

# Guidelines for the Administration of Consultant Contracts



# OKLAHOMA Transportation

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## **CHAPTER 1. INTRODUCTION**

The Oklahoma Department of Transportation (the Department) has the authority to conduct the Consultant Selection Process and execute Consultant Contracts as provided by Federal Regulations at 23 CFR § 1.11, State Statute at 69 O.S. § 708.2 and Oklahoma Administrative Code (OAC) 730:30-5-1. This publication provides assistance to Stakeholders in the procurement and administration of Consultant Contracts in accordance with statutes, regulations, rules and policies.

The goal of the Consultant selection and administration process is to produce a quality transportation improvement for the public at a fair and reasonable cost, within the project schedule. Qualification Based Selection (QBS) is a procurement process established by the U.S. Congress as part of the Brooks Act (Public Law 92-582) that guides the selection of Consultants and the preparation and administration of Consultant Contracts.

Some items are identified as confidential, including: selection results prior to publishing, a Consultant's overhead rate and individuals' roster payroll rates. Good judgment is to be exercised to allow all Consultants an equal opportunity for doing business with the Department. Once the Department has fully executed a legal contract, it is viewable by the public.

### **1.01 Roles and Responsibilities**

The procurement of contractual work and services is subject to review by individuals both within and outside of the Department and requires a knowledge of laws, regulations, program needs, contract documents, policies and specific procedures. Roles and responsibilities in this process include:

- District/Division Offices
  - Eight (8) Field Districts, nine (9) Project Delivery Divisions reporting to the Director of Project Delivery and Director of Design, Materials, and Multimodal Divisions constitute the initiating divisions for the majority of ODOT's contractual actions.
- Project Management Division/Contract Administration
  - Administers the procurement process and applies the provisions of these guidelines.
  - Coordinates the agency's efforts on project scope, schedule and delivery for project specific contracts. The Project Manager (PM) monitors and controls the work of Consultants through project development and coordinates with the Contract Administrator (CA) on any contract issues or modifications.
- Consultant
  - Person or entity that provides engineering and architectural services.
- Financial Services and Operations Division (FSO)
  - Oversees the Department's financial operations to ensure conformance with fiscal requirements.
- Procurement Division
  - Processes encumbrance requests for contract activities
- Office of General Counsel

- Oversees the Department's legal operations to ensure conformance with applicable regulations, statutes and rules.
- Service Provider
  - Person or entity that provides personal services for Right-of-Way.
- Transportation Commission
  - Commissioners appointed by the Governor and Legislature with responsibility for overseeing the Department's operations.
- Federal Highway Administration (FHWA)
  - Agency responsible for ensuring all federally funded projects are in compliance with applicable Federal regulations consistent with the provisions of the FHWA – ODOT Risk-Based Stewardship & Oversight Agreement and for identifying projects for additional review prior to any further action.
- Audit Office
  - Responsible for audit or review of Consultants' indirect cost rates. May also perform an agreed upon procedures review of completed contracts and task orders.
- Contract Compliance Division
  - Responsible for administering the Disadvantaged Business Enterprise Program including goal setting and compliance monitoring
- Department's Consultant Selection Committee (DCSC)
  - Responsible for the evaluation of Consultant qualifications and the evaluation and ranking of Consultant proposals. Committee is composed of a minimum of three (3) Stakeholders with knowledge and expertise in the area of services and approved by the Directors of Project Delivery and Design and Chief Engineer.
- Local Public Agency (LPA)
  - Any city, county, township, municipality or other political subdivision that coordinates with the Department.

## **CHAPTER 2. CONSULTANT SOLICITATION PROCEDURES**

The Department's Consultant solicitation procedures include justification of services that need to be performed by external resources, identification of funding, development of the Scope of Services (SOS), notification to all qualified Consultants and their responses.

### **2.01 Justification for Professional Services Contracts**

It is the policy of the Department to contract for professional services when one or both of the following conditions exist:

- Inability to complete required work within the desired time frame with current resources
- Work requires specialized experience or expertise that is not available within the Department

The Department should proceed with requesting the establishment of a contract based on the following considerations:

- Consultant work and services are needed to support the Department's mission
- Department's in-house capability was assessed in consideration of workload or specialized experience
- There is reasonable certainty that the Department has committed to programming adequate funds
- Knowledgeable Department personnel are available to monitor and manage the Consultant to ensure compliance with the terms and conditions of the contract

The Department's Chief Engineer or designee will review and approve or disapprove the Request for Consultant Services and will notify the Project Management Division of the results.

### **2.02 Contract Types**

The Department has two (2) types of Consultant Contracts:

- Project Specific Contract
  - Provides for a project location and a definition of the anticipated services that will be required. These services may include investigations, inspections, production of documents, studies or reports and may culminate in the development of Plans, Specifications and Estimates (PS&E).
- Demand Service Contract
  - Provides services on an as-needed or on-call basis and solicited in reference to general transportation services or construction management/inspection services without specifically identifying the projects for which work will be performed. Task Orders will be generated to initiate work and identify services required for specific projects. These contracts may include all services necessary to provide a complete PS&E submission.

### **2.03 Identification of Funding**

The Department determines the source of funds for the contract. Typical sources of funding include: the construction work plan division budget, federal or state engineering funds and railroad funds. Federally budgeted engineering funds can only be used on projects eligible for associated funding categories. Adequate funds should be identified prior to solicitation.

### **2.04 Scope of Services Development**

The Department develops the SOS which includes but is not limited to the following:

- ODOT District
- County(ies)
- Job Piece Number (if available)
- Type of contract (Preliminary Engineering, Specialized Services, Data Collection, etc.)
- Location and description of project (if applicable)
- Services to be performed by both ODOT and the Consultant

### **2.05 Solicitation of Interest**

A Solicitation of Interest (SOI) is prepared and posted to the Department's Transportation Online Professional Services (TOPS) website.

The SOI will include:

- Description of contract type
- Anticipated number of contracts
- Detailed description of anticipated SOS
- Specialized qualifications required to perform contract tasks
- Evaluation criteria
- Anticipated starting date of contract(s)
- Disadvantaged Business Enterprise (DBE) Goal, if any
- Deadline for response to the advertisement
- Request for CAP Form 255 or equivalent
- Point of contact

For federally funded Demand Service Contracts the SOI will also include:

- Maximum contract period not to exceed five (5) years, including the number and period of any allowable contract extensions
- Maximum total contract amount
- If multiple Consultants are to be selected and multiple On-Demand contracts awarded through a single solicitation for specific services:
  - The Department will specify the procedures to be used in assigning task orders among the selected, qualified Consultants

- Method of payment

Note: The total number of contracts awarded may differ from the number of anticipated contracts and follow the process outlined in Section 3.04.

The SOI is posted on the Department's website and an email is sent to the Department's list of Consultants.

There may be circumstances where the required services are unusual or specialized in nature and the existing pool of Consultants does not have the expertise. The Department will solicit for these services in a manner that will provide for the greatest number of qualified Consultants. The minimum number of responses needed to ensure a QBS process will be dependent on the number of anticipated contracts but be no less than three (3). If an adequate number of responses are received, the process described in the proceeding sections will be followed. If an adequate number of responses are not received or the conditions of 23 CFR 172.7(a)(3)(iii) can be proven (if federally funded), the consultant contract may be resolicited, developed by direct negotiations or On-Demand contract execution in accordance with State law. Adequate justification is provided to the Chief Engineer for approval to enter into direct negotiations or On-Demand contract execution.

## **2.06 Consultant Response**

Consultants respond to the request for SOI by submitting the following information via TOPS:

- Letter of Interest (LOI) referencing the contract number
- Table of Organization depicting the project team
- Statement of qualifications on a CAP Form 255 (available on website)
- Statement identifying the Firm's strategy in meeting the proposed DBE goal. If the prime Consultant is a DBE, identify this in the statement. If the firm is unable to reach the listed DBE goal, the DBE Form 5-Good Faith Efforts must be included (available on website).
- Letter from ALL Sub-Consultants, not just the DBE firms, on that firm's letterhead stating the intent to participate in the contract.

Project Management Division will address any noncompliance issues in the submittal review and may deem some submittals as nonresponsive if the above criteria are not met. If a DBE Form 5-Good Faith Effort is submitted, Contract Compliance Division will review and provide a decision to Project Management/Contract Administration as to responsiveness prior to short list development.



## **CHAPTER 3. CONSULTANT SELECTION PROCEDURES**

### **3.01 Shortlist Development**

The Department will establish a candidate list consisting of all firms that have submitted a responsive LOI. The list will be available on TOPS and provided to the Department's Consultant Selection Committee (DCSC).

All DCSC members will complete a Nondisclosure Statement. Those with a potential conflict of interest will disclose this on the Nondisclosure Statement which will be discussed with the Directors of Project Delivery and Design or designee.

The DCSC will evaluate responsive LOIs. Issues to be considered during the evaluation may include, but are not limited to:

- Experience and/or familiarity of the proposed Consultant Team with Department procedures
- Ability of the Consultant Team to perform the type of work contemplated
- Specialized qualifications of the Consultant Team applicable to the type of work contemplated
- Capacity of the Consultant Team to accomplish the work in accordance with the anticipated schedule considering current workloads
- Past performance of the Consultant Team
  - The DCSC will receive past performance evaluation details, if available

A shortlist consisting of a minimum of three (3) responsive Consultants will be developed. If there are less than the minimum number of responsive Consultants, the process described in Section 2.05 will be followed.

The CA provides the shortlist for the Directors of Project Delivery and Design and Chief Engineer approvals. Once approved, the CA sends a notification to shortlisted and non-shortlisted Consultants. Further evaluation criteria is listed in the notification to those shortlisted.

### **3.02 Scope of Services Clarification**

If a Consultant has questions about the SOS, the Department's contact person should review the question and submit the answer to all shortlisted Consultants.

### **3.03 Technical Proposal – Interview Presentation**

Shortlisted Consultants will present a detailed technical proposal to the DCSC.

The DCSC may develop its own evaluation criteria based on the specific requirements of the professional services being evaluated, (e.g. bridge inspection, construction management/inspection, geotechnical services, etc.) or it may use the following:

- Consultant's project management approach

- Ability of the Consultant Team to ensure compliance with scope limitations and scheduled milestones.
- Ability to stay within budgetary constraints of the project
- Past performance of the Consultant Team
- Proposed design or construction management/inspection approach, staffing commitment, and solution(s) for this contract demonstrating an understanding of the contract requirements
- Initiative and innovation as demonstrated by the introduction of unique concepts

### **3.04 Interview Evaluation**

Interviews will be conducted with the shortlisted Consultants and presentations will be used to further evaluate a Consultant's qualifications.

The presentation will demonstrate how they intend to provide the necessary personnel, work and services. The DCSC may ask specific questions of each Consultant to clarify their qualifications submission, written proposal or presentation and will adhere to an established time limitation.

Following the interview presentations, the DCSC will evaluate and rank the Consultants based on their presentation and a consistent set of evaluation criteria as outlined in the interview notification. The CA provides the interview results for the Directors of Project Delivery and Design and Chief Engineer approval.

The highest ranked Consultant(s) is/are notified by the CA and asked to submit a detailed Scope of Work (SOW) proposal as detailed in Chapter 4 of these guidelines. The CA will also send notification to the Consultants that were not selected. If the highest ranked Consultant(s) is/are not asked by the Department to submit a detailed SOW, a detailed explanation will be provided for the contract files.

### **3.05 Consultant Debriefing Process**

Consultants shortlisted but not selected, may request a debrief meeting through TOPS. The Debrief Coordinator will notify the Directors of Project Delivery and Design and the DCSC of all debrief requests and coordinate the meetings as necessary. Information given by the DCSC is factual, precise and presented in a manner that intends to help the Consultant improve future technical proposal. Copies of debriefing notes should be treated as sensitive information.

## **CHAPTER 4. CONTRACT DEVELOPMENT**

The Department will initiate contract negotiations with the selected firm.

### **4.01 Detailed Scope of Work**

The SOW is an integral part of the contract development process. The SOW is one of the major factors affecting the cost for consultant services since it defines the nature and level of services to be performed. A well written SOW establishes the tasks to be performed, materials to be delivered, meetings to be attended, schedule to be met, standards that will be followed and responsibilities of both the Consultant and the Department. The SOW should be approved by the Department and the Consultant prior to compiling a Cost Approval.

### **4.02 Cost Proposal**

Once the final SOW has been received and approved by the Department, the Consultant will submit a proposal based on the tasks established in the SOW, detailing costs for all contract components. The proposal will be submitted and evaluated on an hourly basis, unless otherwise requested by the Department. The Department will also prepare an estimate of the cost based on the tasks established in the SOW. The Department's estimate will be provided to the CA prior to the negotiation and maintained in the contract file. The Consultant's proposal will be compared to the Department's estimate. The Department has the option of allowing the selected firm to perform under a lump sum contract. When lump sum payment methods are proposed, it will be in accordance with Section 23 CFR 172.9(b)(3) which is currently defined as:

“The lump sum payment method shall only be used when the contracting agency 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.”

### **4.03 Approved Hourly and Overhead Rates**

Prior to negotiations, the CA will request that the Consultant submit the Firm's approved hourly and overhead rates for review by Department personnel. Depending on the method of payment, overhead costs are evaluated accordingly:

- Cost Plus Fixed Fee
  - The Consultant will use its approved hourly and overhead rate along with an additional negotiated fixed fee to develop its cost proposal to establish a budget and for invoicing.
- Hourly Rate of Compensation
  - The Consultant will use its approved hourly and overhead rate to develop its cost proposal to establish a budget. The approved rate multiplier developed at the time of execution of the contract may be used for the life of the Consultant contract. The overhead rate for contract supplements will be that established with the initial Consultant contract, unless otherwise requested by the Consultant and approved by the Department.

- Lump Sum
  - The Consultant will use its approved hourly and overhead rate to develop its cost proposal to establish a budget. If a supplement is needed, the same method will be used during the processing of the supplement.
- Cost Per Unit of Work
  - The Consultant will use its approved hourly and overhead rate to develop its cost proposal to establish the Unit Costs and budget. The approved rate multiplier developed at the time of execution of the contract will be used for the life of the Consultant contract. The overhead rate for contract supplements will be that established with the initial Consultant contract, unless otherwise requested by the Consultant and approved by the Department.

NOTE: Consultants' overhead rates are confidential.

#### **4.04 Negotiation**

Negotiations are intended to lead to the development of a mutually satisfactory contract with the objective to reach a fair and reasonable cost for the work and services.

The final resolution of all issues should consider the long range effect on the mutual relationship. Items normally negotiated include:

- Contract schedule to be included in the contract
- Products to be delivered
- Classification, hours and experience level of personnel to be assigned to this contract
- Cost items, total cost of contract and profit/fixed fee
- Sub-Consultant costs

Negotiation meetings will convene at the Department, via email or over the phone. Department personnel and key staff from the selected Consultant/Sub-Consultants will attend.

During the negotiation process, each task/sub-task will be discussed to determine how it is to be accomplished, the expected deliverable and its format. If the Consultant's understanding is not in accord with that of the Department, discussion will be conducted to arrive at a mutual understanding of the task(s) to be accomplished, the method by which it will be accomplished, and the final product. The Consultant will submit a final SOW.

Following the meeting, if additional comments arise, the Department may elect to finalize the negotiations with the Consultant by telephone or email. The CA will document conclusions reached.

If agreement with the top ranked Consultant cannot be reached, the Department will formally terminate the negotiations. A meeting will be held with the next highest ranked

Consultant and the above steps will be repeated. If negotiations are unsuccessful, the Department will re-solicit the contract or abandon the effort.

The negotiation procedure for task orders is detailed in section 5.04 Task Order.

#### **4.05 Final Cost Submission**

Following the negotiation process, the Consultant will make any necessary modifications to the cost proposal and resubmit it electronically to the CA. This process will continue until the Department receives an acceptable proposal. When both parties agree on all of these items, a contract is processed.

#### **4.06 Transportation Commission Approval**

Following successful negotiations, if required, an Agenda Item will be presented to the Oklahoma Transportation Commission for approval. This will include the Consultant Firm(s) selected, define the services required, the amount of payment for the contract and estimated construction costs.

#### **4.07 Execution of the Contract**

After approval of the scope and specifications by the Department's Stakeholders, the Consultant will review and execute the contract.

Upon execution by the Consultant, the Department will approve as follows:

- General Counsel
- Directors of Project Delivery and Design, or designee(s)
- Chief Engineer
- FHWA (Major Projects only)

#### **4.08 Federal Authorization**

Following Oklahoma Transportation Commission approval, Project Management Division will notify Financial Services and Operations Division (FSO) if Federal funds are to be utilized. The following information will be provided in the notification:

- Contract Identification (CI) Number
- Job Piece Number
- Amount of contract
- Date Commission approved
- General Scope of Services
- STIP engineering contract line item notice

Once FSO Division has obtained authorization of Federal funding from FHWA, a confirmation email is sent to the CA.

#### **4.09 Contract Allotment Establishment**

The CA submits a request for encumbrance to Financial Services and Operations Division (FSO). FSO Division and Procurement Division will process the request and forward the signed Purchase Order to the CA. For task order based Contracts, the CA will submit a copy of the contract to FSO Division which will hold the contract until a task order has been received.

#### **4.10 Notice to Proceed**

The Consultant cannot begin work until Project Management Division/CA issues a Notice To Proceed (NTP).

## **CHAPTER 5. CONTRACT ADMINISTRATION**

A contract begins with the Solicitation of Interest and does not end until the contract is closed. The CA ensures adherence to all aspects of the contract.

### **5.01 Monitoring and Control**

Monitoring and control are essential to ensure resources are utilized in a manner that will provide the Department what it has contracted for in terms of quality, timeliness and economy of cost.

- Ongoing -The Department uses its own in-house staff for ongoing monitoring of Consultants. The Department's PM serves as a single point of contact to maintain open and accurate communication of all instructions and/or directions given to the Consultant. The CA serves as a single point of contact in regards to the contract and State/Federal contracting requirements.
- Reported – In the event a potential contract violation is reported, the Department will review and involve appropriate personnel as necessary.

### **5.02 Consultant Evaluations**

Consultant evaluations are completed at the end of every contract in order to document and measure performance. These evaluations are a valuable management tool for rating the current Consultant work and services, as well as for use in the selection process for future work and services. When performing the Consultant Evaluation on Contracts, the Department also considers the conduct of the Consultant team regarding the negotiation phase.

NOTE: Consultant Evaluations are confidential.

### **5.03 Stop Work Notification**

If in the best interest of the Department to cease work on a contract, the PM issues a written stop work notification to the Consultant. Unresolved performance issues will be addressed in accordance with Section 5.08. The Consultant may not proceed with work on the contract until the PM provides a subsequent authorization to proceed. If the contract changes, the CA will issue a subsequent NTP. FHWA should be notified of a stop work notification due to poor performance on federally funded projects.

### **5.04 Task Order**

The purpose of a task order is to supplement the basic contract and to provide a vehicle to communicate, define, approve, authorize the services, schedule, costs, and provide funding and other parameters related to services. All efforts which are the Consultant's responsibility, and for which the Consultant expects to be compensated, must be defined in an approved Task Order.

When the Department determines there is a need for the services of a Consultant, a Request for Services (RFS) will be prepared. For On-Demand contracts the Department

will consider the ability of the Consultant team to perform the type of work contemplated, capacity of the Consultant team to accomplish the work in accordance with the anticipated schedule, considering current workloads and past performance of the Consultant team when multiple Consultants are available for the required services. The RFS should include the following:

- Contract Number, Contract JP Number, Project Description, County and Construction Job Piece Number
- Requested By
- Invoice Reviewer
- Consultant
- Reason for selecting the Consultant
- Proposed Method of Compensation
- Description of services to be provided through the requested Task Order
- Description of the anticipated deliverables
- Schedule to complete the requested services
- Task Order Number (Assigned by the CA prior to sending request to the Consultant)

Upon receipt of a RFS, the Consultant will prepare a Request for Task Order Approval. The Request for Task Order Approval details services to be provided, technical standards, schedule, compensation and other parameters under which the services are to be completed.

Each Request for Task Order Approval must include the following:

- Task Order Number, County and Job Piece Number
- Consultant name and contract number
- Detailed, definitive, and specific SOW including project limits (if applicable) for services to be provided
- Method of Compensation and budget for the requested Task Order
- Man-hour detail including a list of tasks to be accomplished, personnel classifications, and hourly rates, overhead, other direct expenses, and costs
- List of deliverables, if applicable
- Schedule for completing SOW including all reviews and approvals by others
- Project Manager/Engineer and/or key personnel to be assigned to the contract and location where work will be completed
- Signature of Consultant and the date of submittal
- A signature block for subsequent use by the Department in the execution and recording of the date of Task Order Approval

The Task Order Approval process includes:

- Consultant submits the Request for Task Order Approval to the Department for review. The Department will review the Request for Task Order Approval to determine it describes the services to be provided, deliverables, compensation, method of payment and the project limits, if applicable.



- After negotiations if it is determined that resolution cannot be achieved, the Department may elect to continue negotiations or elect to complete the work using its own forces or consultant services under a different contract.
- Upon approval of a proposed Task Order, the Department and the Consultant will execute the Task Order document thereby signifying acceptance of the specific terms and exemplified provisions therein and acknowledging the formality of this contract.
- The initiating division/district will forward the executed Task Order to Project Management Division for further processing and issuance of an NTP.

The deliverables and services initiated through a task order associated with a Project Specific Contract must be completed within the contract time identified in the task order.

The deliverables and services initiated through a task order associated with a Demand Service Contract can extend beyond the contract time constraints identified in the contract or a subsequent contract supplement as long as the task order was executed prior to the expiration of the contract. A Demand Service Task Order can also be amended to complete work identified on a previously executed task order. A task order amendment can be executed beyond the contract time constraints identified in the contract or a subsequent contract supplement. Task order amendments will follow the same process as a task order and the task order number and amendment letter will be clearly identified.

## **5.05 Invoice Procedures**

Invoices for all Consultant Contracts are to be submitted monthly and processed electronically through TOPS or [consultantclaims@odot.org](mailto:consultantclaims@odot.org).

The following methods of payment are utilized by the Department for Consultant Contracts:

- Cost Plus Fixed Fee
  - This method is used when the SOW is fairly well-defined, but the total engineering effort required to complete the work cannot be estimated precisely. The Consultant is paid an agreed-upon amount for a fixed fee, based on actual SOW completed, together with all actual costs incurred in the performance of the work and services. Once both parties have agreed to the work effort in an executed Consultant Contract, a change in the amount of fixed fee can only be made if the SOW changes.
- Lump Sum
  - This method is used when the SOW is well-defined and the total engineering effort can be estimated accurately. Once both parties have agreed to the work effort in an executed Consultant Contract, a change in the amount of the lump sum can only be made if the SOW changes significantly.
- Cost Per Unit of Work
  - This method is used when the SOW is well-defined, the engineering effort per unit can be estimated accurately, and there are a repetitive number of similar units to be performed.

- Specific Rates of Compensation
  - This method is used when the SOW and the required work effort cannot be determined at the time the Consultant Contract is executed. A specific rate of compensation is established for each employee classification by multiplying the wage rate by the approved rate multiplier established in each Consultant Contract.

If there is a discrepancy, the Division/District can reject or disallow any portion of the amount claimed without rejecting the entire payment. If an invoice is deemed acceptable, the Division/District approves the invoice in TOPS or signs the paper copy and returns it to Consultant Claims. If any portion of the invoice is rejected, an explanation must be provided to the Consultant.

Payment for all work and services provided is sent to the prime Consultant, who in turn, is responsible for meeting the fifteen (15) day prompt payment requirement to its Sub-Consultants (49 CFR Part 26.29).

#### **5.06 Costs Incurred Outside the Legal Contract**

Costs incurred outside the contract and invoices requesting payment for these costs are subject to disallowance, (e.g. work prior to or after the contract period or beyond the scope).

#### **5.07 Supplementing Engineering Contracts**

A supplemental contract allows the Department to change the terms and conditions of an approved contract. Additional Scope of Work can only be added to the contract if it is within the general context of the advertised Scope of Services of the original Solicitation of Interest. When a change to the Scope of Work, key personnel, sub-consultant or funding is necessary, a supplement can be requested by any stakeholder and is coordinated with the PM to verify its merits. This must be done prior to performing work and services outside the terms and conditions established in the contract.

Supplements must follow the same contract development process as defined in Chapter 4 of this guideline, including negotiation, obtaining approvals as necessary, federal authorization, funding and issuance of a Notice to Proceed.

#### **5.08 Contract Closeout**

Consultant Contracts are closed if any of the following occur:

- All of the work and services to be performed under the terms of the contract have been completed in a satisfactory manner
- The contract has expired
- The Department cancels the contract in accordance with the terms of the contract

Upon closure of the contract, the Consultant will process a final invoice, if applicable. This final invoice will be the Department's notice to begin the process of closing the contract with Project Management Division and FSO Division.

## **5.09 Contract Documentation**

Consultant Contract records and documentation should be maintained by the CA in the project files and made available for any future audit or reference. The minimum retention time for documentation is three (3) years following payment of the contract's final invoice. These records and documentation include, but are not limited to:

- Solicitation of Interest including the Scope of Services
- DCSC ranking sheet(s), review comments, recommendations, and other material pertinent to the selection process
- Technical review verification/comments on the SOW and/or technical proposal
- Consultant Contract correspondence/approvals
- Negotiation Documents including the Consultant's and the Department's cost estimates
- Consultant Contract Documents
- Consultant Evaluations (TOPS)

## **5.10 Consultant Information Webpage**

The Department's website provides contracting information to the Consultant community and general public.

The following information is added and updated during various phases of contract development:

- Scheduled and special solicitation packets
- Contract selection phases including
  - Consultants submitting Letters of Interest
  - Consultants shortlisted
  - Consultants selected for contracts
- Construction estimate pay item history
- Project Management Division personnel information

Additional information will be posted to the website when needed to ensure effective communication between the Department and Consultants.

## **5.11 Federal Acquisition Regulations (FAR)**

The Consultant certifies that the indirect cost rate submitted does not include any costs which are expressly unallowable and the indirect cost rate was established in accordance with the applicable cost principles contained in 48 CFR Part 31. The Audit Office is responsible for ensuring that a Consultant's indirect cost rate complies with the FAR cost principles.

## 5.12 Plan Errors and Omissions

Changes to a project under construction can be categorized under one of four conditions, and are defined as follows:

- Modifications in project scope – Change Orders that result from adjustments to the scope of a project in order to address identified deficiencies and/or to accommodate additional work beyond that which is reasonably defined by the contract documents.
- Changed site conditions – Change Orders attributed to unforeseen or changed site conditions which cannot be readily anticipated during the preliminary engineering and design development process.
- Design engineering errors or omissions – Change Orders that become necessary as a result of errors and/or omissions in the contract documents, plans and/or specifications which may constitute some measure of professional negligence on the part of the responsible party.
- Construction Management errors or omissions – Change Orders that result from errors and/or omissions which are associated with improper construction management and/or construction inspection practices which may constitute some measure of professional negligence on the part of the responsible party.

If a Change Order is caused by one of the above listed conditions, the Department has a responsibility to notify and coordinate with the Consulting Engineer of Record, if determined necessary. Scope modifications and design alterations necessary to address changed site conditions may have a detrimental impact on the performance of the associated project element or facility. These impacts may not be readily apparent without input from the design engineer. Therefore, and at the request of the Department, the Consulting Engineer of Record has an obligation to assist in the interpretation of the plans and specifications during construction and to be a party to any associated decision-making process.

If errors and/or omissions discovered during the execution of a construction project contribute to additional expense or delay in project delivery, the Department may choose to seek reimbursement for costs directly and indirectly attributable.

Expenses such as overhead, profit, labor, equipment, materials, re-work, incidentals, user costs for additional time considerations (computed per day based on the contract liquidated damages amounts) and contractor delay claims may be included in the calculations for Consultant Liability.

When it is necessary to modify a project scope and/or the encounter of changed site conditions the documentation/notification process will follow the Reporting Matrix for Scope Modifications and Changed Site Conditions.

The discovery of design, construction management or inspection errors and/or omissions, the documentation/notification process will follow the Reporting Matrix for Design Errors and/or Omissions and Construction Management/Construction Inspection Errors and/or Omissions.

### **5.13 Sanctions**

If a contract, regulation, statute, policy or rule requirement violation occurs, Project Management Division will involve all necessary parties to review or investigate the occurrence. Events may include but are not limited to: failure to comply with prompt payment, not obtaining an approved substitute or improper/fraudulent billings. Sanctions must be approved by the ODOT Director, or Designee, and progress in severity depending upon each circumstance. A list of sanctions is below:

- Verbal or written communication of the non-compliance and any necessary corrective action or expectation
- Repayment of unauthorized payment
- Withholding payment until a sub-consultant has been paid
- Stop work order issued on the contract
- Suspension from responding to future solicitation(s)
- Report findings to FHWA and assist by providing information to proceed with Federal suspension or debarment

## **CHAPTER 6. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

This section describes the procedures concerning DBE participation in Consultant Contracts. Only DBEs certified by Contract Compliance Division are eligible. All issues of certification or DBE eligibility must be resolved by Contract Compliance Division. DBE participation is required pursuant to Federal Regulations at 23 CFR § 230.201 and 49 CFR Part 26.

### **6.01 Contract DBE Goals**

Prior to the publication of the Solicitation of Interest, the Directors of Project Delivery and Design or designee(s), in coordination with Contract Compliance Division, will review all U.S. DOT-assisted (Federal-aid) Consultant Contracts and other Professional Service Contracts to determine if a goal is needed to meet annual Program attainment targets. If it is determined that a goal is needed, then goals will be set after reviewing subcontracting opportunities and the availability of certified DBEs available to perform in professional services. The Consultant Contract goal will be determined by the Contract Compliance Division and included in the Solicitation of Interest, based on the current established DBE goal methodology for the Department.

### **6.02 Advertised DBE Participation**

If a goal for DBE participation is established for an advertised Consultant Contract, Consultants must include a commitment letter from DBE Consultants currently certified by the Department with its LOI to participate in any subcontracting OR provide Form 5-Good Faith Effort. The commitment letter must be on the DBE firm's letterhead. Responding Consultants will identify how it will meet the DBE goal using DBEs. If the selected Consultant fails to meet the contract DBE goal, it must document and demonstrate a good faith effort, as defined in the ODOT DBE Program Manual, before the Department can recommend award. If the selected Consultant fails to document and demonstrate a good faith effort to meet the contract DBE goal, the Consultant is ineligible for contract award.

After negotiation with the selected Consultant the DBE Form 6 – DBE Confirmation of Intent to Subcontract Federal-Aid Projects must be submitted and approved before an NTP can be issued.

### **6.03 Contract Performance**

Only expenditures to a DBE Consultant that performs a commercially useful function may be counted toward a DBE goal.

When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the clearly defined portion of the work that the DBE performs with its own forces may be counted toward the goal.

#### **6.04 Commercially Useful Function (CUF)**

A DBE performs a CUF when it is responsible for the execution of the work of its contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE Consultant is performing a CUF, the Department will evaluate the type(s) of work the DBE is contracted to perform compared to the work the DBE is certified to perform, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

#### **6.05 Monitoring of DBE Consultants**

Once a U.S. DOT-assisted contract is awarded, the Consultant will provide the Department information as to the proposed DBE participation with a sub-agreement, including the name, subcontract amount, and the type of work to be performed by the DBE Sub-Consultant. The Consultant will submit a form stating the amounts paid to Consultants and amounts paid to DBEs to Contract Compliance Division. The Contract Compliance Division's Contractor Compliance Officers will monitor DBE requirements by conducting onsite visits and periodic reviews of submitted information.

#### **6.06 Substitution/Replacement of DBEs**

Substitution or replacement of a DBE contracted as part of a proposal submitted to the Department will only be permitted or allowed after award and execution of the U.S. DOT assisted contract, and then only in compliance with the procedures outlined in the Department's DBE Program. Substitutions and replacements must be approved by the Directors of Project Delivery and Design, or designee(s) and Contract Compliance Division prior to the action taking place.

If a qualifying event arises and the DBE goal cannot be met, an exception can be considered by submitting a DBE Form 5 - Good Faith Effort. If approved, a supplemental agreement between ODOT and the prime Consultant will be completed. The prime Consultant must submit a new Sub-Consultant agreement to ODOT for review. After approval, the CA will complete the process and an NTP will be issued.

#### **6.07 Prompt Payment**

To ensure that all Consultants' obligations under U.S. DOT Contracts are met, the Consultant will pay all Sub-Consultants for satisfactory performance of their contracts no later than fifteen (15) days after receipt of each progressive payment from ODOT. Failure to comply with prompt payment provisions of the contract may result in sanctions under the contract up to and including termination.

Any delay or postponement of payment may take place only for good cause and must include ODOT's written approval. The explanation of good cause from the prime Consultant must be made in writing to the Department. Further, all Sub-Consultant Contracts carry the same provisions and must include a notice to Sub-Consultants of their right to prompt payment.

In order to allow Sub-Consultants to verify payment has been received according to the provisions set forth for the Sub-Consultant program, an invoice navigation link is available in TOPS for entry of the date that payment is made by the Prime Consultant. In order to access this link, the user must be set up as an invoice user in TOPS.

#### **6.08 Required Assurances**

Each Consultant contract and subsequent sub-consultant contract must include the Title VI Assurances, appendices A-E.

The Consultant will follow all State and Federal requirements in the award and administration of contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such remedy as the recipient deems appropriate.



## **CHAPTER 7. SMALL PURCHASE THRESHOLD CONTRACTS AND OTHER CONTRACTING METHODS**

### **7.01 Small Purchase Threshold Contracts**

The small purchase procurement method can be used when an adequate number of qualified sources are reviewed and the total contract cost does not exceed the small acquisition threshold of \$250,000.00 (or latest revision as defined by 48 CFR). Contract requirements will not be broken down into smaller components merely to permit the use of small purchase requirements.

#### **1) Method of Procurement.**

The requesting division/district develops the Scope of Services in writing and coordinates with Project Management Division to prepare a list of a minimum of three qualified Consultants. Each Consultant provides a Scope of Work (SOW) for the requested services, either by telephone or in writing. The Consultant's SOW is documented in writing by the requesting party when solicited by telephone.

The requesting division/district ranks the solicited firms based on which SOW best meets the needs of the Department and the CA obtains the Directors of Project Delivery and Design and Chief Engineer approval. Negotiations will commence with the highest ranked Consultant. If the highest ranked Consultant(s) is/are not selected, a detailed explanation of the reason(s) for the decision will be provided for the contract file(s). Submission of the cost proposal and subsequent negotiations will follow a similar process as outlined in Sections 4.02, 4.04 and 4.05. When the final SOW and cost proposal are agreed to by both parties, a contract is prepared for execution and follows a similar process as outlined in Sections 4.06 through 4.10. The administration of a simplified acquisition will be subject to the same requirements for management, control, quality and other related procedures as outlined in Chapter 5.

Small Purchase Threshold Contracts may be supplemented during the administration of the contract only if the total contract value including the supplement(s) does not exceed the small acquisition threshold. If the total contract value exceeds the threshold, then services must be solicited in accordance with procedures identified in Chapters 2-4.

### **7.02 Other Contracting Methods-Sole Source, Emergency, Inadequate Competition**

- (i) Noncompetitive Contracts. Selection and contracting may be completed through a noncompetitive procurement method under limited circumstances. When (1) service is only available from a single source; (2) if there is an emergency which will not allow time for competitive procurement (further described in (i) below); and (3) if after receiving proposals from several sources, the competition is determined to be inadequate or impractical to re-compete under a new solicitation per 23 CFR 172.7 (Procurement methods and procedures),

Department may authorize noncompetitive consultant contracts in accordance with state law and ODOT Policy Directive B-601-1.

- 1) Emergency Contracts. The Department reserves the right to contract with consultants during emergency events when serious and immediate need for services cannot be met through normal avenues. Pursuant to 23 CFR 172.7 (Procurement methods and procedures) and Oklahoma Title 63 Section 683.1.
  - a) If an emergency contract is needed, the Division/District will obtain Chief Engineer approval to proceed and a DCSC is identified. The Committee will identify and the CA will notify a minimum of three (3) firms to interview. A selection will be recommended by the Committee and the CA will obtain approval from the Directors of Project Delivery and Design and Chief Engineer. Once approved, a scope and cost proposal will be obtained from the selected firm. After negotiation, a contract will be executed and a Notice to Proceed (NTP) will be issued. The item will be presented to the Transportation Commission by the Executive Director, or designee, as necessary.

## **CHAPTER 8. LOCAL PUBLIC AGENCY CONTRACTS**

### **8.01 LPA Contracting**

Local Public Agency (LPA) contracting provides oversight to ensure the federal-aid contracting process complies with all applicable laws, regulations and policies. LPA Contracts are authorized by Title 69 O.S. §§304, 507 and 601.

The LPA will submit a formal resolution proposing the use of federal funds for engineering on a local city street or county road. The LPA selects the Consultant subject to compliance with statutes, regulations, LPA and Department approval, utilizing the Qualification Based Selection process for the procurement of professional services.

### **8.02 Solicitation Phase**

The LPA solicit the services of Consultants as described in Chapter 2. Alternatively, the LPA must obtain pre-approval from the Local Government Division Engineer to utilize methods outlined in Chapter 7. The Department provides a prequalified list of Consultants. The LPA may add Consultants to the list that have previously performed acceptable work. The LPA will coordinate the DBE goal requirements with Contract Compliance Division for inclusion in the solicitation.

### **8.03 Selection Phase**

The LPA selects the Consultant as described in Chapter 3. Alternatively, the LPA must obtain pre-approval from the Local Government Division Engineer to utilize methods outlined in Chapter 7. The Selection Committee will consist of at least three (3) representatives which may include LPA staff, an elected official and at least one member with technical expertise. The Department can serve as a resource for the Committee as a non-voting member. The LPA will provide the Committee's Nondisclosure Statement forms to the Department.

The Consultant selection is formalized by formal public resolution which is provided to the Department along with all the scoring documents prior to beginning negotiations with the selected Consultant. The Department will review and approve each solicitation and selection prior to contract issuance.

### **8.04 Contract Development Phase**

A Scope of Work defining the nature and level of services to be performed, including deliverables and schedule is developed by LPA, Department Staff, and the top ranked Consultant. Upon approval of the SOW, the Department will initiate contract negotiations as described in Chapter 4. All documentation associated with the final cost including the Consultant's overhead rate will be in the contract file for use during auditing. Overhead rates are required for federally funded contracts.

The Department will formally execute the contract, seek federal authorization if required, and establish the contract allotment prior to issuing the NTP.

## **8.05 Contract Administration Phase**

The Department and LPA administer Consultant Contracts as described in Chapter 5. The LPA may use its in-house staff to manage Consultants. The Consultant submits all invoices for approval and processing by the Department.

Supplements to LPA Contracts will follow the same contract development process described in Section 5.07 considering the LPA allowances identified in Section 8.04.

The Department is responsible for closing the LPA Contract and maintaining contract documentation.

The LPA will notify the Department of any unsatisfactory performance by the Consultant. The Department will issue a stop work notification to the Consultant, if deemed appropriate, and any subsequent authorization to proceed.

## **8.06 Training**

The Department will evaluate the results of each phase of the contracting process to determine if specific training would be beneficial to the entities participating in the procurement of professional services. Each LPA is encouraged to send a representative.