

Iowa DOT Policies and Procedures

Title Negotiated Contracts for Architectural, Engineering, and Related Professional and Technical Services		Policy No. 300.12
Responsible Office Office of Design		Related Policies and Procedures 140.01, 300.02, 300.04, 300.18
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Authority: Director of Transportation.

Contents: This policy applies to the negotiated procurement of architectural, landscape architectural, engineering and related professional and technical services; i.e., the type of work for which prequalification is required under Policy No. 300.04. A table of contents follows:

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Affected Offices: All

Who to Contact for Policy Questions: Consultant coordinator in the Office of Design, Telephone: 515-239-1729.

Definitions:

Audit – A formal examination, in accordance with professional standards, of a consultant’s accounting systems, incurred cost records, and other cost presentations to test the reasonableness, allowability, and allocability of costs in accordance with State and Federal cost principles.

Consultant – An individual or a firm providing outside professional, architectural, and engineering design or inspection related technical services in support of transportation infrastructure projects as a party to a contract.

Consultant contract - A written procurement contract between the contracting agency and consultant for professional or technical services.

Consultant coordinator - The person responsible for coordinating work with consultants.

Consultant steering committee - A committee used in the complete selection process that assigns final ranking to consultants selected by a selection committee with which to start contract negotiations.

Contract – See Consultant Contract

Disadvantaged business enterprise (DBE) - A small business that is both owned and controlled by socially and economically disadvantaged individuals. [See Policy No. 300.18]

Extra Work – Work that is in addition to the approved scope of work in the contract, but is similar to the type of services and work included within the scope of services of the original solicitation from which a qualifications-based selection was made.

Firm - Any bona fide contracting entity including individuals and educational institutions. Except for educational institutions, the term does not include government agencies or political subdivisions. [See 761 IAC 20.2(307)]

Independent Estimate – Detailed estimate with an appropriate breakdown of the work or labor hours, types of classifications of labor required, other direct costs, and consultant's fixed fee for defined scope of work. The independent estimate shall serve as the basis for negotiation for contracts.

Negotiated work - For the purpose of precontract reviews and final audits performed by the External Audits Section of the Office of Finance, "negotiated work" performed under a contract is work performed by others that is not competitively bid. This includes lump sum contracts.

PoDI– Projects of Division Interest with oversight for consultant contracts as determined by the FHWA.

Professional Services – A licensed, registered, or certified architectural, surveying or engineering firm or individual providing transportation infrastructure related services.

Requesting Office – Office requesting services of a Consultant.

RFP - Request for proposal.

Scope of Work – All services, work activities, and all actions required of the consultant by the obligations of the contract.

Selection Committee - A committee that ranks consultants with which to initiate negotiations.
Small Contract – Consultant contracts with totals not exceeding \$150,000.

Subconsultant - An individual or a firm acting as subcontractor on a consultant contract.

Targeted Small Business (TSB) - A small business that is 51 percent or more owned, operated, and actively managed by one or more women, minority persons, or persons with a disability.
[See Iowa Code section 15.102]

References

Iowa Code sections 73.15 to 73.21 - *Iowa Targeted Small Business Procurement Act*

DOT Rule 761 IAC 20.8(307) - Negotiation--architectural, landscape architectural, engineering, and related professional and technical services

Preaudit Procedure No. 240.102 (Dept. of Administrative Services) - *Services Contracting*

Policy No. 300.02 - *Approval of Items of Departmental Business (Staff Actions)*

Policy No. 300.04 - *Prequalification of Architectural, Engineering, and Related Professional and Technical Firms*

Policy No. 300.18 - *Disadvantaged Business Enterprise Participation*

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

Forms: None.

Policy and Procedure:

I. Policy

It is the policy of the Department to contract for professional services when one or both of the following conditions exist: (1) the inability to complete the required work within the desired time frame with available resources; (2) the work requires specialized experience or expertise that is not available within the Department.

II. Summary of Responsibilities

- A. The requesting office shall:
1. Prepare a request for outside services. (See Section III.A.)
 2. Appoint the selection committee team leader for the complete and small contract selection processes. (See Sections IV.B.1. and IV.C.1.)
 3. Prepare the RFP. (See Section IV.B.2)
 4. Review scope and fee and provide comments to the consultant coordinator. (See Section V.)

5. Provide an evaluation of the contract upon its completion. (See Section VII.)
 6. Assist the consultant coordinator in preparing independent estimate(s). (See Section V.A.)
- B. The office director of the requesting office shall:
1. Serve as a member of the consultant steering committee. (See Section IV.B.5.)
 2. For the small contract selection process, review the consultant selection committee's recommendation and determine whether negotiations may begin. (See Section IV.C.3.)
- C. The consultant coordinator shall:
1. Upon request, assist the requesting office in preparing a request for outside services. (See Section III.A.)
 2. Appoint selection committee members for the complete and small contract selection processes. (See Section IV.B.1. and IV.C.1.)
 3. Upon request, assist the requesting office in preparing the RFP. (See Section IV.B.2.)
 4. Advertise the RFP. (See Section IV.B.3.)
 5. Notify selected consultant(s). (See Sections IV.B.9, IV.C.4. and, IV.D.2.)
 6. Negotiate and prepare a contract following completion of the selection process, obtain all necessary internal and external reviews and approvals, and distribute the executed contract (See Section V.)
 7. Administer the contract. (See Section VI.)
 8. Assist in preparing an evaluation of the contract upon its completion. (See Section VII.)
 9. Maintain a contract file documenting communications, actions taken and decisions made during all phases of the contracting process.
 10. Prepare independent estimate(s) with input from the Requesting Offices. (See Section V.A.)
 11. Coordinate prequalification of architectural, landscape architectural, engineering, and related professional and technical firms under Policy No. 300.04.
 12. Coordinate with the FHWA for projects which FHWA have determined to be Projects of Division Interest (PoDI) related to consultant documentation.
 13. Coordinate the selection process and serve as a nonvoting member of the selection committee. Ensure the selection committee follows appropriate procedures and provide the committee with the information it needs to perform its duties. (See Section IV.)
- D. The division director of the administering office shall:
1. Review and approve or disapprove the request for outside services. For the Highway Division, this function is delegated to the Project Delivery Bureau Director. (See Section III.B.)
 2. Appoint the team leader for the consultant steering committee. (See Section IV.B.5.)
 3. Review the consultant steering committee's recommendation and determine whether negotiations may begin. (See Section IV.B.8.)
 4. Review the justification and selected consultant for sole source and emergency selections and determine whether negotiations may begin. (See Section IV.D.1.)

- E. (Highway Division) The Project Delivery Bureau Director shall:
 - 1. Review and approve or disapprove requests for outside services for the Highway Division. (See Section III.B.)
 - 2. Project Delivery Bureau Director: Serve as team leader for the consultant steering committee. (See Section IV.B.5.)
- F. The External Audits Section of the Office of Finance shall provide precontract reviews and final audits. (See Sections V.C. and VI.D.)
- G. General Counsel shall assist in developing contract language when requested and shall review proposed contracts for form and legality of content. (See Sections V.E. and V.F.)
- H. The selection committee shall:
 - 1. Familiarize themselves with the RFP.
 - 2. Provide comments on RFP.
 - 3. Inform team leader and the consultant coordinator of any conflict of interest concerns. The consultant coordinator may choose to excuse the member and appoint an alternate.
 - 4. (Team leader): Answer questions from consultants regarding the RFP. (See Section IV.B.3.)
 - 5. Review proposals and rank the consultants in the complete selection process. (See Section IV.B.4.)
 - 6. Review consultants and select a consultant in the small contract selection process. (See Section IV.C.2.)
- I. The consultant steering committee, under the complete selection process, shall review results of the selection committee and assign final ranking to the consultants in order of preference. (See Section IV.B.6.)

III. Request for Outside Services

- A. Request. When the use of outside services is considered necessary, the requesting office shall prepare a request for outside services and submit the request to the respective division director (or for the Highway Division, to the Project Delivery Bureau Director) for approval. If the request for outside services requires funding from the “Statewide Consultant Services” line item from the approved Iowa Transportation Improvement Program (also known as the Five Year Program), approval from the Project Delivery Bureau Director shall also be requested. The request shall contain the following information:
 - 1. A statement of necessity supporting the determination to use outside services.
 - 2. A description of the project, problem to be solved, services required or proposed work including its purpose and objectives.
 - 3. The time frame within which the contracted services or work must be performed.
 - 4. An estimate of the total contract amount.

5. The source of funds for the contract. Typical sources of funding include: Statewide Consultant Services line item in the Five Year Program, project-specific funding in the Five Year Program, office budget, division budget, federal funds or other external sources.
 6. The DBE/TSB goal. In coordination with the Office of Employee Services, the consultant coordinator shall: a) establish a DBE involvement goal if the contract will be funded in whole or in part by federal-aid transportation funds (see Policy No. 300.18); or b) consider establishing an appropriate TSB involvement goal if the contract will not use federal-aid funds.
 7. The method of selection recommended: complete selection (see Section IV.B.), small contract selection (see Section IV.C.), or sole source or emergency selection (see Section IV.D.). Justification must be included for sole source or emergency selection.
- B. Approval of Request. The division director (or for the Highway Division, the Project Delivery Bureau Director) shall review and approve or disapprove the request for outside services, including the DBE/TSB involvement goal and the method of selection to be used, and notify the requesting office and the consultant coordinator.

IV. Selection Processes

A. Types of Selection Processes

1. Complete Selection. This method of selection should normally be used unless one of the other selection methods is justified.
2. Small Contract Selection. The small contract process is an abbreviated selection process. It may be used when the total costs of the consultant contract will not exceed \$150,000. The selection committee will identify at least 3 consultants, rank them, and initiate negotiations. Unlike the complete selection process, the consultant steering committee is not used.

NOTE: When using the small contract selection for federal-aid funded contract, if the total contract costs exceed \$150,000 by modification or amendment the change is non-participating and FHWA may withdraw all federal-aid from the contract.

3. Sole Source Selection. The Department may select a single, prequalified consultant with which to negotiate when one of the following conditions exists:
 - Only a single consultant is determined qualified or eligible to perform the contemplated services
 - The services involve work that is of such a specialized character or related to a specific geographical location that only a single consultant, by virtue of experience, expertise, proximity to or familiarity with the project or ownership of intellectual property rights, could most satisfactorily complete the work.

NOTE: Concurrence by the FHWA must be obtained prior to utilizing sole source selection for contracts that use federal-aid highway funds.

4. Emergency Selection. The Department may select a single, consultant with which to negotiate when there is an emergency that will not permit the time necessary to use normal selection procedures. An emergency includes, but is not limited to, one of the following:
 - A condition that threatens the public health, welfare or safety.
 - A need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement.
 - A situation in which the Department must act to preserve critical services or programs

NOTE: Concurrence by the FHWA must be obtained prior to utilizing emergency selection for contracts that use federal-aid highway funds.

B. Complete Selection

1. Appointment of Selection Committee. Once the request for outside services is approved, the consultant coordinator shall appoint a selection committee. Normally, the committee shall consist of three or five voting members, with no more than one member from the requesting office.
 - a. The committee shall include one individual from the requesting office who has technical expertise in the work to be contracted as the team leader. If more than one office will be using the contracted services, each should be represented.
 - b. The committee shall include one individual from district office staff or from a division other than the division requesting the selection. This person should be familiar with the scope of work being requested and be familiar with procedures for selecting consultants.
 - c. The committee may include one or more individuals from other offices within the division. These individuals should be familiar with the scope of work being requested and be familiar with procedures for selecting consultants.
 - d. The committee shall include the consultant contract coordinator to serve as a nonvoting member.
2. Request for Proposal (RFP). The requesting office is responsible for preparing an RFP. An RFP should include:
 - a. A clear, accurate and detailed description of the scope of the work.
 - b. The anticipated starting date of the contract.
 - c. The estimated duration of the contract or proposed completion date of the contract.
 - d. A request for the name and office address of the project manager who will direct the work of the consultant and the names of key staff who will be working on the contract.
 - e. A request for the location of the consultant's office where the majority of the work will be performed.
 - f. A request for a list of subconsultants to be used and the work they will perform.
 - g. A statement of the proposed DBE or TSB goal for the work to be contracted, including the address of the website containing the names of prequalified, certified DBE/TSB consulting firms that could be involved as subconsultants. If a DBE or TSB goal is established, the RFP should request the consultant to provide the percentage of the contract it plans to subcontract to DBEs or TSBs.

- h. A statement that costs should not be submitted as a part of the consultant's proposal, and if submitted, will not be considered.
- i. The criteria that will be used to evaluate consultants submitting proposals and the weighted value assigned to each evaluation criteria shall be tailored to the needed services. Typical evaluation criteria are listed below. The list is not exhaustive, nor is each item mandatory.
 - Staffing expertise consistent with special project needs.
 - Experience with similar types of work.
 - Performance evaluations by the Department and other government agencies, and references included in the consultant's proposal.
 - Proximity to the project area when a need for proximity can be established. Any consultant outside the project area that specifies that it will place a project office within the project area meets this criterion. Proximity may be used as a criterion only if it allows for three or more consultants to be considered and other evaluation criteria are also met.*
 - Current workload and commitment of key staff personnel as they pertain to the ability of the consultant to perform the services within the required time.
 - Specific qualifications of key staff that will be forming the consultant's project team.
 - If applicable, willingness and ability to meet or exceed the established DBE/TSB involvement goal.*
 - Resources the consultant has available and proposes to use on the project, including the consultant's use of equipment and automated technology and compatibility with equipment and technology used by the Department.
 - Identification of proposed subconsultants and the work they will perform.

* If used, these criteria shall not exceed 10% of the total criteria.

- j. An indication of whether oral interviews will be conducted. Normally, oral interviews will be conducted only for very complex and critical projects and should be limited to the top two or three consultants based on the written proposals.
- k. The limit on a proposal's length (if any). A limit of ten pages, double sided, between proposal covers, not including blank dividers, is required unless otherwise specified. Proposals exceeding the specified limits shall not be accepted.
- l. A request for the consultant to disclose any of its work that may be affected by work on the proposed contract, to avoid a potential conflict of interest.
- m. The name of the DOT contact person who will answer technical questions, if other than the team leader.
- n. A statement indicating that technical questions should be submitted in writing, preferably by E-mail.
- o. A statement indicating that contacting individual selection team members (other than the team leader) is considered inappropriate.
- p. Provide an estimated schedule for the procurement process and establish deadline (date and time) for submission of proposals, the number of copies of the proposal to be submitted, and the person to whom proposals should be submitted. The deadline for the proposals should provide sufficient time for interested consultants to receive notice, prepare and submit a proposal, which except in unusual

circumstances shall be not less than 14 calendar days from the date of issuance of the RFP.

- q. Specify the contract type and method(s) of payment anticipated.
- r. Identify any unique contract requirements.
- s. Statements that all submitted proposals are subject to Iowa's public record laws.

Example: The Iowa DOT will treat all information submitted by a consultant as open records following the conclusion of the selection process unless the consultant requests that information be treated as confidential at the time of submitting the proposal and provides adequate legal justification for the request. Open records are public records that are open for public examination and copying. The Iowa DOT's release of records is governed by Iowa Code Chapter 22 and 761 IAC Chapter 4. Consultants are encouraged to familiarize themselves with these laws before submitting a proposal.

3. Advertisement of RFP. When the RFP is issued, the consultant coordinator shall notify all consultants that an RFP has been issued and post the RFP on the Department's website for public viewing.
 - a. Questions on the RFP will be answered in writing by the selection committee team leader.
 - b. The team leader will copy all responses to the consultant contract coordinator for posting with the RFP on the Department's website.
4. Review of Proposals. The selection committee shall review the submitted proposals and rank the consultants. Ranking of the consultants shall be done by:
 - a. Evaluating the submitted proposals based on the evaluation criteria.
 - b. Scoring each proposal on a matrix.
 - c. Giving full consideration to the use of prequalified, certified DBE/TSBs as prime consultants and ensuring that a good faith effort is made in meeting a DBE/TSB involvement goal.
 - d. Interviewing consultants (if needed to rank the consultants).
 - e. Documenting the committee's decision.
 - f. Prepare a scoring sheet with consultants ranked in order of preference for review by the Consultant Steering Committee.
5. Appointment of Consultant Steering Committee. The team leader for this committee shall be designated by the division director for the requesting office. For the Highway Division, the team leader shall be the Director of the Project Delivery Bureau. Other members of this committee include the office director from the requesting office, the consultant coordinator and, for a specific project within a district, the district engineer. Additional members may be designated by the team leader if deemed appropriate.
6. Consultant Steering Committee Meeting. Upon being provided the names of the ranked consultants from the selection committee, the consultant coordinator shall forward the names to the consultant steering committee. The consultant steering committee is responsible for reviewing the consultants ranked by the selection committee; determine the final ranked list, and documenting its decision. In carrying

out these duties, the steering committee shall consider not only the selection committee's scoring but other factors such as:

- a. A consultant's ability to accomplish the work in the required time.
- b. The volume of work a consultant has with the Department, both existing and potential.
- c. The Department's goal of having an expanse of experienced consultants capable of providing quality services to the Department.
- d. Other items unique to the particular contract.

The number of consultants selected shall include at least two alternate consultants. The committee shall document its reasoning when the number of selected consultants is less than the minimum requirement.

7. Concurrence by the FHWA. Approval from FHWA must be obtained for contracts that use federal-aid highway funds if the number of consultants considered is less than three.
8. Approval to Initiate Negotiations. Upon being provided the ranked list of selected consultants by the consultant steering committee, the consultant coordinator shall provide the ranked list to the division director of the requesting office. The division director shall review the ranked list of selected consultants and advise the consultant contract coordinator if negotiations may begin.
9. Notification of Selection. After approval to initiate negotiations is received, the consultant coordinator shall inform the requesting office that negotiations may begin with the consultants selected, in order of preference. The consultant coordinator shall also notify those consultants submitting proposals of the names of the consultants selected and the order of negotiations. Along with the notification, the consultant coordinator shall provide each consultant other than the selected consultants a matrix showing the high, low and average scores for each item evaluated and that consultant's score for each item.

C. Small Contract Selection

1. Appointment of Selection Committee. Once the request for outside services is approved, the consultant coordinator shall appoint a selection committee similar to process described in Section IV.B.1.
2. Selection Process. The selection committee shall:
Consider a minimum of three consultants to ensure fair selection practices. The committee shall document the names of the consultants considered. The committee shall document its reasoning when less than three consultants are considered.

NOTE: Concurrence by the FHWA must be obtained for contracts that use federal-aid highway funds if the number of consultants considered is less than the minimum requirement.

- a. If necessary, interview consultants.

- b. Select a well-qualified consultant with which to initiate negotiations and provide the consultant's name and an overview of the contract to the consultant contract coordinator.
- c. Document the committee's decision.

Unlike the complete selection process, the committee need not solicit proposals or use an evaluation matrix.

3. Approval to Initiate Negotiations. Once the committee selects a consultant, the office director shall determine whether negotiations may begin, and so advise the consultant coordinator.
4. Notification of Selection. After approval to initiate negotiations is received, the consultant coordinator shall inform the top consultant selected.

D. Sole Source or Emergency Selection

1. Selection of Consultant. Once the request for outside services is approved, the justification for use of sole source or emergency selection and the basis on which a particular consultant is selected shall be fully documented by the requesting office and forwarded to the division director for approval. The signed approval and supporting documentation shall be provided to the consultant coordinator.

NOTE: If federal-aid highway funds will be used in the sole source or emergency contract, the division director shall submit the justification for the contract to the Federal Highway Administration. FHWA approval must be received before negotiations may begin.

2. Notification of Selection. After approval to initiate negotiations is received, the consultant coordinator shall notify the consultant selected.

E. Selection Dispute Resolution.

1. In the event of a dispute of improper selection, the consultant coordinator shall:
 - a. Request the complainant to provide information about the dispute in writing with supporting evidence of the claim within a period of 15 calendar days from the date the selection is made.
 - b. Notify the division director of the requesting office and copy the Project Delivery Bureau Director, the office director of the requesting office, and for PODI, the FHWA of the dispute.
 - c. Notify the selected consultant(s) of the dispute and inform them in writing that the negotiations may continue at no risk or liability to the DOT.
 - d. Prepare a memorandum summarizing the dispute and the DOT response to the division director of the requesting office and copy the Project Delivery Bureau Director, the office director of the requesting office, the appropriate District Engineer, if applicable, and for PODI, the FHWA.

- e. Prepare and send the DOT response to the complainant.
2. The consultant coordinator shall, unless directed by the Project Delivery Bureau Director, proceed with the negotiations with the selected consultant(s) pending resolution of the dispute or claim.

V. Negotiation and Development of Contract

A. **Introduction.** After the selection process is complete, the consultant coordinator shall initiate negotiations. Prior to the start of negotiations, the consultant coordinator shall prepare an independent estimate with input from the requesting office(s). Negotiations shall begin with the consultant given first preference. The consultant coordinator shall provide the consultant with necessary information and request the consultant to submit its proposal with supporting cost and pricing data. The consultant coordinator shall use the services of technical, legal, auditing, and other specialists in the Department to the extent deemed appropriate.

NOTE: For PODI, a copy of the independent estimate and documentation of the selection process shall be submitted to the FHWA prior to initiating negotiations with the consultant.

Negotiations are intended to lead to the development of a contract mutually satisfactory to the Department and the selected consultant. The goals of the negotiation process are to:

1. Make certain that the consultant has a clear understanding of the scope of services.
2. Determine that the consultant will make available the necessary personnel and facilities to accomplish the scope of services within the required time.
3. Ensure that the DBE/TSB involvement is consistent with the goal.
4. Reach agreement with the consultant on the provisions of the contract, including equitable compensation for the required services and the most suitable and appropriate method of payment.
5. Determine, where applicable, whether the consultant can provide a design that will permit construction within established project costs.
6. Verify that the project manager and the project team are the same as those in the proposal submitted to the selection committee.

NOTE: Authorization to obligate federal funds for a consultant contract must be obtained prior to executing a consultant agreement. In addition, federal funds must be programmed in the Statewide Transportation Improvement Program (STIP), as approved by FHWA. When using federal-aid, the contract shall comply with 23 CFR 172.9(c).

B. **Contract Costs.** The consultant coordinator shall negotiate a fair and reasonable fee and method of payment under the contract based on a comparison of the independent estimate and the cost proposal of the consultant. [See **Appendix A, Payment Methods**]

1. The consultant must submit a detailed cost proposal, including a detailed cost proposal for each proposed subconsultant contract.
2. Significant differences shall be evaluated and resolved to the satisfaction of both parties.

C. **Precontract Review.** A precontract review by the External Audits Section of the Office of Finance is required if the proposed contract will exceed \$150,000; regardless of the type of payment method to be used. A precontract review may be requested on contracts that are \$150,000 or less when:

- Knowledge of the consultant's accounting system is insufficient,
- Experience regarding the reliability of the consultant's accounting system is unfavorable,
- Cost experience for the specific procurement is lacking, or
- The consultant coordinator feels uncomfortable with any item in the cost estimate.

External Audits may waive the need to perform the precontract review based on its knowledge of the consultant and past audit history of the consultant.

A precontract review typically includes:

- An analysis of the consultant's cost proposal and financial records for the method of accounting in place to assure that the consultant has the ability to adequately segregate and accumulate reasonable and allowable costs to be charged against the contract.
- An analysis of the consultant's proposed direct costing rates and indirect overhead factors to assure their propriety and allowability.

1. To obtain a precontract review, the consultant coordinator shall submit to External Audits a written request for precontract review along with a copy of the proposed contract and consultant's cost proposal. The consultant should submit its most current fiscal year overhead rate information and the most current payroll rates on the same basis as labor is being estimated.
2. External Audits shall complete a precontract review report and forward it to the consultant coordinator and to the FHWA, if PODI or other federal funding agency, if applicable.
3. The consultant coordinator shall include a copy of the precontract review report in the contract file and send it to the consultant if applicable. If the precontract review report recommends a reduction in cost that has not been accepted, the consultant coordinator shall also include in the contract file and send to External Audits a written explanation of the report's effect on the final contract terms.

D. **Suspension and Debarment.** The consultant coordinator shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract.

NOTE: For federal-aid projects, the consultant coordinator shall verify with the U.S. Government's System for Award Management (SAM) at <https://www.sam.gov/portal/SAM/> that the consultant is not excluded.

- E. **Preparation of Contract.** Following successful negotiations, the consultant coordinator shall prepare a final contract. The contract shall clearly define the work or design required, services to be performed, method, time and amount of payment, completion schedules, the established DBE/TSB involvement goal, and other requirements and conditions unique to the particular project. The contract shall also address subconsultant contracts when applicable. [See **Appendix A** for required and suggested contract clauses]
- F. **Legal Review.** The consultant coordinator shall submit the proposed contract to General Counsel for approval of form and legality of content. However, if a standard contract form is used, the form need be submitted for approval only when it is created or revised.
- G. **Staff Action and Other Approvals.** When contract development activities are complete (negotiations, precontract review, legal review, final contract language), the consultant coordinator shall secure the Department and consultant approvals and signatures necessary to place the contract into effect. Federal funding agency approval and signature may also be required.
1. The consultant coordinator shall request a final signed agreement from the consultant. Before the contract is executed, the consultant coordinator shall, if required, prepare a Staff Action requesting approval to enter into the contract (see Policy No. 300.02) and submit it for approval. The Staff Action shall identify the consultant, funding source, and amount of the contract.
 2. The consultant coordinator shall provide a copy of the final contract to the FHWA and request FHWA authorization for PoDI. All costs incurred prior to FHWA authorization will not be reimbursed by the FHWA.
 3. After Staff Action (and FHWA, if applicable) approval is received, the office director of the Office of Design or assignee shall sign the contract on behalf of the Department.
- H. **Contract Distribution.** The consultant coordinator shall distribute copies of the fully executed contract to:
- Requesting office
 - Consultant
 - Office of Finance, Project Accounting and Payables Section (submit to the federal-aid staff within this section if the contract is federally participating)
 - Federal funding agency (if applicable)
 - Upload the executed contract to the DOT electronic records management system.

NOTE: The contract should address when work on the contract may begin. Without prior approval, work should not begin until the contract has been fully executed and distributed.

I. **Unsuccessful Negotiations.**

1. Negotiations shall be conducted initially with the consultant given first preference as a result of the selection process. If a mutually satisfactory contract cannot be negotiated upon receiving a best and final offer in writing, consultant coordinator shall formally terminate the negotiations and notify the consultant in writing.

Termination of negotiations shall be made without prejudice. The consultant coordinator shall then initiate negotiations with the consultant given second preference, and this procedure shall be continued until a mutually satisfactory contract has been negotiated. Once negotiations are terminated, negotiations cannot be reopened with the same consultant.

2. If a satisfactory contract cannot be negotiated with any of the selected consultants, the division director (or for the Highway Division, the Project Delivery Bureau Director) shall either:
 - a. Advise the consultant coordinator and request the selection of one or more consultants with which to continue negotiations, or
 - b. Direct the administering office to redefine the scope of the project or work and submit a new request for outside services. All consultants (including those with which negotiations were previously conducted) shall be considered for selection.

VI. Contract Administration

A. Requesting Office. The requesting office shall:

1. Monitor the consultant's work progress and quality.
2. Maintain non-contract related project documentation in appropriate electronic database systems.

NOTE: For federal-aid contracts, all records will be maintained for a period of 3 years from closure of the federal-aid project under which the contract was authorized with FHWA.

3. Review all consultant invoices for conformity to the contract.

B. Consultant Coordinator. The responsibilities of the consultant coordinator are:

1. **Extra Work Orders/Supplemental Agreements.** The contract, where appropriate, shall specify the process by which extra work orders or supplemental agreements are negotiated.
 - a. In general, a process similar to that used to negotiate contracts should be used, including Staff Action approval. FHWA authorization will be needed for federal-aid contracts.
 - b. Any change in the contract requiring additional work must be authorized in writing by the consultant coordinator prior to the consultant starting the additional work. The written authorization may take the form of a letter as long as the following items are covered and agreed to:
 - A description of the change to be made.
 - An explanation of the reasons for the change in sufficient detail so that another individual can understand them.
 - The basis for the cost of the change.
 - c. The process described above is necessary so that contingency funds may be used only for the original contract items and terms instead of being used for extra work.

- d. Additional work added to the contract must be of the type of services and work included within the scope of services of the original solicitation from which a qualifications-based selection was made.

If any additional engineering and design related services outside of the type of the work established in the original request for proposal are required:

- The services can be procured under a new solicitation
- The work can be performed by the department
- The work can be done under a different, existing contract under which the services would be within the scope of work.

2. **Payments.** The contract may provide for progressive billings and payments as phases of the work are completed. The consultant coordinator shall, in coordination with the Project Contact, as identified in the contract, review all consultant invoices for conformity to the contract current billing requirements, prepare and approve payment vouchers, and submit the vouchers, billings and any other supporting documentation required by the contract to the Office of Finance, Project Accounting and Payables Section, for payment. (The documentation shall be routed through the federal-aid staff of Project Accounting and Payables if federal funds are involved.)

An on-line contract must be set up within the Accounts Payable System. Vouchers shall then be initiated from the contract screen.

- C. **Errors and Omissions.** The contract shall specify that the consultant is responsible for damages incurred by the Department due to an error or omission made by the consultant including violation or breach of contract terms and conditions. The consultant coordinator shall be notified upon discovery of an alleged consultant error or omission with the potential to result in damages. Following are the steps in the recovery process:

1. The consultant coordinator shall:
 - a. Assess the preliminary information to determine whether the consultant may have some responsibility for the error, omission or violation or breach of contract terms and conditions.
 - b. If the potential for consultant liability is found, notify the division director of the requesting office and copy the Project Delivery Bureau Director, the office director of the requesting office, and the appropriate district engineer.
 - c. In addition to the above, if the potential for a violation or breach of contract terms and conditions exists, the General Counsel shall also be notified.
 - d. If federal-aid highway funds are involved, notify the FHWA.
2. The consultant coordinator shall notify the consultant in writing of the error, omission or violation or breach of contract terms and conditions as soon as possible after discovery of the problem, and document all communications. When notifying the consultant:
 - a. Allow the consultant to respond to the claim of error or omission.
 - b. Discuss with the consultant any conditions that must be met to reach a resolution that is acceptable to the DOT.
 - c. Inform the consultant that the DOT may take action to correct the issue without consultant assistance if conditions created by the error or omission require an immediate response to avoid additional damages or construction costs.

- d. Inform the consultant that the DOT actions may include but not be limited to terminating the contract, and seeking recourse in the court of law if the violation or breach of contract terms and conditions are considered of a serious nature.
- e. Establish deadlines for the consultant to provide a response and / or a proposed resolution.
- f. Inform the consultant that it needs to track all time spent resolving the issue separately.

At this stage, do not negotiate, reach agreement or sign any document relative to the consultant's responsibility.

- 3. The consultant coordinator shall review the consultant's resolution and confer with the division director (or for the Highway Division, the Project Delivery Bureau Director). If acceptable, the consultant coordinator will notify the consultant of the DOT's acceptance. If not acceptable, the consultant coordinator continues discussions with the consultant until an acceptable resolution is reached.
- 4. Upon implementation of the resolution, the consultant contract coordinator shall review the financial information and:
 - a. Calculate the expected costs based upon a product without errors.
 - b. Determine the consultant's liability by subtracting the expected costs from the actual costs incurred.
- 5. Should there be a need for the consultant to pay for any costs to correct its negligence, the consultant coordinator shall send a letter to the consultant requesting payment.
 - a. The consultant may either send a check for the amount or credit the dollar amount to a subsequent invoice.
 - b. If the amount will be credited to an invoice, the contract maximum should be evaluated and may be lowered accordingly.
 - c. The consultant shall not be allowed to make payment directly to a third party to remedy any claimed negligence because of the difficulty in verifying and recording these payments.
- 6. The consultant coordinator shall evaluate whether any third party, such as the FHWA, local governments, or local or regional planning authorities, originally paid any portion of the recovered costs and, if so, reimburse those parties accordingly.
- 7. If it is later determined that the consultant was not negligent, it shall be compensated accordingly.
- 8. The consultant coordinator shall prepare a memorandum summarizing the negligence and all costs recovered.
 - a. Attached to the memorandum shall be all appropriate information including the letter requesting payment, copies of any payments received, and the consultant's summary of unbilled hours.
 - b. The summary of unbilled hours must list employee names, the number of hours for each employee, the dates worked and the accounting code numbers to which the hours were charged.
 - c. The consultant coordinator shall send this memorandum and the attachments to the External Audits Supervisor in the Office of Finance.
 - d. Failure to provide this documentation could inadvertently result in improper overpayment to the consultant in the final audit and payment process.

9. In cases of violation or breach of contract terms and conditions, the consultant coordinator shall prepare a memorandum summarizing the violation or breach and resulting actions taken by the DOT. The consultant coordinator shall send this memorandum to the division director of the requesting office and copy the Project Delivery Bureau Director, the office director of the requesting office, the appropriate District Engineer, the General Counsel, if applicable, and for PODI, the FHWA.

D. Final Audit and Payment. A final audit by the Office of Finance, External Audits Section, is required for negotiated work performed under the contract. External Audits may waive final audit requirements on certain types of contracts.

1. To obtain a final audit, the consultant coordinator shall submit to External Audits a written request for final contract audit.
2. External Audits shall perform a final audit of the contract, reviewing all invoiced charges to assure that the charges are adequately supported and are eligible for reimbursement. Upon completion of the final audit, External Audits shall prepare an audit certificate and forward it:
 - To the consultant coordinator.
 - If there is an overpayment, to the Office of Finance, Financial Management and Reporting Section.
 - If federally participating, to the Office of Finance, federal-aid staff within the Project Accounting and Payables Section.

NOTE: Waiver of an audit exception that exceeds \$1,000 must be approved by the Audit Committee (see Policy Nos. 140.01 and 300.02). Waiver of a lesser amount may be approved by the requesting office's division director. In such cases, the consultant coordinator should forward a copy of the waiver to External Audits.

3. If there is a balance owing on the contract, the consultant coordinator shall forward to the Office of Finance, Project Accounting and Payables Section, the final payment voucher, the audit certificate, the final bill from the consultant, and any other supporting documentation required by the contract. (The paperwork shall be routed through the federal-aid staff of Project Accounting and Payables if federal funds are involved.)

NOTE: The Office of Finance shall not approve/make a final payment unless there is a final audit certificate or waiver from External Audits.

4. If there is an overpayment, the consultant coordinator shall send a memo to the Office of Finance, Financial Management and Reporting Section, requesting that the consultant be billed.
 - A copy of the memo shall be sent to External Audits and, if applicable, to the federal-aid staff within Project Accounting and Payables.
 - The Office of Finance shall not invoice the consultant until it receives the memo.

E. Contract Dispute Resolution.

1. In the event of a dispute, the consultant coordinator shall:

- a. Request information about the dispute in writing with supporting evidence of the dispute within a period of 30 calendar days from the date the first notification is provided.
 - b. Notify the division director of the requesting office and copy the Project Delivery Bureau Director, the office director of the requesting office, and for PODI, the FHWA of the dispute.
 - c. Prepare a memorandum summarizing the dispute and the DOT response to the division director of the requesting office and copy the Project Delivery Bureau Director, the office director of the requesting office, the appropriate District Engineer, if applicable, and for PODI, the FHWA.
 - d. Prepare and send the DOT response to the complainant.
- F. **Exit Interview.** Upon request from the consultant, the consultant coordinator and the project contact shall participate in an exit interview upon completion of the contract and shall provide feedback as a result of the interview.

VII. Consultant Evaluation

- A. The purpose of a consultant evaluation is to improve two-way communication, working relations, work product and consultant selection. All consultants shall be evaluated annually based on the contracts worked on during the year. Both consultant performance and quality of the final product shall be evaluated. The evaluation shall consider:
1. The quality and adequacy of work performed.
 2. The ability to meet established schedules and budgets.
 3. General administration of the contract, including substantiation of invoicing, payments to subconsultants, and documentation of claims.
 4. Cooperation shown by the consultant in responding to requests for information and in revising procedures and products according to directions.
 5. Coordination exhibited by the consultant in communicating with the Department, subconsultants, agencies and others to accomplish tasks and resolve problems.
 6. Ingenuity displayed in solving unique and unusual design problems encountered during performance of contract objectives.
 7. The ability to obtain an acceptable end product with appropriate Department staff guidance.
- B. The requesting office shall complete the evaluation on standard forms available from the consultant coordinator and return the completed forms to the consultant coordinator. The consultant shall be given an opportunity to review, comment on and sign the evaluation. After completion of the evaluation, the consultant coordinator shall send a copy of the evaluation to the requesting office.

C. The consultant coordinator shall maintain a file of evaluations.

Appendix A
Contract Types, Contract Clauses,
Payment Methods, Award-Fee Plan, and Retention

Contract Types

1. Project-Specific. A project-specific contract provides for all work to be placed under contract with the consultant at the same time, depending on availability of funds.
2. Multi-Phase. A multi-phase contract is similar to project-specific except the work is divided into phases such as survey, design, right-of-way, and construction engineering.
 - Each phase may be negotiated at the beginning, or
 - Initial phases are negotiated and work is authorized. The need for future phases is identified initially, but negotiation for future phases is postponed until later in the contract period.
3. On-Call. An on-call contract covers basic contractual requirements without defining specific projects. On-call contracts are designed to handle a number of projects or specialized services which may be needed during the contract period. The contract may run for a period of several years but shall not exceed 5 years for federal-aid work. The base contract sets up the general scope of services to be provided, contract language, and provisional labor and overhead rates. As specific project needs arise, a work order is issued for that specific need under the base contract's framework. Occasionally, the Department may utilize multiple on-call contracts with several consultants when there is a large volume of similar services to be performed in the same timeframe. The Department will determine which consultant will perform the services based on availability of key staff to perform the work in the required time, qualifications unique to a particular project, proximity to the project area, and the Department's goal of having an expanse of experienced consultants capable of providing quality services.
4. Third Party. A contract wherein the Department recommends approval of, but is not a party to, the contract.

Contract Clauses

The following summarizes required and suggested, but are not limited to, clauses for a consultant contract.

Typically, a consultant contract:

1. Shall clearly define the parties to the contract.
2. Shall clearly state the date to proceed with work, completion schedules for the services to be performed, and the time period covered by the contract, normally no longer than 3 years.
3. Shall include an integration clause stating that the entire agreement between the parties is contained in the contract, and that any representations made prior to signing are void.
4. Shall clearly define the scope of services to be provided.
5. Shall clearly define the specifications for the work.

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6. Shall contain payment terms. These terms address items such as invoicing, progress reports, allowable costs, retainage, auditing, and overpayments. The contract must specify a maximum amount payable under the contract.
7. Shall clearly state whether or not the contract is assignable to another party and whether or not a portion of the work may be subcontracted. All subcontracts should be submitted to the Department for review prior to execution. The contract shall provide that cost underruns associated with the subcontract are not available for use by the prime consultant without Department approval.
8. Shall, as applicable, address the ownership of documents, data, proprietary rights, patent costs, royalties, etc.
9. Shall provide for inspection and acceptance of the consultant's work.
10. Shall, where appropriate, specify the process by which extra work orders or supplemental agreements are negotiated and state that work not clearly required by the contract shall not be undertaken without prior approval of the Department.
11. Shall provide that the Department may terminate or suspend the contract prior to its completion.
12. Shall allow for extension of time due to unavoidable delays caused by an act of God, war, government actions or similar causes beyond reasonable control of the consultant
14. Shall contain an indemnification clause which protects the state from any liability that might result from failure of the consultant to fulfill the terms and duties of the contract.
15. Shall include a non-raiding clause.
16. Shall include appropriate references to governing statutes, administrative rules, federal regulations, etc. and that the laws of the State of Iowa will apply.
17. Shall contain a clause forbidding the use of outside agents.
18. Shall explicitly contain all applicable Equal Employment Opportunity (EEO) provisions if the contract will be funded in whole or in part by federal-aid transportation funds.
19. Shall clearly define the DBE/TSB involvement goal if applicable.
20. Shall require the consultant to retain all records pertaining to the contract for 3 years from the date of final payment for inspection and audit by local, state or federal officials (as applicable) or their authorized representatives.
21. Shall address severability of contract provisions in the event a portion of the contract is found to be invalid or unenforceable.
22. Shall contain a signature block identifying the name and title of each person signing the contract with corresponding space for each person's signature and date of signature.
23. May provide for liquidated damages for late performance or nonperformance of contract obligations.

Payment Methods

Several types of payment methods are available for use in consultant contracts. All payment methods must be based on supportable and reasonable costs within the consultant's accounting system. A reasonable cost is one that does not exceed that which would be incurred by a prudent person in the conduct of a competitive business. External Audits should be consulted during negotiations so that a payment method compatible with, the consultant's accounting practices is used. One of the following methods shall be used.

1. Cost-plus-Fixed-Fee. The consultant is reimbursed for actual documented costs incurred and, in addition, receives a predetermined fixed fee. This method of payment is appropriate when the scope, complexity, character, and duration is indeterminable at the time of negotiations, or where the work is of a nature that the contracting authority does not have experience or knowledge to permit an evaluation of the consultant's proposal on any other basis. This method requires, as a prerequisite to equitable negotiations, that the contracting authority and consultant define as fully and completely as possible and agree upon the scope of services.

By definition, cost-plus-fixed-fee includes payment of:

- a. Direct costs incurred, including:
 - Direct labor.
 - Direct non-salary costs incurred, such as the cost of materials incorporated into the contract work, travel expenses, computer charges, printing costs, expendable supplies, and payments to subconsultants.
- b. Indirect cost: Salary-related expenses and general overhead costs, which are calculated as percentages of direct labor.
- c. Fixed fee: A fixed amount (fixed fee) over and above direct and indirect costs. 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. As a guide, a fixed fee can range from 6 to 15 percent of the total direct and indirect costs. When determining a fixed fee, exclude travel expenses, printing costs, miscellaneous expenses, contingency, and the consultant fee for work done by subcontract.
- d. Contingency: An amount established to provide for reimbursement of unforeseen costs associated with the original contract items. The amount is normally 10% of direct and indirect costs, excluding subconsultant cost. Contingency is not to be used without the prior approval of the contracting office, unless it is for overhead increases.

The cost proposal prepared by the consultant showing estimated direct and indirect costs the consultant expects to incur and the expected fixed fee must be attached to the contract.

2. Cost-plus-Fixed-Fee with Fixed Overhead Rate. This is similar to Cost-plus-Fixed Fee described in "Cost-plus-Fixed-Fee" above, except that the overhead rate is fixed for the duration of the contract. This method of payment is typically used when the contract duration is fixed and is typically less than 12 months.
3. Lump Sum. The consultant performs the services for an agreed amount as full compensation. This method of payment is appropriate only if the contracting authority has established the scope, complexity, and duration of the work required to a degree that just compensation can be determined and evaluated by all parties at the time of negotiations. This method would be most appropriate for use on small and repetitious items of work of no more than 18 months in duration.

The cost proposal prepared by the consultant showing estimated direct and indirect costs the consultant expects to incur and the expected fixed fee must be attached to the contract.

4. Specific Rates of Compensation. The consultant is paid an agreed and supported specific fixed hourly or daily rate for each class of employee directly engaged in the work. This method of payment should be considered only for relatively minor items of work of indeterminable extent over which the contracting authority maintains control of the class of employee to be used and the extent of such use.

When negotiating the contract, the specific rates of compensation should be supported by documentation identifying the direct and indirect costs the consultant expects to incur and the expected fixed fee. Direct non-salary costs may be either set forth as an element of the specific rate or included in the contract as independent cost items.

5. Unit Prices. The consultant is paid on the basis of work performed. A unit of work may be defined as a measurement of work, such as linear feet of borings, number of right-of-way plats, tons of structural steel, or pounds of reinforcing steel. This method is appropriate when the unit cost of the work can be determined in advance with reasonable accuracy, but the extent of the work is indefinite.

When negotiating the contract, the unit prices should be supported by documentation identifying the direct and indirect costs the consultant expects to incur and the expected fixed fee.

Award-Fee Plan

This plan is in addition to one of the payment methods above that will be specified in the contract. Normally, consultant contracts negotiated under this policy will not include this plan. However, in projects deemed high-priority or importance by the Department, the award-fee plan serves to establish reasonable and attainable schedule and technical objectives which the Department deems to be critical. The plan establishes financial incentives, in the form of awarded-fee allocations, which may be earned by the consultant through exceptional performance towards meeting the Department's defined objectives. Decreases in awarded-fee are prescribed to the extent that the Department's defined objectives are not being met.

The plan is composed of three major sections. The award-fee objectives to be achieved by the consultant will be defined within the Objectives section. The award-fee amount which the consultant has potential to earn will be defined in the Maximum Award-Fee section. The criteria used for evaluation of the consultant's performance in achieving the award-fee objectives will be defined within the Evaluation Procedures section. Evaluations will be conducted by the Department on the schedule outlined in the Evaluation Schedule.

The Department will evaluate the consultant's schedule and technical performance for each of the objectives listed in the Objectives section. The evaluation of each objective will be accomplished in three phases. In the first phase, the Department will assess the consultant's schedule performance. The consultant's technical performance will be considered in the second phase. A preliminary earned award-fee amount, consultant response period, and notification of final earned award-fee amount comprise the third phase.

Performance evaluations will generally be conducted within 90 calendar days following the consultant's delivery of the identified objective. However, a 30 calendar day waiting period will be considered the minimum time which must elapse before the department may conduct the evaluation.

The 30 calendar days will provide an opportunity for any latent defects in the consultant's deliverables to be revealed. The Department may extend the 90 calendar days by providing written notification to the consultant.

Retention

A consultant contract may provide that a percentage of monthly payments—not to exceed 3% of the amount payable—be retained until final payment is made or until final audit. This is termed "retention" or "retainage." Normally, consultant contracts negotiated under this policy will not require retention. However, situations in which a contract may require retention include, but are not limited to, the following:

- The Department has no prior experience with the consultant.
- The consultant's prior contracts have included large fluctuations in overhead rates.