

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

**CONSULTANT SELECTION PROCEDURES
FOR ENGINEERING AND DESIGN RELATED SERVICES**

December 2016



**Arkansas State Highway and
Transportation Department**



Federal Highway Administration
12/14/2016

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

CONSULTANT SELECTION PROCEDURES FOR ENGINEERING AND DESIGN RELATED SERVICES

Section I – Application (These procedures do not apply to Design-Build Contracts.)

These procedures apply to federally and state funded contracts for engineering and design related services for projects and are issued to ensure that a qualified consultant is obtained through an equitable qualifications-based selection procurement process, that prescribed work is properly accomplished in a timely manner at a fair and reasonable cost.

Engineering and design related services are defined in 23 Code of Federal Regulations (CFR) Part 172 to include program management, construction management, preliminary engineering, design engineering, surveying mapping, or architectural related services with respect to a highway construction project. These services also include professional services of an architectural or engineering nature, as defined by State law, which are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide the services with respect to a highway construction project. Contracts for these services that are paid with Federal-aid highway program (FAHP) funding will be awarded following these selection procedures. State funded projects for these services will follow this procedure as well in the event that during the project FAHP funds are requested after initial consultant selection on the project.

The federal laws and regulations that govern the procurement of engineering and design related services with FAHP funds are:

- 23 United States Code (U.S.C.) 106 “Project approval and oversight”
- 23 U.S.C. 112 “Letting of contracts”
- 23 U.S.C. 114(a) “Construction Work In General”
- 23 U.S.C. 302 “State transportation department”
- 23 U.S.C. 315 “Rules, regulations, and recommendations”
- 23 U.S.C. 402 “Highway safety programs”
- 40 U.S.C. Chapter 11 – Selection of Architects and Engineers, §§1101 *et seq.*, commonly called the “Brooks Act”
- 2 CFR Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”
- 23 CFR Part 172 “Procurement, Management, and Administration of Engineering and Design Related Services”
- 48 CFR Part 31 “Contract Cost Principles and Procedures”
- 49 CFR Part 1.48(b) “The Federal Highway Administrator is delegated authority to administer the following provisions of title 23, Highways, U.S.C.”

The Federal Highway Administration (FHWA) has approved these procedures for use by the Arkansas State Highway and Transportation Department (Department) for the “competitive negotiation” (qualifications-based selection) method of procurement as defined in 23 CFR §172.7, Procurement Methods and Procedures that complies with the Brooks Act, (40 U.S.C. §§1101, *et seq.*).

Section II – Advertisement for Letters of Interest

The Arkansas State Highway Commission (Commission) authorizes the Director of Highways and Transportation to employ a consultant when a need exists for engineering and design services and it is in the Department’s best interest to contract with a consultant firm.

As a minimum, the Department will advertise at least once in a newspaper with statewide circulation and on the Department’s website, advising that consultant services are being sought for a minimum of three (3) weeks from the date of the newspaper advertisement. In addition, the Department may advertise in appropriate national trade magazines or websites for specialized services.

Interested firms must furnish:

1. A cover letter with the firm’s response
2. The firm’s completed Architect-Engineer Qualifications Standard Form (SF) 330 Parts I and II (48 CFR §53.236-2(b)) (SF 330 is available on the Department’s website http://arkansashighways.com/consultant_services/advertisements/advertisements.aspx.)
3. A current copy of the firm’s equal employment opportunity policy required per Arkansas Code Annotated (Ark. Code Ann.) §19-11-104
4. The firm’s current copy (within 12 months) of the Department and Finance and Administration (DFA) Illegal Immigrant Contractor Disclosure Form (Ark. Code Ann. §19-11-105).
<https://www.ark.org/dfa/immigrant/index.php/user/welcome>

Advertisements may be for either a specific single project; a group of projects; or for an on-call or indefinite delivery/indefinite quantity (IDIQ) for an established contract period (not to exceed 5 years), to be determined at a later date with specific task orders issued for each project. (23 CFR §172.9(a))

When advertising a specific project, the advertisement will describe the general nature of the project allowing firms to evaluate their interest in performing the desired services.

When advertising a group of projects, a general description of work will be furnished. Firms will be asked to specify the types of projects they are interested in performing. When the Department decides to proceed with a certain project, those firms having expressed interest in that type project will be considered for selection.

When advertising for an on-call / IDIQ projects with later specified task orders, the advertisement will include a general description of work for the project task and the number of consultants anticipated to be selected.

If a solicitation fails to yield three qualified respondents, then the Department may proceed with evaluation and selection if the Department determines that the solicitation did not contain conditions or requirements that arbitrarily limited competition. Alternatively, the Department may pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to re-compete under a new solicitation. 23 CFR §172.7(a)(1)(iv)(D)

Solicitations will include language to comply with state procurement laws, rules, and regulations including but not limited to Ethical Standards (Ark. Code Ann. §19-11-708), Employee and Relative Disclosure, and Equal Opportunity Policy.

Interested firms are advised that in order to comply with state and federal requirements that the Department will verify suspension and debarment actions and eligibility status of consultants in accordance with 2 CFR Part 1200 and 2 CFR Part 180.

Ark. Code Ann. §§19-11-701 through 19-11-714 addresses ethics and conflicts of interest. Federal regulations about conflicts of interest are described in 2 CFR §200.112, 23 CFR §1.33, and provisions of 23 CFR §172.7(4). No Department employee may participate in selection, award or administration of a contract in which the Department employee or any member of his or her immediate family has a financial, prospective financial, or other interest.. Additionally, in accordance with Ark. Code Ann. §19-11-704(b) it is a breach of ethical standards for any person, including potential consultants, consultants, or parties to subagreements to engage in any conduct or behavior with other consultants, contractors, cities, counties, state agencies, or metropolitan/local planning organizations that may influence any public employee to breach the standards of ethical conduct provided by state and federal laws.

Section III – Selection Committee

The Department's Assistant Chief Engineer with the Deputy Director and Chief Engineer's concurrence will designate a Selection Committee (Committee) to evaluate and analyze the letters of interest and proposals.

Section IV – Evaluation of Letters of Interest

The Committee will evaluate each consultant firm based on the criteria provided in the detailed letters of interest (LOI) in general as follows:

No.	Evaluation Factors for LOIs	Maximum Points Possible
1	Professional staff including the education, experience, number of personnel available, licensure and registration (if required), and any partnerships with subconsultants	10
2	General and professional reputation, including responsiveness to civil rights and equal employment opportunity requirements and opportunities	10
3	*Past work performance with the Department	10
4	Experience with projects of a similar nature as those advertised	10
	Total Points for LOI	40

*Past performance or evaluations from other clients will be considered when the firm has not worked for the Department previously.

Following their review, the Committee will prepare a short list (minimum of three) of top ranked consultants and recommend to the Deputy Director and Chief Engineer that these firms submit detailed proposals for further evaluation.

Section V – Request for Proposal

The Department will prepare a scope of work statement and request for proposals (RFP) from the consultants on the short list. For projects with FHWA oversight, Projects of Division Interest (PoDI) projects, the Department will forward the scope of work statement for FHWA review and approval before soliciting RFPs. A Department's scope of work will typically include the following:

1. A detailed purpose and description of the work
2. Services that will be furnished by the Department
3. Services that will be furnished by the consultant
4. Deliverables to be provided
5. Project conditions of the work
6. Schedule for performance of the work
7. Special conditions of the work including applicable standards, specifications, and policies
8. Assurance of participation of certified Disadvantaged Business Enterprises (DBE) in Federal-aid projects as Department goals for the Project are established.

The short-listed firms should submit proposals that contain the following:

1. A cover letter with primary contact information
2. A detailed work plan that identifies the major tasks of work
3. A list of major concerns associated with completing the work
4. A detailed work schedule for specific projects as requested
5. A manpower estimate for specific projects as requested
6. Updated SF 330 Parts I and II if necessary

The Committee will review the proposals with particular attention to the five (5) listed evaluation factors for proposals and will also consider the results determined in Section IV. The evaluation factors with weighting of the factors will be listed in the RFP and will follow the factors listed below unless otherwise indicated in the RFP.

No.	Evaluation Factors for Proposals	Maximum Points Possible
1	Obvious indication that the scope of work is clearly understood	20
2	Comprehensive, coherent, and detailed work plan (may include innovative concepts or alternatives, quality control procedures)	20
3	Realistic work schedule when applicable (work load capacity)	10
4	Proposed working office location, need for a local office, and any local representative*	5
5	Identification of subconsultants and responsiveness to DBE goals and opportunities	5
6	Total Points for LOI	40
	Total Points for Proposals	100

*Locality preference shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. (Consultants indicating that it will satisfy this factor in some manner, such as establishing a local project office, shall be considered to have satisfied this factor.)

Using these evaluation factors, the Committee will rank the consultants based on the total score and submit the list to the Deputy Director and Chief Engineer who will either:

1. Select one firm based on the total score to enter negotiations with; or
2. Select
 - a. Multiple firms based on total score for an on-call or IDIQ contract; or
 - b. Three or more firms to interview (a firm may present additional information concerning their proposal at the interview). After the interviews, the Committee re-evaluates the firms based on the interview and the same evaluation factors as noted previously.

The Deputy Director and Chief Engineer will review the ranking after any additional presentations or interviews and if he concurs, will submit the ranking to the Director for concurrence prior to Commission Action.

Per the April 29, 2015 Stewardship and Oversight Agreement, FHWA will provide approval for hiring of consultants that serve in a “management” role (23 CFR §172.9).

Notification must be provided to all responding consultants of the final selection of the most qualified consultant including the ranking of the top three consultants on projects where only one consultant is selected. The contract file will contain records of the solicitation, proposal, evaluations, and selection rankings.

General Time Table

The following proposed timetable is for planning purposes only. The Department will make every attempt to comply with the times and dates set forth in this table, but reserves the right to adjust this timetable as required during the course of the RFP process.

LOI Advertisement	Week 0
Requests for Clarification Due	Week 2
Final Amendments Issued	3 days prior to LOI Due
Letters of Interest Due	Week 3
Short List Firms Notification	Week 5
Requests for Clarification Due	Week 7
Final Amendments Issued	3 days prior to RFP Due
Request for Proposal Due	Week 8
Interview Short Listed Firms as applicable	Week 10
Contract Award by Commission	Week 10-12

Section VI – Negotiation and Contract Preparation

Once a firm is selected for negotiation for a specific project or a group of projects, a draft contract including a cost estimate will be prepared by the firm for the project. The other firms on the short list will be advised of the firm selected, subject to successful negotiations. Prior to receipt or review of the draft contract and cost estimate, the Department shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct cost and consultant’s fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation to ensure a fair and reasonable cost is obtained.

More than one firm may be selected for an on-call or IDIQ contract. The contract will establish a maximum ceiling price for work issued under the contract as well as an expiration date not to exceed 5 years, per 23 CFR Part 172. Individual task order cost estimates will be negotiated when issued.

The selected firm will prepare a draft contract based on a sample contract furnished by the Department. In accordance with the principles of 23 CFR Part 172, the

draft contract must include an indirect cost rate that is approved by the Department. If the contract exceeds \$250,000, in accordance with the Department's Indirect Cost Rate Audit Requirements, the indirect cost rate shall be verified by an audit performed by a certified public accountant on behalf of the consultant. If the contract is less than \$250,000 and at least one of these conditions applies:

1. When there is insufficient knowledge of the consultant's accounting system
2. When there is previous unfavorable experience regarding the reliability of the consultant's accounting system
3. When the contract involves procurement of new equipment or supplies for which cost experience is lacking

then the Consultant shall provide the indirect cost rate verified by an audit performed by a certified public accountant on behalf of the consultant. The certified audit shall be provided by the selected firm prior to the submission of the final draft contract.

The Department will review the draft contract and either approve it as submitted or enter into negotiations with the selected firm to establish terms of the contract and contract ceiling price that the Department deems is fair and reasonable. If a satisfactory contract cannot be negotiated with the selected firm, negotiations will be formally terminated. The Department will then enter into negotiations with the second ranked firm on the short list. If negotiations with that firm fail, the Department will formally terminate those negotiations and begin to negotiate with the third ranked firm, and so on. If the Department cannot negotiate a satisfactory contract with any of the firms on the short list, the Department shall either:

1. Request proposals from additional firms who have submitted LOIs and are considered competent and qualified; evaluate and rank the firms based on the criteria described in Section V; and continue the negotiation process, or
2. Terminate all negotiations and begin the selection process again, or
3. Pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to re-compete under a new solicitation. 23 CFR §172.7(a)(1)(iv)(D)

When the Parties agree the negotiated contract to be fair and reasonable, the consultant will prepare a final draft and submit it to the Department. After review and a determination that it is acceptable, the consultant will sign the contract. The Director will then execute the contract on behalf of the Commission. The Department will distribute copies of the signed contract within the Department and to the Consultant.

For projects with FHWA oversight and for on-call or IDIQ contracts where the consultant performs a management role utilizing federal funds, the Department will forward the initial and final drafts of the contract to FHWA for review and comment. The FHWA approves the final executed contract by stamp and signature and retains a copy.

After an on-call or IDIQ contract is executed, the Department will assign specific projects by task order for the duration of the contract period. The consultant will

prepare each task order based on the scope of work furnished by the Department. The task order will include a manpower estimate and cost. The Department will review the task order and approve it as submitted or negotiate with the consultant to establish a task order and task order amount that the Department deems is fair and reasonable. After review and a determination that the task order is acceptable, the consultant will sign the task order. The Director will then execute the task order on behalf of the Department. The Department will distribute copies of the signed task order within the Department and to the consultant.

For PoDI projects, the Department will forward the initial and final drafts of the task order to FHWA for review, comment, and approval. Upon FHWA approval, the final task order is executed.

Section VII – Monitoring the Contract

The Department staff will administer the contract. Steps in monitoring the contract include:

1. Consultant Contracts office (CC) will maintain the contract files
2. The appropriate Division Project Manager (PM) will arrange and attend periodic progress meetings
3. The PM will coordinate any reviews and approval actions with FHWA and other agencies when necessary
4. CC will review progress payments while verifying project progress with the PM
5. The PM will direct questions from the Consultant to the proper personnel in the Department
6. CC will negotiate any change or amendment to the contract after receiving documentation from the Consultant and the PM
7. The PM will prepare an evaluation of the Consultant's performance after completion of the contract with input from other Department personnel

Section VIII – Consultant Liability

The Department will include a contract requirement that the consultant will warrant that all services and work products provided as part of the contract are performed in accordance to the prevailing industry standards, including standards of conduct and care, format and content, meet the satisfaction of the Owner, and conform to the requirements of the Agreement. This warrant is effective regardless of the degree of inspection and acceptance by the Department.

If the consultant is required to correct or re-perform any work or services, the work will be performed at no cost to the Department, and any work or services corrected or re-performed by the Consultant shall also be warranted that it is free from defects in workmanship in accordance with the industry standards. If the Consultant fails or refuses to correct or re-perform, the Department may, by contract or otherwise, correct or replace the deficient items or services with similar work or services, and charge the cost to the consultant or make an equitable adjustment in the consultant's reimbursement.

Acceptance is an act of an authorized representative of the Department by which the Department approves specific services, as partial or complete performance of the contract. Correction is the elimination of a defect.

Section IX – Insurance

The consultant will be required to have professional liability insurance coverage. Additional insurance may also be required and could include:

1. Worker's compensation insurance
2. Automobile and general liability insurance
3. Valuable papers insurance

Specific information about insurance requirements is found in the sample contracts on the Department website.

http://arkansashighways.com/consultant_services/sample_contracts.aspx