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## Chapter Nine

# Small Professional Services

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The procedures in this Chapter apply to acquisition of outside services where the total compensation of professional services will not exceed the current threshold established by the Contracting and Purchasing Advisory Council.

### 9.1 DEFINITION AND PURPOSE

The Delaware Code, Title 29, Chapter 69, Subchapter V, Section 6980 provides for procurement of outside professional services under an administrative procedure to be established by each Agency when the probable fees, including reimbursable expenses and amendments, are less than the established threshold.

Section 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 this Act, 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.'*

This administrative procedure permits waiver of certain portions of Subchapter V. of the State Procurement Act. In essence, it allows a Director to select and negotiate a fee with a single consultant of that Director's Office's preference subject to the total compensation not exceeding the threshold amount.. The advertising, the shortlisting, and the selection processes may all be eliminated, if so desired by the initiating Director.

However, two provisions of the Subchapter are

not eliminated. These include Section 6983—State Assistance to Local Governmental Units and Section 6985, Sole Source Procurement. Project Managers must comply with these provisions when negotiating contracts under this section of the Code. (See Appendix B for applicable State Law.)

By Department policy, to pursue a professional service contract under the procedures described in this Chapter, the initiating Section must define briefly the manner in which the contract will be administered.

For consistent project management, the portions of DeIDOT's Consultant Procurement and Administrative Procedures process outlined in Section 9.2 apply to these contracts. If this process is to be followed, the initiating section need only refer to Section 9.2 of this Manual in the authorization request for the Secretary's approval.

### 9.2 PROCUREMENT AND ADMINISTRATIVE PROCEDURES

At the discretion of an initiating Director, the standard procedure outlined in this section may be modified. However, if the changes are significant, the revised procedure must be approved by the Consultant Policy Committee to maintain the integrity of the Department's procurement process.

A Section, through its Director, may submit a modified procedure that it believes will result in selecting the best-qualified firm to perform the services. One example, although not required, is

the development of a simpler advertising, shortlisting and selection process than is followed on larger projects. This procedure would allow the Section the opportunity to evaluate several firms but minimize the time and effort required. To reduce the chance of violating the intent of the Code or Department policy, the Section should work closely with the Consultant Control Coordinator who can assist with the determining if there is a need to obtain approval of the changes by the Consultant Policy Committee.

The request to modify the procedure is processed through the Consultant Control Coordinator's Office. To save time and/or re-submittal, the authorization request must be complete, and at least briefly cover the items outlined in Section 9.2, with any proposed deletions, modifications or additions. The Consultant Control Coordinator does not have the authority to process requests that do not outline the complete procedure to be followed.

The following procedure is recommended. Because of the relative size and scope of the contracts, the level of effort and depth of detail for some items may be substantially reduced.

- Obtain an Approved Project Initiation.
- Determine need for outside services.
- Assign a Project Manager.
- Prepare a project description and scope of services.
- Prepare a description of the procedure to be followed in procuring the service and administering the contract.
- Request authorization and approval of the Secretary.
- Request an agreement number.
- Hold a pre-proposal conference, in person or by telephone.
- Request and review the fee proposal.
- Obtain approval of any sponsoring agency,

- Negotiate a reasonable fee.
- Prepare a final draft agreement.
- Obtain Approval As-To-Form.
- Obtain Approval As-To-Process.
- Execute the final agreement.
- Issue the notice to proceed.
- Obtain final funding approval.
- Distribute copies of the final agreement.
- Monitor the work in progress.
- Prepare performance evaluations.
- Notify the Office of Financial Management and Budget when work has been completed.
- Request final audit.
- Contract closeout.

### **9.2.1 PROJECT INITIATION**

The Office of Financial Management and Budget initiates projects. This Office is responsible for developing and maintaining the Department's program goals, project work scopes, project estimates, funding availability, scheduling, and priorities. As projects are assigned, each responsible section must make the determination if outside professional services are required to meet the project's needs.

A project must be initiated before the procurement process can begin. An approved Combined Project Initiation and Project Number Request Form (See Figure 11) assures that the intended work is in a approved operating or capital program, that a project number has been issued, and that funding is available.

### **9.2.2 PROJECT MANAGER ASSIGNMENT**

Upon receipt of the approved Project Initiation Form, the Director, working with the appropriate Section or Office Head, formally assigns a staff member to be Project Manager/contract administrator. This person is responsible and accountable for satisfactory completion of the project.

### **9.2.3 SCOPE OF WORK AND SCOPE OF SERVICES**

Before a firm is contacted to perform the work, the Project Manager should prepare a detailed scope of services. Projects performed under this provision of the State Law are limited as to Scope of Work and in total compensation, which translates into the extent of services that can be performed. The tasks and work product(s) should be well defined, with little chance of change.

### **9.2.4 DETERMINATION OF NEED FOR OUTSIDE SERVICES**

The Project Manager should evaluate the need for outside services. The initial evaluation should consider the following:

- Developing a project description and detailed scope of services.
- Making a preliminary cost estimate for services and cost of project.
- Identifying the most critical features.
- Identifying any special or specific criteria.
- Identifying any special standards to be followed.
- Identifying any known unusual problems, either technical or otherwise.
- Identifying those tasks that may be given to a subconsultant.

The results of the evaluation should be summarized to provide a brief explanation of the necessity for the section to use outside services for this project.

### **9.2.5 APPROVAL REQUEST LETTER**

Using the information developed, the Project Manager prepares a formal request for the Secretary's approval to use outside services. See Figure 1-2 as a guide for the type of information that should be included in this request. Again, because of the size of these contracts, the detail for most of the items should be abbreviated.

### **9.2.6 SECRETARY'S APPROVAL**

The Secretary's approval to utilize an outside firm must be obtained before proceeding with the procurement process.

### **9.2.7 AGREEMENT NUMBER**

After receiving the Secretary's approval, the Project Manager must request an agreement number from the Consultant Control Coordinator. The Project Manager forwards a copy of the Secretary's approval letter with the request.

## **9.3 PROPOSAL INITIATION**

Because of the limit on compensation, contracts of this type must have a well-defined scope of work, work tasks and contract administration process in order to protect both the Department and the Consultant. The following sections describe a process that will help ensure a successful contract.

### **9.3.1 CONTACT WITH CONSULTANT(S)**

The Project Manager should prepare an outline of contractual limitations, instructions on how the fee is to be derived, and a preliminary draft agreement before contacting any firms. Proposal development and fee negotiation will proceed much easier and more quickly if this preparation is made.

A pre-proposal conference may not be necessary or practical for some projects. However, in addition to the scope of work, all of the following items should be thoroughly discussed with the selected firm. Based upon this discussion, the firm will be able to prepare a fee proposal in an acceptable format and at a fair price.

### **9.3.2 PROPOSAL REQUIREMENTS**

### 9.3.2.1 Financial Portion

The Project Manager must have a clear understanding of what financial items are needed to develop a Small Service contract with limited scope of work. This portion of the meeting is the most critical in reaching an acceptable proposal on the first submission.

The Consultant should be requested to present a fee derivation in a format similar to that required on larger projects. Backup information to justify the fee should be included. Monitoring and evaluation will be difficult without a good initial project work scope and fee derivation. The basic elements used to develop the proposal should include:

- direct technical salaries,
- overhead (payroll burden and indirect costs),
- direct non-salary costs,
- fixed fee (profit), and
- total compensation.

Refer to Chapter Four for a detailed description of each of these terms.

At the meeting, the Project Manager should discuss any cost limitations that may be in effect.

Contracts negotiated under this chapter are more flexible. The Project Manager can define a fee proposal format and content and set cost limitations that are tailored to the project being considered, within Department policy. However, to adequately monitor and provide sound fiscal control, it may not be prudent to deviate far from the standards used on larger projects.

Chapter Four lists most of the cost elements with which the Project Manager should be familiar and know what limits, if any, apply to the project.

### 9.3.2.2 Administrative Portion

The Project Manager should discuss the administrative procedures to be followed on the contract

with the Consultant. Items to be discussed include:

- the cost proposal format and contents,
- the fee negotiation process,
- the agreement process,
- interim project reviews,
- key milestones with expected completed work products,
- the project work schedule form and content,
- the supplemental agreement process (usually discouraged and may not even be permitted),
- the performance monitoring process,
- the performance evaluation process, and
- the payment procedure.

For small projects with a fixed budget, a clear understanding of the process is essential for a successful contract. Because of the well-defined and limited scope, problems in work tasks and expected products are unlikely. However, unanticipated delays in administering the contract can be disastrous to the Consultant's schedule, staff assignments and costs.

## 9.4 PROPOSAL

### 9.4.1 COST PROPOSAL CONTENTS

A typical proposal should include the following items:

- a detailed scope of work and scope services to complete this work,
- a complete fee derivation with a summary of total estimated direct labor work hours by class, associated overhead costs, direct costs and the maximum amount payable, and
- a proposed progress schedule in a form as

directed by the Project Manager.

After the pre-proposal meeting is held, the Consultant is instructed to prepare the fee proposal.

#### **9.4.2 TECHNICAL REVIEW**

Upon receiving the fee proposal, the Project Manager performs a technical review and negotiation.

The procedure for reaching agreement on a fee proposal for projects performed under this provision is similar to that for larger projects except there is much less detailed information to evaluate. The proposal is reviewed technically to determine the following:

- Are all the items of work adequately covered?
- Are there any significant differences between the Department's estimate to perform the work and that submitted?
- Is the proposal reasonable, and does it indicate adequate understanding of the work required?
- Does the work schedule agree with the needs of the Department?
- Are the work tasks properly coordinated with the Department and other necessary agencies or groups?
- Is there a demonstrated ability to adequately manage the project production and to control costs and quality?

#### **9.4.3 NEGOTIATION**

Negotiation takes place when the project manager believes any of the items in the proposal are not reasonable or in conformance with instructions given at the pre-proposal meeting.

The end result is a better mutual understanding of what is to be done, by whom, when it is to be done, and what it will cost. All of this is documented by the submission of a revised proposal by

the Consultant reflecting this understanding.

### **9.5 FINAL DRAFT AGREEMENT**

After completion of successful negotiations, the Project Manager prepares the final draft agreement based on the revised proposal.

#### **9.5.1 APPROVAL AS-TO-FORM**

The Project Manager submits four copies of the final agreement to the Deputy Attorney General for Approval As-To-Form.

#### **9.5.2 APPROVAL AS-TO-PROCESS**

The Project Manager submits the Approved As-To-Form agreement to the Consultant Control Coordinator for Approval As-To-Process.

#### **9.5.3 AGREEMENT EXECUTION**

The Project Manager sends the final approved copies to the Consultant for signature, normally four copies (five copies if jointly sponsored). After receiving the signed copies of the agreement, the Project Manager obtains the appropriate Director's signature and then requests the Director of Administration to officially execute the agreement on behalf of the Department. The submission includes a completed Agreement Transfer Form, shown in Figure 5-1. The Director of Administration signs, dates and affixes the Department's seal to the agreements. This date is the recognized official date of the contract.

#### **9.5.4 FUNDING APPROVAL**

Two originals and one copy of the final executed Consultant Information Form (See Figure 5-2) are forwarded to the Office of Financial Management and Budget for funding approval. At least one of the original agreements must have a copy of the Consultant's current Delaware Business License attached. This copy is forwarded to the Finance Office and used in the payment process.

The Project Manager receives an approved Project Authorization and Funding Form FS-1 with a note to issue the Notice to Proceed.

#### **9.5.5 NOTIFICATION TO PROCEED**

The Project Manager issues a formal Notice to Proceed to the Consultant. Included with the Notice to Proceed is an originally executed copy of the final agreement.

#### **9.5.6 DISTRIBUTION OF EXECUTED AGREEMENTS**

Each of the following receive one of the four original executed agreements:

- the Office of Financial Management and Budget,
- the Finance Office,
- the Consultant, and
- the initiating Section's files for use of that Section's Fiscal Officer.

If the project is jointly sponsored, the fifth original is sent to the appropriate agency by the Office of Financial Management and Budget.

A copy of the final agreement must also be sent to the Consultant Control Coordinator. This Office is responsible for tracking all agreements, including any supplemental agreements and reporting professional service activity monthly to the Consultant Policy Committee.

#### **9.6 MONITORING WORK**

Although these projects normally have few work tasks and are of short time duration, project monitoring is still a very important part of having a successful contract. In fact, limited funding and time frame, close monitoring of these types of projects may be more critical, because there is little room for wasted effort and delays.

The actual monitoring process for these types of projects is similar to larger projects but not as detailed or as frequent. Although visits to the Consultant's office are a necessary part of monitoring larger projects, visits may not be practical or necessary. However, progress meetings (at least by phone) and progress report evaluations should be a regular part of a Project Manager's monitoring activity.

On projects under this provision when a Consultant performs additional work or work perceived as being beyond the original scope of work, an immediate mutually agreeable resolution should be initiated. Time, funding, the method of payment and legally binding clauses do not allow for easy use of a supplemental agreement to cover any additional work tasks and costs, particularly if the work has already occurred.

#### **9.7 PERFORMANCE EVALUATION**

A final evaluation is required. Refer to Appendix J for the forms and instructions.

#### **9.8 FINAL AUDIT**

The Department's policy is that a final audit be requested by the Project Manager on all outside service contracts.

#### **9.9 CONTRACT CLOSEOUT**

For consistency in contract management, this type of project should have a formal final closeout, similar to larger projects but much less detailed, see Section 6.4.