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PURPOSE: To establish procedures for the selection and employment of consultants to perform engineering, design and other related professional services on Federal-aid funded projects administered by the Office of State Aid Road Construction. These procedures are established to comply with the provisions of 23 CFR 172.

1. CONSULTANT SELECTION COMMITTEE (CSC). The State Aid Engineer will be the ex officio Chairman of the Consultant Selection Committee (CSC) and will designate one of his Assistant State Aid Engineers as Chairman of the CSC. Committee members will be appointed by the Chairman and will include a minimum of five (5) representatives from the local entity and State Aid. No less than two (2) nor more than three (3) of the committee members shall be appointed from the State Aid staff.

When small purchase procedures are followed (on contracts of less than \$100,000) the short selection process may be handled by the local entity.

The Chairman will determine the method of procurement to be used and will coordinate committee activities throughout the selection process.

2. METHODS OF PROCUREMENT: The methods of procurement for the hiring of consultants to perform engineering and design related services are:
 - 2.1. Competitive Negotiation. Competitive negotiation follows qualifications-based selection procedures and should be used for the selection of a consultant to provide engineering and design related services. The following procedures shall apply to the competitive negotiation process:
 - 2.1.1. Scope of Work, Evaluation Factors and Cost Estimate Development. The following shall be developed prior to soliciting proposals:
 - (1) A scope of work that reflects a clear, accurate, and detailed description of the technical requirements for the services to be rendered by the consultant.
 - (2) A list identifying the evaluation factors ranked in their order of importance and as a minimum shall include the following:
 - A. Experience in performing the type of work outlined in the Scope of Work.
 - B. Qualifications and experience of the principals and professionals to be assigned.
 - C. The present work load of the firm.

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- D. The extent of in-house capabilities of the firm to perform the services required for the project.
- E. Previous work performed for the MDOT and/or State Aid.
- F. Current GSA-254 Form.
- G. Other - will vary as to type of work being undertaken.

- (3) A detailed cost estimate, except for contracts awarded under \$100,000, with an appropriate breakdown of specific types of labor required, work hours, and an estimate of the consultant's fixed fee (considering the risk and complexity of the project) for use during negotiations.

(Subject to approval of the Federal Highway Administration and the State Aid Engineer, the local entity may employ a consultant to assist in developing the above data.)

2.1.2. Soliciting Statements of Qualifications. The solicitation process shall be by advertisement (project, task or service) in a newspaper of Statewide circulation and shall be placed in said newspaper by the County at the request of the Chairman of the Consultant Selection Committee.

- (1) The advertisement will state the following:
 - A. A brief description of the scope of work.
 - B. A brief description of the project.
 - C. The method(s) of payment (lump sum, cost plus fixed fee, cost per unit of work or specific rates of compensation).
 - D. Consultants interested in providing the services are solicited to provide the following Statement of Qualifications:
 - (i) Size of the organization including resume of each principal member or associate of the firm, listing each person's experience and qualifications.

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- (ii) The personnel they will have available for use on the proposed project, including, but not limited to, the number of engineers, draftsmen, mappers, computers, etc..
- (iii) The facilities they have, or propose, for use on the proposed project.
- (iv) A statement from the consultants that their organization is sufficiently staffed to perform the required consulting services with reasonable dispatch.
- (v) A description of similar type work completed during the past five (5) years which qualifies the firm for this work.
- (vi) Standard GSA-254 form.
- (vii) A statement from the consultants to the effect that, in the event certain features on the proposed project are of such complexity and nature as to require specialized or expert assistance, whether their organization is sufficiently staffed with such specialists, or if it will be necessary to associate with others, and if an association should be necessary, the nature of such association.
- (viii) Consultants will be required to submit sufficient copies of the proposal for distribution to all members of the committee plus copies for the State Aid Engineer and for submission to the FHWA.

E. Selection Administration will be based on this S.O.P. and, 23CFR172.

F. Latest date and time consultants submittals must be received at State Aid.

G. Submittals received from consultant's after the cut-off date will not be considered by the Consultant Selection Committee.

2.1.3. Analysis and Selection. The Chairman of the Consultant Selection Committee will distribute copies of those Statements of Qualifications (S.O.Q.'s) received within the specified time period to each committee member and schedule a meeting to evaluate and rank the consultant's S.O.Q.'s. This meeting shall be scheduled in order to allow sufficient time for the CSC members to study the S.O.Q.'s. This process shall include an analysis of the S.O.Q.'s in comparison to the evaluation factors.

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2.1.3.1. Regular Selection Process

- (1) Many factors must be considered by the Consultant Selection Committee in determining the most appropriate and qualified consultant for a particular project. Among the factors to be considered by the CSC are:
 - A. The professional reputation of the consultants should be a prime consideration. The reputation and character of the consultants can best be determined from records in the MDOT and State Aid of performances on previous projects, by inquiries with previous clients, and other references.
 - B. Experience of the consultants in performing specific services related to the project.
 - C. Qualifications and experience of the principals of the consultants.
 - D. Size and experience of the consultant's professional and technical staff with respect to the magnitude of the project.
 - E. The extent of in-house capabilities of the consultants to perform specialized services required by the project.
 - F. Quality of workmanship and performance of the consultants. This can be determined by previous work performed by the consultants for the MDOT and State Aid, by a review of sample plans and inquiries with previous clients.
 - G. Depending on the nature of the project, the location of the consultants with respect to the project site may be important.
 - H. Financial status of the consultants. This may be determined by requesting a certified financial statement.
- (2) A qualifications-based procedure that complies with the provisions of Title IX of the Federal Property and Administrative Services Act of 1949 (Pub. L. 92-582, 86 Stat. 1278 (1972) as amended) will be used in order to provide a uniform system of evaluation by committee members. This procedure of rating will be adapted and be responsive to the statement of the proposed work. The format for the rating sheet will be developed by the Chairman of the committee and shall as a minimum, include the following:
 - A. In order to subjectively and objectively evaluate proposals a scoring procedure shall be

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developed and documented for the record. The scoring procedure should assign, as appropriate, the relative weights of the selected primary proposal evaluation factors (criteria) and any sub-factors which may cover; e.g., the general quality and responsiveness of proposals, technical approach, and adequacy of organization, personnel, and facilities to perform the proposed work.

- B. In order to keep the scoring guidelines simple, 100 points should be distributed among the primary factors and sub-factors. The factors and sub-factors are to be entered for use of the CSC members in recording the scores awarded each consultant during the evaluation process. Likewise, the Chairman of the committee will have assigned weight points to each sub-factor on the basis of its relative importance. The evaluation should judge each consultant in relation to each sub-factor listed on the score sheet and assign a rating or score for each sub-factor. The scores are expressed from 0 to 10 points, the higher the numerical rating the better the score.
- C. Following completion of the scoring for each of the several sub-factors set forth on the sheet, the results are totaled to determine the preliminary scores for the primary factor of the proposal under consideration.
- D. Upon completion of the initial scoring by all members of the Consultant Selection Committee independently for each proposal, the scores of each committee member should be discussed and opportunity given to revise scores based on the discussion. The final scores shall be recorded on the official summary score sheet and will serve as a basis for determining which proposals are technically acceptable. Finally, a percentage score for the proposal is to be calculated. The committee will need to establish a breaking point to separate the acceptable proposals from the unacceptable. After following the above process, to include interviews with any or all consultants, if desired, a list with the consultants ranked as first, second, third, etc., will be made for recommendation to the State Aid Engineer for contract negotiations. Negotiations will proceed in this order in the event of unsuccessful negotiations with the top rated firm.
- E. The Chairman of the Consultant Selection Committee will submit all materials received from the consultants selected, along with the recommendation of the committee, to the State Aid Engineer for his review and consideration. All acceptable documentation of the proposal, evaluation and selection of the consultant shall be retained and records shall be maintained.

2.1.3.2. Short Selection Process. The short selection process may be used when authorized by the

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State Aid Engineer to select consultants when the total cost of engineering services is not expected to exceed \$100,000.00.

2.1.3.2.1. Authorization of Short Selection Process. The Board of Supervisors advises the State Aid Engineer of its intent to select a consultant and requests permission to utilize the short selection process. The State Aid Engineer authorizes the Board to act as the selection committee using the short selection process.

2.1.3.2.2. Selection by the Board of Supervisors. The Board will perform the following functions in selecting a consultant.

- (1) Publish notice of its intent to select a consultant in a local newspaper in accordance with state law.
- (2) Review current data files on eligible firms responding to the notice.
- (3) Evaluate the firms in accordance with the following criteria:
 - A. Professional qualifications necessary for satisfactory performance of the required services.
 - B. Specialized experience and technical competence in the type work required.
 - C. Capacity to accomplish the work in the required time.
 - D. Past performance on contracts with MDOT and/or State Aid in terms of cost control, quality of work and compliance with schedules.
 - E. Location in the general geographical area of the project.
 - F. Hold discussions with at least three (3) of the most highly qualified firms.
 - G. Conduct negotiations beginning with the most preferred firm.
 - H. Submit a written report to the State Aid Engineer certifying that above procedures were followed and requesting approval of the Board's selection.

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(4) Contract development. The contract shall be developed using the standard State Aid format.

2.1.4. Contract Negotiations. When the State Aid Engineer approves the recommendation of the Consultant Selection Committee, the following procedure shall be followed:

(1) The State Aid Engineer shall notify the consultant of their selection for negotiation of a contract. The consultant will be instructed to submit, to State Aid, a cost proposal including:

A. A breakdown of their estimate for performing the services to include:

- (i) Materials costs.
- (ii) Direct salary costs.
- (iii) Any other direct costs.
- (iv) Overhead costs.
- (v) Indirect costs.
- (vi) Profit.

B. On those proposals where Cost Plus Fixed Fee contracts are being considered, the consultant will submit the following:

- (i) Actual overhead and payroll additive rates experienced by the firm during the last fiscal year.
- (ii) A listing, by classification, of each employee's (or prospective employee's) salary who might be assigned to the project, and the anticipated merit increases and/or promotions over the next two years.
- (iii) Fixed fee amount.

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C. A bar chart or some other method to indicate the time frame estimated for each phase of the work by weeks subsequent to receiving a Notice to Proceed from State Aid and the total number of weeks to complete the project subsequent to receiving the Notice to Proceed from State Aid during the contract negotiation phase.

D. Their estimate of the construction costs.

(2) Those consultants that were not selected will be notified by a letter from the State Aid Engineer at the same time the selected consultant is notified.

(3) Upon receipt of the requested information from the selected consultant, the State Aid Engineer shall then request the MDOT's Auditor to prepare a prenegotiation audit to provide the necessary data to assure that the consultant has an acceptable accounting system, adequate and proper justification of the various rates charged to perform work and is aware of the FHWA's cost eligibility and documentation requirements. The Auditor's report will include appropriate statements of the consultant's financial capabilities.

A. Prenegotiation audits and the resultant audit opinions are required for all contracts expected to exceed \$250,000.00 and for contracts of less than \$250,000.00 where:

(i) There is insufficient knowledge of the consultant's accounting system.

(ii) There is previous unfavorable experience regarding the reliability of the consultant's accounting system, or

(iii) The contract involves procurement of new equipment or supplies for which cost experience is lacking.

B. The use of an independent audit, an audit performed by another State/Federal agency or an audit performed by another local governmental agency is acceptable if the information is current and of sufficient detail.

C. Prenegotiation audits may be waived when sufficient audited consultant data is available to permit reasonable comparisons with the cost proposal.

(4) When the Auditor's report is received by the State Aid Engineer, he will prepare a preliminary Contract for the services to be rendered.

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- (5) The State Aid Engineer will furnish a copy of the preliminary Contract to and arrange with the selected consultant a meeting in order to discuss the terms and conditions of a contract. The following matters, but not limited to, will be discussed with the consultant:
- A. The scope of services to be provided by the consultant.
 - B. The preliminary Contract.
 - C. Time period covered.
 - D. Changes in work.
 - E. Disputes.
 - F. Obligations of contracting agency.
 - G. Ownership of documents.
 - H. Inspection of work.
 - I. Equipment and instrumentation, if any.
 - J. Civil rights.
 - K. Documentation, if appropriate.
 - L. Patent rights, if appropriate.
 - M. Copyrights, if appropriate.
 - N. Subcontracts.
 - O. Data, information, etc., to be furnished by the State, if any.
 - P. Disadvantaged Business Enterprises.
 - Q. Maintenance of accounting records.
 - R. Method of payment.

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S. Compliance with all Federal requirements, i.e. environmental statements, Right of Way acquisition, etc.

T. Any other appropriate matters.

(6) The negotiator (appointed by the State Aid Engineer from the State Aid Staff) shall use all resources available to conduct effective negotiations, including but not limited to:

A. The refined scope of work.

B. The evaluation factors and their relative importance.

C. The cost estimate as required in Subsection 2.1.4 (1) of this S.O.P.

D. The audit opinion issued as a result of the prenegotiation audit.

(7) The negotiator shall separately negotiate the dollar amounts for cost and a fixed fee except for services normally negotiated on a per unit (including costs and fees) cost.

(8) If a mutual agreement is reached, the consultant will submit a new proposal incorporating any changes agreed on, to State Aid. If a mutual agreement cannot be reached, a new consultant, being the next on the ranked list of consultants, will be selected for contract negotiations.

(9) State Aid shall maintain records of negotiations to document negotiation activities and set forth the resources considered by the negotiator.

2.1.5. Execution of Contracts. The following procedure shall be followed in order to execute the contract:

(1) Upon receipt of the cost proposal submitted by the selected consultant as required by Subsection 2.1.4 of this S.O.P., the State Aid Engineer shall prepare the Contract and request a review from State Aid's Legal Counsel.

(2) When the Contract is returned from State Aid's Legal Counsel, corrections shall be made as required.

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(3) After approval by the State Aid Engineer, the proposed contract including the agreed upon cost figures shall be submitted to the FHWA, when required, for approval prior to the issuance of the notice to proceed.

(4) Upon approval by the FHWA, when required, the contract shall be executed.

2.2. Noncompetitive Negotiation. Noncompetitive negotiation may be used to obtain engineering and design related services when the award of a contract is not feasible under small purchase or competitive negotiation procedures. Justification shall be submitted and approval received from the FHWA, when required, before using this form of contracting when Federal-Aid highway funds are used in the contract.

2.2.1. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- (1) The service is available only from one source, or
- (2) There is an emergency which will not permit the time necessary to conduct competitive negotiations, or
- (3) After solicitation of a number of sources, competition is determined inadequate.

2.2.2. The following procedures shall be complied with in using noncompetitive negotiations.

- (1) The following process will be utilized to determine when noncompetitive negotiation is to be used:
 - A. Determine if there is only one source available to provide the required service.
 - B. Determine if there is an emergency which will not permit the time necessary to conduct competitive negotiations.
 - C. Review the sources responding to solicitation and determine if competition is inadequate.
- (2) Develop an adequate scope of work, evaluation factors and cost estimate as required by Subsection 2.1.1 of this S.O.P.,
- (3) Conduct negotiations as required by Subsection 2.1.4 of this S.O.P., and

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(4) Execute the Contract as per Subsection 2.1.5 of this S.O.P.

3. COMPENSATION.

3.1. Federal reimbursement shall be limited to the Federal share of the costs allowable under the cost principles in 48 CFR 31 (Federal Acquisition Regulations). Any references included in 48 CFR 31 to other parts of 48 CFR do not apply to these contracts.

3.2. Applicable cost principles shall be referenced in each contractual document.

3.3. Methods of Payment.

(1) The method of payment to compensate the consultant for all work shall be set forth in the advertisement, the original contract and in any contract modifications thereto. It may be a single method for all work or may involve different methods for different elements of work. The methods of payment which shall be used are :

- A. Lump sum,
- B. Cost plus fixed fee,
- C. Cost per unit of work or
- D. Specific rates of compensation.

(2) Compensation based on cost plus a percentage of cost or percentage of construction shall not be used.

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

(4) The lump sum method shall not be used to compensate a consultant for construction engineering and inspection services except when the agency has established the extent, scope, complexity, character and duration of the work to be required to a degree that fair and reasonable compensation including a fixed fee can be determined.

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3.4. Fixed Fees.

- (1) The determination of the amount of fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The establishment of the fixed fee shall be project specific.
- (2) Fixed fees normally range from 6 to 15 percent of the total direct and indirect cost. A fixed fee over 15 percent may be justified when exceptional circumstances exist.

4. CONTRACT MODIFICATIONS.

- 4.1. Contract modifications are required for any modification in the terms of the original contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.
- 4.2. A contract modification shall clearly outline the changes made and determine a method of compensation. FHWA approval of contract modifications shall be obtained prior to beginning the work except as discussed in 4.4 of this S.O.P.
- 4.3. Overruns in the costs of the work shall not warrant an increase in the fixed fee portion of a cost plus fixed fee contract. Significant changes to the Scope of Work may require adjustment of the fixed fee portion in a cost plus fixed fee contract or in a lump sum contract.
- 4.4. In unusual circumstances, the consultant may be authorized to proceed with work prior to agreement on the amount of compensation and execution of the contract modification, provided the FHWA has previously approved the work and has concurred that additional compensation is warranted.

5. MONITORING THE CONTRACT WORK.

- 5.1. The Assistant State Aid Engineer assigned as Chairman of the Consultant Selection Committee will be assigned as Project Director for the Contract. A State Aid District Engineer whose functions are most closely related to the services being performed under the contract will be assigned as Assistant Project Director and will be responsible for ensuring that the work being pursued is complete, accurate and consistent with the terms, conditions, and specifications of the contract. The State Aid District Engineer's responsibilities shall include:
 - (1) Scheduling and attending progress meetings with the consultant and being involved in decisions leading to change orders or supplemental agreements,
 - (2) Being familiar with the qualifications and responsibilities of the consultant's staff,

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- (3) Visiting the project and/or consultant's offices on a frequency that is commensurate with the magnitude, complexity and type of work. This includes being aware of the day-to-day operations for Construction Engineering Service contracts, and
- (4) Assuring that costs billed are consistent with the acceptability and progress of the consultant's work.
- 5.2. A final performance evaluation report, except for contracts awarded under \$100,000 shall be prepared by the State Aid District Engineer and shall be submitted to the State Aid Engineer for his review and submission to the MDOT's contracting office. The report should include, but not be limited to, an evaluation of such items as timely completion of work, conformance with contract and the quality of work. A copy of the report shall be sent to the consultant for its review and/or comment and any written comments submitted to State Aid shall be attached to the final report.
- 5.3. A clause shall be included in engineering contracts requiring the consultant to perform such additional work as may be necessary to correct errors in the work required under the contract without undue delays and without additional cost to the owner. However, in general, a consultant should not be held responsible for additional costs in subsequent related construction resulting from errors or omissions which are not a result of gross negligence or carelessness.