §1.33; FTA Circular 4220.1F

**Applicability**

This policy governs the conduct of employees, officers, or agents of the Department engaged in the award and administration of engineering and design related services and contracts. The purpose of this policy is to prevent, identify, and mitigate conflicts of interest in accordance with the above referenced regulations.

No employee, officer, or agent of the Department nor a federal funds subrecipient of the Department shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Consultant personnel serving in management roles for the Department, or Department federal funds subrecipients, officials and employees of subrecipients, participating in selection, or in the award or administration of a contract shall adhere to the Standards of Conduct prescribed below for Department Personnel.

A consultant hired in a management support role (as defined in 23 CFR 172.3 and 23 CFR 172.7b(5)) is precluded from providing additional services for projects, activities, or contracts under its oversight due to potential conflicts of interest. These services include performance of work and review or evaluation of work done by their firm on behalf of the contracting agency.

Department personnel shall:

- Abide by ethical requirements set forth in the above referenced regulations which, in part, prohibit employees from participating in decision making in circumstances in which the employee, officer or agent, employee's partner, a family member, or an organization that employs or is about to employ any of those listed would have a potential financial interest in the outcome.
- Consider the interests of the Department and the State first when contracting for professional services.
- Seek to obtain the maximum value for each dollar spent for professional services.
- Request removal from any situation in which a personal relationship may affect judgment in selection, administration or performance evaluation activities.
- Avoid unnecessary sharing of internal Department information, including project or program information that may result in giving a competitive advantage to a select firm or firms.
- Accept nothing of monetary value from consultants, potential consultants or parties to subagreements. (Mementos or souvenirs of nominal value may be accepted.)

The Department shall promptly disclose in writing any potential conflict of interest to the FHWA.

Violation of the Standards of Conduct shall result in disciplinary action and/or penalties to the extent permitted by Delaware Code, Title 29, Chapter 58 §5805 sub-paragraph(f), the *Delaware Conduct of Officers and Employees Law*, and/or other state or federal laws.



Delaware Department of Transportation

**Exhibit B - CONSULTANT CONFLICT OF INTEREST POLICY**

**Applicability**

This policy governs the conduct and roles of consultants in the performance of services under contract to the Department, in order to prevent, identify, and mitigate conflicts of interest in accordance with 2 CFR §200.112, 23 CFR §1.33 and 23 CFR §172.7. This policy applies to consultants, subconsultants, and all professional services firms providing, or seeking to provide, services to the Department.

**Goals**

This policy is intended to accomplish the following goals:

- Promote integrity, competitiveness and fairness in the procurement and prosecution of consultant contract services;
- Provide guidance to enable consultants to make informed business decisions concerning participation in contracts with the Department;
- Permit consultants to compete fairly to work for the Department;
- Protect the interests of the Department; and
- Permit consultants to work without actual or apparent conflicts of interest.

**Responsibilities**

The consultant (this term includes subconsultants) shall reasonably and in good faith anticipate, identify, and disclose to the Department any actual or potential Conflict. In addition to complying with the requirements of this Policy, the consultant shall also comply with any other professional responsibilities, code of conduct or law applicable to the consultant.

The consultant shall include terms requiring compliance with this Policy in any agreement or arrangement with any subconsultant in furtherance of any Department contract.

The consultant shall notify the Department of any conflict or potential conflict according to this policy in writing by email to; [dot.profservices@state.de.us](mailto:dot.profservices@state.de.us), fully explaining the conflict or potential conflict and providing any recommendations or protocol to remedy the conflict prior to:

- The completion of any Department consultant selection process;
- Any consultant engaging any professional services firm on a Department contract; or
- The consultant accepting any work from an entity other than the Department.

**Policy**

1. Consultants shall provide independent and uncompromised judgment, counsel, work product and public representation, with respect to every contract with the Department.
2. Consultants shall support the policies and practices of the State and the Department.
3. Any conduct or set of facts that could or does compromise or limit the duties in Paragraphs (1) and (2) above shall be considered a Conflict of Interest (“Conflict”).
4. The Department will review conflict of interest disclosures and strictly disallow the existence of conflicts in furtherance of the above goals. Exceptions will only be considered when, in the best interest of the Department, it is determined that the number of consultants available for a particular activity is inadequate.



### **Guidelines for Evaluating Conflicts of Interest**

- The Department's Consultant Control Coordinator and Contract Services Administrator will consider the consultant's notification of a potential Conflict with consultation from the Project Manager (PM) and the Department's Civil Rights Administrator. The Committee will make a recommendation to the Chief Engineer on whether to object to the Conflict, waive the potential Conflict or require the consultant to remedy the Conflict. The Committee will include an explanation on why a waiver is appropriate for all recommendations to waive a Conflict.
- After receiving the recommendation of the Committee, the Chief Engineer may object to the Conflict, waive the Conflict, or require the consultant to remedy the Conflict to the Department's satisfaction as a condition of awarding or continuing any contract or awarding any amendment to, extension or supplement of or additional work under any contract.
- The Department shall promptly disclose in writing any potential conflict of interest to the FHWA.

### **Conflict of Interest Examples**

The following are activities considered to be Conflicts of Interest;

- Neither consultants nor subconsultants actively engaged in Department contracted responsibilities for a project shall perform concurrent services for other clients that impact or depend upon the Department's project.
- Neither consultants nor subconsultants actively engaged in Department contracted responsibilities for a project shall market to perform future services for other clients that impact or depend upon the Department's project while under contract to the Department.
- Neither consultants nor subconsultants actively engaged in Department contracted responsibilities for a project shall entertain participation on a Design-Build construction contract team involving the same project.
- Neither consultants nor subconsultants actively engaged on a Design-Build construction contract team for a project shall participate in a Department's professional services contract for the same project in a different role.
- The Consultant may have other contracts with other clients (e.g., utility companies, other units of government, or abutting land owners) whose interests may be in conflict with the objectives of a particular Department-initiated Project. It is the Consultant's responsibility to avoid conflicts of interest in these circumstances and to disclose them as soon as they arise.
- Neither consultants nor subconsultants shall participate in construction inspection activities for Department projects for which they provided engineering construction plans or construction contract bid documents, without Director approval.

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