

**RESOLUTION NO. 2018-98**

**A RESOLUTION TO ADOPT THE TENNESSEE DEPARTMENT OF TRANSPORTATION (TDOT) CONSULTANT SELECTION POLICY FOR PROJECTS FUNDED IN WHOLE OR IN PART WITH FUNDS PROVIDED BY THE FEDERAL HIGHWAY ADMINISTRATION OR THE TENNESSEE DEPARTMENT OF TRANSPORTATION (LOCAL GOVERNMENT GUIDELINES FORM 1-2), RELATIVE TO PROJECTS FUNDED IN WHOLE OR IN PART WITH FUNDS PROVIDED BY THE FEDERAL HIGHWAY ADMINISTRATION OR THE TENNESSEE DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the City of Franklin receives state and federal transportation funds for various projects through the Tennessee Department of Transportation (TDOT); and

**WHEREAS**, the City of Franklin, in order to maintain eligibility for State and Federal funding, must comply with the procedures that are required by law, regulation, rule, policies and standard for the use of Federal Highway Administration (FHWA) and State Highway funds for transportation.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:**

**SECTION 1.** The Board of Mayor and Aldermen of the City of Franklin, Tennessee adopts the TDOT *Consultant Selection Policy for Projects Funded in Whole or in Part with Funds Provided by the Federal Highway Administration or the Tennessee Department of Transportation* (Local Government Guidelines Form 1-2), attached as Exhibit A, relative to projects funded in whole or in part with funds provided by the Federal Highway Administration or the Tennessee Department of Transportation.

**SECTION 2.** By this Resolution, it is the intent of the City of Franklin to comply with the current version, dated March 9, 2018, and any future revised version of the TDOT *Consultant Selection Policy for Projects Funded in Whole or in Part with Funds Provided by the Federal Highway Administration or the Tennessee Department of Transportation* (Local Government Guidelines Form 1-2), relative to projects funded in whole or in part with funds provided by the Federal Highway Administration or the Tennessee Department of Transportation.

**SECTION 3.** This Resolution shall take effect upon adoption.

**IT IS SO RESOLVED AND DONE** on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

**ATTEST:**

**CITY OF FRANKLIN, TENNESSEE:**

By: \_\_\_\_\_  
**Eric S. Stuckey**  
**City Administrator**

By: \_\_\_\_\_  
**Dr. Ken Moore**  
**Mayor**

**Approved as to Form:**

By: \_\_\_\_\_  
**Shauna R. Billingsley**  
**City Attorney**

CITY OF FRANKLIN, TENNESSEE

**Consultant Selection Policy for Projects Funded in Whole or in Part with Funds  
Provided by the Federal Highway Administration or the Tennessee Department of  
Transportation**

**AUTHORITY:** T.C.A. § 12-4-107. If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

**PURPOSE:** To prescribe the policy of the CITY OF FRANKLIN, TENNESSEE, hereinafter referred to as the Agency, applicable to the procurement, management and administration of consultant services for architectural, engineering, and right-of-way services for projects.

**APPLICATION:**

A. Engineering and Design Related Services

This policy is to include all engineering and design related services described in T.C.A. §12-4-107, 40 U.S.C. Chapter 11, 23 U.S.C. §112 (b)(2), 23 CFR Part 172, and 2 CFR 200.317.

B. Right-of-Way Acquisition Services

This policy also includes right-of-way acquisition services for required projects. These services include contracts for appraisal, acquisition, or relocation services related to the acquisition of land entered into by the Agency for the purpose of acquiring right-of-way. Since compensation for these services is not paid pursuant to federal regulation, the terms of this policy regarding methodology of compensation are not applicable.

**DEFINITIONS:**

A. *Competitive Negotiation* means a qualifications-based selection procurement procedure complying with 40 U.S.C. §§1101–1104, commonly referred to as the Brooks Act.

B. *Engineering and Design Related Services* means –

1. Program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or architectural related services with respect to a highway construction project or projects; and
2. Professional services of an architectural or engineering nature, as defined by Tennessee law, including T.C.A. §12-4-107, which are required to or

may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide architectural or engineering services.

Examples of services within the scope of this policy include, without limitation, project planning, environmental studies, context sensitive solution/design services, cultural resources studies, geotechnical studies, historic studies, archeological studies, socio-economic and environmental justice analyses, drainage studies, inspection services, intelligent transportation system design and development, traffic control systems design and development, roadway design services, including surveying and mapping, structural design services, materials inspection and testing, value engineering, utility relocation/coordination, and utility analysis/design services with respect to a highway construction project or projects.

- C. *Fixed fee* means a dollar amount established to cover the consultant's profit and other business expenses not allowable or otherwise included as a direct or indirect cost.
- D. *One-year applicable accounting period* means the annual accounting period for which financial statements are regularly prepared by the consultant.
- E. *Scope of work* means all services, work activities, and actions required of the consultant by the obligations of the contract.
- F. *Technical Services* means specialized testing or other paraprofessional services that provide test results, data, or information in support of engineering services, including such services as laboratory testing, core borings, and material sampling.

### **PROCUREMENT METHODS:**

- A. *Competitive Negotiation* - Competitive negotiation is the preferred method of procurement for engineering related services. These contracts use qualifications-based selection procedures in the manner of a contract for architectural and engineering services under the "Brooks Act" provisions contained in Title 40 U.S.C. Chapter 11. The proposal solicitation process is by public announcement and provides qualified in-state and out-of-state consultants a fair opportunity to be considered for award of the contract. Price is not used as a factor in the evaluation and selection phases.
- B. *Small Purchases* - Small purchase procedures are relatively simple and informal procurement methods where an adequate number of qualified sources are reviewed and the total contract costs do not exceed the simplified acquisition threshold as defined in 48 CFR §2.101 (currently \$150,000). Competitive negotiation in the manner of a "Brooks Act" qualifications-based selection procedure is not required.

- C. *Noncompetitive Negotiation* – Noncompetitive negotiation is used to procure engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procedures. Circumstances which may justify a noncompetitive negotiation include when the service is available only from a single source, there is an emergency which will not permit the time necessary to conduct competitive negotiations, or after solicitation of a number of sources competition is determined to be inadequate.

## **TYPES OF CONTRACTS:**

- A. *Project Specific Contract* – A project specific contract provides for all the work associated with a specific project or projects that is to be performed by the consultant firm and requires a detailed scope of services. These contracts may provide for all work to be placed under contract at the same time depending on availability of funds. A project specific contract is the traditional type of consultant contract between the Agency and a consultant for the performance of a fixed scope of work related to a specific project or projects.
- B. *Multiphase Contract* – A multiphase contract is similar to a project-specific contract except that the work is divided into phases such as survey, environmental or design. The consultant contract is based on a general scope of work with a maximum contract ceiling. Individual phases are negotiated and the work authorized while future phases may wait until later in the contract period before completing negotiation and authorization. Multiphase contracts are helpful for complex projects where the scope of a future phase is not well defined. Multiphase contracts may be terminated at the end of a phase. A multiphase contract incorporates the work order concept for a specific project.
- C. *General Engineering Related Contract* – General engineering related contracts are for engineering and design related services related to transportation planning, design, or program management for use on multiple projects. Examples include the development of design standards and technical manuals, and the development of comprehensive transportation program management manuals. These services may be performed on a project specific or on-call basis.

## **POLICY:**

### **I. CONSULTANT EVALUATION COMMITTEE**

- A. Establishment of a Consultant Evaluation Committee: The Agency's legally designated selection authority shall designate the members of the Consultant Evaluation Committee (CEC), which shall at a minimum be composed of professional employees of the Agency capable of providing a review of the technical qualifications of the consultant to perform the job(s) in question. The

Agency's legally designated selection authority must approve any substitutions. The CEC membership may vary depending on the type of service being procured.

- B. Role: The CEC shall have the responsibility of submitting to the Agency's legally designated selection authority a recommended list of at least three of the most highly qualified firms if one firm is to be selected. If more than one firm is to be selected from a single solicitation, the CEC's recommended list of the most highly qualified firms shall include at least two more firms than the number of selections to be made.
- C. Record of Proceedings: The CEC shall designate either a member or staff person to create and maintain a record of proceedings before the CEC, which shall include information submitted to the CEC for consideration, summary minutes of meetings, findings and/or recommendations to the Agency's legally designated selection authority.

## II. PREQUALIFICATION OF CONSULTANTS

- A. All firms, including any public or private universities, shall have a current prequalification status which can be found on the Tennessee Department of Transportation's website.
- B. Firms and their employees must comply with the applicable state licensing law requirements including but not limited to Tennessee Code Annotated Title 62, Chapter 2 (Architects, Engineers, and Landscape Architects), Title 62, Chapter 39 (Real Estate Appraisers), Title 62, Chapter 18 (Land Surveyors), and Title 62, Chapter 36 (Geologists).
- C. Firms prequalified by the Tennessee Department of Transportation for engineering and design related services shall have either an "Unlimited" or "Limited" prequalification status as described below:
  - 1. Unlimited Prequalification: This level of prequalification allows consulting firms to compete for any projects for which they are professionally and financially pre-qualified with the Tennessee Department of Transportation. Continued prequalification at this level requires submittal of the prequalification form every three years.
  - 2. Limited Prequalification: This level of prequalification allows firms seeking prequalification for engineering and design related services to:
    - a) Compete for projects with fees estimated to be less than the "Small Purchase Maximum Contract Value" per contract (see Section VI), or
    - b) Work as a sub-consultant or as contract labor with fees estimated to be less than the "Small Purchase Maximum Contract Value" per contract.

- C. Expiration or termination of a consultant's prequalification status may be cause for the Agency to terminate any contract with a consultant.
- D. A name change, merger, buy out or other similar change in status shall cause a termination of the existing prequalification and necessitate the submittal of a new prequalification form to the Tennessee Department of Transportation.
- E. A firm's prequalification status shall be terminated if the firm is included on the Federal Excluded Parties List or if it has been suspended or debarred by the Tennessee Department of Transportation or any other agency of the State of Tennessee.

### III. COMPETITIVE NEGOTIATION PROCUREMENT PROCEDURE

#### A. Confidentiality of Data and Records Retention

1. To the extent allowed by applicable State law, all documents relating to the evaluation and selection of consultants, and negotiations with selected consultants, shall remain confidential until selection is complete and a contract is awarded.
2. Audit information shall not be provided to other consultants or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the Agency's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. § 112 and 23 CFR Part 172 without the written permission of the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance; however, should a release be required by law or court order, such release shall make note of the confidential nature of the data.
3. In accordance with 23 CFR 172.7 and the provisions of 2 CFR 200.333, financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following:
  - a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
  - b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

- c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.
- d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity

## B. Solicitation

The Agency shall seek Letters of Interest from pre-qualified firms by public announcement through its internet website and by any other means of advertisement that may be required by law. Solicitations shall be reviewed and approved by the Local Programs Development Office before publishing.

1. For **all** contract types, the solicitation shall address:
  - a) Contact information at the Agency for project specific questions;
  - b) The specific location where the Letters of Interest should be mailed or e-mailed;
  - c) The deadline for submittals of Letter of Interest (not less than 14 days from the date of the solicitation);
  - d) A statement that all firms must be pre-qualified or have a completed prequalification form filed with the Tennessee Department of Transportation by the deadline for the Letters of Interest; and
  - e) Disadvantaged Business Enterprise (DBE) and Small Business encouragements.
2. The solicitation shall provide at a minimum, the following:
  - a) A detailed scope of work, including:
    - i. The purpose and description of the project;
    - ii. The services to be performed;
    - iii. The deliverables to be provided;
    - iv. The estimated schedule for performance of the work; and
  - b) The technical requirements of consultants required including the applicable standards, specifications, and policies;
  - c) The qualifications of consultants needed for the services to be rendered;

- d) Any requirements for interviews or other types of discussions that may be conducted with the most highly qualified firms in Phase II of the selection of process;
  - e) The evaluation criteria to be used in Phases I and II of the selection process, including the relative weight of importance of the factors to be considered in evaluating the interested firms that submit proposals in Phase II of the selection process;
  - f) Any approved non-qualifications based evaluation criteria to be considered in Phase II of the evaluation process;
  - g) The contract type and method of payment; and
  - h) Any special provisions or contract requirements associated with the solicited services.
3. For mid-range and large size projects, the CEI consultant shall not be associated with any other aspect of the project as described in Attachment A. The Agency must advertise separately for design and CEI services for mid-range and large projects, OR the Agency must separate the project into phases on one advertisement and require the consultant to indicate to which phase they are responding.

### C. Consultant Evaluation Criteria

1. The qualifications-based selection criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance.
- a) For Phase I evaluation, the qualifications-based evaluation criteria may include, but are not limited to, the following:
    - i. Work experience in the required disciplines with TDOT, the Agency, and/or other clients;
    - ii. Specialized expertise;
    - iii. Professional licensure;
    - iv. Staff capabilities of prime consultant;
    - v. Size of project and limited or unlimited prequalification status; and,



- b) For firms submitting proposals during Phase II evaluation, the following additional evaluation criteria may also be included:
  - i. Workload capacity; including amount of work under contract with the Agency, if applicable
  - ii. Past performance on Agency Projects;
  - iii. Technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures);
  - iv. Other factors including interviews and demonstrations, as approved by the Agency; and
  - v. Any approved non-qualifications based evaluation criteria, as provided in paragraph C.2. below.
  
2. If approved by the Agency's legally designated selection authority and the Department's Local Programs Office, the following non-qualifications based criteria are permitted, provided the combined total of these factors does not exceed a nominal value of ten percent (10%) of the total evaluation criteria:
  - a) For contracts with Federal-aid funding, participation of qualified and certified Disadvantaged Business Enterprise (DBE) sub-consultants; and/or
  - b) For any contracts a local presence may be used as a nominal evaluation factor where appropriate; provided, that this factor shall not be based on political or jurisdictional boundaries, and provided further that this factor may be applied only on a project-by-project basis for contracts where:
    - i. A need has been established for a consultant to provide a local presence;
    - ii. A local presence will add value to the quality and efficiency of the project; and
    - iii. Application of this factor leaves an appropriate number of qualified consultants, given the nature and size of the project.
    - iv. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.
  
3. For contracts or projects with Federal-aid funding, the Agency may set DBE goals, in which case the selected consultant must either meet the goal or show good faith efforts to meet the goal, consistent with the DBE program regulations at 49 CFR Part 26, to be considered for selection.

## D. Evaluation, Ranking and Selection

### 1. Phase I Evaluation

- a) Using the evaluation criteria identified in the public solicitation, the Agency advertising for engineering related services shall evaluate current statements of qualification and performance data from those firms submitting Letters of Interest.
- b) Unless specifically stated otherwise in the solicitation, the evaluation of a firm's qualification during Phase I evaluation shall be limited to the prime consulting firm only.
- c) Evaluations shall be presented to the CEC for review. The CEC shall choose at least three of the most highly qualified consultants who would make viable candidates and who will be invited to submit a proposal.
- d) The Agency shall issue a list of firms chosen to submit proposals and notify the firms that were not selected. The firms selected in Phase I shall be requested to submit a proposal for the work. Proposal format requirements, delivery address and deadlines shall be included in the notification sent to the selected firms. Electronic delivery and receipt of the proposal may be permitted.

### 2. Phase II Evaluation

- a) The Agency shall evaluate the proposals of firms selected in Phase I using the Phase II evaluation criteria identified in the public solicitation.
- b) A consultant firm that has been short-listed for a project and asked to submit a proposal shall specifically identify any sub-consultant(s) required to complete the project team. Identified sub-consultants will be evaluated using the criteria identified in the public solicitation. All sub-consultants identified on the submittal must be pre-qualified by the Tennessee Department of Transportation to perform the required tasks or have an application pending prior to submittal of the proposal. It shall be the responsibility of the prime consultant to include a signed statement from each sub-consultant on their own letterhead confirming that they have the staff available and agree to provide the necessary services for the specific item/project listed in the prime consultant's proposal. Failure to meet these requirements will void the submittal.
- c) Separate formal interviews, if approved as an evaluation criteria, shall be structured and conducted with a specified time limit. Competing consultants may be asked to bring additional information or examples of their work to the interviews if such information will contribute to the

evaluation process. Specific questions may be asked of each consultant to clarify qualifications, written proposals, or oral presentations.

- d) The Agency shall present the evaluation of proposals received from firms selected in Phase I to the CEC for review. The CEC shall rank the firms based on the established and published criteria, or the CEC shall submit to the legally designated selection authority a list of the firms deemed most highly qualified to provide the services required. The list shall contain no fewer than three firms. In instances where only two qualified consultants respond with proposals, the Agency may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition.

### 3. Phase III Evaluation, Ranking, Selection and Notification

- a) If the CEC does not make the final ranking of the most highly qualified firms, the Agency's legally designated selection authority shall rank the firms in order of preference.
- b) Notification must be provided to responding consultants of the final ranking of the three most highly qualified consultants.
- c) The Agency will negotiate with the three consultant firm(s) deemed to be most highly qualified in rank order.

#### E. Negotiation of Contract

The following shall apply to all negotiations of scope and cost for contracts, work orders, and supplemental agreements.

1. Determination of Contract Amount: The Agency shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate, which shall serve as the basis for negotiation, will be based on the following:
  - a) Relative difficulty of the proposed assignment or project, size of project, details required, and the period of performance; and,
  - b) A comparison with the experience record for similar work performed both by Agency personnel and previously negotiated consultant contracts.

This estimate shall be done independently, prior to negotiation, and shall remain confidential to the extent allowed by applicable law.

2. Scope of Work Meeting with Selected Firm: The Agency will negotiate with the selected firm and may arrange a conference with the prospective

- consultant where the parties must come to a mutual understanding of the scope of work and all technical and administrative requirements of the proposed undertaking. In lieu of a conference, this may be done by phone or correspondence. The prospective consulting firm may be represented as it wishes; however, a project manager and accounting representative are recommended.
3. **Cost Proposal:** The prospective consulting firm will be invited to submit a cost proposal for the project. This cost proposal is to be broken down by the various items of work as requested and supported by estimated labor requirements. Instructions shall be given regarding the method of compensation and the documentation needed to justify the proposed compensation.

In evaluating the consultant's cost proposal(s), the Agency shall judge the reasonableness of the proposed compensation and anticipated labor and equipment requirements by the following and other appropriate considerations:

- a) The proposed compensation should be comparable to that of other projects of similar nature and complexity, including as applicable salaries and man-hours to accomplish the work, and allocation of labor within the man-hour estimates.
  - b) The Agency will assess the fairness of the proposed fixed fee based on the scope, complexity, contract duration, degree of risk borne by the consultant, amount of subcontracting, and professional nature of the services as well as the size and type of contract. Fixed fee is calculated using the following formula:  $\text{Fixed Fee} = 2.35 \times \text{Direct Salary} \times \text{Allowed Fixed Fee Rate}$ . Unless a higher fixed fee rate is expressly approved by the Agency, the maximum allowable fixed fee rate is 13% (See Appendix 1 for fixed fee rate determination).
  - c) The proposed compensation shall be studied for reasonableness and to assure sufficient compensation to cover the professional quality of the work items desired.
4. **Contract Negotiations:** If the consultant's first cost proposal is rejected by the Agency, the negotiating parties shall hold a second conference to discuss those points of the cost proposal which are considered unsatisfactory. The consultant shall submit a second cost proposal based upon this second conference. If the Agency rejects the consultant's second cost proposal, negotiations shall be formally terminated and commence with the second most qualified firm. If like negotiations are unsuccessful with the second most qualified firm, the Agency will undertake negotiations with the third most qualified firm and any others on the selected list in sequential order. With the concurrence of the legally designated selection authority, the Agency may, at

- any time, in lieu of continuing negotiations, elect to redefine the scope of the project and resolicit proposals pursuant to "POLICY", Section III, B, "Solicitation".
5. The Agency shall maintain a record of the negotiations and all required approvals and shall retain these records for 36 months following final payment in accordance with Item A.3. of this section and as provided in 23 CFR § 172.7 and 2 CFR § 200.333.

#### F. Contract Development and Execution

1. In the event the parties reach agreement, the legally designated selection authority shall approve the preparation of a contract.
2. The contract will include a clause 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 Agency.
3. The contract shall contain a clause whereby the consultant must report at least quarterly all amounts paid to any DBE sub-consultants and to any Minority Business Enterprise (MBE) and/or Woman Owned Business Enterprise (WBE) sub-consultants.
4. Method of Payment: The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. The methods of payment shall be: Lump sum, cost plus fixed fee, cost per unit of work, or specific rates of compensation. A single contract may contain different payment methods as appropriate for compensation of different elements of work.
5. Suspension and Debarment: Prior to contract execution, the Agency shall verify suspension and debarment actions and eligibility status of consultants and sub-consultants in accordance with 2 CFR Part 1200 and 2 CFR Part 180.
6. The Agency shall maintain a record of the negotiations and all required approvals.
7. Prior to approval of the contract, the Agency must have on file a contract specific Certificate of Insurance for the consultant. It shall confirm that the firm has professional liability insurance for errors and omissions in the amount of \$1,000,000, as a minimum, and the policy shall be maintained for the life of the contract. Consultants responsible for the disbursement of Agency funds shall be required to provide evidence of a Fidelity Bond in the amount of \$250,000 maintained for the life of the contract.

## G. Contract Administration

1. Once a contract has been awarded, the consultant may negotiate directly with sub-consultants. A change in sub-consultants must be approved by the Agency. A written request must be submitted to the Agency to initiate the change. This request must include an explanation of the need to change sub-consultants and the impact on the project schedule and financial elements of the contract. The substitute sub-consultant must be pre-qualified at the appropriate level (unlimited or limited) by the Department of Transportation to perform the required tasks. After consideration of all factors of the request, the Agency will respond to the request in writing.
2. After the contract has been approved, a work order issued, and productive work on the consultant's assignment has begun, the Agency shall periodically review and document the consultant's progress. Said monitoring reviews shall be directed toward assurance that the consultant's assignment is being performed as specified in the agreement, that an adequate staff has been assigned to the work, that project development is commensurate with project billings, and that work does not deviate from the contracted assignment.

Should conditions warrant, these reviews may consist only of an appropriate exchange of correspondence. These reviews shall determine, among other matters, if any changes or supplemental agreements are required for the completion of the consultant's work.

3. A full-time employee of the Agency shall be responsible for each contract or project. Annually and/or at project close, the assigned employee will prepare a performance evaluation report covering such items as timely completion of work, conformance with contract cost, quality of work, and whether the consultant performed the work efficiently. A copy of this report will be furnished to the firm for its review and comments.

## H. Contract Modifications

1. A contract modification, in the form of an executed supplemental agreement or amendment, is required whenever there is a change in the terms of the existing contract, including a change in the cost of the contract; a significant change in the character, scope, complexity, or duration of the work; or a significant change in the conditions under which the work is required to be performed. Contract modifications shall be negotiated using the same procedures as the negotiation of the original contract. The executed supplemental agreement or amendment shall clearly define and document the changes made in the contract and establish the method of payment for any adjustment in contract costs.
2. No contract may be supplemented to add work outside the scope of the project or the general scope of services the consultant was initially evaluated

- to perform. For example, a roadway design contract may be supplemented to add work related to additional phases of project design (e.g. preliminary engineering with related technical services such as survey or geotechnical work, preparation of right-of-way plans, or preparation of final construction plans); however, a project specific or multiphase contract for roadway design shall not be supplemented to add a new project or to add a different type of service, such as construction engineering and inspection, beyond the type of services solicited in the original solicitation.
3. Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee or lump sum reimbursed contracts.
- I. Contract Accounting Policies
    1. Indirect Cost Rate – Basic Agreement or Contract
      - a) **Federally funded projects:** The indirect cost rate, effective for contracts advertised on or after December 1, 2005, shall be the actual rate as determined in compliance with Federal Acquisition Regulation Standards and approved by the cognizant agency as defined by 23 CFR § 172.3. The cognizant agency is the home state transportation department, a federal agency, or TDOT in the absence of any of the other. A Certified Public Accountant (CPA) may perform the audit, but the audit work papers may be reviewed by the governmental agency. Further;
        - i. The indirect cost rate for firms with multiple offices shall be a combined rate for all offices.
        - ii. The approved rate shall be utilized for the purposes of contract estimation, negotiation, administration, reporting, and contract payment for a twelve month period beginning the seventh month after the firm's Fiscal Year End.
        - iii. If the indirect cost rate expires during the contract period an extension may be considered on a case-by-case basis in accordance with 23 CFR § 172.11(b)(1)(vi). In any event, no new contracts will be considered for any firm without an approved indirect cost rate.
      - b) **State funded projects:** Pursuant to T.C.A. § 54-1-130, the indirect cost rate cannot exceed a maximum of 145%.
    2. Travel: Travel and subsistence charges shall be in conformance with the State of Tennessee Comprehensive Travel regulations. Air travel shall be pre-approved by the Agency. Actual expenses, not to exceed the commercial

- rate, for the use of company owned airplanes are allowable as a direct charge.
3. Fixed Fee Payment:
    - a) For cost plus fixed fee contracts, payments of fixed fee shall be based on the actual labor costs not to exceed the total approved fixed fee.
    - b) The fixed fee for each progress billing shall be determined using the consultant's actual direct labor for the specific billing period multiplied by 2.35 times the negotiated fixed fee percent.
    - c) With the exception of Construction Engineering and Inspection Contracts, the firm may invoice for the balance of any unbilled fixed fee upon successful completion of the contract.
  4. Contract and Project Closing: The Agency is responsible for keeping up with contract costs and knowing when a contract is complete. The Agency is also responsible for closing the contract in a timely manner. By letter to the consultant, the Agency shall affirm that the contract or work order has been satisfactorily completed. In the event that additional services are required within the original scope of the project, the contract or work order may be reopened. All terms and conditions of the contract shall remain the same.
  5. Retainage shall not be required for new Engineering and Technical Services Contracts.
  6. Audit Requirements:
    - a) Pre-award audits consist of a review of a proposed indirect cost rate based upon historical data, review of the consultant's job cost accounting system, and review of project man-day or unit price proposals.
    - b) Awarded contracts are subject to interim and final audits. The audits consist of determining the accuracy of invoice charges by reviewing time sheets, payroll registers, travel documents, etc. Charges that cannot be supported will be billed back to the consultant. Firms will be selected for contract compliance audits using a risk analysis utilizing primarily the firm's total contract exposure with the Agency and the time elapsed since the last compliance audit.
    - c) Annual approval of the indirect cost rate for non-fixed indirect cost rate contracts will be required and adjustments to the invoiced billing rate may be necessary based on audit results. The determination of whether to perform a desk review or full field audit of the indirect cost schedule is made utilizing a risk analysis created in accordance with the guidelines proscribed in the AASHTO Uniform Audit & Accounting Guide.



7. Computer Aided Drafting and Design (CADD) Expenditures: All CADD equipment and software expenditures are to be treated as part of indirect cost. CADD expense will not be allowed as a direct expenditure based on an allocation rate.
8. Facilities Capital Cost of Money (FCCM) Rate: FCCM referenced in 48 CFR § 31.205-10 shall be allowed as part of indirect cost and applied to direct labor.
9. Direct Costs
  - a) Include job related expenses that are required directly in the performance of project services such as travel, subsistence, long distance telephone, reproduction, printing, etc. These should be itemized as to quantities and unit costs in arriving at the total cost for the expense.
  - b) The proposed direct cost shall not exceed the Tennessee Department of Transportation's maximum allowable rate when a rate for such cost is specified. All direct costs must show supporting documentation for auditing purposes. Documentation for proposed rates should show how they were developed including historical in-house cost data or names and phone numbers of vendors that supplied price quotes along with receipts, invoices, etc., if available.
  - c) Electronic equipment, such as personal computers, cameras, and cellular phones, shall be included in the consultant's indirect cost.
  - d) The cost of the use of the consultant's vehicle(s) to the Agency's project shall be paid for according to Attachment B, Schedule of Vehicle Reimbursements.
10. Collection of Funds Due as Result of Contract Audit: Once an audit is completed and the consultant is found to owe the Agency, the Auditor will notify the Agency's Finance Director in writing, with a copy to the Department's Local Programs Office. The Agency will contact the consultant in writing about the indebtedness and request payment within 30 days from the date of the letter. If after 30 days payment is not received, the consultant will then be notified that any funds owed to the consultant under other agreements will be used to satisfy the indebtedness. If funds or payables to the consultant in the Agency's possession are in excess of the indebtedness, anything owed the consultant will be remitted under normal payment procedures. If the funds in the Agency's possession are not sufficient to satisfy the indebtedness, the Agency will take appropriate action.

## J. Geotechnical Contracts

Contracts for geotechnical services are considered separately because they may involve a mixture of two types of services, i.e., geotechnical studies (engineering services) and subsurface exploration/drilling and/or laboratory testing (technical services). Additionally, some firms offer one or the other of these services, others offer both, and others offer some combination as well as other services, e.g., design. Firms offering both services must, for accounting purposes, separate the two operations. Cost of equipment, supplies, etc., used in technical services may not be applied towards indirect cost computations for engineering services.

Geotechnical Studies and/or Subsurface Exploration/Drilling and/or Laboratory Testing services shall be procured as noted in "POLICY", Section III, Competitive Negotiation Procurement Procedure. The technical services costs shall be negotiated by the Agency based on usual industry standards.

## K. Sub-consultants for Engineering Services

1. Geotechnical Studies and/or Subsurface Exploration/Drilling and/or Laboratory Testing within another Engineering Services Firm: These services may be procured as part of the larger contract, e.g., roadway design. Payment for subsurface exploration/drilling shall be invoiced as a direct cost. Geotechnical studies shall be invoiced as other engineering services.

### 2. Geotechnical Studies Firms as Sub-Consultants

a) Geotechnical Studies Only: The services of these firms may be procured by negotiation with the prime consultant as described previously herein.

b) Geotechnical Studies and/or Subsurface Exploration/Drilling and/or Laboratory Testing Firms as Sub-Consultants: The services of these firms shall be procured by negotiation with the prime consultant. However, costs associated with subsurface exploration/drilling and/or laboratory testing shall be negotiated by the Agency.

## L. Sub-consultants Not Covered Under Engineering Services

In the event a sub-consultant is required whose hiring process, as a prime, would not be governed by Competitive Negotiation under this Policy, that sub-consultant shall be retained by the same method as the Agency would use to procure the same type of services under the Agency's local law or other applicable state law.

1. Example: Design consultants are occasionally asked to provide laboratory testing services under their design contract. The design consultant shall use, and document, the applicable procedures identified by the Agency.

2. The Agency should monitor the hiring and documentation of sub-consultants by the prime. Documentation should detail the method used and should be satisfactory for a final project audit.

#### **IV. NONCOMPETITIVE NEGOTIATION PROCUREMENT PROCEDURE**

The following procedures shall be used by the Agency, subject to the Tennessee Department of Transportation's prior approval, in those circumstances where there exists only one viable source for the desired services, when competition among available sources is determined to be inadequate after solicitation of a number of sources, or in emergencies when adherence to normal competitive negotiation procedures will entail undue delays for projects requiring urgent completion.

Upon determination of a need for this type of procurement, the Agency shall request an estimate from the qualified firm for the accomplishment of the desired assignment. The request for an estimate shall define the full scope of the desired services, together with minimum performance specifications and standards, the date materials and services are to be provided by the consultant to the Agency, and the required assignment completion schedule. Response to the request for an estimate shall be evaluated, giving due consideration to such matters as a firm's professional integrity, compliance with public policies, records or past performances, financial and technical resources, and requested compensation for the assignment. Before using this form of contracting, the Agency shall submit justification to and obtain approval from the Department; provided, however, that for Federal-aid contracts, the Department shall also submit the request to FHWA for approval in accordance with 23 CFR § 172.7(a)(3)(ii).

#### **V. SMALL PURCHASE PROCUREMENT PROCEDURE**

When the contract cost of the services does not exceed the simplified acquisition threshold as defined in 48 CFR § 2.101 of the Federal Acquisition Regulations (FAR), which is currently \$150,000, small purchase procedures may be used. 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. Further, a contract obtained under small purchase procedures shall not be modified to exceed the simplified acquisition threshold.

Proposals will be obtained from an adequate number of qualified sources with a minimum of three. In instances where only two qualified consultants respond to the solicitation, the Agency may proceed with evaluation, ranking and selection if it is determined that the solicitation did not contain conditions or requirements which arbitrarily limited competition. Awards will be made to the responsible firm whose proposal is most advantageous to the program.

## **VI. TECHNICAL SERVICE PROCUREMENT PROCEDURE**

The Agency shall use the procurement process it would use for the same type of service under applicable state or local law; provided, that on Federal-aid projects the procurement process shall be consistent with competitive procurement requirements under 2 CFR Part 200.

### ATTACHMENT A – Consultant Selection for Locally Managed Projects

| Size of Project   | Type of Project  | Procurement Requirements  |
|---|--|---|
| <p><b>SMALL projects</b></p> <ul style="list-style-type: none"> <li>• Must have a full-time employee on staff with experience managing transportation projects.</li> <li>• Must hire consultants for all phases of the project from TDOT’s approved list if the Local Government has not been approved by TDOT to use their own forces. The consultants must be qualified in the required area of expertise.</li> </ul> | <ul style="list-style-type: none"> <li>• Transportation Alternatives</li> <li>• intersection improvements without significant ROW (under one acre of disturbance)</li> <li>• Safe Routes to School</li> <li>• resurfacing</li> <li>• striping</li> <li>• signing</li> <li>• guardrail installation</li> <li>• signalization</li> <li>• some bridge replacement projects (under one acre of disturbance)</li> <li>• non-construction/service contracts (as listed in Chapter 10 of the LGG)</li> <li>• low-risk and exempt ITS</li> </ul> | <ul style="list-style-type: none"> <li>• Local Government can use the same consultant for the entire project (planning, preliminary engineering and CEI)</li> </ul> |
| <p><b>MID-RANGE projects</b></p> <ul style="list-style-type: none"> <li>• Must have a qualified, full-time professional engineer on staff.</li> <li>• Must hire consultants for all phases of the project from TDOT’s approved list. The consultants must be qualified in the required area of expertise.</li> </ul>  | <ul style="list-style-type: none"> <li>• roadway widening</li> <li>• realignment of existing roadway</li> <li>• signalization projects with the addition of turn lanes</li> <li>• intersection improvements with significant ROW (over one acre of disturbance)</li> <li>• bridge replacement projects requiring significant land acquisition (over one acre of disturbance)</li> <li>• projects with environmental requirements greater than a categorical exclusion but lesser than an EIS</li> <li>• high-risk ITS</li> </ul>         | <ul style="list-style-type: none"> <li>• The selected CEI consultant <b>shall not</b> be associated with any other aspect of the project.</li> </ul>                |
| <p><b>LARGE projects</b></p> <ul style="list-style-type: none"> <li>• Must have a qualified, full-time professional engineer on staff with extensive experience working with federally-funded transportation projects.</li> <li>• Must hire consultants for all phases of the project from TDOT’s approved list. The consultants must be qualified in the required area of expertise.</li> </ul>                        | <ul style="list-style-type: none"> <li>• construction of new facilities</li> <li>• widening of existing roadways</li> <li>• realignment of existing roadways that require significant land acquisition (over 10 acres)</li> <li>• environmental clearances that require an EIS</li> </ul>  | <ul style="list-style-type: none"> <li>• The selected CEI consultant <b>shall not</b> be associated with any other aspect of the project.</li> </ul>                |

## **ATTACHMENT B – Policy for Standard Procurement of Engineering and Technical Services**

### **Vehicle Reimbursement Schedule**

For all projects except Construction Engineering and Inspection (CEI), the consultant shall be reimbursed at the rate specified in the State of Tennessee Comprehensive Travel Regulations in effect at the time the cost was incurred.

For CEI projects, the consultant shall be reimbursed at the rate of \$27.00 per day for compact pick-up trucks used on the Agency's projects. For full size pick-up trucks used on the Agency projects, the consultant shall be reimbursed at the rate of \$30.25 per day

Rate changes are approved: \_\_\_\_\_  
AGENCY HEAD DATE