

# Professional Service Agreement Procedures



*July 2016*



**SECTION 100.00 – GENERAL INFORMATION**

**SECTION 200.00 – AGREEMENT REQUIREMENTS**

**SECTION 300.00 – SOLICITATION AND SELECTION**

**SECTION 400.00 – AGREEMENT PREPARATION**

**SECTION 500.00 – AGREEMENT ADMINISTRATION**

**SECTION 600.00 – TERM AGREEMENTS**

**SECTION 700.00 – MINOR AGREEMENTS**

**SECTION 800.00 – CONSTRUCTION ENGINEERING AND INSPECTION**

**SECTION 900.00 - *Reserved***

**SECTION 1000.00 - *Reserved***

**SECTION 1100.00 - DEFINITIONS**

## **SECTION 100.00 GENERAL INFORMATION**

**110.00 Using Professional Services**

**120.00 Written Requirement**

**120.1 Conflict of Interest**

**130.00 Consultant Services**

**140.00 Types of Agreements**

**150.00 Consultant Services Request**

**160.00 Consultant Services Recommendation**

**170.00 Agreement Administrator**

**180.00 Access to Records**

**190.00 Agreement Number and Filing**

**195.00 Overview**

## SECTION 100.00 – GENERAL INFORMATION

### SECTION 110.00 – USING PROFESSIONAL SERVICES

When time or work force constraints do not permit accomplishment by Idaho Transportation Department (ITD) staff, or special expertise is not available within the department, professional services from private industry may be contracted. Professional services are defined as engineering (i.e., material inspection, bridge inspection, construction inspection, design, environmental, archaeological, geotechnical engineering, transportation planning, public involvement, and information technology engineering), architectural, land surveying, legal, accounting, auditing, and right of way services where negotiating the fee is the accepted practice of the profession.

Other services that are not listed above may be contracted by the department when the need arises and as budgeted. Solicitation and selection procedures for these other services should be similar to the following procedures used for professional services. Consultant Services should be contacted to provide assistance and oversight.

#### Links:

Program Update Manual: <http://itd.idaho.gov/newsandinfo/publications.htm>

Guidelines for Local Public Agency Projects: <http://itd.idaho.gov/manuals/ManualsOnline.htm>

Contract Administration Manual: <http://itd.idaho.gov/manuals/ManualsOnline.htm>

Consultant Services Web Site: <http://www.itd.idaho.gov/design/cau/cau.htm>

FHWA Web Site – Procurement, Management, and Administration of Engineering and Design Related Services – Questions and Answers: <http://www.fhwa.dot.gov/programadmin/172qa.cfm>

### SECTION 120.00 – WRITTEN REQUIREMENT

The Idaho Transportation Department is required to have written procedures for consultant services to be eligible for reimbursement when federal-aid highway funds are used in the contract for professional services. These **Professional Service Agreement Procedures** shall apply to federally-funded and state-funded consultant agreements. Local agencies shall follow these procedures for federally-funded projects. These written procedures and any revisions must be approved by FHWA.

The following procedures provide direction in the solicitation, selection, negotiation, and administration of consultant agreements for professional services. These procedures are prepared in compliance with the Code of Federal Regulations, Idaho Code, and the department's Board and Administrative policies.

## **SECTION 120.1 – CONFLICT OF INTEREST**

### **120.1.1 – Purpose**

The goal of the following procedures is to ensure fair and open competition in procuring professional services and to maintain the public interest in carrying out a project.

### **120.1.2 – FHWA Requirement**

No consultant performing services for the Department in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than its employment or retention by the Department, in any contract or subcontract in connection with such project. Such consultant shall not have, directly or indirectly, any financial or other personal interest in any real property acquired for the project unless such interest is openly disclosed upon the public records of the Department and such consultant has not participated in such acquisition for and in behalf of the Department.

No employee of the Department who participates in the procurement, management, or administration, of any contract or subcontract in connection with a project shall have, directly or indirectly, any financial interest, personal interest, or relationship that could impair the employee's ability to act impartially or in the best interest of the Government in any such contract or subcontract.

### **120.1.3 – Department Responsibility**

The Department is responsible to ensure the public interest is maintained and that a conflict of interest, direct or indirect, does not occur. It is important to understand that a conflict of interest is to be avoided whether it is one that is real or apparent. An apparent conflict may undermine public trust in the integrity of the procurement process.

### **120.1.4 – Consultant Responsibility**

It is the responsibility of the consultant (whether prime or subconsultant) to recuse itself from competing for solicited services if a conflict of interest exists. Where approval is required, it is the responsibility of the consultant with the potential conflict of interest (whether prime or subconsultant) to request a determination on eligibility prior to a consultant's submittal for a solicitation. Requests for a determination on eligibility should be submitted well in advance of the solicitation closing date to allow enough time for a decision. All consultant firms have an obligation to promptly disclose potential conflicts of interest that arise while participating in the execution of a project.

### **120.1.5 – Defined Conflict of Interest**

A conflict of interest is a situation in which there is a risk that professional judgment or actions in performing the contract work is or might be unduly influenced by existing or planned activities or a personal or business relationship; or that a consultant has or appears to have an unfair competitive advantage by having access to undisclosed information related to a solicitation.

### **120.1.6 – Eligibility Guidelines**

For the purpose of this procedure, the term “consultant” shall mean a consultant firm or its affiliate.

#### **Development of Solicitation Documents**

Any consultant that developed the scope of services, the Request for Proposal (RFP) or other solicitation documents for a particular project phase is ineligible to compete for that phase of the project for which they developed the documents.

A consultant that developed the scope of services, the RFP, or other solicitation documents for a design project is eligible for CEI services for that same project.

#### **Preliminary Engineering Activities**

The Department will determine whether to allow the preliminary design consultant or subconsultant, who has completed or is still performing preliminary design services only, to compete for work on other phases based the extent of the firm’s involvement and whether a potential conflict of interest exists. Preliminary design services are design related activities that are performed before the relevant NEPA decisions have been issued (CE, FONSI or ROD).

#### **Construction Engineering Activities**

A consultant that is the Engineer of Record (EOR) or a subconsultant to the EOR on a project shall be considered ineligible to compete as a prime consultant or a subconsultant for CEI services on that same project. However, a consultant that performed design services (whether as a prime or subconsultant) is eligible to compete for CEI staff augmentation agreements where the consultant firm will only provide inspectors and Department staff will perform day-to-day administration of the construction project, including the management of inspection staff and project documentation. Nevertheless, Design and CEI services must be procured under separate solicitations.

A consultant firm that performs geotechnical services for the EOR on a project will not be eligible as the CEI to perform the same types of geotechnical services, or to provide testing of the same types of materials tested or evaluated for the EOR on the same project.

A consultant firm that performs surveying services for the EOR on a project will not be eligible to perform related surveying services for the CEI firm on the same project.

No consultant that is currently providing, or has previously provided, consulting services on a project shall perform any services for the construction contractor on the same project.

**Conflict of Interest Table**

Current relationship/Future relationship (on same project)	Requires Consultant Services Approval	Not eligible for approval
Prime or Sub Preliminary design/Prime or Sub EOR	X	
Prime or Sub Preliminary design/Prime or Sub CEI	X	
Prime or Sub EOR/Prime or Sub CEI		X
Prime or Sub EOR/ITD Inspector Staff Augmentation	X	
Prime or Sub for geotech services/Prime or Sub CEI performing same type of services		X
Prime or Sub for geotech services/Prime or Sub CEI performing different type of services	X	
Prime or Sub for survey services/Prime or Sub CEI performing related services		X
Prime or Sub for survey services/Prime or Sub CEI performing unrelated services	X	

See Q&A on Consultant Services Website for specific examples of each scenario.

**SECTION 130.00 – CONSULTANT SERVICES**

The department is committed to complying with the regulations for professional services and part of this commitment is to provide assurance of compliance by monitoring transactions and procedures. The Contracting Services section (as assigned by ITD Board and Administrative policy) shall have general oversight responsibility for developing, authorizing, and managing ITD professional service agreements.

Contracting Services section’s Consultant Services section shall assist in the selection, negotiation, and administration of professional agreements for development of all State Highway and local projects that will receive federal-aid.

Consultant Services document the procurement process for contracting professional services and ensure that the process complies with appropriate policies and procedures.

**All professional service agreements for the State Highway System or other types of capital improvements connected to a project or activity listed in the Idaho Transportation Investment Program that are initiated by the Districts or Sections (except the Right of Way section) must be processed through Consultant Services in the Contracting Services section.**

Consultant Services will work with the EEO Office to ensure that consultant procurement complies with Title VI and the Code of Fair Practices. Consultant Services will also work with the Contract Compliance Officer in matters related to the DBE program.

Consultant Services shall also be a resource to other sections of the department for other types of Professional Service Agreements.

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## SECTION 140.00 – TYPES OF AGREEMENTS

Three types of professional service agreements are regularly used by the department and usually the type chosen depends on the complexity of the project, the amount of service, and the need for immediate services.

The types are:

- **Individual Project Solicitation and Consultant Selection** -- used for large, complex highway projects or where the needed service is in an area in which there is no existing Term Agreement. The selection can use either competitive or non-competitive methods. (**Non-competitive or Sole-Source Selection** is used when specific conditions exist that allow negotiations with a single firm. (See Section 200, Agreement Requirements--Non-competitive Selection)
- **Term Agreements** – used for services that can be performed by a pre-qualified consultant as the need arises. These agreements are for specific, well-defined and narrow-focused work and small projects. Accumulated work tasks associated with a term agreement shall not exceed \$1,500,000 in the aggregate of the term period without ITD Board approval. A task cannot exceed a maximum amount of \$500,000 per project and per consultant. (See Section 600, Term Agreements) Total tasks cannot exceed \$1,500,000 per project.
- **Minor Agreements** – are used for non-routine professional agreements for services that are in an area of expertise where no Term Agreement exists. These types of agreements allow a great deal of flexibility in solicitation and shall not exceed \$50,000 per consultant. (See Section 700, Minor Agreements)

## SECTION 150.00 – CONSULTANT SERVICES REQUEST

Whenever consultant services are desired, an ITD-2760, Request for District or Consultant Services, should be completed and sent to the CAU prior to starting any consultant contact. A current version of the ITD-2760 is available from the ITD Form Finder.

The following information, while not inclusive, must be included in the request for consultant.

1. Type of consultant services required (e.g. roadway design, materials, environment, etc.).
2. Description of the ultimate product.
3. Detail of what the consultant's work will include. If appropriate, list what the department has already done and will furnish.
4. Estimated cost of the services required.



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5. Estimated construction cost for that portion of work to be done by the consultant.
  6. Date the consultant's work must be completed.
  7. If selecting from the Term Agreement, identify all categories of service required to perform the work.

**SUFFICIENT FUNDS TO COVER THE ESTIMATED COST OF SERVICES MUST BE SCHEDULED BEFORE THE ITD-2760 WILL BE PROCESSED.**

The ITD-2760, Request for District or Consultant Services, requires signatures from the Agreement Administrator and the District Engineer or Section Manager.

## **SECTION 160.00 – CONSULTANT SERVICES RECOMMENDATION**

From the information on the ITD-2760, Request for District or Consultant Services, Consultant Services will:

- 1) Recommend the type of Agreement.
  - ***Individual Project Solicitation and Consultant Selection.***
  - ***Term Agreement.***
  - ***Minor Agreement Procedures.***
- 2) Coordinate the preparation and presentation of an ITD-2210, Board Agenda Item, for agreements that are expected to exceed the limits set by the Board (See Section 230 – Approval Requirements for Board Limits). The Board Agenda Item should contain the following information:
  - Project data.
  - Need for outside expertise.
  - Scope of work.
  - Projected cost (range).
  - Expected agreement duration.
  - Type of funding
- 3) Recommend an Agreement Administrator, if not already established.
- 4) Establish a Selection Committee if an individual project solicitation is necessary. The Consultant Administration Unit Coordinator or designee shall serve as Chairman.

## **SECTION 170.00 – AGREEMENT ADMINISTRATOR**

For each Professional Service Agreement, an Agreement Administrator will be appointed to directly administer the consultant's performance and payment.

The individual requesting consultant services from Consultant Services may be named the Agreement Administrator. The Agreement Administrator should be the person who would normally supervise the work if the work was performed by state forces and should **NOT** be the person who approves payment vouchers. Normally, District Engineers, or Section Managers are not named the Agreement Administrator.

The Agreement Administrator decides all questions that may arise as to quality and acceptability of the work, rate of progress, definition of work to be performed, and acceptable fulfillment of the agreement.

## **SECTION 180.00 – ACCESS TO RECORDS**

The retention of supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant is regulated by 2 CFR 200.333.

All project records are to be available for inspection and audit at reasonable times during the contract period and for an additional three (3) years from the date of final payment. If litigation, a claim, or an audit has been announced or is underway; then the records must be maintained until the litigation, claim, or audit is completed and any findings are resolved.

## **SECTION 190.00 – AGREEMENT NUMBER AND FILING**

Consultant Services shall assign an agreement number to each agreement issued, and shall submit a copy of the signed agreement to Financial Services (FS). This number must appear on all payments and other documentation associated with the agreement.

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## SECTION 195.00 – OVERVIEW

The following overview is a summary of the general requirements and procedures to be used with each type of agreement. The overview, combined with various pertinent chapters in this manual, can assist you in working with professional service agreements and meeting department requirements. If further assistance is needed, contact Consultant Services.

### **TERM AGREEMENTS (WORK TASKS)**

2-Year Duration

For Less than \$500,000/Project and Task

Maximum of \$1,500,000 Cumulative Per Consultant

Maximum of \$1,500,000 Cumulative per Project

Consultants Pre-qualified For Specific Services

Consultant Selected From Term Agreement List (If Less than \$150,000)

Consultants Short-Listed from Term Agreement List with Request for Information (If Less than \$500,000)

Independent Man-Day (MD) Estimate Required (If Over \$50,000)

Supplementals NOT Permitted

### **PROFESSIONAL AGREEMENTS**

Individual Solicitation

Statement of Interest Evaluation

Technical Proposal Evaluation

Interview Consultants

Independent Man Day (MD) Estimate Required

Negotiate With Most Qualified

FHWA Approval Required if Full Oversight or Management-Type Agreement

Supplementals Permitted

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**PROFESSIONAL AGREEMENTS (LOCALLY-SPONSORED)**

**Execute State/Local Agreement**

Individual Solicitation

Statement of Interest Evaluation

Technical Proposal Evaluation

Interview Consultants

Independent Man Day (MD) Estimate Required

Negotiate With Most Qualified

Supplementals Permitted

Sponsor can utilize Term Agreement List if total design fees will not exceed \$500,000

FHWA Approval Required if Full Oversight or Management-Type Agreement

**MINOR AGREEMENTS (SPECIAL CIRCUMSTANCES)**

Less Than \$50,000

Requires Justification

District Selects Consultant Based on Qualifications

Independent Man Day (MD) Estimate NOT Required

Supplementals Permitted up to a total agreement amount of \$50,000

**SUPPLEMENTAL AGREEMENT**

May Be Used With All Agreements, EXCEPT Term Agreements

Independent Man-Day Estimate Required (If Over \$50,000)

Additional Supplementals permitted

FHWA Approval Required if Full Oversight or Management-Type Agreement

***Board Approval Required If Agreement and Supplemental Over \$1 Million***

***(Non-Routine Agreement Over \$50,000)***

## **SECTION 200.00 AGREEMENT REQUIREMENTS**

**210.00 Regulation of Professional Service Agreements**

**220.00 Local Professional Agreements**

**230.00 Approval Requirements**

**240.00 Methods of Procurement**

## **SECTION 200.00 – AGREEMENT REQUIREMENTS**

### **SECTION 210.00 - REGULATION OF PROFESSIONAL SERVICE AGREEMENTS**

Federal Regulations mandate, and Idaho Code allows for, qualification-based selection procedures for professional services. Selection of professional service firms must follow federal guidelines when the services involve federal funds. State-funded agreements generally follow the same procedures as federally-funded agreements and must conform to state statutes and fiscal controls. The main difference is that prior FHWA approval must be obtained if a noncompetitive selection is used on a federally-funded agreement.

The following regulations shall be used to ensure fair and equitable treatment of all phases of the Professional Service Agreement contracts.

#### ***Code of Federal Regulations (CFR),***

**23 CFR 172.** Procurement, Management, and Administration of Engineering and Design Related Services

**48 CFR 31.** Contract Cost Principles and Procedures (for determination of allowable costs of commercial, for-profit entities).

**2 CFR 200.** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

***Title VI of the Civil Rights Act of 1964,*** as amended, provides that no person shall on the grounds of race, color, national origin, sex, age, and handicap/disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

***Disadvantaged Business Enterprise (DBE).*** The USDOT DBE Program applies to all USDOT-assisted transportation-related contracts administered by the Idaho Transportation Department (ITD). When soliciting consultants for professional services, the procedures for establishing DBE commitments must be used. These are outlined in ITD's approved DBE Plan. Technical assistance may be obtained from the department's Contract Compliance Officer.

**Idaho Code, Section 67-2320.** Professional service contracts with design professionals, construction managers, and professional land surveyors.

***ITD Board and Administrative Policies,***

**4001 and 5001,** Authority to Sign Contracts, Agreements, and Grants and Requirement to Report Certain Contracts

**4019 and 5019,** Equal Employment Opportunity and Fair Employment Practices, which states that all services, activities, programs and functions of the Department shall be performed without regard to race, color, sex, religion, sexual orientation, national origin, age, disability, veteran status, marital status, or political or religious opinions or affiliations. Department facilities shall not be used in the furtherance of any discriminatory practice, nor shall the Department become a party to any agreement, arrangement, plan, contract, or subcontract, which has the effect of sanctioning such practices.

Additionally, the department is committed to complying with the requirements of Title VI of the Civil Rights Act, by monitoring transactions and procedures of consultant procurement.

Consultant Services will work with the EEO Office to assure that consultant procurement complies with Title VI and the department's Code of Fair Employment Practices.

**Agreements for the Division of Motor Vehicles and agreements that are not negotiated** under the following procedures must comply with the Division of Purchasing regulations.

Copies of the regulations may be obtained from Consultant Services.

## **SECTION 220.00 – LOCAL PROFESSIONAL AGREEMENTS**

Local agreements that are federally funded must comply with federal regulations. When federal-aid is used in preliminary engineering, the State shall be responsible for ensuring the management of the Local Agency engineering agreements. Refer to the Guidelines for Local Public Agency Projects for guidance. The LPA Manual is located at <http://itd.idaho.gov/manuals/ManualsOnline.htm>

## **SECTION 230.00 – APPROVAL REQUIREMENTS**

Routine engineering and right-of-way agreements that exceed, or are expected to exceed a total amount of \$1,000,000 require Board approval. Supplemental agreements (including the original agreement) that would bring the department's obligation to more than \$1,000,000 for routine engineering and right of way agreements or \$50,000 for non-routine agreements must be approved by the Board.

Approval from FHWA must be obtained prior to final execution of the agreement, and subsequent supplemental agreements for FHWA Projects of Division Interest where professional service agreement activities are selected for FHWA involvement.

## **SECTION 240.00 – METHODS OF PROCUREMENT**

When professional services are needed, four methods of procurement can be used: Competitive Selection, Non-competitive Selection, Term Agreements, and Minor Agreements.

### **Competitive Negotiations**

Competitive Negotiations shall follow qualification-based selection procedures. Selection of the highest qualified firm is based on one of the following methods:

- Statements of Interest, the Proposals, and interviews of the top three firms.
- Proposals and interviews of the top three firms.
- Proposals only.

Negotiations are held with the highest qualified firm to determine a price that is reasonable and fair to the public, after considering the estimated value, the scope, the complexity, and the nature of the services.



When the department and the highest qualified firm are unable to negotiate a satisfactory contract or agreement, negotiations are formally terminated and the department may undertake negotiations with the next most qualified firm. If a satisfactory contract or agreement cannot be negotiated with any of the selected firms, the department may repeat the selection and negotiation process until a contract or agreement is reached. Alternatively, the department may utilize non-competitive negotiation procedures.

### **Non-competitive Selections**

Non-competitive selection of a single firm is allowed to take place only when the following specific conditions exist:

- The service is available only from a single sole source; or
- An emergency exists that does not permit the time necessary to conduct competitive negotiations; or
- After solicitation of a number of sources, competition is determined to be inadequate.

When federal-aid highway funds are used in the contract, prior approval to use non-competitive negotiations must be obtained from FHWA.

### **Term Agreements**

Term Agreements use a qualification-based selection procedure to pre-qualify consultants who can then be available to perform services as the need arises. The agreement uses Work Tasks to detail the work to be performed. (See Section 600, Term Agreements)

### **Minor Agreements**

Minor Agreement procedures are used for agreements where:

- The cost of the service does not exceed \$50,000 per firm, and
- The services needed are in an area of expertise where no Term Agreement exists.

## **SECTION 300.00- SOLICITATION AND SELECTION**

**310.00 Qualification-Based Selection**

**320.00 Obtaining Consultant Services**

**330.00 Project Advertising**

**340.00 Consultant Selection Methods**

## **SECTION 300.00 – SOLICITATION AND SELECTION**

### **SECTION 310.00 – QUALIFICATION-BASED SELECTION**

Qualification-based selection procedures for professional services allow all interested parties an equitable opportunity to present their credentials for consideration. Selection of professional service firms must follow federal guidelines when the services involve federal funds. State-funded agreements generally follow the same procedures as federally funded agreements and must conform to state statutes and fiscal controls.

### **SECTION 320 .00 – OBTAINING CONSULTANT SERVICES**

An ITD-2760, Request for District or Consultant Services, must be completed and sent to Consultant Services to begin the process. The Division of Engineering Services procedures library contains SOPs for requesting District services and consultant services. The requesting party should also provide project information, an initial scope of work, and an estimated cost of the services. A current version of the ITD-2760 is available in the Form Finder.

Approved funding may be identified by attaching a copy of an ITD-2101, Project Authorization and Agreement.

**SUFFICIENT FUNDS TO COVER THE ESTIMATED COST OF SERVICES MUST BE SCHEDULED BEFORE THE ITD-2760 WILL BE PROCESSED.**

### **SECTION 330.00 – PROJECT ADVERTISING**

The Consultant Services web site provides a link to the Idaho Transportation Investment Program (ITIP) and the Statewide Transportation Improvement Program (STIP). The program documents contain all currently scheduled highway projects. These documents are for informational purposes only and do not guarantee that all projects listed will require services.

Consultant Services will post open solicitations with information, criteria and instructions on the web. Advertisements will also be made in local newspapers, in conformance with Idaho Code 67-2320. The consultant is responsible to review the website for service opportunities. The Consultant Services web address is: <http://www.itd.idaho.gov/design/cau/cau.htm>.

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## **SECTION 340.00 – CONSULTANT SELECTION METHODS**

Consultant selection is based on one of the following:

- A. Full Solicitation (Statement of Interest, Technical Proposals from the top firms, and Interviews)
- B. Technical Proposals and Interviews of the top rated firms
- C. Technical Proposals only.

### **Selection Committee**

A Selection Committee is used for individual project solicitation and selection. The Consultant Services Coordinator, or a designated representative, serves as Chairman. The Agreement Administrator will normally be one of the committee members with at least one representative from the requesting District or Section. Refer to the Guideline for Local Public Agency Projects – Section 605.00 for local project selection committee composition. All members must understand the scope of work and be familiar with consultant selection procedures. When appropriate, representatives from other sections should be invited and encouraged to attend the negotiations.

During the selection process, selection committee members shall not discuss the solicitation or the project with the proposers or their representatives. A designated point of contact will be provided in the solicitation documents. All communications regarding the solicitation or the project shall be delivered through the designated point of contact.

The list of Committee members should be attached to the ITD-2760, Request for District or Consultant Services.

### **Civil Rights Notification**

ITD encourages consultants to consider utilizing subconsultants listed in ITD's DBE Directory. Consultant Services will forward individual project solicitations draft documents to the EEO Office for review and a DBE participation recommendation. The ITD DBE Directory is located in the ITD web site at: <https://itd.dbesystem.com/>. For more information regarding ITD's DBE program, contact the ITD EEO Office.

### **Past Performance**

Past performance is one of the qualification based factors used for evaluation, ranking and selection of consultants. Consultant Services maintains an archive of Consultant Services Performance Evaluations (ITD-2759) from past ITD projects for use in ranking and selection of consultants during the selection process. If a consultant has not performed work for ITD previously, references from other clients that are provided by the consultant in the proposal should be considered. The lack of a performance evaluation, relevant to this solicitation, from a previous ITD project shall not be rated favorably or unfavorably in the evaluation of this component of the criteria.

### **A. Full Solicitation Procedures**

The full solicitation procedure is a three-step consultant selection process recommended for complex, long-duration or multi-phase projects. This solicitation method allows for an in-depth evaluation of differing technical approaches.

The process begins with the issuance of a request for statements of interest (SOI), followed by a request for proposals (RFP) from three or more of the most highly qualified consultants and subsequent interviews to clarify the technical approaches provided in the SOI/RFP responses.

#### **Step 1 – Statement of Interest**

In the Statement of Interest (SOI), the consultants demonstrate their ability, experience and qualifications to perform a specific type of work. The SOI shall include an initial scope of work from which a detailed scope of work can be developed. The SOI is prepared and is posted on the Consultant Services Web page.

The rating criteria should address such items as:

- Experience in the area of work being solicited.
- Location where the work will be performed.
- References (preferably clients from the same type of work).
- Proposed Method and Approach
- Key Personnel.
- Sub consultants.
- Availability of Manpower
- Quality Control
- Disadvantaged Business Enterprise (DBE) utilization commitment (if applicable).

In addition to these items, the SOI should include Equal Employment Opportunity (EEO) Programs, weighting factors, deadline for returning the SOI, and the number of copies of the SOI to submit. The SOI might also include the method of payment (lump sum, cost plus fixed fee, etc.) and the name of the agreement administrator.

#### **Evaluation Criteria**

Prior to the Proposal Review and/or Selection meeting, an evaluation form is prepared based on the proposal criteria. The proposal evaluation criteria are a working tool to establish a basis of discussion for the committee.

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## **Proposal Review**

When the SOIs are received by Consultant Services, they are screened to assure that they comply with the requirements of the solicitation. A copy is then distributed to the Selection Committee members for review and rating. The Selection Committee Members should provide constructive comments on the evaluation sheets to assist Consultant Services in providing useful feedback to the consultants during the debriefing. The Committee then meets to evaluate the ratings. Each proposal is reviewed and discussed. The Chairman builds a consensus among the Committee to recommend a consultant short list or a consultant selection. Although a consensus is desirable, the majority vote shall rule.

The evaluation rating sheets are finalized, signed by the Committee members, and tallied. Draft ratings are often revised after thorough consideration and discussion by the Committee. The evaluation rating sheets should show the crossed-out draft data and the entry of the new rating, thus leaving an audit trail.

## **Consultant Short List**

The Committee then recommends three or more of the most highly qualified consultants to provide a request for technical proposal (RFP). Due to the high cost of preparation of proposals and interviews, the short list should be limited to the top ranked firms who will submit Technical Proposals and/or Interviews. At least three firms must be selected for technical proposals. In instances where less than three qualified consultants respond to the solicitation, Consultant Services shall review the solicitation to determine if the evaluation and selection can proceed. Notification to responding consultants of initial rankings is not required when short-listing firms for proposals or interviews. Only final rankings must be provided.

## **Step 2 – Request for Technical Proposals**

Once consultants are chosen to submit a Technical Proposal (RFP), they should visit the project site and obtain actual project specifics. In the proposal, they must demonstrate their ability to perform the specific project. The RFP will contain an initial scope of work from which a detailed scope of work can be developed and technical and desired criteria for performance of the work to be done. Typical rating criteria are:

- Detailed Scope of Work
- Critical Path Diagram
- Milestones
- Availability of Manpower

In addition, the RFP should address weighting factors, deadline for returning the RFP, number of copies of the RFP to submit, and re-address DBE commitment requirements.

## **Proposal Review**

When the proposals are received by Consultant Services, they are screened to assure that they comply with the requirements of the RFP. A copy is then distributed to the Selection Committee members for review and rating. The Selection Committee Members should provide constructive comments on the evaluation sheets to assist Consultant Services in providing useful feedback to the consultants during the debriefing. The Committee then meets to evaluate the ratings. Each proposal is reviewed and discussed. The Chairman builds a consensus among the Committee to recommend a consultant selection or to hold interviews.

The evaluation rating sheets are finalized, signed by the Committee members, and tallied. Draft ratings are often revised after thorough consideration and discussion by the Committee. The evaluation rating sheets should show the crossed-out draft data and the entry of the new rating, thus leaving an audit trail.

### **Step 3 – Interviews**

Interviews allow the Department a firsthand opportunity to ascertain the consultant's ability to perform a specific project. The interview format should be approximately one hour long, with the first thirty minutes for consultant presentations and the second thirty minutes for questions and answers. Scheduling an extra twenty to thirty minutes between interviews allows adequate time for set up of the next consultant firm. Other formats may be used, but need to be coordinated with Consultant Services.

To maintain consistency of information prior to the interview, the Committee Chairman should be the only Department contact to the short-listed consultants. The Chairman cannot divulge information from other firms, but should let the firms know any information the Department has of record that is pertinent to the project. On a case-by-case basis, the Chairman may direct the consultant to other committee members or Department employees who possess expertise appropriate to the project.

During the interviews, the same set of questions is used for each consultant, and the Committee members rate each consultant. After the interviews, the Committee meets to discuss the interview, and to make a selection.

## **B. Technical Proposals And Interviews (Procedures)**

The technical proposals and interviews procedure is a two-step consultant selection process recommended for projects of medium complexity. This procedure combines the SOI and RFP into one submittal for evaluation and selection for interviews. Three or more of the most highly qualified consultants are then interviewed to clarify the technical approaches provided in the RFP responses.

### **Step 1 – Request for Technical Proposals**

In the technical proposal, the consultants must demonstrate their ability to perform a specific project. The RFP will contain an initial scope of work from which a detailed scope of work can be developed, technical and desired criteria for performance of the work to be done, and the consultant will be

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encouraged to visit the project site and obtain project specifics. Typical rating criteria are:

- Company Experience in the Area of Work
- Detailed Scope of Work
- Critical Path Diagram
- Milestones
- Availability of Manpower
- Location of Work
- Project Manager
- Key Personnel
- Sub consultants
- Disadvantaged Business Enterprise (DBE) utilization commitment (if applicable).

In addition, the RFP should address weighting factors, deadline for returning the RFP, and the number of copies of the RFP to submit.

### **Proposal Review**

When the RFPs are received by Consultant Services, a copy will be distributed to the Selection Committee members for review and rating. The Selection Committee Members should provide constructive comments on the evaluation sheets to assist Consultant Services in providing useful feedback to the consultants during the debriefing.

The Committee then meets to evaluate the ratings. Each proposal is reviewed and discussed. The Chairman builds a consensus among the Committee to recommend a consultant selection or to short-list for interviews.

The evaluation rating sheets are finalized, signed by the Committee members, and tallied. Draft ratings are often revised after thorough consideration and discussion by the Committee. The evaluation rating sheets should show the crossed-out draft data and the entry of the new rating, thus leaving an audit trail.

### **Step 2 – Interviews**

Interviews allow the Department a first hand opportunity to ascertain the consultant's ability to perform a specific project. The interview format should be approximately one hour long, with the first thirty minutes for consultant presentations and the second thirty minutes for questions and answers. Scheduling an extra twenty to thirty minutes between interviews allows adequate time for set up of the next consultant firm. Other formats can be used, but should be coordinated with Consultant Services.



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To maintain consistency of information prior to the interview, the Committee Chairman should be the only Department contact for the short-listed consultants. The Chairman cannot divulge information from other firms, but should let the firms know any information the Department has of record that is pertinent to the project. On a case-by-case basis, the Chairman may direct the consultant to other committee members or Department employees who possess expertise appropriate to the project.

During the interviews, the same set of questions is used for each Consultant, and the Committee members rate each consultant. After the interviews, the Committee meets to discuss the interview, and to make a selection.

### **C. Technical Proposals Only (Procedures)**

The technical proposals only procedure is a single-step process generally used for simple, short duration projects or for procuring construction engineering and inspection services. This procedure is recommended for use instead of the Term Agreement for full project development (design) of simple projects.

The Technical Proposal (RFP) alone may be used for solicitation purposes. In the proposal, the consultants must demonstrate their ability to perform a specific project. The RFP will contain an initial scope of work from which a detailed scope of work can be developed, technical and desired criteria for performance of the work to be done, and the consultant will be encouraged to visit the project site and obtain project specifics. Typical rating criteria are:

- Company Experience in the Area of Work
- Detailed Scope of Work
- Critical Path Diagram
- Milestones
- Availability of Manpower
- Location of Work
- Project Manager
- Key Personnel
- Sub consultants
- Disadvantaged Business Enterprise (DBE) utilization commitment (if applicable).

In addition, the RFP should address weighting factors, deadline for returning the RFP, and the number of copies of the RFP to submit.

## **Proposal Review**

When the RFPs are received by Consultant Services, a copy will be distributed to the Selection Committee members for review and rating. The Selection Committee Members should provide constructive comments on the evaluation sheets to aid Consultant Services in providing useful feedback to the consultants during the debriefing.

The Committee then meets to evaluate the ratings. Each proposal is reviewed and discussed. The Chairman builds a consensus among the Committee to recommend a consultant selection.

The evaluation rating sheets are finalized, signed by the Committee members, and tallied. Draft ratings are often revised after thorough consideration and discussion by the Committee. The evaluation rating sheets should show the crossed-out draft data and the entry of the new rating, thus leaving an audit trail.

The Agreement Administrator shall retain supporting documentation of the solicitation, proposal evaluation, and selection of the consultant in accordance with this section and the provisions of 2 CFR 200.333.

## **D. Post-Solicitation Procedures**

### **Selection**

The Selection Committee recommends a consultant selection, and the Engineering Services Division Administrator (ESDA) makes the final selection approval. Once the consultant is selected, the Consultant Services notifies the successful and unsuccessful firm(s) via mail.

### **Debriefing**

Because the Department uses a qualification-based selection criteria calling for proposals and sometimes interviews, the consultants incur a fair amount of time and cost that is not directly reimbursed. As a professional courtesy, the Department should provide candid debriefings.

These debriefings not only benefit the consultants, but also the Department. Consultants can adjust their future operations to better serve the Department. A debriefing can be held any time after the consultant agreement is executed with the selected firm.

Administrative Policy 5025 – Appealing Department Actions and Orders states: It is the policy of the Idaho Transportation Board that when a party is notified of a Department action or order, for which an administrative remedy is not provided by statute, rule, or policy the party may, within thirty days (30) of the notice of action or order, request in writing, a review of the action or order to the next supervisory level. If the matter is not resolved at that level, the aggrieved party may request further review by the appropriate Division Administrator. The decision of the Division Administrator shall be the final agency action.

## **SECTION 400.00- AGREEMENT PREPARATION**

### **410.00 Negotiation of the Contract**

- 410.1 Scope of Work**
- 410.2 Main-Day Estimate**
- 410.3 Overtime**
- 410.4 Reserved**
- 410.5 Cost of Living Increases**
- 410.6 Travel and Per Diem Expenses**
- 410.7 Automobile Travel**
- 410.8 Other Direct Costs**
- 410.9 Summary Cost Estimate**

### **420.00 Basis of Payment**

- 420.1 Special Rates of Compensation**
- 420.2 Cost Plus Fixed Fee**
- 420.3 Fixed Fee**
- 420.4 Lump Sum**
- 420.5 Cost Per Unit of Work**
- 420.6 Not-to-Exceed**
- 420.7 Additional Services**

### **430.00 Agreement Technicalities**

- 430.1 Agreement Preparation**
- 430.2 Pre-Award Audit Assurance**
- 430.3 Legal Review and Approval**
- 430.4 Agreement Funding**

### **Negotiation Meeting Agenda**

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## SECTION 400.00 – AGREEMENT PREPARATION

### SECTION 410.00 – NEGOTIATION OF THE CONTRACT

The department's objective is to receive quality work at a price that is fair to both parties, **NOT** to receive professional services at the cheapest price possible. Therefore, the services to be performed should be based on realistic estimates of future requirements and activities.

**410.1 Scope of Work.** The first step in negotiations is for the consultant to provide a well- defined written scope of work based on the initial scope of work that was provided by the Department within the solicitation from which the selection was made. The level of detail should be adequate so that later the services that were required can be determined, particularly as to identifying what qualifies as additional services. The scope of work should be revised as necessary until the department and the consultant agree to the services to be provided. The scope of work cannot be modified to add services that were not included in the advertised scope of work and evaluation criteria of the solicitation from which the selection was made. The scope of work will become an attachment and will be the main basis of the agreement.

**410.2 Man-Day Estimate.** After the scope of work is completed, the consultant shall provide a blank man-day estimate form. This form should reflect the consultant's actual staffing and the scope of work. Utilizing the consultant's format, both the consultant and the department will estimate the man-day effort required to complete the scope of work. The District or Section that would normally perform the work should complete the department's estimate.

The estimates shall be completed independently. The consultant's completed man-day estimate and the department's independent estimate should be delivered directly to Consultant Services one week in advance of negotiations. For agreements with an estimated cost of less than \$50,000, an independent estimate is not required. Negotiations should still be done to achieve the desired scope of work and cost.

Consultant Services will distribute the consultant's completed man-day estimate to the appropriate Sections/ Districts. The man-day estimates of the consultant and the department should be exchanged and thoroughly reviewed, discussed, and negotiated. Items to be negotiated include: an appropriate breakdown of the labor hours, classifications of labor required, direct costs, fixed fee, schedule, and deliverables for the agreed scope of work. Final negotiation notes shall be provided to Consultant Services with the final package.

**410.3 Overtime.** All professional services agreements are negotiated prior to awarding the project, with specific time constraints for completion of work as well as compensation to consultants for the actual billable work hours within the time frame agreed. That agreement between the Department and the consultant firm shall be that the project can be completed within the negotiated time frame and budget. It is the responsibility of the consultant to schedule and manage their overall workload, staff and working time.

It is the policy of the Department to pay overtime only when the Department requests the project be accelerated and/or expedited, and the overtime has been negotiated in advance. Overhead and fee will not be paid on the premium portion of overtime.

**410.4 Reserved.**

**410.5 Cost of Living.** All professional agreements are negotiated between the Department and the selected consultant for a reasonable and fair price based on current approved company costs.

Based on the length of the project, reasonable salary increases could occur and some allowances should be provided in the agreement to include a contingency amount. Cost of Living increases will be applied to the remainder of the work under the Agreement. The formula for this is  $(\text{Raw Labor Cost})(\% \text{ Allowable Escalation})(\% \text{ Duration})(1 + \text{Overhead}) = \text{Allowed Escalation}$ .

Because salary increases are estimated and do not reflect the actual current cost, they are not supportable for the pre-award audit, and it is not guaranteed that the increases will happen in the amount or in the time expected. Therefore, the department will not apply fixed fee to the cost of living increase.

**410.6 Travel and Per Diem Expenses.** All travel and per diem expenses shall be paid in accordance with the Federal Travel Regulations and ITD policies.

Reimbursement for meals and lodging should follow the firm's policy. However, the amount allowed for reimbursement shall not exceed the Federal Per Diem rates for Idaho. The Federal Per Diem rates referred to in the professional agreements include seasonal rates that are allowed for Idaho. These rates should be applied for all work and according to the periods indicated.

Consultants are eligible for meal and lodging expense reimbursement when assignments are beyond 65 miles of official station of duty as defined by the Idaho Transportation Department, and personnel are in travel status for more than 12 hours.

All claims for travel expenses are made on a reimbursable basis. The Consultant can claim actual expenses up to the allowable limits for meals and incidentals. Actual expenditure of the amount claimed must be made before requesting reimbursement.

**410.7 Automobile Travel.** When privately-owned automobiles are authorized or approved for transportation, distances between points traveled shall be as shown in standard highway mileage guides. (Actual odometer readings need not be shown on the invoice, but the firm should have a system or method for tracking the mileage.) Any substantial deviations from distances shown in the standard highway mileage guides shall be explained. The mileage may be claimed from whatever point the employee or other person rendering service begins his/her journey. The mileage reimbursement rate covers all cost of vehicle operation including insurance, repairs, gasoline, maintenance, etc.

**410.8 Other Direct Costs.** All costs must meet the test of being fair and reasonable.

Some cost elements such as computers, vehicles, and other costs can be recovered, at the consultant's option, in overhead or as direct expenses. The treatment of these cost elements must be consistent and no double charging will be allowed. Usually costs that are unique to a project such as a crew's hotel charges, mileage, and meals for out of town work are separated out as direct expenses. Some of these out of pocket expenses are capped as per current approved federal and state policies.

Sometimes a cost type can be both an overhead expense and a direct expense. For instance, the room and board charges for the crew are a direct expense, while the room and board charges for a corporate meeting are an overhead expense.

Sub-consultant costs are usually classified as direct expenses, however all cost accounting criteria that are applied to the prime consultants shall also apply to sub-consultants.

Eligibility of cost on federally-assisted agreements is governed by 48 CFR 31 (Federal Acquisition Regulations).

**410.9 Summary Cost Estimate.** All costs shall be itemized on a "Summary Cost Estimate" sheet with separate categories for Man-Day Costs, Fringe and Overhead, FCCM (Facilities Capital Cost of Money), Net Fee, Out-Of-Pocket Expenses and a summary amount for each Sub-Consultant. A sample cost estimate summary form is located in the Consultant Services Website.

The raw labor estimate is derived from negotiated man-hours multiplied by certified hourly rates identified by job classification for the staff assigned to the proposed project. The labor estimate is then multiplied by the overhead rate. Combining the raw labor computation and the overhead rate computation results in the loaded cost of labor from which the fixed fee is calculated.

The labor estimate is also multiplied by the FCCM, the total of which is listed as a separate line item and is not used in the fixed fee calculation. The amount of fixed fee for the Consultant is negotiable and is added to the consultant's cost estimate as a separate line item.

Out-of-Pocket Expenses, that are not included within the company's Overhead rate, shall be itemized to reveal quantities, unit costs and a cost summary for each item. Out-of-pocket expenses are listed at actual cost and added to the cost estimate without mark-up for profit.

Costs for each sub-consultant should be listed with the sum of their costs added to the estimate of the prime consultant. Each sub-consultant should provide a separate itemized cost estimate using the same format as described above for the prime consultant.

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## SECTION 420.00 – BASIS OF PAYMENT

The basis of payment shall be established during the negotiation proceedings. The basis of payment shall be either “specific rates of compensation,” “*cost plus fixed fee*,” “*lump sum*,” or “cost per unit of work”. A single agreement may contain different payment methods as appropriate for different elements of work. Compensation based on “*cost plus a percentage of cost*” payment method whereby fee (profit) increases with actual costs incurred or a “*percentage of construction cost*” payment method whereby compensation increases with the cost of project construction shall not be used (as specified in 23 CFR 172.9(b)(2)). Regardless of the basis of payment, the man-day estimate and the cost elements remain the same. A discussion of each basis of payment method follows:

**420.1 Specific Rates of Compensation.** This basis of payment provides for payment of direct labor at specified fixed hourly rates (including direct labor, overhead cost and fee) plus any other direct expenses. Under the “*specific rates of compensation*” basis of payment the established loaded, fixed hourly rates will not change for the duration of the agreement.

Some small firms do not have an approved overhead rate that has been developed in accordance with the cost principles of the Federal Acquisition Regulations (FAR). On a case by case basis, these companies can be approved to use a loaded hourly rate that includes all overhead and fees for time worked directly on the project.

When the agreement or sub-consultant agreement is under \$100,000 the requirement for an approved overhead rate may be waived. In the absence of an audited overhead rate, fair and reasonable rates should be negotiated if a fully loaded hourly rate isn’t already approved. These rates become the hourly charge out rate and the basis of payment then would be “*Specific Rates of Compensation*”. A “*not-to-exceed*” dollar amount shall be established during negotiation and included in the agreement whenever “*cost*” payments are used.

**420.2 Cost Plus Fixed Fee.** “Cost plus fixed fee” is a basis of payment that provides for reimbursement of allowable costs plus negotiated fixed fee. The fixed fee does not vary with the actual cost but may be adjusted as a result of changes in the work to be performed under the agreement. This basis of payment is utilized when the scope of work is definitive. The consultant assumes a greater risk and is required to complete a specific scope of work within a set dollar amount. The risk is directly tied to the written scope of work and man-day estimate. The elements of the project under the consultant’s contract must be completed at a not-to-exceed amount.

If additional work by the consultant becomes necessary, official notification to the department is required. If Consultant Services and the Agreement Administrator determine that the Consultant needs to perform additional work, an appropriate payment would then be negotiated.

**420.3 Fixed Fee.** The “fixed fee” is a dollar amount negotiated to cover the Consultant's profit and business expenses not allocated to overhead costs. The determination of “fixed fees” shall take into account the size, complexity, duration, and degree of risk involved in the work and does not vary as direct labor costs vary.

The establishment of the fixed fee shall be project specific. Fixed fees average between 10 percent and 12 percent of direct labor and indirect cost. The negotiated fixed fee shall not exceed 15 percent of the total direct labor and indirect cost. A fixed fee worksheet is located on the Consultant Services web site for calculating and negotiating a fixed fee.

**420.4 Lump Sum.** “Lump sum” is an agreed upon total amount for all work described in the agreement. Calculation is based on the sum of the payroll costs, combined overhead, direct costs, and a fee. Under the “*lump sum*” basis of payment the consultant assumes higher financial risk than any other payment type and should only be used for a simple, well defined scope of services with low possibility of changes.

**420.5 Cost Per Unit of Work.** This basis of payment consists of a rate that is inclusive of all costs (labor, OH, fee, and directs.) An example of this could be when a geotechnical firm is only doing tests, and their test rates are inclusive of all costs.

**420.6 Not-to-Exceed.** A “not-to-exceed” dollar amount should be established during the negotiation and included in the agreement.

**420.7 Additional Services.** Additional services is a dollar amount that is included in the agreement for additional work that is identifiable, but cannot be accurately determined at the time the agreement is signed. It is for work beyond the scope of work already authorized by the department, and is limited to no more than ten percent (10%) of the not-to-exceed amount of the agreement. Additional services shall only be used for the type of services included within the scope of work of the original solicitation.

If additional services money is utilized, it must be negotiated and authorized by issuance of a Professional Services Authorization and Invoice Summary (Authorization).



## SECTION 430.00 – AGREEMENT TECHNICALITIES

**430.1 Agreement Preparation.** The sample Professional Service Agreement should be used as a guide by Consultant Services in preparing the agreement. (See Sample Agreement at the Consultant Services web site.

Each section of the agreement should be reviewed and edited as appropriate for the specific agreement being negotiated.

Individual Subconsultants and their portion of the work and the duties and responsibilities of the department should be listed.

The description of work should include the following documents as attachments:

- the negotiated scope of work,
- man-day (man-hour) estimate,
- cost proposal of consultant services including employee utilization,
- itemized breakdown of direct cost, and
- project schedule and milestones or completion date.

Contract time will be designated in either calendar days or a completion date. A separate agreement will be negotiated with the consultant for on call services during the construction phase of the project to provide designer-related services.

If the contracted services are other than full project design, the department often has a need for the consultant to provide additional input after the main body of work has been completed. Therefore a clause should be added to keep the agreement open for an additional period of time (usually 60 to 180 days) or until the agreement is closed out, whichever comes first.

The basis of payment and the agreement amount shall be listed along with the fee and combined overhead rates for the consultant and each sub consultant.

**430.2 Pre-award Audit Assurance.** Prior to writing the agreement, Consultant Services shall perform a desk review of the negotiated cost estimates to assure that costs included in the agreement are allowable in accordance with the Federal cost principles and consistent with the agreement type and payment method. Headquarters' Internal Review section may perform a pre-award audit assurance upon request.

The consultant should have an acceptable cost accounting system that meets the requirements of the FAR. See the Consultant Services web site for additional information regarding overhead rate requirements.

**430.3 Legal Review and Approval.** The Legal section must approve all negotiated contracts or agreements, except for right of way agreements and standard formatted agreements that have been previously approved by the Legal section. Agreements must be submitted to the Legal section for approval when the standard agreement form is altered.

If the contract or agreement is not approved by the Legal section, the Director will resolve any differences.

**430.4 Agreement Funding.** The district or section requesting the agreement verifies that funding is available for the consultant services and the authority to use the funding has been completed. This funding process starts with approval of the ITD-2760, Request for District or Consultant Services. At times, the District or Section may need to submit an ITD-1414, Project Program Entry or Revisions, to the Office of Transportation Investments and an ITD-2101, Project Approval Request to Planning and Program Management to allocate the necessary funding for consultant services. The Notice to Proceed cannot be issued until the necessary funds are obligated as evidenced by an approved ITD-2101.

On FHWA Projects of Interest with approval of professional agreements required, the agreement must be approved by FHWA prior to the "2101" funds being authorized.

## Negotiation Meeting Agenda

- Introductions (sign-in sheet) (Typical attendees: Project Manager PDE, Technical Experts, Prime Consultant, Sub consultants, Consultant Services, local official (if local project), FHWA (if FHWA Project of Interest))
- Define Project Title information to be used on all correspondence:

Project Location \_\_\_\_\_

Project Number \_\_\_\_\_

Key No. \_\_\_\_\_ Work Authority: \_\_\_\_\_

- Agreement Administrator \_\_\_\_\_

- Prime Consultant \_\_\_\_\_

Subconsultant \_\_\_\_\_ Task \_\_\_\_\_

Subconsultant \_\_\_\_\_ Task \_\_\_\_\_

Subconsultant \_\_\_\_\_ Task \_\_\_\_\_

- Agreement Type: \_\_\_\_\_

(i.e. Work Task, Professional Agreement, or Supplemental Agreement)

- Basis of Payment: \_\_\_\_\_

(i.e. Cost Plus Fixed Fee, Specific Rates of Compensation, Lump Sum, or Cost Per Unit of Work)

- Overhead Costs (Current Audit?)
- Federal-aid Per Diem Rates: Lodging, Meals, Mileage

- Project Milestones & CPM Schedule or Completion Date
- Scope of Work
- Resource time comparison (i.e.: Man-days per task)
- Direct Expenses (not included in overhead)
- Additional Services
- Fee Percentage \_\_\_\_\_% (Discuss reason for %, include copy of fixed fee worksheet)
- Potential Supplemental (not for Work Task Agreements)
- Construction Support Services (obligatory and paid)
- Errors & Omissions (discuss responsibility and process)
- Not-to-Exceed Amount \$ \_\_\_\_\_
- Authorization #1 \$ \_\_\_\_\_ (discuss Authorization distribution, task start approval & deliverables)
- Scheduled construction costs \$ \_\_\_\_\_ (discuss E&C%, R/W, UTIL, TS, SF, & other costs that will utilize project funds.)
- Current Funding
- Notice-to-proceed proposed date \_\_\_\_\_

## **SECTION 500.00 AGREEMENT ADMINISTRATION**

### **510.00 Notice to Proceed**

### **520.00 Pre-Operational Conference**

### **530.00 Professional Services Authorization**

### **540.00 Agreement Management**

#### **540.1 Monthly Progress Report**

#### **540.2 Construction Support Services**

#### **540.3 Resident Engineer's (RE) File**

#### **540.4 Errors and Omissions**

#### **540.5 Supplemental Agreements**

#### **540.6 Extension Agreements**

#### **540.7 Adjusting Contract Time**

#### **540.8 Consultant Performance Evaluation**

#### **540.9 Payment for Services Rendered**

#### **540.10 Agreement Close Out**

#### **540.11 Agreement Administer Checklist**

## **SECTION 500.00 – AGREEMENT ADMINISTRATION**

### **SECTION 510.00 – NOTICE TO PROCEED**

Once the desk review has been completed, Consultant Services will send the Agreement to the Agreement Administrator via email to send to the consultant for signature.

After the consultant signs the Agreement (and obtains the Sponsor’s signature for Local projects), the Agreement is returned to the Agreement Administrator for signature by the District Engineer or Section Manager (when acting within their jurisdictional duties). Agreements cannot be signed by the Agreement Administrator. The Section Manager cannot be an Agreement Administrator.

Once all the processing requirements are completed, the Agreement Administrator will issue a “Notice to Proceed” letter. The letter shall distribute the executed copies of the agreements and accompanying Professional Services Authorization documents.

**COSTS INCURRED PRIOR TO THE NOTICE TO PROCEED DO NOT QUALIFY FOR FEDERAL REIMBURSEMENT.**

Consultant Services may, at their discretion, issue a pre-Notice-to-Proceed (NTP) prior to the execution of the agreement. A pre-NTP may be issued in an emergency situation or when time constraints exist. Agreement negotiations must be completed and the final scope of work and estimate provided to Consultant Services prior to issuing the pre-NTP. Sufficient funds to cover the amount authorized in the pre-NTP must be obligated.

Costs incurred prior to the pre-NTP date do not qualify for Federal Reimbursement and the consultant cannot exceed the dollar amount authorized in the pre-NTP. The consultant will be paid after the agreement is subsequently executed. To avoid delays check to ensure the consultant’s rates are up-to-date and the final scope of work and estimate documentation is complete.

### **SECTION 520.00 – PRE-OPERATIONAL CONFERENCE**

A pre-operational conference shall be held once the agreement is executed, and preferably prior to the beginning of work. Additionally, a pre-operational conference would be appropriate at the beginning of a substantial Supplemental Agreement. The Agreement Administrator, Sponsor, District Records Inspector, Consultant, and Representative of Consultant Services and any other applicable parties are invited to attend. The Consultant Services representative conducts the meeting.

The intent of a pre-operational conference (kick-off meeting) is to thoroughly discuss all contractual issues and to see that all parties understand their individual roles and responsibilities under the contract. After the contractual issues are discussed, the Agreement Administrator and the Consultant shall discuss the work of the Agreement.

If both the agreement administrator and the consultant have experience with consulting agreements the pre-operational conference may be waived. In such case the Agreement Administrator should include the insert "Administration of Agreements" with the Notice to Proceed to remind the parties of their duties and responsibilities regarding the agreement.

## **SECTION 530.00 – PROFESSIONAL SERVICES AUTHORIZATION**

An ITD-2761 – Professional Services Authorization and Invoice Summary (Authorization) is issued by the department to authorize the Consultant to proceed with a specific portion of the work. Authorizations are issued by Consultant Services, as directed by the Agreement Administrator. The Authorization controls the cash flow of a project and forces the Consultant and the Agreement Administrator to communicate.

The number of Authorizations required to accomplish all the work under the Agreement may be one or several. Each Authorization authorizes an increment of funding and designates a maximum dollar amount, and may tie the dollar amounts to milestones or deliverables.

The department assumes no obligation of any kind for expenses incurred by the Consultant for services not authorized by the Authorization, or for any dollar amount greater than the amount authorized by the Authorization.

The Consultant should be made aware that they must notify the Agreement Administrator when project expenses reach the sixty to eighty percent (60% to 80%) level of an Authorization. However, the Agreement Administrator should also be monitoring the project cash flow and not allow the Consultant to over spend the authority of any Authorization. The Agreement Administrator and the Consultant should regularly review the status of the project and discuss the Consultant's request for the issuance of the next Authorization. The Agreement Administrator will then contact Consultant Services, in writing, and request the issuance of the next Authorization.

## **SECTION 540.00 – AGREEMENT MANAGEMENT**

The consultant is expected to properly manage the work effort in a reasonable and prudent manner and to fulfill the agreement. The consultant should keep performance within the scope of work and estimate, keep the department informed as the work progresses, and not perform additional work without written authorization from Consultant Services to do the work.

Each District/Section shall ensure that actual expense reimbursement under the provisions of the agreement is properly administered and controlled to prevent abuse. Expenses claimed by the consultant shall be reviewed by the agreement administrator to determine whether the expenses are reasonable and allowable, and are necessarily incurred for the project.

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**540.1 Monthly Progress Report.** The Consultant submits a monthly progress report using ITD-771, Professional Agreement Progress Report, (see Section 900, Forms) for each month that the agreement is in effect. This requirement can be waived by the Agreement Administrator if it is known that no work will be performed for a period of time. In such case, the Agreement Administrator should give written notice to the consultant to cease submitting progress reports until such time as work re-commences. The Consultant's invoice shall be accompanied by a progress report.

The progress report represents the official communication by the Consultant with the Agreement Administrator. A description of the work accomplished during the month is listed along with any information required from the department to avoid delays. Any anticipated changes in the scope of work that could cause time and/or cost revisions are listed.

The Agreement Administrator uses page 2 of the progress report form to keep track of the project status in regards to agreement time, payments made, and percentage of work completed. Each month an interim performance evaluation is written on page 2 and sent to the consultant for their response. See Section 540.8, Consultant Performance Evaluation, for additional information.

**540.2 Construction Support Services.** If necessary, an increment of funding should be set up for a separate agreement for designer-related construction services. The amount of the fund will vary depending on the amount of shop drawing, submittal review, and designer support services that are anticipated.

The Consultant could be paid on specific rates of compensation or cost plus fixed fee basis of payment, for support services when requested by the Resident Engineer.

**540.3 Resident Engineer's (RE) File.** An RE file is required as part of the "scope of work," the Agreement Administrator and the Consultant shall meet with the Resident Engineer and review the RE file prior to the advertisement of the project.

**540.4 Errors and Omissions.** The department should only pay once for specified work. The Consultant should correct all errors in a timely manner without any additional cost to the department. When the Consultant is asked to clarify design intent, no compensation should be made. However, compensation should be made when designer-related construction support services are requested.

Refer to the Contract Administration Manual, Section 104.02.012 Consultant Designs – Errors or Omissions Change Orders, for an explanation of recoverable and non-recoverable costs resulting from consultant design errors and omissions and for recovery procedures.

**540.5 Supplemental Agreements.**

A supplemental agreement is used to modify the terms of an existing professional agreement. Supplemental agreements are generally used to authorize significant changes in the scope of work. Additional work that is of a totally different type of services than those in the advertised scope from which the original selection was conducted must be procured under a new solicitation.

Negotiation procedures for supplemental agreements are the same as the procedures for the original agreement. Items to be negotiated include an appropriate breakdown of the labor hours, classifications of labor required, direct costs, fixed fee, project schedule, and deliverables for the agreed scope of work.



Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost plus fixed fee agreement. Permitted changes to the scope of work or duration may warrant an increase or reduction of the fixed fee portion of a cost plus fixed fee or lump sum agreement.

Supplemental agreements cannot be written for Term Agreement Work Tasks. A new Work Task must be prepared for the additional work, but the total of all work tasks for that project/consultant shall not exceed the Term Agreement limits for the original solicitation method. See Section 600 – Term Agreements for details.

**540.6 Extension Agreements.** Active professional service agreements using the “Specific Rates of Compensation” payment method may be extended with minimal or no additional negotiations. Extension agreements may only be used when time constraints do not permit negotiations. For example, when a CE&I agreement that has unexpectedly expended the not-to-exceed amount while construction is still on-going. An extension agreement CANNOT be used when there is time to negotiate a scope and estimate. The intent is only to prevent an unacceptable lapse in services.

An extension agreement may only be used for agreements having the specific rates of compensation basis of payment. The hourly rates and the scope of work of the original agreement cannot be amended. Only the agreement amount and duration can be modified. The amount and duration of the extension agreement should be kept to a minimum and a separate supplemental negotiated if a significant amount is needed.

Extension agreements will be written and executed using standard agreement forms. Professional Agreements will be extended with a Supplemental Agreement. Work Tasks will be extended with a new Work Task, provided the accrued amount is within the Work Task/Term Agreement limits. (See Section 600, Term Agreements). These limits also apply to Local Professional Agreements where the consultant is selected from the Term Agreement List (either direct selection or short list for RFI). An ITD-2112, Supplemental Agreement Authorization Request, must be completed and approved by the District Engineer/Section Manager before an agreement extension can be written.

**540.7 Adjusting Contract Time.** The Agreement Administrator will be responsible for adjusting the agreement time by notifying the Consultant in writing. A copy of this time extension approval shall be forwarded to the CAU.

**540.8 Consultant Performance Evaluation.** The Federal Highway Administration requires contracting agencies to perform an evaluation summarizing the consultant’s performance on a contract. Consultant performance evaluations provide continuous feedback for improvements and a record of past performance for the selection process on future projects.

Interim evaluations provide periodic constructive feedback, encourage communication and bring about continuous improvement. These interim evaluations also provide a record of the consultant’s performance for completing the final evaluation. This is especially important when the evaluator is not the original agreement administrator. Interim evaluations should be completed on the Professional Agreement Invoice and Progress Report (ITD-771 form) each month. When the ITD-771 is completed by the agreement administrator, the consultant must be provided a copy and an opportunity to provide a written response. In connection with written interim evaluations, meetings may be held when needed.

The ITD-2759 (Consultant Services Performance Evaluation) form has been developed to provide an objective and consistent method for measuring consultant performance. When the work of the agreement is completed, the Agreement Administrator will rate the consultant's performance, using the ITD-2759. The consultant shall be provided a copy of the performance evaluation and given an opportunity to provide a written response to be attached to the evaluation. Completed performance evaluations shall be sent to Consultant Services to be archived for use in future consultant selections.

**540.9 Payment for Services Rendered.** When consultant performance is in reasonable conformance with the agreement, the intent is that the consultant should receive full payment for services rendered.

The Consultant submits the invoice, consisting of signed: ITD-771, Professional Agreement Progress Report, ITD-2761, Professional Services Authorization and Invoice Summary, the Consultant's invoice cover sheet, and invoice support documentation. The current certified labor rates should be approved and already in the file. Certified labor rates are confidential and shall only be given to individuals with a need to know.

The Agreement Administrator reviews the invoice to see that the labor hours and expenses claimed are reasonable for the work performed, and that there is supporting documentation for all labor and expenses claimed. (Meal receipts are not required, though the consultant may submit them if they are available.) A mathematical check is performed. The second page of the ITD-771 is completed. The ITD-2761 and ITD-771 are signed and dated.

During the course of an agreement, there may be instances where an invoice is greater than the balance on the ITD-2761 (Authorization). If that is the case, the consultant will submit two Authorizations to cover the invoice. The invoice is then forwarded to the second reviewer (the District Records Inspector for agreements administered in the Districts). The second reviewer gives the invoice a thorough check, signs, and dates the ITD-771. Payment of the invoice is processed by the District Records Inspector in the District and by office staff in headquarters. The Invoice Entry and Tracking form is filled out, the invoice is data entered, and a check is issued. The six-digit billing reference number from the Authorization and the Reference Code "KK" shall be included on the Invoice Entry and Tracking form. If two Authorizations are submitted for one invoice, the Invoice Entry and Tracking Form should have two line items, one for each Authorization and its billing reference number and reference code

**540.10 Agreement Close Out.** Once the work of the Agreement has been completed and accepted, the Agreement should be closed out. The performance evaluation and an affidavit of indebtedness shall be submitted to the Consultant for his response and action.

A copy of the following shall be sent to Consultant Services to close the agreement:

1. An ITD-0060, Certification of Indebtedness; and
2. An ITD-2759, Consultant Services Performance Evaluation; and
3. An ITD-2921, Certification of Payment (only if the agreement contains subconsultants).

Final payment closes out the Agreement.

**540.11 Agreement Administrator Checklist.** The Agreement Administrator must ensure that basic contract requirements are met. Use the checklist below to ensure that the consultant invoice contains the following elements:

- Check the math in all areas involving figures.
- Check the individual employees' hours on the invoice against the copies of payrolls that the consultant provides with each invoice.
- Compare the wage rates being charged with the certified wage rates on file. If you find you do not have a current certified wage rate schedule, please call Consultant Services to get a copy of the most current one that is on file in our office.
- Check that the consultant is using the proper overhead rate as listed in the Agreement. If the overhead rate does not match, first check with Consultant Services to see if the consultant has been approved for a higher or lower rate. If Consultant Services confirms that the overhead rate is the Agreement rate, the invoice may be adjusted to reflect the proper overhead rate. A change in the overhead rate has to be approved by the Agreement Administrator.
- Check that the "not-to-exceed" amount has not increased. The consultant is allowed to increase wage rates as his employees are given raises, and to apply a higher or lower overhead rate after being approved by ITD, but the "not-to-exceed" amount never increases due to these changes.
- Track that the total fixed fee is not overpaid for the project. Most agreements are Cost plus Fixed Fee, which is a set amount paid to the consultant regardless of how many hours it takes to do the work. Each invoice normally charges the fee as a percentage on the invoice that when totaled could allow overpayment.
- Check for backup documentation for the invoice:

Cost Plus Fixed Fee agreements - the consultant is required to provide back-up documentation for all direct expenses, plus copies of time sheets to justify hours. Meal receipts are not required but may be submitted if available.

Lump Sum agreements - the consultant need only provide an itemized invoice, no back-up documentation is required.

- Make sure that the consultant is not charging for capital equipment unless authorized by the department.
- Make sure that an approved Authorization (Professional Services Authorization and Invoice Summary) is attached with the invoice. ***An approved Authorization must be issued by Consultant Services prior to the work being performed, and an invoice should never be paid if the approved Authorization is***

**not attached.** Sometimes two Authorizations will be submitted with one invoice. The current Authorization must be zeroed out before the subsequent Authorization is used.

Issuance of a new Authorization - When the consultant has used approximately 80% of the money on the current Authorization, the consultant should call the Agreement Administrator to request a new Authorization. The Agreement Administrator and the consultant will discuss how much the new Authorization needs to be written for. The Agreement Administrator then sends a written request (e-mail, letter, or ITD-500) to Consultant Services requesting the new Authorization. The written request should include the consultant name, the agreement number, the key number of the project, and the dollar amount requested.

Consultant Services checks that sufficient funds are obligated to cover the new Authorization and any other agreements that are written on that particular project before a new Authorization is issued.

If sufficient funds are not obligated, the Agreement Administrator will be notified, and there will be a delay in the issuance of the Authorization until sufficient money has been obligated.

If there is an additional services amount written into the agreement, the money allotted for those services cannot be touched by the consultant unless the District requests out-of-scope work and the work is negotiated. A new Authorization must be issued by Consultant Services before the work can be performed.

Consultant Services will normally issue a new Authorization within two days, provided everything is in order.

- Review page 1 of the ITD-771, Progress Report, and then fill out page 2 and take action as circumstances dictate. Space is provided on page 2 for interim performance evaluations. See Section 540.8, Consultant Performance Evaluation, for details. The ITD-771, Progress Report, must be submitted on a monthly basis, and is usually received along with the invoice for that month. A progress report is required each month even if there is no invoice to be submitted. The ITD-771 assists the Agreement Administrator to monitor the work that has been performed vs. time spent and hours invoiced.
- Consultants are required to pay their subconsultants within 20 calendar days of receipt of payment from ITD. If there are subconsultants on the project, verify that an ITD-2892 (Certification of Payment) has been submitted. This is required for each invoice after the first when subconsultant invoices are submitted. A copy of the completed form is to be submitted to the Civil Rights Section by the Agreement Administrator. At completion of the work, check that the consultant has submitted form ITD-2921, (Certification of Payment Amounts). This form is submitted to Consultant Services along with the final Progress Report, the Certification of Indebtedness and the Consultant Performance Evaluation Form to close out the agreement.

## **SECTION 600.00 TERM AGREEMENTS**

**600.00- Term Agreements**

**610.00-Reserved**

**620.00- General Procedures**

**630.00- Requesting Consultant Services**

**640.00- Consultant Selection Methods**

**650.00- Work Task Administration**

## **SECTION 600.00 – TERM AGREEMENTS**

Term Agreements are on-call or indefinite delivery/indefinite quantity (IDIQ) contracts awarded to consultants who are prequalified to perform specific services, for a number of projects, for a contract period of two years. Work task agreements are competed and awarded among the prequalified consultants, on an as-needed basis, through an additional qualifications-based selection (QBS) procedure.

The department maintains a list of consulting firms who have Term Agreements. The FHWA has also approved the utilization of this list of consultants on local projects. Local public agencies may make a shortlist of consultants from the Term Agreement List for local projects for selection either by RFI or Direct Selection methods. The department does not intend that qualified local consultants who are not on the list be shut out from proposing on local projects. If local agencies want to consider qualified firms that are not on ITD's list, the open solicitation and selection process should be used.

The Idaho Transportation Board approved the following Term Agreement limits with Board Policy 4001. These limits may only be exceeded with prior approval from the Board.

The limit for individual Work Tasks is \$500,000. The total accrued amount for Work Task agreements with an individual consultant, for a project, may not exceed \$500,000. The total limit for Work Tasks for an individual project is \$1,500,000. The limit for Work Tasks associated with a consultant's Term Agreement is \$1,500,000 in the aggregate for the two-year term period.

Projects or Work Task fees that are expected to exceed \$500,000 shall use the individual project solicitation and consultant selection process rather than a Term Agreement.

## **SECTION 620.00 – GENERAL PROCEDURES**

The Term Agreement List is a list of consultants that have been pre-qualified for categories of services and have executed two-year Term Agreements. A Term Agreement list may be obtained from an application located at the Consultant Services web site. Reports may be selected to provide a list of consultants in a single category or categories for a single consultant, statewide or by District.

The Term Agreement Request for Qualifications (RFQ) is an on-going, open solicitation allowing consultants to submit proposals at any time for prequalification. Term Agreements are open for two years with an opportunity for a one-time extension for an additional two years.

Consultants on the Term Agreement are required to update their overhead on a yearly basis. The Overhead Policy can be viewed on the Consultant Services web site at <http://www.itd.idaho.gov/design/cau/policies/overhead.htm>.

Consultant Services administers the procurement and utilization of Term Agreements.

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## **SECTION 630.00 – REQUESTING CONSULTANT SERVICES**

An ITD-2760, Request for District or Consultant Services, must be completed and sent to Consultant Services to begin the process. Division of Engineering Services procedures library contains Standard Operating Procedures (SOP) for requesting District services and consultant services. The requesting party should also provide project information, an initial scope of work, and an estimated cost of services. A current version of the ITD-2760 is available in the ITD Form Finder.

## **SECTION 640.00 – CONSULTANT SELECTION METHODS**

Consultant selection is based on one of the following:

Request for Information (RFI) from Term Agreement short list.

Direct Selection from Term Agreement short list.

### **Past Performance**

Past performance is one of the qualifications based factors used for evaluation, ranking and selection of consultants. Consultant Services maintains an archive of Consultant Services Performance Evaluations (ITD-2759) from past ITD projects for use in ranking and selection of consultants during the selection process. If a consultant does not have a performance evaluation from a previous ITD project, relevant to this solicitation, professional services references provided by the consultant, in the Term Agreement RFI submittal, should be considered. The lack of a performance evaluation, relevant to this solicitation, from a previous ITD project will not be rated favorably or unfavorably in the evaluation of this component of the criteria.

### **Request for Information (RFI) Method**

Agreements initiated with this selection method shall not exceed \$500,000. Services that exceed \$500,000 cannot be broken down into smaller components merely to permit the use of this method. For services estimated more than \$500,000, refer to Section 300. A consultant who is selected using the RFI method may submit a proposal for a subsequent RFI for the same project provided the accrued amount does not exceed the \$500,000 limit and a potential conflict of interest does not exist. The same consultant may submit a proposal, for a subsequent RFP on the same project provided a potential conflict of interest does not exist.

Under this method, an adequate number of prequalified consultants from the Term Agreement List will be identified for evaluation. A Term Agreement List may be obtained from the Consultant Services Web Site by the originating party. The prime consultants will be required to be prequalified for all of the services they will be providing. Subconsultants will also be required to be prequalified if a category of service exists for the services they will be providing. If a category does not exist, qualifications and performance data will be required for evaluation to be accepted.

Consultant Services will coordinate with the originating party to identify an adequate number of prequalified consultants from the Term Agreement List for evaluation and assemble a selection committee. No less than three consultants may be short-listed for consideration. A selection committee consisting of three or five members will be assembled by the Agreement Administrator for each solicitation. The Agreement Administrator will normally be one of the members. The other members will be selected based on the services being requested. All members must understand the scope of work and be familiar with consultant selection procedures. The names of the committee members will be furnished to Consultant Services. The committee will designate one of the members to lead the committee and document the decision-making process.

Once a Request for Consultant Services is approved, a Request for Information (RFI) will be prepared. The RFI will consist of an initial scope of work and a list of questions, including their relative weight of importance, for the consultants to answer in writing. The initial scope of work will briefly describe the project; including details of the work to be provided and will clearly state what prequalification categories of service are required. The list of questions will be tailored to the needed services. Normally, 5 to 7 questions will be sufficient but no less than 3 questions will be used. The criteria used to select the consultants must assess the demonstrated ability of the consultants to perform the needed services. Possible topics for consideration include: ability to meet schedule requirements; current workload and commitment of key personnel; changes in qualified staff; if applicable, commitment to meet or exceed an established DBE participation goal; proposed subconsultants and the services they will perform; project understanding and approach for furnishing the required services, and past performance. Sample questions may be obtained from the Consultant Services. The same RFI will be sent to all of the short-listed firms. A new short list will only be required if none of the short-listed firms respond to the RFI.

Each selection committee member will independently evaluate all of the submittals received, based on the criteria established in the initial scope of work contained in the RFI. Each committee member will rank the submittals in order of preference. The committee will discuss the submittals and reach a consensus on the final ranking. The committee's decision-making process will be documented and copies of the documentation will be sent to Consultant Services. When the selection is final, notification of the final ranking of the top three consultants shall be provided to the respondents and negotiations may begin with the highest ranked firm.

### **Direct Selection Method**

Agreements initiated with this selection method shall not exceed \$100,000. Services that exceed \$100,000 cannot be broken down into smaller components merely to permit the use of this method. The full amount of any contract modification or amendment that would cause the total contract amount to exceed \$100,000 would be ineligible for Federal-aid funding. Furthermore, the FHWA may withdraw all Federal-aid funding from a contract if it is modified or amended above \$100,000.

Under this method, an adequate number of prequalified consultants from the Term Agreement List will be reviewed for selection. A Term Agreement List may be obtained from the Consultant Services Web Site by the originating party. The prime consultants will be required to be prequalified for all of the services they will be providing. Subconsultants will also be required to be prequalified if a category of



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service exists for the services they will be providing. If a category does not exist, the subconsultant's qualifications and performance data will be required for evaluation to be accepted.

The CAU will coordinate with the originating party to determine the Term Agreement categories of services required for the work to be provided. No less than three consultants may be short-listed for consideration. A selection committee will not be required. The short-listed consultants will be listed in order of preference on the ITD-2760 for approval by the District Engineer/Section Manager. Once the Request for Consultant Services is approved, negotiations may begin with the selected consultant.

A consultant who is selected using the Direct Selection method cannot submit a proposal for a subsequent RFP or RFI for the same project. However, the same consultant may be selected, for extra work on the same project, using the direct selection method provided the accrued amount does not exceed the \$100,000 limit.

The agreement administrator shall retain supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant in accordance with this section and the provisions of 2 CFR 200.333.

## **SECTION 650.00 – WORK TASK ADMINISTRATION**

Negotiations and Agreement Management should be similar to Consultant Agreements per Section 400 and 500 of this manual. Should the first Consultant not be available or not be able to negotiate a satisfactory agreement, then another qualified Consultant will be contacted and so on until a satisfactory agreement is negotiated. Consultant Services will work with the originating party and the Consultant chosen to see that the Work Task is set up in a manner that best serves the party needing the service. The administration of Consultant Agreements should be used as the basic guide for administering Work Tasks. See Section 500.00 - Agreement Administration.

## **SECTION 700.00 MINOR AGREEMENTS**

**700.00 Minor Agreements**

**710.00 Consultant Selection**

**720.00 Preparation and Administration**

## **SECTION 700.00 – MINOR AGREEMENTS**

Minor Agreement procedures may be utilized with prior approval of the Consultant Services to obtain Professional services \$50,000 or less. The object of the Minor Agreement procedures is to simplify the procurement process for small purchases. The intent of these agreements is **NOT** sole source selection, nor elimination of qualification-based selection criteria.

## **SECTION 710.00 – CONSULTANT SELECTION**

Minor Agreement procedures may be used for specialized types of work that are needed that are not covered under the term agreement. Qualifications should be submitted by firms that are being considered for these types of agreements.

When services are desired under Minor Agreement procedures, an ITD-2760, Request for Consultant Services, shall be completed and sent to Consultant Services.

Consultant Services will work with the originating party to determine appropriate solicitation procedures.

## **SECTION 720.00 – PREPARATION & ADMINISTRATION**

After the Consultant is selected, the agreement is negotiated and administered similar to other agreements with the exception that an independent estimate is not required.

## **SECTION 800.00 CONSTRUCTION AND ENGINEERING INSPECTION**

**810.00 General**

**820.00 Scope of Services**

**830.00 Estimate of Cost**

**840.00 Administration**

## **SECTION 800.00 – CONSTRUCTION ENGINEERING AND INSPECTION SERVICES**

### **SECTION 810.00 – GENERAL**

The Idaho Transportation Department (ITD) may use Consultant Engineering services for the management and administration of construction contracts throughout the state on a selected basis. Consultants may be used to balance peak construction workloads, to assist with projects requiring special technical expertise and to perform constructability reviews. Each District or Section shall determine their needs for consultant services and obligate the necessary funds required for the agreement.

The Consultant work force will be considered an extension to ITD, performing the same tasks and procedures as ITD's employees assigned to the Resident/Region Engineer who is in responsible charge of the project. The consultant will perform services in accordance with ITD and federal standards, specifications, and policies.

The design consultant cannot perform CE&I services on the project they designed.

To be most effective, the constructability review should be a part of the Final Design Review. If a constructability review is not desired, the Consultant should at least participate in the Final Design Review.

The same process as outlined in the previous chapters will be used to solicit and select a Consultant, and negotiate and implement a professional service agreement. As provided for in 23 CFR 172.7(b)(5), all contracts for a consultant to act in a management role for ITD must be approved by FHWA. The Resident\Region Engineer shall designate an Agreement Administrator to monitor Construction Engineering and Inspection (CE&I) agreements. The Agreement Administrator will coordinate the work with Consultant Administration Unit throughout this process. The Agreement Administrator will administer the agreement by checking the Consultant's monthly invoicing, guaranteeing sufficient funds are obligated, adjusting agreement time, requesting any supplemental agreements, evaluating the Consultant's performance, and closing the agreement.

### **SECTION 820.00 – SCOPE OF SERVICES**

The detailed Scope of Services must be completed by the Agreement Administrator and will describe the services needed for the project. The Consultant and the Agreement Administrator shall negotiate each work task contained in the Scope of Services.

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## SECTION 830.00 – ESTIMATE OF COST

The estimated cost of the services shall be established during the negotiation process. The cost will be the sum of the labor cost, the combined overhead, the fixed fee, approved direct costs, and any subconsultant costs, in accordance with Section 400, Agreement Preparation.

When the need for overtime is agreed upon in the negotiation, the overhead rate and negotiated fee multiplier are **not** to be applied to the premium time paid.

The overhead rate for Construction Engineering and Inspection (CE&I) agreements must be approved by the ITD Internal Review section in the same manner that overhead rates for all Professional Services Agreements have to be approved. The Consultant is expected to follow its previously established internal policies regarding the use of field rates. If a field rate is developed following an accepted methodology and is approved as such, then it should be consistently applied when appropriate. Consultants who have developed a field rate should submit it for approval along with an explanation of the methodology used in developing it at the time that the office overhead rate is submitted for approval.

Any direct costs, other than Direct Labor, should be determined during the negotiation process. Relocation costs should not be allowed with this type of agreement. However, special circumstances may justify some compensation to the consultant. If long-term subsistence is negotiated, these costs should not exceed the rates set in the Federal Travel Regulations or ITD Travel policy, whichever is less. These costs will need to be accepted by Consultant Services and Internal Review before the agreement is implemented.

Costs for renting a room, apartment, house or other lodging on a long-term basis (e.g. weekly, monthly) are negotiated, and the following expenses are considered part of the negotiated cost:

- Furniture
- Cost of Utilities, et al

Allowances for sustenance shall be negotiated on a monthly basis.

## SECTION 840.00 – ADMINISTRATION

The Consultant will administer the construction contract within the same ITD guidelines and requirements used by ITD personnel.

The Agreement Administrator's role is to observe and verify that ITD policies and procedures are being followed and the plans and specifications are being adhered to. The Agreement Administrator should be available to assist the Consultant as needed.

The Agreement Administrator must provide the Consultant with one fully executed copy of the construction contract and an appropriate and reasonable number of plans and proposals to administer the contract.

The Agreement Administrator should advise the consultant to acquire the following documents:

- Standard Drawings
- Standard/Supplemental Specifications
- Pertinent Local Government Agency Standards
- Contract Administration Manual
- ITD Materials Field Test Manual,
- Materials Policy and Procedure Directives Manual,
- Manual on Uniform Traffic Control Devices,
- ITD Traffic Manual
- Other references noted in the Special Provisions, and
- Latest updates of any references supplied.

The Agreement Administrator, as ITD's liaison with the Consultant, should at the very beginning of the project, establish guidelines and channels for timely flow of all project information. A direct communication link shall be established for all involved parties in order to provide ITD with a knowledgeable, on-site source of scrutiny, evaluation, comment, and judgment.

The Agreement Administrator may encourage the Consultant to contact and communicate with other necessary ITD sections, such as Design/Traffic, Bridge Design, Construction/Materials, etc., including Local Government, and other Consultants that may have contributed to the Construction Contract.

After the consultant agreement is executed and prior to the beginning of construction, the Agreement Administrator and the Consultant will work together to prepare the partnering workshop and/or pre-construction conference. (The **pre-construction conference** is very important for an effective start of a construction project. The Agreement Administrator and the Consultant will coordinate and conduct the meeting in accordance with Section 108.04 of the Contract Administration Manual.)

The Agreement Administrator will conduct inspections of the project to ensure contract and specification compliance by both the Consultant and the Contractor.

## SECTION 1100.00 DEFINITIONS

Agreement	A binding agreement or contract between the State and the Consultant.
Agreement Administrator	The Agreement Administrator directly administers the consultant's performance and payment per the agreement/contract specifications.
Authorization	Professional Services Authorization and Invoice Summary.
Consultant Services	The Consultant Services section of the Contracting Services Section has general oversight responsibility for developing, authorizing, and managing ITD Professional Service Agreements.
Consultant Administration	The overall program of solicitation, selection, negotiation, and administration of consultant agreements for professional services.
Contractor	The individual, partnership, firm, corporation, or any acceptable combination thereof, contracting with the Idaho Transportation Department, for performance of prescribed work.
Combined Overhead	The sum of the payroll additives and general administrative overhead expressed as a percent of the direct labor cost.
Consultant	The individual or firm providing professional services.
Specific Rates of Competition	Payment type consisting of the sum of the hourly charge-out rate and other direct costs.
Cost Plus Fixed Fee	Payment type consisting the sum of labor costs, combined overhead, other direct costs plus a fixed fee.
DBE	Disadvantaged Business Enterprise



Department	Idaho Transportation Department.
Direct Labor Costs	The actual salaries paid to personnel for the time worked directly on the project. Also referred to as payroll costs.
Additional Services	Any services or actions required of the Consultant beyond the obligations of the original or modified contract.
FAR	Federal Acquisition Regulations (48 CFR)
FHWA	Federal Highway Administration. The federal agency that provides oversight on all federal-aid highway projects.
Fixed Fee	A dollar amount negotiated to cover the Consultant's profit and business expenses not allocated to overhead costs. It is a percent of the direct labor and combined overhead.
General Administrative Overhead	The allowable overhead expense expressed as a percent of the direct labor cost.
LPA	Local Public Agency.
LRC	Local Roads Coordinator.
Lump Sum	Payment type consisting of an agreed upon total amount that constitutes full payment for all work described in the agreement.
Not-To-Exceed Amount	The maximum amount payable unless adjusted by a Supplemental Agreement or additional services.
Other Direct Costs	The out-of-pocket costs and expenses directly related to the project that are not a part of the company's overhead expense.

Payroll Additives	All payroll additives allocated to payroll costs such as FICA, State Unemployment Compensation, Federal Unemployment Compensation, Group Insurance, Worker's Compensation Insurance, Holiday, Vacation, and Sick Leave. Payroll additives are expressed as a percent of the direct labor cost.
Payroll Costs	The actual salaries paid to personnel for the time worked directly on the project. Also referred to as direct labor cost.
Pre-award Audit Assurance	An evaluation of the cost elements of agreements and work tasks to assure that costs included in the agreement are allowable in accordance with federal cost principles.
Professional Services	Any professional services for engineering (i.e., material inspection, bridge inspection, construction inspection, design, environmental, archaeological, geotechnical engineering, transportation planning, public involvement, and information technology engineering), architectural, land surveying, legal, accounting, auditing, and right of way where negotiating the price is the accepted practice of the profession.
Project	The section of highway or that area as shown by the plans, within which work is to be performed.
Resident/ Regional Engineer	The administrator acting either directly or through an authorized representative within the limits of the authority granted by the administrator.
Scope of Work	All services, work activities, and actions required of the consultant by the obligations of the agreement.
State	The State of Idaho acting by and through the Idaho Transportation Board and the Idaho Transportation Department.
Subconsultant	Any consultant that is hired by the prime consultant to perform contract-related engineering services. All subconsultants must be approved by Consultant Services and the Agreement Administrator prior to contracting with the prime consultant.

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Supplemental Agreement	An agreement that modifies the existing contract to accomplish work beyond the scope of the original contract.
Unit Cost	The sum of the hourly charge-out rate and other direct costs. Also referred to as Cost.
Unit Prices	The allowable charge-out rate for units or items directly related to the project that is not a part of the normal overhead expense.
Work Task	Under the Term Agreement, the Work Task details a particular task and the expected output that the pre-qualified consultant will perform.