

Consultant Administration Services

Procedure Manual

July 15, 2015
Revised March 6, 2017



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Consultant Administration Services Procedure Manual

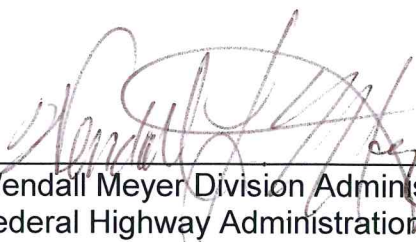
PART 172 – ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICE CONTRACTS

23 CFR PART 172.9 WRITTEN PROCEDURES



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3/20/17
Date



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TABLE OF CONTENTS

INTRODUCTION.....	4
23 CFR PART 172.9 WRITTEN PROCEDURES.....	5
COMPETITIVE NEGOTIATION.....	5
1) Project Initiation.....	5
2) Request for Proposal (RFP).....	5
3) Soliciting Proposals.....	8
4) Analysis and Selection.....	9
5) Negotiations.....	10
6) Contract Administration and Distribution.....	12
7) Work Authorization.....	13
8) Supplement Agreement.....	14
9) Monitoring and Contract Oversight.....	14
SMALL PURCHASES AND NONCOMPETITIVE NEGOTIATION.....	17
1) Small Purchases – 23 CFR 172.5(a)(2).....	17
2) Noncompetitive Negotiation – 23 CFR 172.5(a)(3).....	17
ON-CALL OR INDEFINITE DELIVERY/INDEFINITE QUANTITY (IDIQ).....	18
CONSULTANT SERVICES IN MANAGEMENT ROLES.....	20
FEDERAL REQUIREMENTS.....	21
TITLE VI AND NONDISCRIMINATION PROGRAM/ADA (TITLE VI).....	21
TITLE VI-NONCOMPLIANCE.....	22
DISADVANTAGED BUSINESS ENTERPRISES (DBE).....	22
AUDITS.....	23
AUDIT REPORTS.....	25
DEBARMENT, EXCLUSION OR INELIGIBILITY.....	25
RECORDS.....	25
CONFLICTS OF INTEREST.....	26
COSTS.....	26
OWNERSHIP OF WORK PRODUCT.....	26
PROPERTY MANAGEMENT.....	26
TERMINATION FOR CAUSE.....	26
LOCAL PUBLIC AGENCY / METROPOLITAN PLANNING ORGANIZATION REQUIREMENTS.....	27
STATE REQUIREMENTS.....	30
PREQUALIFIED CONSULTANT SOLICITATIONS.....	30
NON PREQUALIFIED CONSULTANT SOLICITATIONS.....	31
LIST OF APPENDICES.....	33
APPENDIX A – PROPOSED SUB CONSULTANT REQUEST.....	34
APPENDIX B – PRIME CONSULTANT REQUEST TO SUBLET.....	36
APPENDIX C – TITLE VI ASSURANCES (APPENDICES A & E).....	38
APPENDIX D – RISK MANAGEMENT APPENDIX EXAMPLES.....	41
APPENDIX E – AGENCY SELECTION COMMITTEE.....	46
APPENDIX F – SELECTION AND RANKING MEMORANDUM.....	52
APPENDIX G – RESPONSIBLE CHARGE GUIDANCE.....	54
APPENDIX H – CONSULTANT EVALUATION FORMS.....	58
APPENDIX I – ERRORS AND OMISSIONS PROCEDURES.....	65
APPENDIX J – CONSULTANT MANAGEMENT SYSTEM.....	71
APPENDIX K – FHWA REFERENCES.....	75

INTRODUCTION

The North Dakota Department of Transportation (NDDOT) regularly enters into contracts for consultant services with architect, engineering, and land surveying firms. This manual is intended to help describe and define the procedures and processes used for procuring consulting services and administering consultant contracts.

These procedures shall explain how procurements are completed in addition to defining the responsibilities of the Consultant Administration Services (CAS) and the responsibilities of the divisions and districts.

The selection of consultant services with federal funds are governed by applicable federal requirements as outlined in 23 CFR, Part 172, 23 U.S.C. 112(b)(2)(A) and 40 U.S.C. § 1101 – 1104, a/k/a the “Brooks Act”, Federal Highway Administration (FHWA) guidelines.

The selection of consultant services (architect, engineer, and land surveyor) with state funds, are governed by N.D.C.C. Chapter 54-44.7 and Section 24-02-07.3

The solicitation and selection for these consultant services will be coordinated by the Consultant Administration Services (CAS) of the Environmental and Transportation Services Division.

CAS shall be contacted when consultant services are required. CAS will be responsible to coordinate with the requesting District and Division to establish the scope of engineering services and request for proposal.

Procurement consultant services for engineering, design, and construction related services financed with federal-aid highway funds must be in accordance with the provisions of 23 CFR 172.9, and other applicable federal laws and administrative requirements as set forth by the procedures in this manual. Procurement of consultant services financed with state funds must comply with state laws and administrative requirements.

Resources:

- ✓ Contract Manual for Non-Construction Contracts – Legal Division
- ✓ Local Government Manual – Local Government Division
- ✓ Construction Records Manual – Construction Division

23 CFR PART 172.9 WRITTEN PROCEDURES

COMPETITIVE NEGOTIATION

Competitive negotiation should be used for the procurement of a consultant firm to provide consultant services.

1) Project Initiation

The division or district identifies a project for Consultant Administrative Services (CAS) and prepares a solicitation checklist, milestone, estimated construction costs and submits the project information to CAS. CAS obtains federal authorization and publishes a Request for Proposal (RFP). FHWA approval in FMIS is required prior to a contract being signed.

CAS develops an independent estimate of services for each project. CAS maintains historical costs of services required for various project types to aid in the development of the independent estimates. As necessary, the estimate of services costs are broken into work activities, labor, and direct cost associated with the proposed scope of work and project type. The estimate of services costs is not published, and is used as a basis for negotiation and determining the fair and reasonable cost for the consultant scope and fee.

2) Request for Proposal (RFP)

An RFP is prepared by CAS. The RFP provides: a description of the scope of work and identification of the evaluation factors including their relative importance, the method(s) of payment, the submission requirement and deadlines for response. Specific sections of the RFP are described as follows:

- a. Date, Contact Person, and Date for Submission of Proposal
- b. Project Scope of Engineering Services – This section describes the types of consultant services required, the project location, project limits, and the project overview.
- c. Project Scope of Work – This section describes the work necessary by the Consultant Firm to complete the Scope of Engineering Services for a project, the project completion, and bid opening dates. The Scope of Work will be negotiated and authorized in phases based on the RFP, consultant proposal, consultant performance, and available funding.

- d. Proposed Project Schedule – This section describes the major activities and proposed completion dates and/or milestone report (detailed project activities and schedule of proposed completion dates), solicitation check list, scoping report, and risk management appendix. This proposed schedule may be referenced in the scope of work and attached to the RFP as applicable.
- e. Proposed Sub Consultant Request – This section describes requirements for Prime Consultants to identify Sub Consultants that have been contacted and agree to be listed on the Prime Consultants Proposal (see Appendix A available on website).
- f. Prime Consultant Request to Sublet – This section describes the requirements for Prime Consultants to Request to Sublet prior to the execution of the contract (see Appendix B available on website).
- g. Title VI and Nondiscrimination Program/ADA (Title VI)

Under Title VI of the Civil Rights Act of 1964, and its related statutes and regulations, no person or groups of persons shall, on the grounds of race, color, national origin, sex, age, disability, limited English proficiency, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by the North Dakota Department of Transportation (NDDOT), its recipients, sub recipients, or other contractors, subcontractors, consultants and sub consultants.

A copy of the Title VI Assurances (Appendices A & E) are provided in Appendix C.

For information regarding the Title VI Program see the NDDOT website at: <https://www.dot.nd.gov/divisions/civilrights/titlevi.htm>.

- h. Disadvantaged Business Enterprises (DBE)

The NDDOT has established a Disadvantaged Business Enterprise (DBE) program and policy in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

The DBE requirements of 49 CFR Part 26 and the Department's DBE program apply to all federally-funded contracts and to any assignments made to recipients, sub recipients, contractors, subcontractors, consultants, and sub consultants,

NDDOT will take all steps to ensure that no person or groups of persons shall, on the grounds of race, color, national origin, sex, age, disability, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by the NDDOT, its recipients, sub recipients, contractors, subcontractors, consultants, and sub consultants.

It is NDDOT policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

Although not mandated, Consultant firms are encouraged to use DBE sub-consultant services where applicable.

For a list of DBE consultants, navigate to <https://www.dot.nd.gov/dotnet2/dbedirectory/default.aspx>. Click Export DBE Contact Information. Selecting Consultant from the Category drop-down list will allow the user to download an Excel file with all consultant DBEs' contact information.

For information regarding the DBE Program see the NDDOT website at: <https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>.

- i. Proposal Requirements – This section describes instructions and information regarding the preparation and submission of proposal and deadline for the submission of proposals.
- j. Evaluation and Selection Process – This section describes the selection procedures, weighted evaluation criteria and other factors to be used in evaluating proposals including:
 - i. Past performance
 - ii. Ability of professional personnel
 - iii. Willingness to meet time and budget requirements
 - iv. Location (local presence ≤ 10 percent)
 - v. Recent, current, and projected workloads of the persons and/or firms
 - vi. Related experience on similar projects
 - vii. Recent and current work for the agency
 - viii. DBE participation (≤ 5 percent)
 - ix. Other criteria as applicable e.g.
 - 1. Project Schedule
 - 2. Project understanding, issues, and approach

Interviews are conducted with at least three of the most highly qualified consultants to clarify technical approach, qualifications, and capabilities. The interviews may be by telephone or oral presentation and may include written responses as required by the RFP.

- k. Right of Rejection – A statement that NDDOT reserves the right to reject any or all proposals.
- l. Disclosure of Proposal – A statement at the conclusion of the selection process, the contents of the proposals will be subject to North Dakota Open Record Laws and open to inspection by interested parties. Proposals submitted will remain confidential until a contract has been executed for the project.
- m. Risk Management for Professional Services – A statement or summary of risk management requirements (see Appendix D for examples).
- n. Audit – A statement of requirements for cognizant Federal Acquisition Regulation (FARs) audits.
- o. Consultant Email Contacts – A statement for email contact requirements.

3) Soliciting Proposals

Proposals are solicited from all consultant firms that are interested in being considered for the work. To ensure qualified in-state and out-of-state consultant firms are given the opportunity to be considered for award of a contract, RFP's are published on the NDDOT website at <https://www.dot.nd.gov/business/consultants.htm>, from the date of release until the required response date. Additionally, RFP's are emailed to the prequalified consultants. A consultant firm may request to become prequalified by submitting Federal Form 330 with their proposal

- a. Prequalified Consultant Solicitations
 - i. Projects with consultant fees estimated to be under \$100,000 may be procured through direct negotiation with a selected prequalified consultant after considering the nature of the project; the proximity of the consultant to the project; the capability of the consultant to produce the required services within a reasonable time, past performance; and the ability to meet the budget requirements; and other factors that are deemed to be in the NDDOT's best interest.

Fees and rate quotations shall be obtained from at least three prequalified sources. No single consultant may be awarded contracts of this type that exceed \$200,000 in a 12 month period immediately preceding the contract being negotiated.

- ii. Projects with consultant fees estimated to be greater than \$100,000 but not more than \$300,000 may be solicited by notifying all prequalified firms in the specific area of need, allowing a minimum of seven calendar days to respond.
- iii. Projects with consultant fees estimated over \$300,000 may be solicited by notifying all prequalified firms, allowing a minimum of twenty-one calendar days to respond.
- iv. The NDDOT may solicit multiple projects in one solicitation using the highest threshold above.
- v. Information regarding prequalification is available on the NDDOT website at <https://www.dot.nd.gov/business/consultants.htm>.

b. Non Prequalified Consultant Solicitations

If the NDDOT has no prequalified consultants for a desired consultant service, a notice will also be published in the official newspaper of the county where the project is to be undertaken and in the 10 major daily state newspapers. The date of submission of proposal shall not be less than twenty-one calendar days after the date of publication of the notice. The items enumerated in the RFP, but not all details, should be included in the notice published in the newspaper.

- c. Consultant services shall not be broken down into smaller components to meet threshold dollar amounts.

4) Analysis and Selection

- a. The Proposals, encompassing the information required by the RFP, will be evaluated and ranked by the Agency Selection Committee (ASC). The ASC is described and procedures are fully defined in Appendix E. The Agency Selection Committee may short list a minimum of three Proposals to be interviewed. This process shall include an analysis of the proposals in comparison to the evaluation criteria and other factors in the RFP.
- b. If less than three responses or proposals are received, CAS will make a determination to proceed using non-competitive negotiations or will re-solicit the RFP. If the project is federally funded, CAS will obtain FHWA approval to proceed using noncompetitive negotiations prior to conducting interviews.

- c. ASC, upon the completion of interviews shall select and rank, in priority order, the most qualified consultants based on an analysis of the interviews, and proposals in comparison to the evaluation criteria and other factors as published in the RFP.
- d. CAS will prepare a Selection and Ranking Memorandum Appendix F. In addition, CAS reviews and verifies the selected consultant firm has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency. The memorandum is submitted to the Office of Project Development Director and/ or Office of Operations Director who will then submit the memorandum to the Director for signature, authorizing the NDDOT to enter into negotiations with that consultant firm. Upon signature by the Director, CAS will send written notification to the first ranked consultant firm and requests submittal of a preliminary scope and fee. Additionally, CAS will send written notification of the selection and order of preference to the other respondents.
- e. CAS retains acceptable documentation of the proposal, evaluation, and selection of the consultant firm. Records shall be maintained in accordance with the cost principle provisions of 2 CFR 225 (previously 49 CFR 18.42).

5) Negotiations

- a. CAS negotiates with the most qualified consultant firm to refine a Scope of Work and establish a fee for the project. Negotiations are initiated by having the consultant firm submit a Scope of Work and estimated hours for review by the NDDOT. CAS distributes the scope of work and estimated hours to the appropriate divisions and districts. The scope of work and estimated hours are reviewed to ensure the necessary work activities are addressed and the estimated hours are reasonable.

CAS then negotiates the final Scope of Work including: work activities, staffing requirements, estimated hours and rates, fixed fee amount, direct expenses, and sub consultant expenses. The indirect cost rates are applied to the direct costs. The final fees are compared to the initial estimate and a determination is made if the fees are fair and reasonable. Federal reimbursement is limited to the federal share of the costs allowable under the cost principles in 48 CFR Part 31.

- b. If negotiations for satisfactory Scope of Work and fee are unsuccessful with the first ranked consultant firm regardless of phase, CAS will formally terminate the negotiations with the first ranked consultant firm and begin negotiations with the second and third ranked consultant firms until a satisfactory contract is negotiated. If necessary, the ASC will select three additional consultant firms in priority order and commence negotiations or publish a new RFP.
- c. The negotiations are limited to scope of engineering services and evaluation criteria as published in the RFP solicitation from which a consultant firm was selected to perform. As identified in the RFP, work may be negotiated and performed in phases based on the outcome of the initial phase, consultant firm performance and funding availability.
- d. CAS retains acceptable records of negotiations to document negotiation activities and set forth the resources. Records shall be maintained in accordance with the provisions of 2 CFR 225 (previously 49 CFR18.42).
- e. Methods of Payment
 - i. The method of payment to compensate the consultant firm for all work required shall be set forth in the original contract and in any work authorizations or supplement agreements thereto. It may be a single method for all work or may involve different methods for different elements of work. The methods of payment which shall be used are: lump sum, cost plus fixed fee, cost per unit of work, or specific rates of compensation.
 - 1. Lump Sum. Full payment at one time for a commodity, well defined service or deliverable. This method shall not be used to compensate a consultant firm for consultant services except when the state has established the extent, scope, complexity, character, and duration of the work to be required to a degree that fair and reasonable compensation, including a fixed fee.
 - 2. Cost Plus Fixed Fee. Actual costs incurred, plus a fixed fee. The total fee or maximum fee is fixed at the inception of the contract. See 48 CFR Part 16.306.
 - 3. Cost Per Unit of Work. The price negotiated or quoted for each unit, set in the proposal.
 - ii. All methods of payment must specify a Work Authorization Amount Payable, which shall not be exceeded, unless adjusted by a Work Authorization or Supplement Agreement.

- iii. The cost plus a percentage of cost and percentage of construction cost methods of compensation are prohibited in accordance to 23 CFR 172.5(c).

f. Fixed Fees

- i. The determination of the amount of the 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.
- ii. Fixed fees normally range from 0 to 15 percent of the total direct and indirect cost. A fixed fee over 15 percent may be justified when exceptional circumstances exist.

6) Contract Administration and Distribution

CAS uses the Contract Management Program (see Appendix J) to prepare consultant contracts. . CAS reviews and verifies the consultant firm status using the System for Award Management (SAM). The SAM documentation is attached to the Selection and Ranking Memorandum prior to the Director's signature. CAS will prepare and distribute the contract to the consultant for signature. Upon receipt from the consultant with appropriate signatures, CAS will route the contract to the Environmental and Transportation Services Director, Office of Project Development, and Legal Division for review and approval. Legal Division will forward the agreement to the NDDOT Director for execution. Upon execution by the Director, CAS will receive the contract and place the "original" in the CAS File, a scanned copy in contract management, and mail a copy to the consultant.

Upon execution by the Director or a Notice to Proceed by the Deputy Director for Engineering, the appropriate division or district shall monitor and manage the consultant contract.

Rankings from each member of the ASC, the signed Memorandum of Concurrence from the Director, a copy of the RFP, the short listed proposals, the contract, pertinent correspondence during negotiations, correspondence pertaining to the contract during the project, final consultant proposal, notice to proceed (if applicable), work authorizations and supplement agreements, and progress estimate invoices shall be saved and placed in the CAS project file. The contracts, work authorizations, supplement agreements, and progress estimates are placed in FileNet via the Contract Management Program.

7) Work Authorization

The Consultant Firm may receive Work Authorization(s) from the NDDOT once a Scope of Work is negotiated and approved.

- a. Added Phase – These are added work activities authorized to advance the Scope of Work for the next phase of the contract. The Work Authorization shall include a description of the activities and justification for the proposed work activities and costs.

Additional Fixed Fees shall be at the rate established in the contract and payment made on a lump sum basis.

- b. Added or Deleted Work Activities – These are work activities that are added or deleted to the authorized Scope of Work. The added work must be necessary for the Consultant Firm to complete the Scope of Work. The Work Authorization shall include a description of the activities and justification for the proposed work activities and costs.

Additional Fixed Fees, if necessary, shall be at the rate established in the contract and payment made on a lump sum basis.

- c. Extension of Services – This is an extension of services provided in the Scope of Work. Extensions may be necessary to increase the amount of an existing work activity, or time extensions to complete existing work activities, e.g. extension of, or delay, in the construction contractor's work schedule. The Work Authorization shall include a justification for the increased costs.

Additional Fixed Fees, if necessary, shall be at the rate established in the contract and payment made on a lump sum basis.

- d. Only work within the original scope of engineering services and evaluation criteria as published in the RFP, from which a consultant firm was selected, may be incorporated into a work authorization Work outside the original scope of engineering services and/or emergency work may be completed by NDDOT staff, using consulting services by publishing a new RFP, or using small purchase or non-competitive contracting procedures. Contact CAS to obtain the appropriate review for scope of engineering services and emergency work determinations. Work performed outside the original scope of engineering services is not eligible for federal-aid and the entire contract may become ineligible for federal-aid.

- e. A work authorization **may not be used** to change the Bid Opening Date (Completion Date) of a contract.

8) Supplement Agreement

The terms of the Consultant Contract shall not be waived, altered, modified, supplemented, or amended, in any manner except by Supplement Agreement in writing between NDDOT and the Consultant Firm.

- a. The Supplement Agreement shall set forth the reasons for a need to change the Consultant Contract, Bid Opening Date (Completion Date), or the Contract Total Maximum Cost to be paid by NDDOT to the Consultant Firm. The Supplement Agreement shall include a justification for the increased costs. Requests for a Supplement Agreement shall be submitted to DTR and CAS for approval. All changes must be approved by a fully executed Supplement Agreement.
- b. Only work within the original scope of engineering services and evaluation criteria as published in the RFP, from which a consultant firm was selected, may be incorporated into a supplement agreement. Work outside the original scope of engineering and/or emergency work may be completed by NDDOT staff, using consulting services by publishing a new RFP, or using small purchase or non-competitive contracting procedures. Contact CAS to obtain the appropriate review for scope of engineering services and emergency work determinations. Work performed outside the original scope of engineering services is not eligible for federal-aid and the entire contract may become ineligible for federal-aid.

9) Monitoring and Contract Oversight

- a. The Contract Administrator and Designated Technical Representative (DTR) are responsible for contract management and ensuring the contract stays in budget. This involves the monitoring of day-to-day involvement in the delivery and expected outcomes for which a consultant was contracted. It includes reviewing the semi-monthly or monthly progress reports and payment requests necessary to accomplish the scope of services agreed to in the contract. This oversight includes ensuring the consultants are only performing the work activities authorized and requesting payment, as defined in the approved contract, work authorizations and supplement agreements. The DTR or District Representative acts as the person in "Responsible Charge" for the project.
- b. Consultant Administrative Services (CAS) is responsible for contract administration; which includes handling of the administrative functions of the contract, work authorizations and supplemental agreements. CAS maintains the contractual records.

- CAS reviews the consultant payment requests to ensure contract payment rates and maximum payment amounts are correct; and forwards payments request to Bridge, Design, ETS, and Materials and Research Divisions for review of progress and hours billed. After being reviewed by the DTR, the requests for payments are returned to ETS for processing payments.
- CAS reviews the consultant payment requests to ensure contract payment rates and maximum payment amounts are correct; and forwards payments request to Districts for review of progress and hours billed. After being reviewed by the DTR, the payment requests are returned to CAS and forwarded to Construction Services for processing payments.
- Local Government Division reviews consultant payment requests to ensure contract payment rates and maximum payment amounts are correct; and processes the payments for the Local Government Division DTR.

There can be times when the personnel involved in one process are also involved in the other; for example, the DTR responsible for verifying the progress report prior to the approval of the monthly payment request.

In general:

- The contract statement of work and the project schedule guide contract management.
 - The contract terms, references to state and federal regulations, policy manuals, and budget govern contract administration.
- c. The Consultant Firm is responsible to meet the terms of the contract and provide the deliverables as per the contract schedules. The consultant firm is responsible for quality control of services and the administration of the contract, work authorizations and supplement agreements. This includes ensuring they are only performing the work activities and requesting payment, as defined in the approved contract and applicable work authorizations and supplemental agreements. Similarly, the consultant firm is responsible to review the work activities, payment requests, and maximum payment amounts for sub-consultants.
- d. Responsible Charge – The NDDOT Responsible Charge guidance, evaluation form and evaluation guidance requirements are described in Appendix G. The information in Appendix G is for informational purposes. The current guidance is documented and available in the Construction Records Manual in the Construction Division at <https://www.dot.nd.gov/manuals/construction/construction-records/constructionmanual.htm>.

e. Evaluations

Consultant evaluation is be used to provide feedback on performance, identify areas of improvement, or as input into selection for future services. Consultant evaluation forms will be filled out by the consultant firm and then submitted to the DTR or District Representative at the completion of the project prior to receiving final payment. When the DTR or District Representative fills out his portion of the evaluation form, it will then be sent back to the consultant for review and signature, and then returned to CAS. CAS will keep all evaluation forms on file in each consultants personnel file (see Appendix H – form available on the NDDOT website).

- f. Errors and Omissions – The NDDOT error and omission requirements for services provided are described in Appendix I – form available on NDDOT website.

SMALL PURCHASES AND NONCOMPETITIVE NEGOTIATION

1) Small Purchases – 23 CFR 172.5(a)(2)

Small purchase procedures may be used for the procurement of consultant services when the contract cost does not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11), currently fixed at \$150,000. The NDDOT is limited to \$100,000 by state law. See also Soliciting Proposals, Section 3.a.i. on page 8.

Contract requirements may not be broken down into smaller components to permit the use of small purchase requirements. Work performed outside the original scope of engineering services, or beyond the threshold limits are not eligible for federal-aid and the entire contract may become ineligible for federal-aid.

2) Noncompetitive Negotiation – 23 CFR 172.5(a)(3)

Noncompetitive negotiation may be used for the procurement of consultant services when the award of a contract is not feasible under small purchase or competitive negotiation procedures. See also Soliciting Proposals, Section 3.a.i. on page 8.

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

- a. The service is available only from a single source,
- b. There is an emergency which will not permit the time necessary to conduct competitive negotiations, or
- c. After solicitation of a number of sources, competition is determined inadequate.

When using noncompetitive negotiations, CAS shall:

- a. Obtain written justification from the Division Director or District Engineer and approval by the NDDOT Director, or designee,
- b. Submit justification and receive approval from FHWA before using this form of contracting.
- c. Develop an adequate scope of engineering services, scope of work, evaluation factors, and cost estimate as required under competitive negotiation, in Section 5) Negotiations.
- d. Conduct negotiations as required in Section 5) Negotiations.

ON-CALL OR INDEFINITE DELIVERY/INDEFINITE QUANTITY (IDIQ)

On-call or indefinite delivery/indefinite quantity (IDIQ) are contracts for the performance of services for a number of projects, under separate contracts, issued on an as-needed or on-call basis, for an established contract period. The procurement of consultant services to be performed under on-call or IDIQ contracts follows either competitive negotiation or small purchase procurement procedures.

- 1) The RFP and/or contract provisions shall address the following:
 - a. The maximum length of contract period, including the number and period of any allowable contract extensions, which shall not exceed 5 years (NDDOT currently uses 2 years for the length of contract period);
 - b. The maximum total contract dollar amount that may be awarded under a contract;
 - c. Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the consultant services; and
- 2) If multiple consultants are to be selected and multiple on-call or IDIQ contracts awarded through a single solicitation for specific consultant services:
 - a. Identify the number of consultants that may be selected or contracts that may be awarded from the solicitation; and
 - b. Specify the procedures the NDDOT will use in competing and awarding contracts among the selected, qualified consultants.
 - c. Under competitive negotiation procurement, each specific contract shall be awarded to the selected, qualified consultants:
 - i. Through an additional qualifications-based selection procedure, which may include, but does not require, a formal RFP; or
 - ii. On a regional basis whereby consultants are selected to provide on-call or IDIQ services for an assigned region(s) identified within the solicitation.
 - d. Contracts shall not be competed and awarded among the selected, qualified consultants on the basis of costs.
- 3) Payment methods:
 - a. The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification.

- i. The methods of payment shall be: Lump sum, cost plus fixed fee, cost per unit of work, or specific rates of compensation.
- ii. A single contract may contain different payment methods as appropriate for compensation of different elements of work.

4) Types of Consultant Services using On-call or IDIQ:

- a. Cultural Resource Inventories
- b. Wetland Delineations
- c. Wetland Monitoring
- d. Biological Assessments/Evaluations
- e. Noise Studies
- f. Value Engineering Studies
- g. Survey (aerial and/or ground)
- h. Material Testing/Geotechnical

CONSULTANT SERVICES IN MANAGEMENT ROLES

The NDDOT does not presently use consultants to act in a management role. It is acknowledged that if and when federal funds are used, FHWA approval is required per 23 CFR 172.9.

FEDERAL REQUIREMENTS

[The following provisions are applicable to contracts funded wholly or in part with federal funds. It should not be assumed that the following clauses should be used in every contract that involves federal funds. CAS will consult with FHWA to determine which federal clauses need to be included in each contract. CAS will coordinate with the Legal Division to get the recommend federal clauses incorporated into the consultant contracts. The following list is not all inclusive. A federal funding agency may require a federal clause that is not listed here.]

TITLE VI AND NONDISCRIMINATION PROGRAM/ADA (TITLE VI)

It is the policy of the NDDOT to ensure compliance with Title VI of the Civil Rights Act of 1964, 49 CFR part 21, and the related statutes and regulations.

Under Title VI of the Civil Rights Act of 1964, and its related statutes and regulations, no person or groups of persons shall, on the grounds of race, color, national origin, sex, age, disability, limited English proficiency, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by the North Dakota Department of Transportation (NDDOT), its recipients, sub recipients, or other contractors, subcontractors, consultants and sub consultants.

External individuals (non-NDDOT employees) who believe that they have been discriminated against by NDDOT or by its recipients, sub recipients, contractors, subcontractors, consultants, and sub consultants should contact the NDDOT Title VI Liaison Officer at 701-328-2576 or toll free at 1-855-NDROADS (1-855-637-6237). TTY users may call Relay North Dakota at 711.

The consultant firm shall comply with Appendix A and E of the Title VI Assurances which is included in the consultant contract. A copy of the Title VI assurances is provided in Appendix C.

Information regarding the NDDOT Title VI Program is available from the Civil Rights Office or on the NDDOT website at <https://www.dot.nd.gov/divisions/civilrights/civilrights.htm>.

TITLE VI-NONCOMPLIANCE

If the consulting firm fails to comply with the federal or state civil rights requirements of this contract, sanctions may be imposed by the FHWA or NDDOT as may be appropriate, including, but not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The NDDOT has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

The DBE requirements of 49 CFR Part 26 and the Department's DBE program apply to all federally funded contracts and to any assignments made to recipients, sub recipients, contractors, subcontractors, consultants, and sub consultants.

NDDOT will take all steps to ensure that no person or groups of persons shall, on the grounds of race, color, national origin, sex, age, disability, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by the NDDOT, its recipients, sub recipients, contractors, subcontractors, consultants, and sub consultants.

It is NDDOT policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT assisted contracts. Although not mandated, Consultant firms are encouraged to use DBE sub consultant services where applicable.

For a list of DBE consultants, navigate to <https://www.dot.nd.gov/dotnet2/dbedirectory/default.aspx>. Click Export DBE Contact Information. Selecting Consultant from the Category drop-down list will allow the user to download an Excel file with all consultant DBEs' contact information.

Information regarding the NDDOT DBE Program is available from the Civil Rights Office or on the NDDOT website at: <https://www.dot.nd.gov/divisions/civilrights/civilrights.htm>.

AUDITS

North Dakota Department of Transportation (NDDOT) Indirect Cost Rate Policy

Each consultant who anticipates performing services for the North Dakota Department of Transportation (NDDOT) is required to submit an overhead (indirect) cost rate. The indirect cost rate must be compiled and audited in accordance with cost principles contained in the Federal Acquisition Regulations (FAR) of part 31 of title 48, Code of Federal Regulations (CFR). Firms proposing to do work for the NDDOT should have a current audit rate no older than 12 months from the close of the firm's fiscal year to ensure rates reflect the most recent costs.

Consulting firms that do not meet this requirement will not qualify to propose or contract for NDDOT projects until the requirement is met. Consulting firms that have submitted all the necessary information to the NDDOT and are waiting for the completion of the audit will be qualified to submit proposals for work. Information submitted by a consulting firm that is incomplete will not qualify.

- (Effective after December 31, 2016) Engineering consultants that exceed \$250,000 in current or proposed contracts for any year will be required to submit an audited rate conducted by an independent Certified Public Accountant (CPA).
- Engineering consultants that do less than \$250,000 of work in a year may submit a rate audited by a CPA or submit a compiled rate to be audited by the NDDOT Audit Services Division.
- In the absence of an audited FAR compliant rate, engineering firms may elect to utilize a safe harbor indirect cost rate of 110% under a current test program with FHWA.

As part of the audit process, consultant firms will be required to submit a management representation letter to confirm that indirect cost rate proposals have been submitted in accordance with the FAR and with generally accepted accounting principles. Indirect cost rate audits may be performed by a CPA, an agency of the Federal government, another state highway agency or similar audit agency. All audits shall be subject to review and / or modification by the NDDOT Audit Services Division for compliance with the FAR. NDDOT Audit Services will complete a review of the CPA working papers and report when applicable, in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit & Accounting Guide. NDDOT Audit Services therefore requires access to CPA audit working papers to conduct the review and issue its acceptance of the audited rate.

Out-of-state consultant firms can submit a current FAR Compliant audit rate accepted by a cognizant agency. A cognizant audit performed by another state highway agency will be accepted in the absence of a CPA audit report. A provisional rate will be negotiated if the indirect cost rate established in the cognizant audit is in dispute. If the out-of-state consultant firm does not have a current audited rate, they will need to provide an indirect cost rate prepared or reviewed by an independent Certified Public Accountant, or submit a current rate proposal prepared in accordance with the FAR for review by NDDOT audit staff.

The \$250,000 threshold applies to all in-state and out-of-state prime consultants that contract with the NDDOT. The NDDOT is not required at this time to conduct audits of sub consultants. However if a sub consultant has an indirect cost rate, it is expected the sub consultant will use that rate on NDDOT funded projects.

Audits of indirect cost rates should be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) and the AASHTO Audit Guide. The cost of CPA audits is allowable in the indirect cost rate; the cost of a rejected CPA audit is not an allowable cost. As part of the indirect cost rate audit, engineering firms will need to provide a completed:

- Indirect cost rate schedule in a format similar to examples in the AASHTO Audit Guide.
- AASHTO Internal Control Questionnaire (Appendix B of the AASHTO Audit Guide).
- Executive Salary Schedule (see Chapter 7 of the AASHTO Audit Guide). AASHTO has developed a National Compensation Matrix (NCM) for use when benchmarking the reasonableness of executive compensation.
- Supporting documentation for adjustments to the indirect cost rate and selected transactions under review.
- Management representation letter.

Facilities Capital Cost of Money (FCCM) will be approved separately from the indirect cost rate when calculated on the indirect cost rate report. Fixed fees cannot be calculated on the FCCM according to FAR paragraph 15.404-4(c)(3). FCCM is to be calculated on direct labor only and listed separately on the cost summary sheet.

23 CFR part 172 was revised effective June 22, 2015 requiring consulting engineers to certify that the final indirect cost rate is allowable in accordance with the Federal cost principles. NDDOT will therefore require consulting engineers to submit a certification form when contracts are signed.

Any questions regarding audits of indirect cost rates can be sent to Daryl Splichal, Audit Services Division at dasplichal@nd.gov. Questions regarding contract submittals and award procedures can be sent to Steve Cunningham, Consulting Administrative Services at scunning@nd.gov.

Related Links:

Title 23 U.S.C.

<https://www.fhwa.dot.gov/map21/docs/title23usc.pdf>

Title 48 Code of Federal Regulations

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title48/48cfr31_main_02.tpl

AASHTO Audit Guide available for purchase

https://bookstore.transportation.org/item_details.aspx?ID=2625

Certification of Final Indirect Costs

<https://www.dot.nd.gov/divisions/audit/docs/Cert%20of%20IndirectII.rtf>

A consulting firm that has not previously had a FAR compliant indirect cost rate compiled or accepted by a cognizant agency may choose to use the safe harbor indirect cost rate of 110%. North Dakota is one of ten states approved by the FHWA for use of the safe harbor rate through December 31, 2016 or as extended by FHWA. The safe harbor rate was established to allow time for small consulting firms, new consulting firms, and consulting firms that may not have previous experience with federally-funded contracts to become compliant with the FAR.

AUDIT REPORTS

Audit reports are prepared and distributed to CAS periodically by the Audit Services Division. CAS will send a copy of the audit report in a discrete manner to the Consultant firm (the person listed in the report). The original report will be maintained by CAS and filed in the "Consultant File". This information is confidential and is not classified as a "Public Record".

DEBARMENT, EXCLUSION OR INELIGIBILITY

49 CFR Part 29 requires that the selected consultant firm has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency. CAS reviews and verifies the consultant firm status using the System for Award Management (SAM). The SAM documentation is attached to the Selection and Ranking Memorandum prior to the Director's signature.

Additionally, the consultant firm is advised that by signature on the contract or agreement, they certify that the consultant firm or any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determined ineligible by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.

RECORDS

The consultant firm shall maintain all contract, financial, and project as specified in 2 CDR 200.333 and 23 CFR 172. Such records shall be made available to NDDOT and the federal government for inspection and audit during the contract term and retained for a period of three years after FHWA project closeout and final voucher, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

CONFLICTS OF INTEREST

No official or employee of the state or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector, or other person performing services for the state or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by the same state or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by the state or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of NDDOT and of such other governmental instrumentality, and such officer, employee, or person has not participated in such acquisition for and in behalf of the state.

COSTS

Cost principles and allowable costs are covered under Title 48 CFR Part 31, procurement procedures are covered under Title 49 CFR Part 18, or if an institution of higher learning, subject to 49 CFR Part 19.

OWNERSHIP OF WORK PRODUCT

All work products and copyrights of the contract which result from this contract are the exclusive property of NDDOT, with an unlimited license for use by the federal government and its assignees without charge.

PROPERTY MANAGEMENT

The consultant firm shall make all purchases and maintain and dispose of all equipment purchased in accordance with 49 CFR Part 18.32 and 18.36, copies of which will be provided upon request.

TERMINATION FOR CAUSE

In the event a consultant firm fails to perform his obligations under this agreement, NDDOT shall terminate the agreement, pursuant to 48 CFR Part 49 (Termination of Contracts). Copies will be provided upon request. CAS will obtain approval from the Director to begin negotiations with the second selection or re-publish the request for proposal.

LOCAL PUBLIC AGENCY / METROPOLITAN PLANNING ORGANIZATION REQUIREMENTS

NDDOT – Local Government Division maintains the Local Government Manual. That manual is for use by the state, cities, counties, metropolitan planning organizations (MPO), and consultants to help in developing Local Public Agency (LPA) and MPO projects.

NDDOT agreements shall require that LPA/MPO be responsible for completing all phases of preliminary engineering (PE) and construction engineering (CE) for projects on urban and county roads & bridges, Emergency Repair (ER) Program, Transportation Alternative Program (TAP), NDSTREETS Program, and planning studies, as applicable. The LPA/MPO may complete this work by using their staff, if capable, or by contracting consultant services (engineering and design related services or planning services), as necessary.

If federal funds are not being used for contracting consultant services, the LPA/MPO need only follow North Dakota state and other applicable laws.

If federal funds are being used for contracting consultant services, the LPA enters into an agreement with the NDDOT to use federal funds for contracting consultant services. The MPO work program agreements are reviewed and approved by NDDOT and the MPO contracts directly for the consultant services. The LPA/MPO shall use the Qualifications Based Selection (QBS) procedures as outlined in this manual. The selection of the consultant firm is the responsibility of the LPA/MPO. The LPA/MPO selection process is subject to outside (NDDOT or Federal) audits to ensure that the appropriate federal and state requirements were followed.

The following apply:

- 1) Local Government Division obtains federal authorization for use of federal funds.
- 2) The LPA/MPO shall provide a Request for Proposal (RFP) to the Local Government Division. The Local Government Division will approve and publish the RFP on the NDDOT website. The RFP shall meet the requirements established in this manual and include the contact person (name, address, phone, and email) and date of submission for proposals. The LPA/MPO shall allow 21 calendar days, from the initial posting date on the NDDOT website, for responses.
- 3) The LPA/MPO shall designate a selection committee to conduct the QBS procedures.
- 4) The LPA/MPO shall send a letter to the Local Government Division, preferably signed by the mayor or president of the LPA/MPO commission, certifying that the appropriate federal and state requirements were followed and attach the appropriate documentation:

- a. Request for Proposal (RFP).
 - b. Selection committee.
 - c. Shortlist evaluation and rankings for firms to be interviewed.
 - d. Interview location date, time, and questions.
 - e. Selection committee interview answers and notes.
 - f. Ballots and ranking of selection.
 - g. Selection and ranking Memorandum.
 - h. Approval of mayor or president of the LPA/MPO commission.
 - i. Copies of Proposals received.
 - j. Copies of Proposed Sub Consultant Request (see Appendix A).
 - k. Other information, if applicable.
- 5) The LPA must enter into a consultant services agreement with the selected consultant firm. This agreement (furnished by NDDOT) must be reviewed and signed by NDDOT for approval for federal participation. The MPO must enter into a consultant services agreement with the selected consultant firm. NDDOT must approve the agreement between the MPO and the consultant firm as being eligible for federal funding. No consultant services are eligible for federal reimbursement until:
- a. NDDOT has approved the agreement as eligible for federal funds.
 - b. The agreement between the LPA/MPO and the consultant firm is executed.

The LPA/MPO verifies and provides the following prior to the execution of a contract:

- a. The selected consultant firm is licensed for business in North Dakota.
 - b. The selected consultant firm is registered with North Dakota Board Registration for Professional Engineers and Surveyors, as applicable.
 - c. The selected consultant firm has not been suspended, debarred, voluntarily excluded, or determined ineligible for by any federal agency.
 - d. Approved copies of Prime Consultant Request to Sublet (see Appendix B).
 - e. Certification of Indirect Cost Rate
- 6) The LPA/MPO shall designate a person in Responsible Charge for construction projects (see Appendix G).
- 7) The LPA/MPO shall be responsible for Monitoring and Contract Oversight.
- 8) The LPA/MPO shall be responsible to complete consultant evaluation forms (see Appendix H) and submittal of completed forms to the Local Government Division.
- 9) The LPA/MPO shall be responsible for error and omission procedures (see Appendix I).

NDDOT has established a contract and engineering review team (CERT) to conduct inspections of construction contracts on the LPA system for federal-aid projects. The purposes of the inspections are to make sure specifications, established construction practices, and field office procedures are complied with uniformly, help train inspection and engineering personnel, and improve the quality of the construction work.

STATE REQUIREMENTS

The selection of architect, engineer, and land surveyor services with state funds, are governed by N.D.C.C. 24-02-07.3 and N.D.C.C. 54-44.7.

The solicitation and selection for these services will be conducted by Consultant Administration Services (CAS) of the Environmental and Transportation Services Division.

PREQUALIFIED CONSULTANT SOLICITATIONS

The NDDOT Director may prequalify, select, and contract for consultants in the area of engineering, land surveying, architecture, traffic safety business administration, and related matter in accordance to N.D.C.C, 24-02-07.3. Prequalification may be done in several areas and can be accomplished by sending in the proper Federal Form 330 to the CAS. In addition, consultants must also submit a statement of qualifications, a brochure describing past experience and firm capabilities, and a cover letter describing the area(s) in which the consultant is requesting to become prequalified. The submitted information shall also contain a list of the people in the firm qualified to sign contracts. The consultant must notify CAS in writing of any change in the list prior to any additional document signatures. Upon receiving and reviewing all the required information the consultant shall be notified by CAS of the prequalification and be placed on the prequalification list, which is available on the NDDOT website. All firms doing engineering or land surveying for NDDOT need to follow state laws relating to Professional Engineer and Professional Land Surveyor, registration in North Dakota.

The prequalification list is used to assist the NDDOT in finding interested, qualified consultants for potential engineering, land surveying, and architectural services. The prequalification list is maintained in the following areas of work:

- A. Preliminary Engineering
 - 1. Surveying
 - 2. Structural Design
 - 3. Road Design
 - 4. Traffic Engineering
 - 5. Environmental
 - 6. Wetlands Delineation
- B. Construction Engineering
 - 1. Inspection
 - 2. Materials Testing
 - 3. Surveying
- C. Geotechnical Investigations
- D. Steel Fabrication Inspections
- E. Soil Contamination Studies
- F. Partnering Facilitation
- G. Bridge Inspection
- H. Traffic Planning
- I. Architectural Design

All prequalified consultants, receive Request for Proposals (RFPs) by email or can access RFP's on the NDDOT Website, <https://www.dot.nd.gov/business/consultants.htm> when the NDDOT is soliciting for services. Information provided for prequalification is confidential and not available to the public.

All consultant proposals submitted during any solicitation shall remain confidential until a contract has been executed with the NDDOT for each project.

Firms are required to submit an updated Federal Form 330 as described above is OMB No. 9000-0157 Architect Engineer Qualifications Form every three years stating their firm's capability. If a firm does not submit the update, then they will be removed from the prequalification list. <https://www.dot.nd.gov/business/consultants.htm>

NON PREQUALIFIED CONSULTANT SOLICITATIONS

If the consultant services required is not included in the prequalification list, the engineering, land surveying, and architectural services are procured in accordance to N.D.C.C. 54-44.7. A notice will be published in the official newspaper of the county where the project is to be undertaken and in the major state newspapers. The date of submission of proposal will not be less than twenty-one calendar days after the date of publication of the notice. The items enumerated in the RFP, but not all details, should be included in the notice published in the newspaper. Services required for Public Information Coordination, Transit and DBE/OJT are procured according to NDCC section 54-44.4-09 OMB registered state bidders list.

LAST PAGE

**PART 172 – ADMINISTRATION OF ENGINEERING AND
DESIGN RELATED SERVICE CONTRACT**

23 CFR PART 172.9 WRITTEN PROCEDURES

LIST OF APPENDICES

<u>APPENDIX</u>	<u>TITLE</u>
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A	Proposed Sub Consultant Request
B	Prime Sub Consultant Request to Sublet
C	Title VI Assurances - Appendices A & E
D	Risk Management Appendix (Examples)
E	Agency Selection Committee
F	Selection and Ranking Memorandum
G	Responsible Charge Guidance
H	Consultant Evaluation Forms
I	Errors and Omissions Procedures
J	Consultant Management System
K	FHWA References

APPENDIX A – PROPOSED SUB CONSULTANT REQUEST

PROPOSED SUB-CONSULTANT REQUEST

North Dakota Department of Transportation, Environmental & Transportation Services
SFN 60232 (9-2016)

Sub-Consultant firms that have been contacted and agree to be listed on a Prime Consultants Project Proposal for work with NDDOT must submit original form and one copy to be attached to the Prime Consultants Proposal. This form is used for informational purposes only.

NDDOT Project Number		NDDOT Project Control Number	Prime Consultant Company Name	
Company Name		Owner		
Address		City	State	ZIP Code
Company Telephone Number	Fax Number		Email Address	

Type of Work to be Subcontracted

<input type="checkbox"/> Appraisals	<input type="checkbox"/> Environmental	<input type="checkbox"/> Planning	<input type="checkbox"/> Structural Design
<input type="checkbox"/> Architecture	<input type="checkbox"/> Geotechnical	<input type="checkbox"/> Public Involvement	<input type="checkbox"/> Survey
<input type="checkbox"/> Bridge Inspection	<input type="checkbox"/> Materials Testing	<input type="checkbox"/> Roadway Design	<input type="checkbox"/> Traffic Operations
<input type="checkbox"/> Construction Engineering	<input type="checkbox"/> Partnering Facilitation	<input type="checkbox"/> Soil Contamination	<input type="checkbox"/> Wetlands Delineation
<input type="checkbox"/> Cultural Resources	<input type="checkbox"/> Photogrammetry	<input type="checkbox"/> Steel Fabrication	<input type="checkbox"/> Other

The undersigned declares that all statements listed above are true.

Firm Name
Print Name
Title

Signature	Date
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Is Firm Currently NDDOT Certified as a DBE?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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APPENDIX B – PRIME CONSULTANT REQUEST TO SUBLET

PRIME CONSULTANT REQUEST TO SUBLET

North Dakota Department of Transportation, Environmental & Transportation Services
SFN 60233 (9-2016)

Project Number	PCN	Project Description
Sub-Consultant		Address
Prime Consultant		Address

The subcontract between the sub-consultant and prime consultant specified above contains all the pertinent provisions and requirements of the prime contract with the North Dakota Department of Transportation (NDDOT). It is specifically agreed and understood by and between the prime consultant and the sub-consultant that should the Deputy Director for Engineering of the NDDOT determine that progress on any sublet item of work is not satisfactory, the Deputy Director shall notify the prime consultant in writing of that fact and the prime consultant shall have the right to terminate the subcontract by giving written notice thereof to sub-consultant, and the sub-consultant shall have no cause of action against the prime consultant or the state of North Dakota for such termination. A prime contractor's organization shall perform work amounting to not less than 30 percent of the total original contract amount.

Name		
Title		
Sub-Consultant		
I hereby acknowledge that I have received and am aware of the following applicable provisions to this subcontract:		
APPLICABLE	NOT APPLICABLE	
<input type="checkbox"/>	<input type="checkbox"/>	Consultant Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Request for Proposal
<input type="checkbox"/>		Appendix A and E (Title VI Assurance)
<input type="checkbox"/>	<input type="checkbox"/>	Risk Management Appendix
Signature	Date	

Name		
Title		
Prime Consultant		
I hereby acknowledge that I have received and am aware of the following applicable provisions to this subcontract:		
APPLICABLE	NOT APPLICABLE	
<input type="checkbox"/>	<input type="checkbox"/>	Consultant Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Request for Proposal
<input type="checkbox"/>		Appendix a and E (Title VI Assurance)
<input type="checkbox"/>	<input type="checkbox"/>	Risk Management Appendix
Signature	Date	

ITEMS COVERED BY SUBCONTRACT

	Work Description	Unit	Amount
X			
ADD EXPENSE			
			Total: \$.00

Prime Consultant: Submit original form to Consultant Administrative Services

NDDOT USE ONLY			
Approved: CAS or Contract Manager	Date	Percent Sublet This Request	Total Percent Sublet to Date
NDDOT Distribution: Submit one copy of Contract Documents to FileNet.			

APPENDIX C – TITLE VI ASSURANCES (APPENDICES A & E)

APPENDIX D – RISK MANAGEMENT APPENDIX EXAMPLES



CERTIFICATE OF LIABILITY INSURANCE

HOLLBEC-01 MAMO

DATE (MM/DD/YYYY)
4/9/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

INSURED		CERTIFICATE NUMBER:		REVISION NUMBER:	
INSURER		INSURER		INSURER	
INSURER		INSURER		INSURER	
INSURER		INSURER		INSURER	
INSURER		INSURER		INSURER	
INSURER		INSURER		INSURER	

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSUR LTR	TYPE OF INSURANCE	ADOL (SOH) (NSR) (MVD)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X X		4/5/2012	4/5/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION \$	X X		4/5/2012	4/5/2013	LIMITED SINGLE LIMIT (No accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> YES describe under DESCRIPTION OF OPERATIONS below Y1H N/A			4/5/2012	4/5/2013	WC STALL TORY LIMITS OFF CR EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional Liability			4/5/2012	4/5/2013	Limit \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 104, Additional Remarks Schedule, if more space is required)

Insurance Coverage Verification

CERTIFICATE HOLDER ND DOT Steve Cunningham Environmental & Transportation Services 608 East Boulevard Avenue Bismarck, ND 58505-0700	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. A
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APPENDIX E – AGENCY SELECTION COMMITTEE

Agency: North Dakota Department of Transportation
Division: Environmental and Transportation Services Division
Group: Executive Policy Manual
Category: III-Committees, Boards, Commissions, Teams
Policy Number: III 5-1
Title: Agency Selection Committee Chairperson
Original Date: 12/15/2009
Revised Date: 03/03/2014
Review by Date: 03/01/2017

PURPOSE: The Agency Selection Committee is responsible to select the most competent and qualified firms for architect, engineer, construction management, and land surveying services.

POLICY: The Environmental and Transportation Services Division Director, Program Manager of Environmental and Transportation Services Division, or Consultant Administrative Services staff shall serve as the qualified, responsible designee to act as the chairperson, on behalf of North Dakota Department of Transportation Director, of the Agency Selection Committee (NDCC 54-44.7-03).

The chairperson shall choose committee members from a designated employee pool approved by the Director. Additionally, the committee chair is responsible for coordinating and accounting for the committee's work.

The chairperson will forward the Agency Selection Committee recommendations to the Deputy Director for Business Support for final approval.

The section leader of the Consultant Administrative Services, Environmental and Transportation Services Division, shall administer the consultant prequalification on behalf of the Director (NDCC 24-02-07.3).

Grant Levi, P.E.
Director

APPENDIX C

Consultant Selection Process

January 15, 2010

Upon receipt of the solicitation checklist, the Division Representative (DR) shall meet with Consultant Administration Services (CAS) to discuss the solicitation and establish time frames associated with the solicitation. At this time CAS, acting as the Director's designee, shall establish the Agency Selection Committee. CAS shall sit as a member of the agency selection committee and will coordinate and account for the selection committee's recommendations. The selection committee will generally be comprised of three to five representatives.

The Director will establish a Consultant Selection Committee Pool. The following Divisions shall have representation in the pool: Bridge, Communications, Construction, Civil Rights, Design, Environmental & Transportation Services, Local Government, Materials & Research, Planning, and Districts. CAS will develop a list of Qualified Committee Candidates for the Director's approval. CAS will select one primary and one or more alternate representatives from the approved list of Qualified Committee Candidates, for each of the divisions. The eight combined Districts shall be represented by one primary representative and at least one alternate as determined by the Director. Each primary representative shall serve a two year term in the committee pool. Each alternate shall serve a four year term, two years as alternate and two years as the primary representative. New members shall be appointed by the Director every two years to serve a four year term in the rotation. Local Government Entities and/or Agencies may submit the name of one representative to be considered to serve as a voting member of the Consultant Selection Committee on projects that they share in costs

The committee will be comprised of CAS and one or more members selected by CAS from the pool of representatives described above based on the contract work required. Other participants, such as city or government agency representatives, may be invited to attend interviews or to provide technical assistance on specific project issues to the selection committee, but will not be voting representatives. The Director may designate additional individuals to serve on the selection committee. Prior to serving on the selection committee division representatives will be trained on the consultant selection process.

All division representatives will be required to attend a brief training session with CAS before serving on a committee. Training will cover:

- a. An overview of Consultant selection procedures and guidelines
- b. A review of selection criteria definitions
- c. A review of performance evaluation process
- d. Overview of Federal and State laws governing consultant selection
- e. Civil Rights

NDDOT's evaluates consultants based on the following criteria outlined in NDCC Section 54-44.7-03:

- a. Past performance.
- b. The ability of professional personnel.
- c. Willingness to meet time and budget requirements.
- d. Location.
- e. Recent, current, and projected workloads of the persons or firms.
- f. Related experience on similar projects.
- g. Recent and current work for the agency.

NDDOT generally interprets these criteria as follows:

- a. **Past performance:** Measurement based on reviewing the firm/team's NDDOT project evaluation history and/or history of firm/team performance on non-NDDOT projects.
- b. **Ability of professional personnel:** An evaluation of the consulting firm/team's ability to meet the needs of the NDDOT based on the proposed team's credentials and qualifications. Significant consideration may be given to the level of professional credentials in order to appropriately address the nature and complexity of the project. Consideration may also be given to the overall size and ability of firm to provide additional professional resources if needed.
- c. **Willingness to meet time and budget requirements:** The firm/team's willingness to dedicate appropriate resources (staff, time, equipment, etc.) to meet NDDOT needs and deadlines. Firms must submit an acceptable project schedule and identify an approach that supports the schedule.
- d. **Location:** Relative proximity to the project and/or ability to efficiently and economically mobilize resources and staff to manage all site work required.
- e. **Recent, current, and projected workloads of the persons and/or firms:** The firm/team's ability to take on the work to be assigned considering the firm's current and impending work, both for the agency and others.
- f. **Related experience on similar projects:** How familiar the firm/team is with the specific type of work to be assigned, particularly on complicated projects with compressed schedules to insure milestones are met.
- g. **Recent and current work for the agency:** The amount of work the NDDOT has assigned to the firm recently. If several firms are equally qualified, additional consideration may be given to firms that have not recently been awarded work by the agency.

ADDITIONAL CRITERIA CONSIDERED

- h. **Project understanding, issues, and approach:** A general measure of the research the firm/team has conducted to develop an understanding and approach that addresses the primary issues identified. This is usually accomplished through site visits, review of old plans, and communication with informed concerns such as District staff, local governments, technical representatives and persons that frequent the project segment.

Each member of the Agency Selection Committee shall be responsible for reviewing and ranking the proposals in the time frame established. The Agency Selection Committee shall meet and establish a short list of firms to be interviewed. This short list shall include a minimum of three firms based on the information in the proposal and compliance with the criteria in the Request for Proposal (RFP). If less than three firms respond reference NDCC Section 54-44.7-03 prior to proceeding with interviews.

Once the short list has been established, CAS shall schedule the consultant interviews and email the appropriate correspondence to the proposing firms identifying interview schedules. CAS will also notify, in writing, those firms not chosen for interviews. The CAS representative shall also compile and distribute a series of questions to the Agency Selection Committee which will be asked during the interview.

The CAS representative shall facilitate the interviews. Upon completion of the interviews the members of the Agency Selection Committee shall select and rank, in priority order, the consultants based the criteria outlined in NDCC Section 54-44.7-03 and which in its judgment are most qualified.

The CAS representative shall submit a selection and ranking memorandum to the Office of Project Development Director who will then submit the memorandum to the Director for signature, authorizing the NDDOT to enter into negotiations with that firm. Upon signature by the Director CAS will notify the successful firm by telephone. The CAS representative will also notify in writing the unsuccessful firms.

Upon notification, the CAS representative shall begin negotiations with the successful firm to refine a scope of work and establish a fee for the project. Negotiations are initiated with the consultant by having the consultant submit a scope of work and estimated hours for review by the NDDOT. CAS distributes the scope of work and estimated hours to the DR of the project. CAS and the DR review the scope of work and hours to insure that the necessary work items are addressed. CAS then negotiates the fees, drafts the contract, and processes the contract.

If negotiations with the first ranked firm are unsuccessful, CAS will formally terminate the negotiations with the first ranked firm and begin negotiations with the next ranked firm as outlined in NDCC Section 54-44.7-03.

MEMORANDUM

TO: Francis G. Ziegler, P.E. – Director
Ron Henke, P.E. – Office of Project Development
Grant Levi, P.E. – Deputy Director for Engineering

FROM: Mark Gaydos, P.E. – Environmental and Transportation Services
Steve Cunningham – Consultant Administration Services


DATE: December 1, 2009 (Revised January 15, 2010)

SUBJECT: CONSULTANT SELECTION PROCESS

Consultant Administrative Services (CAS) has developed revised guidelines for the Consultant Selection Process. The guidelines establish the selection committee and procedures. The procedures comply with NDCC 24-02-07.3 and NDCC 54-44.7-03. The guidelines will be incorporated in the Consultant Administration Services Procedure Manual as Appendix C pending the rewrite of the manual.

Your concurrence in the guidelines is requested.


Recommend for Approval:



Ron Henke, P.E. – Office of Project Development

11/15/10
Date

Recommend for Approval:



Grant Levi, P.E. – Deputy Director for Engineering

11/19/10
Date

Approved:



Francis G. Ziegler, P.E. – Director

11/20/10
Date

*- was signed
1-20-10 (not 11-10)
TH*

APPENDIX F – SELECTION AND RANKING MEMORANDUM

MEMO TO: Darcy Rosendahl
Deputy Director for Business Support

FROM: Steve Cunningham
Consultant Administration Services

DATE: February XX, XXXX

SUBJECT: Consultant Selection to Perform Preliminary Engineering for X-XXX(XXX)XXX, PCN
XXXXX.

Consultant Administrative Services published a Roadway Design Request for Proposal (RFP) on January XX, XXXX. The RFP solicited qualified firms to do Preliminary Engineering for X-XXX(XXX)XXX, PCN XXXXX. NDDOT allowed 21 days for companies to submit proposals based on the requirements in NDCC Section 54-44.7.

The six firms that submitted proposals were, (names of firms and location). The firms were interviewed on February 00, 0000 and ranked in the order listed above.

The selection committee consisted of (Names of personal that will be part of the committee and their Division), Steve Cunningham and Ron Peck (CAS). "Name" was present as the NDDOT Technical Representative. The committee recommends NDDOT enter into negotiations with (selected firms' name). The decision was based on the requirements in NDCC Section 54-44.7-03 and the following:

(Selected firms name) has presented a (Narrative on why committee selected this firm). Attached is the matrix on how the committee ranked the firms and the weighted criteria our selection was made. (Firms interviewed but not selected) understood the project and could also do the work.

In summary, the selection committee recommends the department attempt to negotiate with (selected firm) to perform the services for NDDOT. If you concur in this recommendation please sign and date below and return this memo. Thank you.

19/sc/rp

I concur: _____

I do not concur: _____

Darcy Rosendahl
Deputy Director for Business Support

Date

APPENDIX G – RESPONSIBLE CHARGE GUIDANCE

Section 1 CONSTRUCTION ADMINISTRATION

RESPONSIBLE CHARGE

As a recipient of Federal-aid funds for the state, the NDDOT is responsible for ensuring that Federal-aid funds are expended in accordance with applicable Federal laws and regulations.

This responsibility includes ensuring adequate supervision and inspection to ensure projects are completed in conformance with the approved plans and specifications.

Federally funded projects shall have a full time public employee in responsible charge of the project.

NDDOT PROJECTS WITH FEDERAL AID

For NDDOT administered Federal-aid projects, the District Engineer shall name a full-time NDDOT employed engineer as the person in "responsible charge." This requirement applies even when consultants are providing construction engineering services. The person in "responsible charge" shall be identified in the pre-construction conference meeting minutes.

Roles of NDDOT Responsible Charge

1. Primary point of contact for FHWA
2. Attends all key project meetings – if the responsible charge cannot attend, rescheduling of meeting will be attempted. Key project meetings – such as: Project pre-construction conference and meetings involving Federal-aid issues
3. Attend final inspection
4. Must be involved in and/or knowledgeable of key project decisions

Responsibilities of the NDDOT Employee in Responsible Charge

1. Ensures project is constructed in accordance with the plans and specifications
2. Oversee project activities involving costs, schedules, quality, and project changes
3. Be familiar with project status.
4. Be aware of the qualifications, assignments, and on-the-job performance of the engineering staff during all stages of the project
5. Conduct a one-on-one meeting with engineering staff prior to the preconstruction conference. At this meeting the person in "responsible charge" and engineering staff shall discuss required construction contract administration and any project specific expectations
If a consultant is performing the engineering, they shall be required to submit the qualifications for the project's inspectors and material testers that will be used on the project. Spot checks and verification will need to be done during the duration of the project on the qualifications of the consultant's inspectors and testers in the field
6. Review financial processes, transactions and documentation for the project
7. Direct and ensure engineering staff carry out construction project administration in accordance with contract documents
8. Administer change orders in accordance with their level of authority. Manage project agreements and any supplements to them
9. Maintain familiarity of day to day project operations & safety issues, including work zone safety requirements
10. Visit and review projects on regular basis (in proportion to the project scope and size)
11. Review and ensure final estimate and final documentation is completed timely

LOCAL PUBLIC AGENCY (LPA) PROJECTS

For locally administered Federal-aid projects, the LPA shall name a person in "responsible charge" for each project. The person in responsible charge must be a full-time employee of the LPA. The person in responsible charge need not be an engineer. The person in "responsible charge" shall be identified in the pre-construction conference meeting minutes.

Roles of LPA Responsible Charge

1. Primary point of contact for the LPA will be the NDDOT
2. Attends all key project meetings – if the responsible charge cannot attend, rescheduling of meeting will be attempted. Key project meetings – such as: Project pre-construction conference and meetings involving Federal-aid issues

3. Attend final inspection
4. Must be involved in and/or knowledgeable of key project decisions

Responsibilities of the LPA Employee in Responsible Charge

1. Ensure project is constructed in accordance with the plans and specifications
2. Oversee project activities involving costs, schedules, quality and project changes
3. Be familiar with project status.
4. Be aware of the qualifications, assignments, and on-the-job performance of the engineering staff during all stages of the project
5. Conduct a one-on-one meeting with engineering staff prior to the preconstruction conference. At this meeting the person in "responsible charge" and engineering staff shall discuss required construction contract administration and any project specific expectations
If a consultant is performing the engineering, they shall be required to submit the qualifications for the project's inspectors and material testers that will be used on the project at this meeting. Spot checks and verification will need to be done during the duration of the project on the qualifications of the consultant's inspectors and testers in the field
6. Review financial processes, transactions, and documentation for the project
7. Direct and ensure engineering staff carry out construction project administration in accordance with contract documents
8. Administer change orders in accordance with their level of authority. Manage project agreements and any supplements to them
9. Maintain familiarity of day to day project operations & safety issues
10. Visit and review projects on regular basis (in proportion to the project scope and size)
11. Review and ensure final estimate and final documentation is completed timely

Duties for NDDOT on LPA Projects

1. Attend preconstruction conference
2. Attend meetings when a major decision is needed
3. Verify that LPA ensures project is constructed in accordance with the plans & specifications
4. Review & approve change orders
5. Verify that LPA ensures work zone safety requirements are being implemented on the project
6. Attend final Inspection
7. Review final estimate

Construction Engineering Provided by County, City, and/or Consulting Engineers

County, city, and consulting engineers will provide their own supplies unless otherwise specified by special agreement between the department and the county, city, or consultant. Many construction forms can be found on the DOT's website. Other forms, such as pay quantity report forms are available through the DOT district offices.

Manuals and Documents for Construction Oversight

1. *Construction Records Manual*
<https://www.dot.nd.gov/manuals/construction/constr-records/constructionmanual.htm>
2. *Standard Specifications for Road and Bridge Construction*
<https://www.dot.nd.gov/dotnet/supplspecs/StandardSpecs.aspx>
3. *Field Sampling and Testing Manual*
<https://www.dot.nd.gov/divisions/materials/testingmanual.htm>
4. *External Civil Rights Manual*
<https://www.dot.nd.gov/manuals/civilrights/civil-rights-manual.pdf>
5. *Inspection Checklist*
<https://www.dot.nd.gov/manuals/manuals-publications.htm>

6. *Erosion and Sediment Control Handbook*
<https://www.dot.nd.gov/manuals/environmental/escm/escmfinal.pdf>
7. *Davis-Bacon and Payroll Requirements Handbook*
<https://www.dot.nd.gov/manuals/civilrights/davisbacon.pdf>
8. *Department Safety Manual* (for NDDOT employees)
<http://mydot.nd.gov/manuals/maintenance/safety%20manual.pdf>

APPENDIX H – CONSULTANT EVALUATION FORMS

CONSULTANT EVALUATION - CONSTRUCTION SERVICES

North Dakota Department of Transportation, Environmental & Transportation Services
 SFN 51242 (9-2016)

				PCN
Project Number				
Project Description				
Consultant Project Manager			NDDOT Technical Advisor	
Consulting Firm				
Address		City	State	ZIP Code
Consultant Fee				
Original Contract Fee			Final Contract Fee	

INSTRUCTIONS: Review the consultant's performance on this project. Rate the following items on a scale of 1 to 5 (1=Exceptional, 2=Exceeds Standards, 3=Satisfactory, 4=Marginal, 5=Unsatisfactory, NA=Not Applicable). Add comments if rating is Exceptional or Unsatisfactory.

RATING

1. Preconstruction Conference
 Did the consultant take charge of scheduling and conducting the prejob conference? Were all necessary items covered?
 Are meeting minutes accurate?

RATING

2. Supervision and Problem Resolution
 Did the consultant have the proper level of management on the project? Did the consultant's employees assigned to the project have adequate experience and training? When possible, were issues resolved at the project level?

RATING

3. Communication
 Did the consultant communicate well with the DOT and the contractor? Was there adequate communication with other agencies concerned with the project? Was the consultant courteous and helpful in dealing with the general public?

RATING

4. Sampling and Testing
 Were all samples taken and test run that were specified? Was testing performed correctly? Did the consultant follow through with failing test results?

--	--

RATING

5. Records and Estimates
 Were records thorough and complete? Were the pay estimates correct? Were estimates and records submitted in a timely manner?

--	--

RATING

6. Compliance with Plans and Specifications
 Was the project built according to the plans and specifications? Did the consultant use good engineering judgement in the interpreting the plans and specifications?

--	--

RATING

7. Timely Completion of the Project
 Was the project final submitted in a timely manner?

--	--

RATING

8. Overall Project Rating
 Rate the overall performance on the project, based on the above questions and subjective scrutiny.

--	--

Division/District Representative	Date

Division/District Engineer	Date

City/County Representative	Date

Comments

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Reviewed by

Division/District Representative	Date
City/County Representative	Date

CONSULTANT EVALUATION - PRELIMINARY ENGINEERING

North Dakota Department of Transportation, Environmental & Transportation Services
SFN 51727 (9-2016)

				PCN
Project Number				
Project Description				
Consultant Project Manager			Consultant Project Team Members	
NDDOT Technical Advisor				
Consulting Firm				
Address		City	State	ZIP Code
Consultant Fee				
Original Contract Fee			Final Contract Fee	
Contract Phase		Consultant Selection Date	Contract Execution Date	

INSTRUCTIONS: Review the consultant's performance on this project. Rate the following items on a scale of 1 to 5 (1=Exceptional, 2=Exceeds Standards, 3=Satisfactory, 4=Marginal, 5=Unsatisfactory, NA=Not Applicable). Add comments if rating is Exceptional or Unsatisfactory.

RATING

1. Milestone Items
Were all milestone activities met and completed on time? If not, which milestones were missed and why? Explain the process used to get the project back on schedule? Was the Final PCR or Final Plans delivered on time? (Please include correspondence/documentation to this evaluation)

RATING

2. Project Management and Coordination
Rate the quality of project management and coordination. Were status reports on time and accurate? Was coordination and correspondence done through the technical support contact? Were project management conflicts, schedules, and issues identified early on by the consultant and addressed in a timely manner to the satisfaction of the NDDOT? (Please include correspondence/documentation to this evaluation)

RATING

3. Quality Control/Quality Assurance (QC/QA)
Rate the quality of QC/QA of the consultant. Did the Environmental Document and process (ECL, PCR, SOVs and mailing list, etc.) follow the Design Manual and template formats? Did the plans and procedures follow the Design Manual and CADD Standards? Was the work submitted completed to NDDOT satisfaction? Were comments and revisions incorporated to the satisfaction of the NDDOT and responded to in a timely manner?

RATING

4. Wetland Delineation and Permits
 Was the wetland delineation and any permits submitted in a timely matter? Did the wetland delineation and any permits follow the Design Manual formats, review, and submittal process? Was the quality of work submitted completed to NDDOT satisfaction? Were comments and revisions incorporated to the satisfaction of the NDDOT and responded to in a timely manner?

RATING

5. Project Survey
 Was the survey submitted in timely matter? Was the survey format, review, and submittal completed in compliance with Chapter 19 of Surveys and Photogrammetry Manual? Was the right of way plat format, review, and submittal completed in compliance with Chapter 20 of the Surveys and Photogrammetry Manual? Was the quality of the work submitted completed to NDDOT satisfaction? Were comments and revisions incorporated to the satisfaction of the NDDOT and responded to in a timely manner?

RATING

6. Right of Way
 Were the right of way items (limits, plants appraisals, forms, etc.) submitted in a timely matter? Were the right of way items format, review, and submittal completed in compliance with the Right of Way Manual? Was the quality of the work submitted completed to NDDOT satisfaction? Were comments and revisions incorporated to the satisfaction of the NDDOT and responded to in a timely manner?

RATING

7. Structures and Hydraulics
 Were the structure and hydraulic items (design, reports, calculations, etc.) submitted in a timely matter? Were the structure and hydraulic items format, review, and submittal completed in compliance with the NDDOT Design Manual? Was the quality of the work submitted completed to NDDOT satisfaction? Were comments and revisions incorporated to the satisfaction of the NDDOT and responded to in a timely manner?

Additional Comments

Local Government/Bridge/Design Division Representative	Date
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Local Government/Bridge/Design Division Engineer	Date
--	------

Environmental Transportation Services Division Representative	Date
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Consultant Comments

Consultant Representative	Date

APPENDIX I – ERRORS AND OMISSIONS PROCEDURES

North Dakota Department of Transportation
Consultant Administration Section
August 2007

Errors and Omissions Procedures

**PROCEDURES FOR PURSUING REIMBURSEMENT
FROM DESIGN/CONSTRUCTION ENGINEERING CONSULTANTS
RESULTING FROM DESIGN/CONSTRUCTION ENGINEERING ERRORS
AND/OR OMISSIONS**

INTRODUCTION

- 1) It is the goal of the North Dakota Department of Transportation (NDDOT) to develop engineering documents that are complete, accurate, and are of the highest standards. However, despite this conscious effort, circumstances can and do arise concerning the quality of design/construction engineering consultant services. The NDDOT recognizes that professional services are based on reasoned judgment and that there is no one correct course of action. The NDDOT also recognizes that exactness is not possible because of the unique characteristics of each project and the latitude allowed for the application of professional skill and experience to each project. Due to the recognized uncertainty associated with these services using a known standard of care is required to provide an objective measurement of the professional's services. The NDDOT may seek to recover costs that are a result of a consultant performing services that do not meet the established standard of care.
- 2) To address those circumstances, the NDDOT has developed procedures for the evaluation of alleged errors and omissions and pursuing reimbursement of costs from design/construction engineering consultants.
- 3) NDDOT managers will investigate any alleged error and/or omission. If a design/construction engineering error and/or omission occurred, NDDOT will make every reasonable effort to recover the associated costs from the design/construction engineering consultant. It is the desire and intent that many of these circumstances can and will be resolved through informal actions.

DEFINITIONS

- 1) Errors and/or omissions are defined as "Deficiencies from the standard of care on the part of a design/construction engineering consultant in the performance of professional services under contract with NDDOT".
- 2) The "standard of care", applied to the performance of consultant services for the NDDOT, shall be the "*duty to exercise the degree of learning and skill ordinarily*

possessed by a reputable design professional practicing in the same or similar locality and under similar circumstances.”

- 3) An alleged error or omission will be considered “alleged” until either the consultant acknowledges, or the Errors and Omissions Review Board determines, that it is an error or omission.

DISCOVERY

- 1) **Prior to Advertisement** - If an alleged error and/or omission is found prior to advertisement of a specific contract, the technical representative will immediately notify the division engineer. If the division engineer’s determination warrants further evaluation, he will contact the appropriate office director who will form a team to further evaluate the alleged error and/or omission. The office director will notify the Deputy Director for Engineering (DDE), the consultant and the Consultant Administration Section of the alleged error and/or omission.

The consultant shall correct such errors and/or omissions, at no cost to NDDOT. Consultant liability may include all NDDOT and consultant costs to prepare revisions.

- 2) **After Advertisement, Prior to Bid** - If an alleged error and/or omission is found after advertisement, but prior to bid opening, the technical representative will immediately notify the division engineer. If the division engineer’s determination warrants further evaluation, he will contact the appropriate office director who will form a team to further evaluate the alleged error and/or omission. The office director will notify the DDE, the consultant and the Consultant Administration Section of the alleged error and/or omission.

The consultant may be responsible for the associated cost of preparing the addendum. Consultant liability may include all NDDOT and consultant costs to prepare revisions.

- 3) **After Bid, Prior to Construction Contract Award** - If an alleged error and/or omission is found after the bid opening, but prior to contract award, the technical representative will immediately notify the division engineer. If the division engineer’s determination warrants further evaluation, he will contact the appropriate office director who will form a team to further evaluate the alleged error and/or omission. The office director will notify the DDE, the consultant and the Consultant Administration Section of the alleged error and/or omission.

The error and/or omission may be reviewed for consultant liability. Consultant liability may include:

- a) Fiscal Impact (all costs incurred above that expected had the original plans been correct);

- b) Cost of preparing the revision; and,
 - c) Delay costs determined to be caused directly by an error or omission of the design engineering consultant.
- 4) **After Construction Contract is Awarded** - If an alleged error and/or omission (design or construction engineering) is found during construction, the project manager will immediately notify the district engineer.
- a) If the district engineer's determination warrants further evaluation, he will contact the appropriate office director who will form a team to further evaluate the alleged error and/or omission.
 - b) The office director will notify the DDE, the consultant and the Consultant Administration Section of the alleged error and/or omission.
 - i) The consultant will be given the opportunity to participate in the determination of the solution. Consultant participation in this process is not an admission of any liability.
 - ii) The consultant shall make every effort to resolve the alleged error and/or omission and make the revisions in a timely fashion.

RESOLUTION OF ERROR

- 1) **Resolution of Cost Process** - If the alleged error and/or omission results in additional costs, the District Engineer will transmit a copy of the change order (CO) to the construction division along with notification of the apparent error or omission.
- a) Any necessary CO will be processed under normal procedures, regardless of the status of any claim against the consultant.
 - b) The appropriate division will prepare a letter to the consultant for signature by the Director of the Office of Project Development. This letter will detail the alleged error and/or omission and associated costs and specify a response date of thirty (30) days after receipt of same. The Director of the Office of Project Development (or his designee) will coordinate the review of the response from the consulting firm.
 - i) **Concurrence** - If the consultant accepts responsibility, the Director of the Office of Project Development will request payment and coordinate the appropriate method of payment with the Finance Division.
 - ii) **Non-Concurrence** - If the consultant disputes or denies responsibility for the alleged error and/or omission, the appropriate division will re-evaluate the

consultant's liability in light of the response received. The appropriate office director shall make a recommendation to the DDE on the validity of the response, using the following procedures:

- 1) If the consultant response is accepted, payment, if any, will be requested.
- 2) If the consultant's response is not accepted the consultant will be notified in writing.

The appropriate division will prepare the notification letter for the signature of the Director of the Office of Project Development.

The consultant will be required to respond within thirty (30) days of receipt of this determination. The consultant's failure to respond will result in a claim for payment being issued.

The consultant's response can be an admission of liability or a request that the matter be forwarded to the Errors and Omissions Review Board (EORB).

- 3) If the consultant requests that the matter be forwarded to the EORB:
 - (a) The Director of the Office of Project Development will convene a meeting of the board. Both the consultant and the NDDOT will present all issues regarding the matter.
 - (b) The EORB will issue an opinion report to all concerned parties. The opinion report of the EORB, while not binding, will be evidenced in any subsequent proceedings between NDDOT and the consultant.
 - (c) If the parties agree with the opinion reached by the EORB, the Director of the Office of Project Development will proceed in collecting the appropriate funds from the consultant, or consider the matter closed with no funds due.
 - (d) If the parties do not agree with the opinion of the EORB, the Director of the Office of Project Development will prepare a notice of claim against the consultant. This notice of claim requires DDE concurrence. The Legal Division shall be consulted as necessary concerning the content of the notice of claim prior to concurrence by the DDE. The notice will include a request that the consultant reimburse the State within thirty (30) days.

If the consultant fails to respond or refuses to comply with the notice of claim, the Director of the Office of Project Development will coordinate the issuance by the Director of a final decision. The final decision will

identify methods by which NDDOT will recover associated costs from the consultant.

ERRORS AND OMISSIONS REVIEW BOARD (EORB)

- 1) The EORB will be comprised of four (4) members and a committee chair:
 - a) All of the board will be professional engineers.
 - b) The Director of the Office of Project Development shall chair the committee.
 - c) Two (2) members shall be from the NDDOT.
 - d) Two (2) members shall be from the American Council of Engineering Companies (ACEC).
- 2) The two NDDOT committee members shall be appointed by the DDE. These two members will not include NDDOT employees with direct involvement in the project or the chain of review preceding the EORB referral.
- 3) The two ACEC committee members shall be appointed by the ACEC Transportation committee chair and co-chair, after receiving appropriate notification from the Director of the Office of Project Development. These two members will not include employees from the firm being reviewed or anyone with direct involvement in the project or the chain of review preceding the EORB

APPENDIX J – CONSULTANT MANAGEMENT SYSTEM

Contract Management System
August 4, 2010

Introduction

NDDOT Contract Management Application is an application that enables NDDOT to manage contract lifecycles effectively using latest internet, content management, and workflow technologies. It allows users to create standard form contracts, RMAs, and cover memos from within the Application as well as to use non-standard form contracts that are generated outside of the Application. It also allows users to manage any supporting documents of a contract from within the Application. The Application puts all contract documents electronically in a FileNet repository and provides easy and quick access to any contract and their related documents and workflows.

Contracts are submitted electronically for review and approval. The Application would route the request among the Legal division, DD/DEs, and DOT Director, giving users easy access to work items through private inboxes as well as shared work queues.

Users can also create Contract Payable Setups and Payment Requests for active contracts and submit them for approval and processing. Each request can have its own supporting documents and audit history captured by the Application. The Application also provides functions for contract managers to keep track of milestones of a contract, and assign tasks to individual who can oversee the completion of the milestones.

Finally, users can also close or terminate a contract, activating record retention schedules for all associated documents.

The following information is the contracts that are normally processed through CAS. The main contract numbers that will be used in CAS are;

1. 51812 – PE Design
2. 17692 – CE Construction
3. 52445 – PE Supplement
4. 52446 – CE Supplement
5. 52447 – Supplement for Structures
6. 1052 – Cultural Resources
7. 1028 – Public Information
8. 1080 – Transit (Local Government)

Any contracts that are not listed above, you can do a contract search for.

The following steps will guide you through the contract system (This will apply to any type contract);

1. Log into the contract management system
(<https://secure.intranetapps.nd.gov/cm/login.seam>)
2. New Contract Tab;
 - a. Create a contract
 - b. Fill in;
 - i. PCN
 - ii. Short name (this is the contract number you will use)
 - iii. Vender ID (click the eye glass), change ID to name, and type vendors name in and search. Then click the little picture on the right.
 - iv. Save
 - c. Detail Tab;
 - i. Fill in the dollar amount in both Contract amount & Budget amount boxes. They will be the same amount. Save
 - d. Click on Configure Contract Privilege tab at the top (blue). Here you will enter everyone who needs to manage this contract. Save
 - e. Click on Select Risk Management Appendix Tab. Here you will use #16 for Engineer firms and #5 for all others. Click on Generate (right side). Return arrow
 - f. Click on Create/Update Main Agreement Tab (Word Document symbol)
 - i. Form ID box – enter contract number, search.
 - ii. Click on the Preliminary Engineering Service Agreement line.

You can now enter all the data in the gray highlighted areas, using the tab key to navigate through the contract. Using the tab key will ensure you hit all the areas that need information.

Once you have entered all the data, it will return you to the top of the contract.

At the very top, you will see three little boxes, click on it. DO NOT PUT X in the little box until you are ready to finalize it.

Print draft and have it reviewed.

Once a draft has been approved for content and accuracy, it will be saved in contract management by putting a check mark in the save document box. You can now print it out and send it to consultant for signature.

To move a contract through contract management you must click on the flow button, for contractor and Division Director. Once the Division Director receives it and approves it, he will click the flow button to send it to legal. Once legal approves it, they click the flow button to send it to the Director. Once approved by the director, you will get a message to scan and save.

When a contract is signed by the Director, it is scanned and put in contract management with all attached documents that pertain to that contract.

Link to;
Contract Management Quick Start Guide Contract Creation

<http://mydot.nd.gov/manuals/itd/cmquickstartguide.pdf>

Contract Management Quick Start Guide Payable Setup-Claim for Payments

<http://mydot.nd.gov/manuals/itd/cmquickstartguideFinancial.pdf>

APPENDIX K – FHWA REFERENCES

23 U.S.C. 106, Project Approval and Oversight

23 U.S.C. 112, Letting of Contracts

23 U.S.C. 302, State Transportation Department

23 U.S.C. 306, Mapping

40 U.S.C. Chapter 11, Section 1101 to 1104, Selection of Architects and Engineers (Brooks Act)

41 U.S.C. 403(11), Public Contracts, Definitions, Simplified Acquisition Threshold

23 CFR 1.11, Engineering Services

23 CFR 1.33, Conflicts of Interest

23 CFR 172, Administration of Engineering and Design Related Service Contracts

48 CFR 31, Contract Cost Principles and Procedures

49 CFR 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Grant Rule)

49 CFR 26, Participation by Disadvantaged Business Enterprises in Department Of Transportation Financial Assistance Programs

Contract Administration Core Curriculum Participant's Manual and Reference Guide 2006;
<http://www.fhwa.dot.gov/programadmin/contracts/index.htm>

FHWA Memorandum – “Awarding Engineering and Design Services Contracts Based on Brooks Act Requirements,” December 12, 2005
<http://www.fhwa.dot.gov/programadmin/121205.cfm>

FHWA Employment of Consultants Web Site:
<http://www.fhwa.dot.gov/programadmin/consultant.cfm>

[Administration of Engineering and Design Related Services Contracts – Questions and Answers](http://www.fhwa.dot.gov/programadmin/172qa.cfm)
<http://www.fhwa.dot.gov/programadmin/172qa.cfm>

Uniform Audit and Accounting Guide for Audits of Architectural and Engineering (A/E) Consulting Firms, AASHTO, Washington, DC 2010 Edition
<http://audit.transportation.org/Pages/default.aspx>