

CONSULTANT SELECTION PROCEDURES PRIMARY ROLES & RESPONSIBILITIES

LPA Local Let Consultant Agreements that Include Federal Funds

<u>PRIMARY TASK</u>	<u>Cons Servs</u>	<u>District</u>	<u>LPA</u>
PRESCOPE OF SERVICES PHASE		District to advise if needed	X
*DETERMINE SELECTION PROCESS - PROGRAMMATIC or TECHNICAL PROPOSAL		District to assist if needed	X
*PREPARE ANNOUNCEMENT - REFER to the LOCAL GOVERNMENT SECTION OF ODOT's WEBSITE	CS to advise if needed	District to advise if needed	X
*POST ANNOUNCEMENT ON ODOT WEBSITE	X		X LPA E-mails to ODOT
*RECEIVE LETTERS OF INTEREST (LOI)			X
*RATE AND SELECT FIRM		District to advise if needed	X
SCOPE OF SERVICES MEETING	CS to advise if needed	X	X
COMPLETE SCOPE OF SERVICES MINUTES, REQUEST PRICE PROPOSAL		District to advise if needed	X
RECEIVE PRICE PROPOSAL		LPA Reviews and forwards to District	X
PERFORM PRE-AWARD EVALUATION		X	
ANALYZE PROPOSED FEE		X	X
ACCEPT FEE OR NEGOTIATE A REVISED FEE		X	X
PREPARE CONSULTANT/LPA AGREEMENT		X	
ENCUMBER FUNDS		X	X
AUTHORIZE AGREEMENT		X	X

*Contracts under \$50,000 can use direct selection per ORC 153.71 and tasks 2 thru 6 would not apply

CONSULTANT CONTRACT ADMINISTRATION

INTRODUCTION

The LPA may engage consultants to perform architectural, engineering and related services needed to develop a Federal-aid project.

The procedures included in this chapter are based on the Federal regulation 23 CFR 172 – Administration of Engineering and Design Related Service Contracts. Section 172.1 requires the following of State DOTs: "Recipients of Federal funds shall ensure that their subrecipients comply with this part." (i.e. LPAs must follow the same Federal requirements.)

However, the application of Federal requirements to the consultant selection process is dependent on the use of Federal funds in the consultant agreement. **If Federal funds are used in a consultant agreement**, Federal rules are invoked and ODOT is charged with oversight responsibilities. In this case the Department will be actively involved in the consultant selection and contracting process. **If Federal funds are not used in a consultant agreement**, the LPA must select an ODOT prequalified consultant in accordance with State law, but the LPA consultant selection process will not be subject to oversight from the Department. Relevant Federal and State documents that apply include:

- Federal Highway Administration (FHWA) and Other Federal Documents
 - < 23 CFR 172 - Administration of Engineering and Design Related Service Contracts: FHWA policies that govern ODOT's consultant procurement policies are included in this document.
 - < 48 CFR, Part 31 - Federal Acquisition Regulations: Part 31 of the Federal Acquisition Regulations, which is invoked by 23 CFR 172.9 (FHWA requirements), addresses contract cost principles and procedures. Additionally, Part 15 of the FARS, although compliance is not required, includes useful guidance on a number of topics, including estimating and negotiation procedures.
 - < 49 CFR, Part 18.42- Records Retention Requirements: This document is invoked by 23 CFR 172.7 and addresses records retention requirements and procedures.
 - < United States Code, Title 23, Section 112 - Section 112(b) requires ODOT to follow Title IX of the Federal Property and Administrative Services Act of 1949 (the "Brooks" law) or an equivalent State qualifications based requirement. The provisions of the "Brooks Bill" require award of Federally funded engineering and design contracts on the basis of fair and open competitive negotiations, demonstrated

competence and professional qualifications (23 CFR 172). Cost may not be used as a basis for selecting architectural and/or engineering consultants. Contracts with such consultants must be negotiated in order of the most highly qualified consultant at prices determined to be fair and reasonable.

- Section 112(B) also was amended by Section 307 of the 1995 NHS Act to prohibit limits on indirect cost rates (overhead) and requires ODOT to accept overhead rates established by a cognizant Federal or State government agency.
- < 49 CFR 18.36: 49 CFR 18.36 details the selection of consultants for projects off the highway right of way. Examples of such projects are: transportation museums, historic preservation, bike and pedestrian facilities, etc.
- Ohio Revised Code (ORC) - Sections 153.65 through 153.71 (ODOT is governed by ORC Section 5526): Documents procedures that must be utilized in procurement of professional services.
 - Ohio Department of Transportation Documents - Documents include the Department's requirements for consultant prequalification, including descriptions of the prequalification categories. This document is available on ODOT's Website at <http://www.dot.state.oh.us/contract/consultant.htm>. Further information can be found on Consultant Services' Website, including the complete Consultant Contract Administration Manual, scope template, and fee estimation guidance. Those resources and more can be found at <http://www.dot.state.oh.us/Divisions/Engineering/Consultant/Pages/Manuals-and-Contract-Documents-.aspx>.

POLICIES CONCERNING THE USE OF CONSULTANTS

Every LPA must provide a full-time public employee to be in responsible charge of the project. For those LPAs who utilize the services of consultants, the following policies shall apply:

1. Only consultants that are pre-qualified by ODOT will be eligible to provide services on projects that include services defined in ODOT's Consultant Prequalification Requirements and Procedures Manual. For projects that do not include such services, pre-qualification will not be required, but the LPA is still responsible to select a qualified consultant in accordance with the qualifications based selection procedures required by the Ohio Revised Code and Federal requirements if applicable.
2. For any single project, a consulting firm or sole proprietor retained by an LPA may act as design engineer for the preparation of construction contract plans, or perform construction contract administration including construction inspection services, but cannot perform both.

3. A consulting firm that designed a project (prime consultant) and any subconsultant firms involved in that design cannot administer a construction contract or provide construction inspection services. Firms that are subsidiary to or have common ownership with the prime consultant or subconsultants are similarly prevented from administering a construction contract and providing construction inspection services. A waiver may be granted by ODOT for a project which involves specialty engineering expertise.

However, the consultant may provide on-going construction phase services as an extension of the design effort for the purpose of advising the LPA concerning interpretations of the plans and specifications prepared by the consultant, conferring with the LPA as to any changed or unanticipated field conditions that will impact the work, and participating in a formal Partnering process, if applicable. The consultant shall not have any formal ongoing duties in administration of the construction contract or inspection and testing of the project. The consultant's personnel assigned to this phase of the work should be the same personnel that designed the project and prepared the plans. Typical on-going services activities include:

- a) Assist the LPA in answering pre-bid questions and attend the pre-bid meeting.
- b) Attend meetings including the preconstruction meeting, job progress meetings, partnering meetings if applicable, and other meetings as requested.
- c) In conjunction with job progress meetings or as requested, visit the job site at appropriate intervals to monitor critical areas of the work and advise the LPA of any conditions that would affect the work.
- d) Respond to questions and visit the job site on an as needed basis.
- e) Assist the LPA in review of contractor shop drawings, and in evaluation of change orders or claims.

POLICIES FOR CONSULTANT SELECTION AND CONTRACTING

Consultant Contracts that Do Not Use Federal Funding

The LPA must:

1. Select a consultant that meets ODOT prequalification requirements for the services to be provided.
2. Comply with State law in selecting consultants.

Consultant Contracts that Use Federal Funding

In order to ensure compliance with Federal regulations, the Department will assist in the announcement, negotiation and contract preparation phases. Refer to Appendix A, Procedures for Selection of Consultants (When Using Federal Funds in the Consultant Agreement).

AUTHORIZATION TO PROCEED

All procedures described in this chapter must be followed if Federal funds are used for consultant services or if credit toward the non-Federal share will be sought. ODOT must give the LPA an "**Authorization to Proceed**" prior to the performance of any work for which Federal reimbursement is to be requested. The LPA should note *that executing the agreement with the consultant prior to the receipt of the "Authorization to Proceed" will prohibit the reimbursement of Federal funds.*

PRE-SCOPE OF SERVICES PHASE

The pre-scope of services phase occurs prior to public announcement of the contract. In developing the preliminary scope of services, the LPA should involve appropriate staff including representatives specializing in engineering, construction, utilities, real estate, and others as needed, and the ODOT District LPA Manager. The objectives of this phase are as follows:

- Define the services to be provided.
- Determine the form of agreement. Various forms of agreements include lump sum, costs plus a net fee, rates of pay and unit of work. Refer to *ODOT Consultant Fee Estimation Guidance* for additional guidance on preparing cost estimates and evaluating consultant proposals.
- Determine the required pre-qualification to provide the services. Refer to *ODOT Consultant Prequalification Requirements and Procedures Manual* for pre-qualification categories and definitions.
- Identify any selection sub-factors that will be considered in the selection process. Sub-factors are considered in the scoring through normal selection criteria, but the firms with experience or a record of good performance in the sub-factors would receive relatively higher scores. Examples of sub-factors would be an unusual bridge type, a complex geotechnical or foundation situation, or a very complex interchange configuration.
- Determine the required schedule for completion of the services.

- Determine the number and frequency of progress meetings and on-site visits by the Project Manager.

Subcontracted Services

The consultant is responsible for performing the work required under the agreement in a manner acceptable to the LPA. If the consultant chooses to subcontract their services, they are still responsible for the work performed under any consultant agreement entered into by a subconsultant. The consultant's organization and all associated subconsultants must be identified at the time of the proposal. If the consultant wishes to use a firm not specified in the proposal, prior written approval must be obtained from the LPA.

DBE Participation

The LPA receiving Federal funds must comply with ODOT's adopted Disadvantaged Business Enterprise (DBE) program and annual goals. The LPA must take affirmative steps to assure that DBE consultants are utilized when possible. Such steps include soliciting DBE firms and, when feasible, organizing the project schedule and task requirements to encourage participation by DBE firms. The consultant has the responsibility for using DBEs as subconsultants when feasible. If a DBE subconsultant is unable to perform, the consultant must make a good faith effort to replace that subconsultant with another DBE subconsultant. DBE efforts must be documented and verified.

DETERMINE THE PROJECT SCHEDULE

Along with services to be rendered and price, time is one of the key elements of any contract. The schedule of submittal dates and delivery of reports or final plans constitutes the time element of a consultant's contract. The time element is very important to the success of a project.

A typical consulting contract with the LPA should call for several interim submissions throughout the course of the contract. In the case of a contract for final design plans, the technical review process (similar to ODOT's Staged Review Process) defines those interim submissions. In the case of a preliminary development project, there are also several interim reports and studies required of the consultant before the final report is due.

The scheduling process begins at the pre-scope of services stage and the overall completion time is included in the announcement. The end product is an agreed upon Project Schedule.

PROJECT MANAGER

The LPA shall appoint a person to act as the Project Manager to each consultant contract. This person should serve as the primary contact for administrating a consultant contract. The Project

Consultant Contract Administration

Manager should be qualified to ensure the work performed by the consultant(s) is complete, accurate and consistent with the terms, conditions and specifications of the contract. It is important that the consultant get his/her direction from only one person for the day-to-day matters involving plan reviews, deliverables, schedules, etc., to avoid conflicting directions and to establish the authority of that one person. It is equally important that this one person be accountable for the day-to-day activities in order to develop a sense of ownership of the project. This person should have the authority to administer the daily activities to see that the contract requirements are met.

The Project Manager should be responsible for the quality of consultant contract products or services. The project manager's duties should include but not be limited to:

- Provide direction to ensure the proposed work is advertised properly;
- Arrange for preparation of an advance, independent estimate of the value of the work to be contracted out;
- Analyze the selected consultant's cost proposal;
- Contract negotiations;
- Serve as the successful consultant's primary contact person;
- Monitor the consultant's progress and provide direction;
- Schedule and attend progress/review meetings with the consultant and being involved in decisions leading to design exceptions, change orders or supplemental agreements;
- Be familiar with the qualifications and responsibilities of the consultant's staff;
- Visit the project and/or consultant's offices on a frequency that is commensurate with the magnitude, complexity and type of work which includes being aware of the day-to-day operations for construction engineering service contracts;
- Provide technical guidance to the consultant, or see that such guidance is provided by others;
- Coordinate all activities necessary to certify plans, such as Plan Review, Constructability Review, Environmental clearance, Right of Way clearance, Utilities clearance, Permits, Railroad Agreements, and Cost Estimate;
- Verify that contract deliverables meet the scope of services requirements and that all required deliverables are received; and
- Approve the consultant's progress payments and assure that costs billed are consistent with

the applicability and progress of the consultant's work.

Effective project management requires early identification and resolution of difficulties and issues as they occur. Most of these problems are more often due to a lack of communication and understanding of requirements, rather than to poor engineering judgment or practice. Early resolution of these problems requires close coordination and communication with relevant members of the design team. Often this is achieved through regular contact by phone or attending meetings with the consultant. The frequency for these contacts will depend on the project's complexity.

Progress Meetings

The Project Manager should schedule regular progress meetings to help confirm that a project is on schedule or to determine that an adjustment in the schedule is necessary. These meetings also serve as an avenue for communication between all parties. Office visits enable the Project Manager to discuss the project with the consultant's staff, as well as clarify instructions and intent. The Project Manager should set aside some time to answer questions by the consultant's staff.

Items to examine when visiting the consultant's office might include:

- Are the individuals named in the proposal working on the project?
- Are the consultant's personnel cooperative?
- What progress has been made?
- Discussions of issues and on-going problems to be resolved.
- Have past review comments been addressed?

All communications with the consultant shall be documented.

Technical Reviews

The purpose of construction and right of way plan review is to provide the assistance and review needed to ensure that work performed by the consultant conforms to the contract scope of services and meets all applicable Federal and State standards.

Construction Plans

It is vital that the review process is defined in the scope of services so the consultant is aware

of the process being used. The Project Manager has discretionary rights to modify this process if a revised process better suits the type of project being administered. If the review process is not described in the scope of services then the consultant needs to be in agreement with the revision and it shall be documented.

Right of Way Plans

The submission schedule for right of way plan review is also included in the technical review process.

Field Review

A field review of the project shall be made somewhere around the completion of the final plans to assure that the site conditions have not changed subsequent to when the Scope of Services was written. Should field conditions change, a determination can be made by the Project Manager on how to address it. The field review would also serve as a means of checking to make sure the consultant has not missed any pertinent item such as a utility, a lawn section, a drainage structure, etc.

DOCUMENTATION, FILES AND RECORD KEEPING

Record keeping is one of the most important aspects of contract administration and is vital to its success. The LPA must be able to respond quickly and accurately to disputes with consultants, internal and external audits, the State's fiscal control agencies, the Legislature, and the public. Only by maintaining accurate and complete contract records can the LPA provide honest, fair, and efficient administration and ensure compliance with all applicable laws, regulations, policies, and procedures. The LPA shall maintain an accurate and complete filing system.

A complete and properly organized filing system is vital to the success of the LPA's administration of agreements. Filing procedures that produce this result should be regarded as a means of reducing the overall effort of administering an agreement. The time required to maintain good records will ease the burden on all those involved in contract administration. Most consultant contract administration activities required by this document depend, to some extent, on knowledge of past activities. Accurate, organized and readily accessible records will help to ensure fact based decision making and minimize important items from "falling through the cracks".

Comprehensive documentation of plan/documentation reviews is crucial to effective consultant administration. Proper review documentation should include the following:

- A log of all reviews performed on the project. The log must indicate the date of submission,

name of reviewer, and the date comments were transmitted to the consultant.

- A copy of the comments transmitted to the consultant. These comments may be delivered by providing written comments, marked up prints, annotated comments on documents or reports, or documentation of all communications between the LPA and the consultant.

If marked up prints or annotated comments are used as the official means of communicating the comments to the consultant, it is the Project Manager's responsibility to ensure that the comments are legible and clear. A copy of the marked up prints or annotated comments shall be kept in the project file where they can be easily accessed until the record retention period has passed or all disputes are resolved, whichever is longer. The Project Manager should make the determination as to how long to keep the records, following 2CFR 200.333. For instance, if there is a pending dispute with the consultant, but the record retention period has passed, then the plans or comments should remain on file until such time the dispute is resolved.

It is recommended that checklists be used whenever possible on plan reviews. These checklists serve as a reminder to the reviewer of the pertinent items to look for in the review. The items on the checklist should be checked off or crossed out by the reviewer and reviewer notes written in. The marked up lists must then be filed with the project file.

Records Retention Requirements

Retention of contractual records is required by 2 CFR 200.333. The minimum length of time for retention of records is three years post closeout in the Federal Fiscal Management Information System (FMIS). Such records may be required in any future dispute concerning the agreement or may be needed for a variety of other reasons.

APPROVAL OF INVOICES

The Project Manager should review and approve the invoices to verify that the billed work has been completed and authorized by the contract. After the Project Manager has approved the invoice, it should be forwarded for payment. General procedures for approval of invoices are as follows:

- Most agreements require that invoices/progress schedules be submitted every thirty (30) days. The Project Manager should contact the consultant if the invoice is more than ten (10) days late.
- Review the invoice according to the agreement's requirements.
- The invoice should be signed by the consultant.

- Review the arithmetic for mathematical accuracy.

MODIFICATIONS TO AGREEMENTS

A modification is a legal adjustment to an agreement made necessary as a result of:

- A change in scope which may require an adjustment of prime compensation; or
- Additionally required services to be performed that may require the adjustment of prime compensation.

In order to justify the need to modify the contract, the LPA must determine that the situation meets two criteria:

1. That additional professional services are necessary to complete the work originally contracted for; and
2. That it is in the best interest of the LPA that the services be performed under the same contract.

Once the need for a modification is established, the consultant can be asked to prepare a proposal based on an addition, reduction, substitution or a revision in the complexity, character or duration of the original services. **If Federal funds are used in the agreement, modifications must be processed through ODOT, with agency responsibilities similar to those for new agreements.** The full amount of any contract modification or amendment using Federal funds cannot exceed the established simplified acquisition threshold. FHWA may withdraw all Federal-aid from a contract if it is modified or amended above the applicable threshold.

Time Extensions

The Project Manager can grant a time extension for a Consultant Agreement. These extensions can be given in cases where there is a change in scope of services, a delay caused by the LPA, or other justifiable conditions. Time extensions which concur with a consultant's delayed schedule are not acceptable. The following procedure must be used in granting a time extension:

- The approval of the time extension shall be given to the consultant in writing.
- A revised Project Schedule in the Project Monitoring format should be prepared. All required submittals with scheduled submittal and approval dates and review times should be adjusted to reflect the revised completion date.

- The consultant should agree to the revised schedule by returning a signed copy of the revised schedule.
- All revisions shall be kept in the project file.

Change of Project Team/Staff Commitments by the Consultant

One of the major factors in the selection of a consultant to provide services is the make up of the consultant's proposed project team. Both the Letter of Interest and Technical Proposal formats require that the consultant's key staff be named. The LPA selects the consultant based on this promise and must ensure that the named staff actually produces the work. However, the staff commitment is not a true contractual commitment. Named staff that is in charge of the work fulfills the obligation even though other individuals may provide a considerable portion of the necessary labor. The LPA's true objectives are quality services that meet expectations.

In the event that the consultant has failed to fulfill the staff commitment, the Project Manager shall investigate the situation and take appropriate actions. Under certain circumstances, it may be in the LPA's interest to suspend work on a contract.

BREACH AND DEFAULT OF CONTRACT

Problems discovered during a subsequent phase of project development will usually be categorized as negligent acts, errors, or omissions. Additionally, breach of contract results from a consultant's failure to address an identified problem in the performance of the agreement. The LPA should notify the consultant in writing of deficient performance, identify required solutions, and set a deadline for cure. After these steps have been carried out and the consultant has failed to address the deficiency, the consultant may be declared in default of contract and additional administrative remedies may be pursued by the LPA.

As stated above, unsatisfactory technical performance by the consultant must be addressed in writing by the Project Manager. The letter to the consultant must cite the specific areas of unsatisfactory performance, require a return to an acceptable level, and set a time limit for response by the consultant. The consultant's continued failure to provide an acceptable level of performance may result in default of contract with appropriate actions by the LPA, up to and including termination of the consultant agreement.

CONSULTANT NEGLIGENCE - IDENTIFICATION AND PROCEDURES

The purpose of this section is to provide, for the use of those charged with administration of agreements, guidelines for identifying errors, omissions and negligent acts by consultants, and

procedures for dealing with each situation.

Identification of Consultant Negligence

Negligence by a consultant is contractually defined in Section 2.12 (Errors and Omissions) of ODOT's Specifications for Consulting Services, as follows:

"Services provided by the consultant under this agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances."

This definition does not define every error by a consultant as a negligent act that must be pursued for reparation of damages, but in all cases of consultant error the consultant must:

1. Respond promptly to the LPA's request for clarification/correction.
2. Prepare any plans or data needed to correct the negligent act, error or omission without additional compensation.

The "negligent acts, errors or omissions" will in most cases be identified during a subsequent phase of the work. Detection of errors, even major errors, during the review process would not normally fall within the negligent standard that is the subject of this section. Such errors and other review comments must be corrected by the consultant, at no cost, and later considered in rating the consultant's performance.

"Negligent acts, errors or omissions" as discussed herein will generally consist of harm to the LPA based on the LPA's use of the consultant's completed work. The most common occurrence will be design errors discovered during bidding or construction. Some additional examples are: wetlands not identified during an environmental investigation that are discovered during later design or construction; failure to identify dangerous conditions during a bridge inspection; or acceptance of a contractor's work such as bridge painting based on a consultant inspector's report and later the work is proven clearly deficient.

Procedures for Dealing with "Negligent Acts, Errors or Omissions"

Upon discovery of an alleged error by a consultant, the Project Manager shall carry out the following procedures:

1. Notify the consultant of the problem either by telephone or in writing; a telephone call will be sufficient in most cases. This is the beginning of the "discovery phase" of investigation that is intended to fully identify the problem (or possibly determine that a problem does not exist).

Do:

- Ask for clarification of the discrepancy.
- Agree to a deadline for response.
- Fully document the call in writing.
- Direct the consultant to maintain separate cost accounting specific to their efforts to resolve the problem.

Do not:

- Characterize the discrepancy as an error.
 - Negotiate, reach agreement or sign any document relative to the consultant's responsibility for the problem.
2. Fully investigate the discrepancy to determine the extent, impacts (harm to the LPA) and source of the discrepancy. Notify other LPA personnel as appropriate. The consultant's response to the LPA's initial contact should be obtained and considered in completing the investigation. The consultant's scope of services must be considered in reaching any conclusions regarding responsibility for any error or omission. Relevant facts may include:
 - A determination that the project was constructed in accordance with plans and specifications and the problem did not result from contractor error.
 - Reasonable assurance that the project was inspected properly.
 3. Fully document the investigation in writing, including conclusions reached concerning responsibility for the error or omission. All communications with the consultant shall be documented.

Procedures for Corrective Actions

Upon agreement with the consultant and/or the consultant's professional liability insurance company that a negligent act was committed and corrective actions are required, the following procedures should be initiated.

1. Enter into negotiation with the consultant and/or the consultant's insurer.
2. Corrective plans (or other documents) should be completed by the consultant or another consultant chosen by the insurer. Any payment to a third party consultant will be made by the insurer. Do not enter into agreement with any other consultant for the corrective plans.
3. All plans, once accepted, must be constructed by an ODOT pre-qualified contractor. The

cost of corrective construction may be negotiated by the insurer or may be let competitively through a competitive bid letting process. All payment will be made by the consultant or insurer either directly or indirectly.

CONSULTANT EVALUATION SYSTEM

In response to a certain level of dissatisfaction with the 10-8-5-1 rating scale previously used in the Consultant Evaluation System (CES), a change to a 1-10 rating scale has been implemented. The change took effect on July 14, 2014. Agreements with ratings completed before the implementation date will retain the previous rating scale (10-8-5-1). During this transition period, data in the previous system will be retained and used in consultant selections until the new system is fully populated. However, it should not be assumed that the old and new scores are equivalent to each other when considering previous evaluation scores during the consultant selection process.

Questions cover three basic areas (Project Management, Timeliness and Quality) and are answered jointly by the LPA and ODOT through a web-based method. A Project Characteristics form is first filled out primarily to designate the consultant work performed - Environmental, Design (including R/W plans) and R/W Acquisition. The rating definitions and the performance ratings screen layout can be found in Appendix B.

The primary objective of the system is to provide a report card to the consultant and the associated opportunity to strengthen areas of weakness. Upon completion of the services the LPA and ODOT Project Manager complete a draft evaluation and then meet with the consultant. The consultant is to be provided a copy of the draft evaluation and have an opportunity to discuss and comment. Any changes, as appropriate, are then made to the draft and a copy of the final evaluation is provided to the consultant. The final evaluation must be completed within 30 days of completion of services.

The link to CSS/CES is <https://cssces.dot.state.oh.us/cssces/cescss/css.CSSOpener>. Permission must be granted to access this application. Please work with the district or ODOT's Office of Consultant Services for permission.

If you would like further details on any of the topics discussed in this chapter, please refer to the ODOT Consultant Contract Administration Manual. The ODOT Consultant Contract Administration Manual shall act as the final authority for all matters discussed in this chapter.

REFERENCES

23 Code of Federal Regulations

48 Code of Federal Regulations

49 Code of Federal Regulations

ODOT Specifications for Consulting Services

ODOT Consultant Prequalification Requirements and Procedures

Title VI of the 1964 Civil Rights Act

ODOT Consultant Contract Administration Manual

ODOT Policy 25-001(P)

Ohio Revised Code 153.65 to 153.71

APPENDICES

- A** Procedures for Selection of Consultants (When Using Federal Funds in Consultant Agreements)
- B** Rating Definitions

Revised 12/2016

APPENDIX A

Procedures for Selection of Consultants (When Using Federal Funds in Consultant Agreements)

Purpose

This document establishes policies for administration of consultant contracts **when Federal funds are used in consultant contracts in LPA Local Let projects**. 23 CFR 172 directs ODOT to require sub recipients of Federal funds (LPAs) to also comply with 23 CFR 172. This document provides a summary of policies and procedures that must be followed by LPAs and ODOT in the use of consultants on LPA Local Let projects. Responsibilities for consultant selection activities are included below under **Primary Roles and Responsibilities**.

Reference Documents

Federal Rules

23 CFR 172 - FHWA rules governing consultant selection and contract administration - invokes the Brooks Act; directs the contracting agency to give consideration to Disadvantaged Business Enterprises (DBEs) in the selection process

United States Code Title 40, Chapter 11 - Brooks Act - Requires qualifications based selection of consultants

ODOT's Website

<http://www.dot.state.oh.us/divisions/Engineering/consultant/Pages/default.aspx>

Sample Request for Proposal documents and procedures for using ODOT's website are included under the heading "Local Government".

Ohio Revised Code sections 153.65 through 153.71

ODOT's Consultant Contract Administration Manual

This document is available through ODOT's Website:

<http://www.dot.state.oh.us/Divisions/Engineering/Consultant/ConsultDocs/Contract%20Administration%20Manual.pdf>

Summary of Requirements

- LPA must select an ODOT prequalified consultant/ consultant team for the applicable work types.
- The LPA shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract.
- The LPA shall promptly disclose, in writing, any potential conflict of interest to FHWA.
- The LPA must incorporate ODOT's "Specifications for Consulting Services" as a contract document in all of its consultant contracts.
- The LPA must specify the contract type and method(s) of payment anticipated to contract for the solicited services.
- The LPA consultant agreement must provide for ongoing consultant involvement during the construction phase of the Project.
- The LPA must assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.

Federal Highway Administration Approval

For agreements that **include Federal funds** in the preliminary engineering phase, Federal authorization is required prior to incurring consultant costs. Federal authorization is divided into three subphases: Preliminary Engineering, Environmental Engineering and Final Engineering. Federal authorization for these three sub-phases of Preliminary Engineering must be requested and approved individually.

District Offices must coordinate with the Office of Payroll and Federal Accounting to obtain Federal Authorization for each sub-phase. Federal Authorization for work authorized prior to Federal PE approval will not be eligible for compensation.

Consultant Selection Procedures

Consultant selection procedures must comply with Ohio Revised Code sections 153.65

through 153.71, and Federal Regulation 23 CFR 172.

Selection procedures should be based on the size and complexity of the project as follows:

1. Direct Selection of Consultants for Exempt Projects. These are projects that are determined to be emergency and immediate action is required, or projects with estimated fee less than \$50,000 project total, not per consultant (Ref ORC 153.71). The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures. It should be documented how the consultant selection was deemed a quality selection.
2. "Programmatic" Selection Process - This process is a one-step, simplified selection process designed for projects that are routine in nature. It should be utilized for most projects instead of the Technical Proposal Process. (The term "Programmatic" is used by ODOT to describe the one-step selection process.) Public announcement is required in accordance with ORC 153.67.
4. Technical Proposal Selection Process - A two-step selection process designed for larger, more complex projects. A short list of firms is selected based on the initial letter of interest and a more detailed technical proposal is requested from the short listed firms. Public announcement is required in accordance with ORC 153.67.

23 CFR 172(b) directs the contracting agency to give consideration to Disadvantaged Business Enterprise (DBE) consultants in the procurement of consultant contracts. In consultation with the Department, the LPA shall consider the inclusion of a DBE goal in the agreement. Procedures for administering contracts with goals are included in Chapter 7 of the Department's Consultant Contract Administration Manual. As the DBE program is the sole program recognized by Federal rules, local policies concerning similar programs may not be used in selecting consultants.

The LPA, in accordance with 23 CFR 172.7, shall rank, in order of preference, at least three consultants determined most highly qualified to perform the solicited services based on the established and published criteria. In instances where only two qualified consultants respond to the solicitation, the contracting agency may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition. Notification must be provided to the responding consultants as to the final rankings of the three most highly qualified consultants.

Prior to receipt or review of the most highly qualified consultant's cost proposal, the LPA

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shall prepare a detailed independent estimate, in accordance with 23 CFR 172.11. The estimate should include an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and the consultant's fixed fee for the defined scope of work. The independent estimate will serve as the basis for negotiation. This ensures that contracts for consultant services are obtained at a fair and reasonable cost.

Sample consultant selection documents, including announcements for both the programmatic and technical proposal selection processes, are available on ODOT's website at <http://www.dot.state.oh.us/divisions/Engineering/consultant/Pages/default.aspx>. Sample letters for use in requesting technical proposals in the two-step process are also included.

Announcements of Available Contracts

ODOT's website shall be used for all announcements of available contracts to ensure compliance with State and Federal requirements. The LPA should consult with the ODOT District for assistance. Announcements shall include:

1. Project designation (County-Route-Section);
2. A description of the project including the location;
3. Specific services required;
4. The ODOT prequalification required to provide the service;
5. The approximate construction cost if available;
6. Major work elements involved;
7. Important aspects (ODOT uses the term subfactor) of a project, if any, that will play a large role in the consultant selection process;
8. Estimated date of authorization;
9. Time period in which the work must be completed;
10. The DBE percentage, if any;
11. A description of the selection process to be used, including the number of steps (direct selection based on the information provided, or a two-step process with a short list and second submittal, etc.), and the selection rating criteria to be used.

Selection factors must be qualifications based factors that meet the requirements

of 23CFR172 and the Brooks Act. ;

12. Instructions for submitting a letter of interest including content and required format. The information requested should be consistent with the rating criteria. ;
13. Name and address of the official to whom the letter of interest is to be sent; and
14. Date that the letter of interest is due. The minimum response time shall be two weeks from the initial posting date.

ODOT rates consultant performance on ODOT-held and LPA-held agreements through the Department's Consultant Evaluation System. Performance ratings for specific consultants will be furnished to LPAs upon request, but shall not be further distributed by the LPA.

Documentation of Consultant Selections

The LPA shall maintain a consultant selection file that includes the following information:

- A copy of the Request for Proposal and the date posted on ODOT's website;
- A listing of firms that submitted Letters of Interest;
- Letters of Interest from all firms that submitted;
- Selection rating forms and any supporting notes and documentation, including membership of the selection committee;
- A listing of firms selected to submit technical proposals (if applicable), copies of the technical proposals, and related correspondence;
- Selected consultant's Price Proposal;
- Negotiation records, if any; and
- A copy of the Agreement, Scope of Services, Authorization Letter, Invoice and Project Schedule, and any other documents relevant to the agreement.

Upon completion of the agreement, the LPA shall provide copies of all documents to the District for their files.

Agreements

The ODOT District Office will prepare the LPA/Consultant Agreement. The agreement will be transmitted to the LPA through the District Office. A copy of the executed LPA/Consultant Agreement shall be returned to the ODOT District. ODOT may withhold payment for the consultant if the agreement has not been received.

Administration of Consultant Agreements

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After authorization, LPAs shall administer consultant agreements in accordance with ODOT's Consultant Contract Administration Manual. For agreements that include a DBE goal, **the LPA shall report to ODOT the actual dollars paid to DBE prime consultants or** subconsultants.

APPENDIX B

Rating Definitions

**Ohio Department of Transportation
Standard CES Rating Definitions 1-10 Scale**

Numeric Rating	Description	Generic Description
10	Work completed with minimal comments and technical guidance from the LPA, including compliance with ODOT manuals and procedures. The consultant's performance was an asset to the LPA's Project Manager.	Outstanding
9	Work completed with a small number of comments and minimal technical guidance from the LPA, relative to the size and complexity of the project. LPA's time commitments to complete reviews are relatively small.	Excellent
8	Work completed with some comments and technical guidance. Comments are minor in nature and do not include serious design or product quality issues, relative to the size and complexity of the project. LPA's time commitments to complete the reviews are still relatively small.	Very Good
7	Work completed with some comments and technical guidance. Comments are mostly minor in nature but more numerous, relative to the size and complexity of the project, but do not include serious design or cost issues.	Good
6	Work completed with a significant but acceptable level of LPA involvement required, including comments and technical guidance. Comments do not include serious design or product quality issues.	Acceptable
5	Significant level of comments included serious design, plan preparation, or product quality issues.	Fair
4	Consultant was deficient in knowledge of ODOT practices and manuals. Extensive LPA staff involvement was required to achieve an acceptable product.	Poor

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3	Consultant was deficient in knowledge of ODOT practices and manuals. Extensive LPA staff involvement was required to achieve an acceptable work product. The LPA Project Manager spends excessive amounts of time in coordinating response to consultant.	Very Poor
2	Work product is unacceptable to the point that deliverable is returned for revision without detailed comments.	Unacceptable
1	Work product is unacceptable to the point that removal of prequalification is warranted.	Remove Prequalification

**Ohio Department of Transportation
Timeliness CES Rating Definitions 1-10 Scale
Intermediate Submittal Rating Criteria**

Numeric Rating	Description	Generic Description
10	The consultant provided an acceptable intermediate submittal within the schedule in all cases and exceeded the schedule by 2 weeks for more than 50% of submittals.	Outstanding
9	The consultant provided an acceptable intermediate submittal within the schedule in all cases and exceeded the schedule by 1 week for more than 50% of submittals.	Excellent
8	The consultant provided an acceptable intermediate submittal within the schedule in all cases.	Very Good
7	The consultant provided an acceptable intermediate submittal within the schedule or was late by 3 work days or less for less than 50% of intermediate submittals.	Good
6	The consultant provided an acceptable intermediate submittal within the schedule or was late by 1 week or less for less than 50% of intermediate submittals.	Acceptable
5	The consultant provided an acceptable intermediate submittal within the schedule or was late by 1 week or less for more than 50% of intermediate submittals.	Fair
4	The consultant provided an acceptable intermediate submittal more than 1 week late for all intermediate submittals.	Poor
3	The consultant provided an acceptable intermediate submittal more than 2 weeks late for all intermediate submittals.	Very Poor
2	The consultant provided an acceptable intermediate submittal more than 3 weeks late for all intermediate submittals, or any intermediate submittal was more than 4 weeks late.	Unacceptable
1	The consultant provided an acceptable intermediate submittal more than 4 weeks late for all intermediate submittals, or any intermediate submittal was more than 5 weeks late.	Notify Management

**Ohio Department of Transportation
Timeliness CES Rating Definitions 1-10 Scale
Final Work Product Rating Criteria**

Numeric Rating	Description	Generic Description
10	An acceptable final work product was delivered more than 4 weeks ahead of schedule.	Outstanding
9	An acceptable final work product was delivered more than 2 weeks ahead of schedule.	Excellent
8	An acceptable final work product was delivered on schedule.	Very Good
7	An acceptable final work product was delivered no more than 3 work days late.	Good
6	An acceptable final work product was delivered no more than 1 week late.	Acceptable
5	An acceptable final work product was delivered not more than 2 weeks late.	Fair
4	An acceptable final work product was delivered no more than 3 weeks late.	Poor
3	An acceptable final work product was delivered no more than 4 weeks late.	Very Poor
2	An acceptable final work product was delivered no more than 5 weeks late.	Unacceptable
1	An acceptable final work product was delivered more than 5 weeks late.	Notify Management