

# INSTRUCTIONAL MEMORANDUMS

## To Local Public Agencies



To: Counties and Cities	Date: August 29, 2006
From: Office of Local Systems	I.M. No. 3.305
Subject: Federal-aid Participation in Consultant Costs	

**Contents:** This Instructional Memorandum (I.M.) includes guidelines and procedures for a Local Public Agency (LPA) to select a consultant; request Iowa Department of Transportation (Iowa DOT) approval and Federal Highway Administration (FHWA) authorization for Federal participation in consultant costs; and prepare a consultant contract, including acceptable payment methods and a sample contract. This I.M. also includes the following attachments:

- [Attachment A](#) – Federal-aid Consultant Checklist
- [Attachment B](#) – Guidelines for Federal-aid Consultant Contracts
- [Attachment C](#) – Payment Methods
- [Attachment D](#) – Sample Consultant Contract (also available in [Microsoft Word](#) format)

### Introduction

All consultant contracts which will be reimbursed with Federal funds shall comply with the Title 23 of the Code of Federal Regulations, Part 172 ([23 CFR 172](#)). Among other things, these regulations require consultant services to be acquired through a qualifications-based selection process. When using a qualifications-based process, price may not be considered when determining which consultant is most qualified. Price is negotiated only after the most qualified consultant has been identified.

### Estimate of Consultant Costs

Prior to beginning the consultant selection process, the LPA shall prepare its own estimate of consultant costs. This estimate should include all phases of work that the consultant will be expected to perform, even if the initial agreement will not encompass all phases of work. In other words, the estimate should reflect the total anticipated cost of all services that will eventually be provided by the consultant.

The LPA should prepare a detailed estimate based on the estimated number of hours and hourly rates for each type of employee, direct expenses, and typical overhead and profit margins. However, if the LPA is unable to prepare a detailed estimate, the LPA may prepare a simplified estimate based on typical consultant fees as a percentage of the total construction costs. Typical design costs for road, bridge, and trail construction range from 8 to 10 percent of the total construction cost. Typical construction inspection services for road, bridge, and trail construction range from 12 to 15 percent of the total construction cost.

However the cost estimate is prepared, the primary responsibility for determining the reasonableness of the proposed consultant costs rests with the LPA. The purpose of the LPA's estimate is to assist in negotiating a consultant contract at a fair and reasonable cost. For estimating very complex or unusual consultant services, the Iowa DOT will provide assistance to the LPA upon request.

### Consultant Selection

[Attachment A](#) – Federal-aid Consultant Checklist, outlines the steps for selecting a consultant, requesting FHWA authorization, and requesting reimbursement of consultant costs. The LPA should be careful to follow the steps outlined in this Attachment. If the selection process used does not comply with these procedures, the consultant costs may not be eligible for Federal reimbursement. In addition, the cost of any consultant work done prior to FHWA authorization will not be eligible for Federal reimbursement. Attachment A contains two different procedures for consultant selection, an abbreviated process and a full process.

#### Abbreviated Process:

The abbreviated process may be used if the cost of all phases of the proposed consultant work is estimated to be less than or equal to \$100,000. The abbreviated process does not require use of a selection committee, distribution of a Request for Proposal (RFP), or use of written evaluation criteria and a scoring matrix. However,

the LPA must consider at least 3 firms, all of which must be on the [Iowa DOT pre-qualified list](#), and document their selection process.

#### Full Process:

If the cost of all phases of the proposed consultant work is estimated to be greater than \$100,000, the full selection process shall be used. In summary, the full process includes forming a selection committee, preparation and distribution of an RFP, and evaluation of proposals received based on established criteria. When using the full selection process, consultants do not have to be prequalified with the Iowa DOT in order to be considered.

A key aspect of the full selection process is preparing a well written RFP. The Iowa DOT does not require a standard format, however, the RFP prepared by the LPA shall contain the following as a minimum:

1. A scope of services for the proposed work.
2. The evaluation criteria used and the relative weight for each factor.
  - The criteria shall **not** include a factor for DBE involvement or estimated contract cost.
  - Geographic location may be included in the evaluation criteria, unless application of this criterion would result in less than 3 qualified firms.
3. The preferred method of payment (see [Attachment C](#) – Payment Methods for acceptable methods).
4. The proposed DBE goal. If no DBE goal is proposed for contracts estimated to be greater than \$100,000, the LPA must document the reasons why no DBE goal is proposed. For guidance in setting DBE goals, refer to [I.M. 3.710](#), DBE Guidelines.
5. The deadline date for receiving proposals.

If inexperienced in preparing RFPs, the LPA may wish to review the Iowa DOT current list of RFPs for examples of typical format and content. These are available on the Iowa DOT Consultant Utilization web site, as shown on the [Open Requests for Proposals](#) page. (Note: most of the Iowa DOT consultant contracts are not Federally funded, so they do not typically include a statement about a DBE goal.)

For additional guidance in conducting the full selection process using qualifications-based procedures, refer to the [Qualifications-Based Selection: A Guide for Selecting an Architect or Engineer for Public Owners](#), published by the [American Council of Engineering Companies of Iowa](#).

#### Contract Negotiation

After receiving Iowa DOT approval, the LPA shall initiate negotiations with the consultant deemed to be the most qualified. The LPA shall provide the consultant with necessary information and request the consultant to submit its proposal with supporting cost and pricing data. Negotiations are intended to lead to the development of a contract mutually satisfactory to the LPA and the selected consultant. The goals of the negotiation process are to:

- Make certain that the consultant has a clear understanding of the scope of services.
- Determine that the consultant will make available the necessary personnel and facilities to accomplish the scope of services within the required time.
- Reach agreement with the consultant on the provisions of the contract, including equitable compensation for the required services and the most suitable and appropriate method of payment. This should include review of an itemized estimate of consulting fees, including tasks, estimated hours, hourly rates, and expenses (both direct and indirect, such as overhead).
- Determine, where applicable, whether the consultant can provide a design that will permit construction within established project costs.
- Verify that the project manager and the project team are the same as those in the proposal submitted to the selection committee (applicable only if the full process was used).

If a mutually satisfactory contract cannot be negotiated upon receiving a best and final offer in writing, the LPA shall formally terminate the negotiations and notify the consultant in writing. Termination of negotiations shall be made without prejudice. The substance of terminated negotiations is confidential. The LPA shall then initiate negotiations with the consultant given second preference, and this procedure shall be continued until a mutually satisfactory contract has been negotiated.

## Contract Preparation

[Attachment B](#) – Guidelines for Federal-aid Consultant Contracts, provides guidance for preparing a consultant contract. The Iowa DOT requires that certain provisions be included in all contracts which will be reimbursed with Federal funds. The Iowa DOT also recommends that certain other contract provisions be included for the mutual benefit of both the LPA and the consultant. This Attachment identifies both the required and recommended contract provisions.

[Attachment C](#) – Payment Methods, outlines several types of payment options that are acceptable for consultant contracts with Federal-aid participation. Regardless of which form of agreement is used, the method of payment it employs shall conform to one of the options described in this Attachment.

[Attachment D](#) – Sample Consultant Contract, provides a model contract for the LPA and its consultant to use. This Attachment is also available in [Microsoft Word](#) format.

The Sample Consultant Contract indicates the areas that are intended for modification by using yellow highlighting. If additional modifications to the text of the Sample Consultant Contract are made, the LPA shall advise the Iowa DOT Administering Office when the draft contract is submitted for review and specifically identify those parts of the Sample Consultant Contract that have been modified. If the draft contract is prepared using Microsoft Word, use of the “Track Changes” formatting, or something similar, is strongly encouraged.

Note: The Iowa DOT strongly recommends use of the Sample Consultant Contract because it will ensure compliance with the Federal regulations and considerably reduce the time required for review by the Iowa DOT. If the Sample Consultant Contract is not used, the LPA and its consultant should review [Attachment B](#) carefully before submitting a draft contract to the Iowa DOT for review to ensure that all of the required provisions are included.

## Pre-audit Procedures

If the estimated total consultant cost (including any planned supplemental agreements) is greater than \$100,000, the Administering Office will forward 1 copy of the draft contract(s) to the Office of Finance, External Audits, and request a pre-audit. If the estimated cost is less than \$100,000, a pre-audit is usually not required, unless:

- there is insufficient knowledge of the consultant's accounting system;
- there is previous unfavorable experience regarding the reliability of the consultant's accounting system;
- the contract involves procurement of new equipment or supplies for which cost experience is lacking; or
- the Iowa DOT Administering Office has concerns about any item in the proposed cost estimate.

External Audits may waive the need for a pre-audit based on its knowledge of the consultant and its past audit history. A pre-audit typically includes:

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

If there are any questions about the pre-audit procedures, the LPA or Administering Office may contact External Audits for assistance.

## Contract Administration

Contract officials and monitoring by the Iowa DOT:

The LPA shall appoint one of its officials to act as the Contract Officer and be responsible for administration of the consultant contract. The Contract Officer shall not be employed by the selected consultant. An Iowa DOT Administering Office staff person shall serve as the Contract Monitor. The Contract Officer's approval and the Contract Monitor's concurrence are required on all matters regarding contract administration, including any adjustments to the contract price, approval of extra work, or execution of supplemental contracts.

#### Final Design Activities and the NEPA process:

The National Environmental Policy Act (NEPA) and its implementing regulations require that certain procedures be followed in the process of selecting the location of Federal-aid project. Until this process has been completed and accepted by the Iowa DOT and the FHWA, final design activities may not begin, as required by [23 CFR 771.113](#).

Environmental and related engineering studies, agency coordination, public involvement activities, and preliminary engineering work are not considered final design. Therefore, if FHWA authorization for these costs has been obtained, these activities may proceed prior to completing the NEPA process. However, work directly associated with preparation of construction documents is considered final design. For Federal-aid projects let at the Iowa DOT, work associated with preparation, review, or submittal of Check Plans or Final Plans is considered final design.

The event that marks the completion of the NEPA process depends on the type of NEPA document that is required for the project:

- For projects that are classified as a Categorical Exclusion (CE), the NEPA process is complete as of the effective date of FHWA Environmental Concurrence. This date is specified in the written notice the LPA will receive from the Iowa DOT Office of Location and Environment.
- For projects that require an Environmental Assessment (EA) or Environmental Impact Statement (EIS) document, the NEPA process is considered complete as of the date that the FHWA signs these documents, referred to respectively as a Finding of No Significant Impact (FONSI) and Record of Decision (ROD). For more information concerning the types of NEPA documentation, refer to [I.M. 3.112](#), FHWA Environmental Concurrence Process.

#### Reimbursements:

The LPA may request reimbursement for approved and authorized consultant costs anytime after payments have been made to the consultant. Each request for reimbursement shall include:

- 1 cover letter that identifies the project number, the type of services for which reimbursement is being requested, and the total amount claimed for reimbursement;
- 1 copy each of the prime consultant and any applicable subconsultant invoices; and
- 1 copy of the canceled check or warrant to verify that the LPA has made payment to the consultant.

Use of the sample invoice format is recommended, as shown in [Attachment D](#) - Sample Consultant Contract.

#### **Contract Close-out**

After all the consultant's work is completed, the LPA shall submit a request for final reimbursement to the Iowa DOT Administering Office. Because the final audit process can require a significant amount of time, and the final audit will need to be complete before the project as a whole can receive final Federal-aid reimbursement, the LPA should submit their request for final reimbursement of consultant work as soon as possible.

Upon receipt of a request for final reimbursement of consultant costs, the Administering Office will forward a request for a final audit or final review to the Iowa DOT Office of Finance, External Audits. Lump sum agreements do not need a final audit, but may have a final review. External Audits may waive final audit requirements on agreements less than \$100,000. Final reimbursement for lump sum agreements or hourly rate agreements under \$100,000 can be made prior to the final audit or review (reimbursement set by agreement).

If a final audit is conducted, External Audits will review all invoiced charges to assure that the charges are adequately supported and are eligible for reimbursement. After the final audit is complete, External Audits will return the audit report to the Administering Office, which in turn will pass the report on to the LPA and the consultant.

- If the audit report finds that a balance is due to the consultant, the consultant may invoice the LPA for the balance due and the LPA may request reimbursement for the additional payment. Upon receipt of such a request, the Iowa DOT will reimburse the LPA for the appropriate Federal share.
- If the audit report finds that the consultant has been overpaid, the Iowa DOT will invoice the LPA for the appropriate Federal share or deduct this amount from the balance of reimbursement that is due to the LPA for other project costs. Likewise, the LPA may request reimbursement from the consultant for the amount of overpayment.