

# INSTRUCTIONAL MEMORANDUMS

## To Local Public Agencies



To: Counties and Cities	Date: December 19, 2014
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, negotiate, and administer 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 Requirements~~ for Federal-aid Consultant Contracts
- [Attachment C](#) – Payment Methods
- [Attachment D](#) – ~~Sample Standard~~ Consultant Contract ([Word](#))
- [Attachment E](#) – ~~Errors and Omissions~~

### Definitions

Construction Engineering (CE) – Work that includes materials testing, construction inspection, and other work directly related to the administration of the construction contract (e.g., processing contractor payment requests, or preparing eChange eOrders, a final punch list, or project close-out paperwork). Any additional design work that occurs after the construction letting is also considered CE work.

Extra Work – Any additional activity or activities, level of effort, or deliverables that exceed the previously approved scope of work, but are minor changes to the consultant contract.

Planning Work – Work that involves planning or studies, but is not part of the development of the plans, specifications, and estimate (PS&E) necessary for a construction project. Examples include planning studies, feasibility studies, conceptual studies, and Interchange Justification Reports. Planning work *should not be* authorized as PE. Feasibility or conceptual studies may include some engineering work, but only to the extent needed to determine if it is feasible to build the proposed project or determine what type of structure or facility should be designed. Any engineering or design work beyond the planning stage is considered PE.

Phase of Work – A clearly distinguishable stage in the project development process. For planning work, typical phases consist of planning studies, feasibility studies, and conceptual studies. For PE work, typical phases include preparation of environmental studies or documents, preliminary design, final design, and preparation of bid documents. CE work is usually not phased, unless the approved CE work is for multiple construction contracts. In this case, the CE work associated with each construction contract would be considered a separate phase.

Preliminary Engineering (PE) – Work that is part of the development of the plans, specifications, and estimate (PS&E) for a construction project. This includes environmental studies and documents, preliminary design, and final design up through and including the preparation of bidding documents. PE does not include planning or other activities that are not intended to lead to a construction project. Examples of work not considered PE include planning, conceptual, feasibility studies, and Interchange Justification Reports.

Scope of Work – The statement of services to be provided, as written in the contract between the local agency and the consultant. This includes the specific work activities, deliverables, and timeframes to perform the work for the specified price.

### IntroductionGeneral Considerations

All consultant contracts which will be reimbursed with Federal funds shall comply with the Title 23 of the Code of Federal Regulations (CFR), Part 172 ([23 CFR 172](#)). Among other things, these regulations stipulate when require consultant services must 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.

### Conflicts of Interest

The LPA and the consultant shall comply with the conflict of interest requirements in Iowa Code Chapter 68B, 193C Iowa Administrative Code (IAC), Chapter 8, and 23 CFR 1.33. Situations that create conflicts of interest include, but may not be limited to, the following:

1. An LPA employee who participates in the procurement, management, or administration of the consultant contract has a direct or indirect financial or other personal interest in the contract or related subcontracts. For example, a city engineer may not participate in the selection of a consulting firm that employs a close relative.
2. The consultant has a direct or indirect financial or other personal interest, other than employment or retention by the LPA, in any contract or related subcontracts in connection with the project. For example, when a consultant is acting as the project engineer for a construction project, that consultant's firm may not also provide construction staking services to the contractor for the same project. Another example is if the consultant is serving as city engineer, the consultant may not participate in any aspect of the selection process if his or her own firm is being considered to perform those services.
3. The consultant has a direct or indirect financial or other personal interest in any real property acquired for the project, unless such interest is openly disclosed in public records, and the consultant has not participated in such acquisition for and in behalf of the LPA. For example, a consultant may not participate or assist in the acquisition of property owned by the consultant or a close relative.

### Person in Responsible Charge

If the LPA uses a consultant to perform construction inspection services, 23 CFR 635.105 requires the LPA to have a full time employee who is in responsible charge of the project. For counties and larger cities, this person is typically the county or city engineer; however, they need not be a licensed engineer or architect to be the person in responsible charge. For smaller cities that do not have any full time employees, the mayor or city clerk may perform this function, with assistance from the Iowa DOT Administering Office. A consultant may not serve as the person in responsible charge for a Federal-aid project.

Duties and functions of the person in responsible charge include:

1. administering inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
2. maintaining familiarity with day to day project operations, including project safety issues;
3. making or participating in decisions about changed conditions or scope changes that require change orders or supplemental contracts;
4. visiting and reviewing the project on a frequency that is commensurate with the magnitude and complexity of the project;
5. reviewing financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse; and
6. directing project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
7. is aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

These duties may be shared by several people. A single person may also serve as the person in responsible charge for multiple projects.

### Consultants Acting in a Management Role

In accordance with 23 CFR 172.9(d), Federal funds may not be used to for a consultant to act in a management role for the LPA, unless this has been approved in advance by FHWA. A consultant is acting in a management role when the firm or individual representatives of the firm act on the LPA's behalf to perform inherently governmental functions, or fulfill a program or project administrative role typically performed by an LPA employee. Examples of consultants acting in management roles include: being responsible for managing a major project or series of projects; being responsible for overseeing the work of other consultants; and being responsible for

reviewing or approving permits or applications on the LPA's behalf. To request approval for a consultant acting in a management role, contact the Administering Office for assistance.

### PE 10-Year Rule

When Federal funds are authorized for PE services, 23 CFR 630.112(c)(2) requires that either right-of-way acquisition or actual construction begin by the close of the tenth fiscal year following the fiscal year in which the PE services were authorized. Otherwise, the LPA will be required to repay all the Federal funds expended for the PE services.

The LPA may request an extension to the 10-year rule if the project has been delayed by factors beyond the ability of the LPA to control, and the LPA can provide a reasonable plan of action for proceeding with the project in the near future. Requests should be submitted to the Administering Office well in advance of the 10-year deadline. The Administering Office will review with the Office of Local Systems. If acceptable, the Office of Local Systems will forward the request to FHWA for approval.

### Errors and Omissions

In accordance with 23 CFR 172.9(a)(6), the written procedures for Federal-aid consultant contracts shall include procedures to address errors and omissions. These procedures are provided in Attachment E to this I.M.

### 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-design** 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.~~

### **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 contract 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.

The LPA's estimate shall identify the type of services included, such as PE, CE, planning studies, etc., and provide a subtotal for each. The estimate shall also be documented so that a third party such as the Iowa DOT or FHWA can determine what services were included and how the LPA determined the estimated cost of those services.

## 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.

### Pre-qualification

Attachment A contains two different procedures for consultant selection, an abbreviated process and a full process. In either case, Prime consultants and subconsultants considered must be on the Iowa DOT pre-qualified list at the time of selection, by the LPA and the prime consultant, respectively. Consultants removed from the pre-qualified list may finish contracts currently underway, but will not be allowed to participate in future Federal-aid contracts until pre-qualified status is regained.

### Scope of selection

The basis of selection must be based on the complete scope of services the consultant will be expected to provide; even if the initial contract will not include all those services. If an LPA desires to select a consultant for services not included in the original scope of selection, another selection process must be used.

### 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~~ \$150,000. 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.

If the estimated cost of all phases of the proposed consultant work is close to the \$150,000 threshold, the LPA should use the full process. The full amount of any contract modifications that exceed this threshold will not be eligible for Federal participation. If the abbreviated process is used to select a consultant for multiple phases of work and the same consultant is chosen for more than one phase of work on the same project, the \$150,000 threshold applies to the total amount of work performed on the different phases of work. In addition, if it appears the full selection process was intentionally circumvented, the entire cost of the consultant services may be ineligible for Federal participation.

### Full Process

If the cost of all phases of the proposed consultant work is estimated to be ~~greater than \$100,000~~ greater than \$150,000 or more, 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.
- The criteria may include a factor for DBE involvement.\* Scoring of this criterion should be based on a firm's proposed DBE involvement. Proposals that meet or exceed the goal should get full credit for this criterion. If the proposed DBE involvement is less than the DBE goal, the scoring should be based on the firm's documented good faith efforts to involve DBE firms, as documented in their proposal.
- Geographic location may be included in the evaluation criteria, unless application of this criterion would result in less than 3 qualified firms.\*- Note: LPAs may not use this criterion to disqualify firms that are not within a particular State or local jurisdiction. Firms that propose to establish a temporary local office shall be considered to have met this criterion.

\* The combined weight of the DBE and geographic location criteria, if used, may not exceed 10% of the total.

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. Regardless of whether a goal is set or not, the RFP should encourage use of DBE firms and include a reference and link to the Iowa Directory of Certified Disadvantaged Business Enterprises, which is available on the Iowa DOT Office of Employee Services, Civil Rights Team (OES-CRT) DBE Program website. 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~~ should 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](#).

#### Noncompetitive selections

If less than 3 firms were considered under the abbreviated process, or if less than 3 proposals were received under the full process, then the selection process is not considered competitive. Noncompetitive selections may be approved, but only if at least one of the following criteria is met:

1. The desired services are available from only one firm.
2. There is an emergency situation which does not allow sufficient time for a regular selection process.
3. After soliciting a number of sources, less than 3 proposals were received, but additional solicitations are unlikely to generate any additional proposals.

Requests for approval of a noncompetitive selection shall be submitted with appropriate justification and / or documentation to the Administering Office. The Administering Office will review the request and confer with the Office of Local Systems. The Administering Office will then notify the LPA of the decision.

#### Suspended or Debarred Firms

Firms that are presently suspended or debarred by the Federal government are prohibited from providing services that exceed \$25,000 on any Federal-aid contract. The Standard Consultant Contract contains provisions requiring the consultant to certify the suspension or debarment status of his or her firm. Even so, the Iowa DOT strongly recommends the LPA verify the firm is not presently suspended or debarred using the System for Award Management (SAM) web site before proceeding with contract negotiations. The status of a firm can be determined using the SAMS web site search page.

## 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

The following attachments to this I.M. are provided to assist the LPA and consultant in preparing an acceptable contract:

Attachment B – Guidelines-Requirements 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 ~~fun~~ds-aid. 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~~The method of payment ~~used it employ~~ shall conform to one or more of the options described in this Attachment.

Attachment D – Sample Standard Consultant Contract, provides a model contract for the LPA and its consultant. ~~Use of this document is required for contracts with Federal participation. to use~~ This Attachment is also available in Microsoft Word format.

The ~~SampleStandard~~ Consultant Contract indicates the areas that are intended for modification by using ~~yellow blue text with grey highlighting~~. ~~Explanatory text is shown with yellow highlighting and is for information only. The explanatory text shall be removed when drafting of the agreement is complete.~~ If additional modifications to the text of the ~~SampleStandard~~ 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 ~~SampleStandard~~ Consultant Contract that have been modified. ~~All additional changes shall be shown using red underline and strikeout, highlighting, or other similar formatting so that any changes to the standard text are clearly visible. 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~~requires use of the ~~SampleStandard~~ Consultant Contract because it ~~contains all the required Federal contract provisions. This helps will~~ ensure compliance with the Federal regulations and considerably ~~reduces~~ 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.~~

## FHWA Authorization

FHWA authorization must be obtained before incurring any costs for which Federal reimbursement will be requested. The LPA shall submit a written request for authorization to the Administering Office along with a draft consultant contract and other supporting documentation, as described in Attachment A. The LPA shall not give the consultant notice to proceed until after receiving written notification from the Iowa DOT that the requested consultant services have received FHWA authorization.

The process for requesting FHWA authorization for PE costs is different than CE costs, as described below:

### PE Costs

When requesting FHWA authorization for PE costs, the estimated cost shall include all phases of PE work, even if the scope of the initial consultant contract does not include all phases. If the initial contract does not include all phases of PE work, the LPA shall provide the best estimate available for all phases of PE work. This amount can be adjusted later as supplemental contracts for additional PE work are reviewed and approved. Requesting authorization for all phases of work up-front is an important safeguard that helps avoiding incurring costs prior to FHWA authorization.

### CE Costs

Unlike PE costs, FHWA authorization of CE costs may not be requested well in advance of authorizing construction costs. Ordinarily, authorization for CE costs will be requested at the same time authorization for construction is requested.

However, authorization of CE may be requested 1-2 months prior to requesting authorization for construction, if it includes work that must be done prior to beginning construction, such as construction survey or conducting a pre-construction meeting.

LPAs should use the following guidelines to determine when to submit their request for FHWA authorization of CE costs to the Administering Office:

1. If the CE services are being added as a supplemental contract to an existing Federal-aid consultant contract which has already been reviewed and approved by the Iowa DOT, including a pre-audit if necessary, submit a detailed scope of services and a corresponding estimate of CE costs to the Iowa DOT Administering Office with the final letting plans, as per I.M. 3.005, Project Development Submittal Dates and Information.
2. If the consultant contract has not yet been approved by the Iowa DOT, contact the Administering Office to determine the appropriate amount of lead time required for their review and approval of the consultant selection process, consultant contract, and FHWA authorization.

Following the above guidelines should allow enough time for the CE authorization request to be reviewed by the Iowa DOT and authorized by FHWA at the same time construction is authorized. If some CE work needs to begin before construction is authorized, the above timeframes should be adjusted accordingly. The LPA is responsible for notifying the Iowa DOT Administering Office of any CE work that needs to occur prior to authorization of construction.

## **Pre-audit Procedures**

If the estimated total consultant cost (including any planned supplemental ~~agreement~~ contracts) is **greater than \$100,000 or more**, 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 Administering Office has concerns about any item in the proposed cost estimate; or
- the Administering Office has any other concerns about the proposed contract.

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-Administrator~~ and be responsible for administration of the consultant contract. The Contract ~~Officer-Administrator~~ shall not be employed by the selected consultant. An Iowa DOT Administering Office staff person shall serve as the Contract Monitor.

### Contract modifications

The Contract ~~Administrator's Officer's~~ approval and the Contract Monitor's concurrence are required on all matters regarding contract administration, including any contact modifications, such as adjustments to the contract price, approval of extra work, release of contingency, or execution of supplemental contracts. Before proceeding with work covered by a contract modification, the Contract Administrator's approval and the Contract Monitor's concurrence must be obtained in writing.

Contract modifications may not expand the scope of services beyond what was considered during the original selection process. For example, if the proposed scope of services for the original consultant selection only included PE services, then CE services cannot be added to the contract. In this scenario, a separate selection process would be needed for the CE services.

### Adjustments to the FHWA authorization

If a contract modification changes the estimated cost of planning, PE, or CE services previously authorized by ~~more than 25% (individually or in aggregate)~~, the Administering Office will initiate an adjustment to the FHWA authorization upon receipt of the contract modification request.

Some contract modifications may require a corresponding adjustment to FHWA authorization prior to beginning the work, others may not. In general, if the proposed work is within the same phase(s) of work included in a previous FHWA authorization for the contract, then the adjustment to the FHWA authorization may occur after the work begins. However, if the proposed work involves a new phase of work, FHWA authorization must be obtained first. In either case, the Contract Administrator shall contact the Contract Monitor to verify whether the FHWA authorization must be adjusted in advance of proceeding with the work.

**Note:** Proceeding with a new phase of work without an adjustment to the FHWA authorization will make such work ineligible for Federal participation.

### Pre-audits of Contract Modifications

If a pre-audit was conducted for the original contract, an additional pre-audit is not required for a contract modification, except in the following circumstances:

1. The contract modification changes or adds to the previously approved payment method(s).
2. The estimated costs are increased by \$~~100,000~~ or more.

If a pre-audit was not conducted for the original contract, a pre-audit of the contract modification will be required if the new estimated total cost of the proposed services ~~exceeds is \$100,000 or more~~, or if otherwise requested by the Administering Office.

## 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 or Claim for Reimbursement of Project Costs (Form 517050) 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.

Invoices shall include as a minimum: the Iowa DOT project number, a description of the work performed, and the dates the work was performed. If the invoice includes both PE and CE services, a separate breakdown of each shall be provided. Use of the sample invoice format is recommended, as shown in Attachment D - Sample Standard Consultant Contract.

For contracts that extend more than one year, reimbursement requests should be submitted every 6 months, but in no case less than every 12 months.

## **Contract Close-out**

### Final payment to the consultant

For contracts that do not include CE services and are not fixed fee with a variable overhead rate, the LPA shall make final payment to the consultant as soon as all the deliverables required by the contract have been provided.

For contracts that include CE services, the LPA shall not make final payment to the consultant until after receiving approval from the Administering Office to do so. Before authorizing final payment to the consultant for CE services, the Administering Office will verify that all construction documentation that must be supplied by the consultant for final reimbursement of construction costs has been received. Until such documentation is provided, the Administering Office will not grant approval to the LPA for final payment to the consultant. If final payment is made to the consultant without the Administering Office's approval, such payment will be ineligible for Federal-aid reimbursement. The LPA shall not withhold retainage on CE services if the remaining documentation is not the responsibility of the consultant

For cost plus fixed-fee contracts with variable overhead rates, the LPA shall submit the consultant's final invoice to the Administering Office. The Administering Office will forward the final invoice to the Office of Finance, External Audits, for final review and approval. External Audits will notify the consultant and LPA if any adjustments to the final invoice are required. After the consultant has adjusted its final invoice accordingly, the LPA shall pay the final invoice.

### Final reimbursement

After all the consultant's work is complete, all deliverables have been received, and the consultant has been paid in full, the LPA shall submit a request for final reimbursement for consulting services to the Iowa DOT Administering Office. Upon receipt of the final reimbursement request, the Administering Office will process the final Federal reimbursement for consultant services.

~~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.~~

### Final audit

Upon receipt of a request for final reimbursement of consultant costs, the Administering Office will also forward a request for a final audit or final review to the Iowa DOT Office of Finance, External Audits. Lump sum agreement contracts do not need a final audit, but may have a final review. External Audits may waive final audit requirements on agreement contracts 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.

#### Consultant evaluations

Upon completion of the contract work, the LPA shall complete the LPA Consultant Evaluation (Form 517024). After completing the form, the LPA shall send the evaluation to the consultant, the Administering Office, and the Office of Local Systems.

#### Records retention

Upon FHWA approval of the final closure document, the Administering Office will notify the LPA and the consultant of the record retention date. The LPA and consultant shall keep all records associated with the project for at least 3 years from the record retention date. During this time, the records shall be available to Iowa DOT and FHWA staff upon request.

## Federal-aid Consultant Checklist

The following checklist describes the procedures and sequence of steps that a local public agency (LPA) must follow to receive Federal-aid reimbursement for consulting services. Items with an asterisk (\*) are the responsibility of the LPA. The LPA is encouraged to include this checklist in their project file and use it to ensure that all the necessary steps are completed.

- \* ~~1. The LPA prepares a scope of work and cost estimate that reflects the consultant services to be requested. If the cost estimate for consultant work is less than or equal to \$100,000 go to Step 2; if over \$100,000, go to Step 6. See the "Estimate of Consultant Costs" section of I.M. 3.305 for additional guidance in preparing a cost estimate.~~
- \* 1. The LPA obtains a list of consultants which are prequalified with the Iowa Department of Transportation (Iowa DOT) in the categories of work required. This list is available on the [Iowa DOT Consultant Utilization](#) website. Only firms on the Iowa DOT prequalified list may be considered for the work.
- \* ~~2. The LPA prepares a scope of work and cost estimate that reflects all the ~~consultant~~ services to be provided by the consultant for the entire project, even if the initial contract will not include all of the services that will eventually be provided requested. If the cost estimate for consultant work is less than ~~or equal to \$100,000~~ \$100,000 go to Step ~~3~~ 2; if ~~over \$100,000~~ \$100,000 ~~or more~~, go to Step 6. See the "Estimate of Consultant Costs" section of [I.M. 3.305](#) for additional guidance in preparing a cost estimate.~~
- \* 3. The LPA identifies at least 3 firms from the Iowa DOT prequalified list to be considered for the desired services. ~~If the LPA is interested in a firm not on the list, go to Step 6.~~ The LPA also decides if a Disadvantaged Business Enterprise (DBE) goal will be set, and if so, what percentage will be targeted. For guidance in setting DBE goals, refer to [I.M. 3.710](#), DBE Guidelines.
- \* 4. The LPA may hold discussions with an adequate number of prequalified firms as necessary to evaluate their ability to perform the work. Such discussions should include items such as: any changes in qualified staff, workload, willingness to meet time requirements, ability to meet the established DBE goal (if any), past performance, accounting methods, and approach to the project.
- \* 5. If after discussions, the LPA feels they can negotiate an agreement contract with a prequalified consultant at a cost less than ~~or equal to \$100,000~~ \$100,000, the LPA submits a request to begin negotiations to the Administering Office and proceeds to Step 21. This request shall include the following:
  - a) The proposed scope of work and estimate of consultant costs.
  - b) The names of all the pre-qualified firms considered.
  - c) The reasons why the selected consultant is considered most qualified.
  - d) An indication if the LPA has set a DBE goal, and if so, the targeted percentage of DBE participation. If not, the LPA shall indicate the reasons why no goal is proposed.
- \* 6. The LPA appoints a selection committee. The selection committee should have 3 to 5 members which may include LPA staff, elected officials, and at least one member with technical expertise (i.e., a licensed professional engineer or architect). The selection committee can add non-voting members to act as resources if it deems necessary.
- \* 7. The LPA submits the selection committee membership and method of appointment to the Administering Office. The LPA requests authority to proceed with the consultant selection process.
- 8. If acceptable, the Administering Office approves the LPA's request to proceed with the selection process.

- \* 9. The LPA prepares and submits a draft Request for Proposal (RFP), estimate of costs, and the proposed DBE goal, if any, to the Administering Office. If no DBE goal is proposed, the LPA shall indicate the reasons why. If a DBE goal has been set, the RFP shall identify the goal. The RFP shall also specify that proposals that do not meet the DBE goal or provide documentation of a good faith effort to meet the goal will not be considered. For guidance in preparing the draft RFP, refer to the “Consultant Selection” section of [I.M. 3.305](#).
10. The Administering Office reviews the draft RFP, estimated consultant costs, and proposed DBE goal, if any. If these are acceptable, the Administering Office concurs and notifies the LPA. If not, the Administering Office works with the LPA to resolve any concerns.
- \* 11. The LPA solicits RFPs by public announcement, notice or advertisement. This should be accomplished using the same means the LPA uses for other public notices, such as web sites, e-mail distribution lists, newspaper, social media, etc. The LPA should also send qualifications-based RFPs to three or more consultants. The Iowa DOT recommends sending RFPs to more than 3 firms, since additional justification will be required if less than 3 proposals are received. The LPA also sends RFPs to all Certified DBE consultants claiming experience in the categories of work to be included in the contract, as listed in the Iowa Directory of Certified Disadvantaged Business Enterprises, published by the Iowa DOT Office of Contracts.
- Note:** The LPA may shall not direct the consultant to include an estimate of cost with their proposal, even if the estimated cost is to be submitted in a separate, sealed envelope. If the LPA receives a proposal that includes cost information, that proposal should shall not be considered.
12. Consultants prepare and submit proposals in response to the RFP. If a DBE goal has been set by the LPA, consultants that did not meet the goal must document their good faith efforts to meet the goal. This documentation should include: a list of DBE firms contacted, a list of the DBE firms that responded with a subcontract proposal, and, if the consultant does not propose to use a DBE firm that submitted a subcontract proposal, an explanation why such a DBE firm will not be used. The documentation may be included in the proposal or in a separate document that accompanies the proposal.
- \* 13. The LPA selection committee evaluates proposals utilizing the evaluation criteria. If less than 3 proposals are received, the LPA should consider making another solicitation for proposals. When evaluating the proposals, the selection committee shall not consider whether a consultant’s proposal does or does not meet the DBE goal, if any. DBE goals should only be considered after the consultants have been ranked according to the selection criteria.
- \* 14. If appropriate, the LPA selection committee conducts interviews (usually with no more than the top three firms). The LPA then applies the evaluation criteria, and finalizes the ranking in order of preference. The selection committee also documents its decision-making process.
- \* 15. If a DBE goal was set for the contract, the LPA reviews the documentation provided with the top-ranked consultant’s proposal to verify the consultant’s good faith effort to meet the DBE goal was met. If the goal was not met, but in the opinion of the LPA, the consultant made a good faith effort, or if no DBE goal was set for the contract, proceed to Step 20. For guidance in evaluating good faith efforts, refer to [I.M. 3.710](#), DBE Guidelines.
- \* 16. If, in the opinion of the LPA, the consultant **did not** make a good faith effort to achieve the DBE goal, the LPA notifies the consultant that a contract cannot be awarded due to the consultant’s lack of a good faith effort.

The consultant may appeal the LPA’s decision by submitting a written request for an administrative reconsideration. If an appeal is made, proceed to the next step. If no appeal is sought, the LPA goes back to Step 15 and evaluates the good faith effort of the next highest ranked firm. For the guidance concerning the administrative reconsideration procedures, refer to [I.M. 3.710](#), DBE Guidelines.

17. The consultant prepares and sends a written request for an administrative reconsideration to the Administering Office. This request should include ~~2~~ copies of the following: the RFP ~~if used~~, the consultant's proposal, and any additional justification or documentation that may support the consultant's good faith efforts to meet the DBE goal.
18. Upon receipt of the written request for an administrative reconsideration, the Administering Office forwards this request to the ~~Office of Contracts~~ Office of Employee Services, Civil Rights Team (OES-CRT), along with one copy of the documentation provided by the LPA and / or consultant.
19. The ~~Office of Contracts~~ OES-CRT reviews the administrative reconsideration request. If the ~~Office of Contracts~~ OES-CRT concurs with the LPA's determination, the ~~Office of Contracts~~ OES-CRT so notifies the Administering Office and provides copies to both the LPA and the consultant. The LPA goes back to Step 15 and evaluates the good faith effort of the next highest ranked firm.

If, on the other hand, the consultant's good faith effort is judged sufficient, the ~~Office of Contracts~~ OES-CRT notifies the Administering Office and provides copies to the LPA and the consultant.

- \* 20. The LPA submits the consultant rankings to Administering Office and requests approval to initiate negotiations with the consultant ranked highest by the selection process. If less than 3 firms submitted a proposal, the LPA shall include justification for proceeding with the selection process. This justification must address whether soliciting proposals again would result in additional proposals or not.
21. The Administering Office reviews the LPA's request to begin negotiations with the selected consultant and the proposed DBE goal, if not already reviewed. If acceptable, the Administering Office concurs and notifies the LPA.
- \* 22. The LPA informs those consultants that submitted proposals of the results of the selection process.
- \* 23. The LPA begins negotiations with the selected consultant. For additional guidance on negotiation procedures, refer to the "Contract Negotiation" section of I.M. 3.305. Negotiations continue until agreement is reached on these items. If agreement cannot be reached on these items, the LPA goes back to Step 3 (for contracts estimated less than ~~\$100,000~~ 150,000) and begins discussions with the next firm; or goes back to Step 15 (for contracts estimated at ~~\$100,000~~ 150,000 or more) and evaluates the good faith effort of the next highest ranking firm. This process continues until negotiations are successful.
- \* 24. The LPA submits a request for FHWA authorization to the Administering Office. This request shall include the following information:
- ~~A copy 2 copies~~ of ~~the a~~ draft agreementcontract prepared by the consultant, including any subconsultant agreementcontracts, if available.
  - An estimate (even if only a very rough one) of the costs of all ~~future~~ phases of consultant contract work that are anticipated for the project. This should also include costs for any additional design work and any construction inspection services that are not ~~covered~~ included in by the initial draft agreementcontract. The estimate for all phases of work may be based on the typical percentages provided in this I.M., but the costs associated with the scope of work included in the draft contract must be supported by a detailed estimate.
  - ~~A copy 2 completed copies~~ of the completed DBE Commitment Information (Form 517010). ~~It submitted electronically, hard copies are not required~~—This form is required, even if no DBE goal was set or no DBE commitment has been made. For more information, refer to the instructions included with the form.
  - If a DBE goal was set, and the consultant's DBE commitment is less than the goal, include documentation that supports the consultant's good faith efforts to meet the DBE goal established for the contract. This should include the justification for the consultant's proposed DBE involvement that was submitted as part of their proposal. It also should include any additional considerations weighed by the LPA when reviewing the consultant's good faith efforts.

25. The Administering Office reviews the draft agreementcontract in accordance with Attachment B to I.M. 3.305 and verifies that Form 517010 was completed correctly. If a DBE goal was set for the contract, and the consultant's proposed DBE commitment is less than the goal, the Administering Office reviews the documentation provided by the LPA concerning the consultant's good faith effort to meet the DBE goal.
26. If appropriate, the Administering Office shall forward 1 copy of the draft agreementcontract(s) to the Office of Finance (External Audits) and request a pre-audit. For more information on pre-audits, refer to the "Pre-audit Procedures" section of I.M. 3.305.
27. External Audits conducts a pre-audit (if requested) of the draft agreementcontract(s) and forwards 3 copies a copy of the pre-audit report to the Administering Office.
28. The Administering Office forwards 3 copy of the pre-audit report (if conducted) and the Administering Office's comments on the draft agreementcontract(s) to the LPA and the consultant.
29. The Administering Office verifies that adequate federal funds are shown in the current fiscal year of the Statewide Transportation Improvement Program (STIP). If funds are inadequate, or if they are incorrectly programmed, the Administering Office contacts the LPA and requests them to work with the appropriate Metropolitan Planning Organization (MPO) or Regional Planning Affiliation (RPA) to revise the programming of the project's funds.
30. If adequate funds are available, and they are correctly programmed, the Administering Office prepares a request for FHWA authorization. If FHWA Environmental Concurrence has not yet been obtained, final design may not yet begin. In such cases, the Administering Office's authorization request will note that final design will not begin until after FHWA Environmental Concurrence has been obtained.
31. The Iowa DOT submits the authorization request to FHWA. FHWA reviews the authorization request, and if acceptable, electronically signs the request.
- \* 32. The consultant and LPA modify the agreementcontract(s) to address the Administering Office's comments and the pre-audit recommendations, if any. The LPA submits the agreementcontract(s) to the City Council, County Board of Supervisors, County Conservation Board, or other appropriate contracting authority for approval.
- \* 33. The consultant and LPA execute and forward 3 copy 3 originals of the prime agreementcontract and any subconsultant agreementcontracts to the Administering Office.
34. The Administering Office verifies that all comments have been addressed. If not, the Administering Office works with the LPA to resolve any remaining issues.
35. The Administering Office verifies that FHWA authorization has been obtained. If so, the Administering Office signs and dates a copy of the prime contractthe original prime agreements, notifies the LPA that FHWA authorization has been obtained, and provides a copy of the notification to the appropriate RPA or MPO. The Administering Office's notification shall contain a reminder that the consultant's final design activities shall not proceed until the NEPA process is complete. For additional information concerning this requirement, refer to the "Contract Administration" section of I.M. 3.305.
- \* 36. The LPA issues notice to proceed to the consultant and requests copies of executed subconsultant agreements (if not previously obtained) and forwards them to the Administering Office. The LPA shall reminds the consultant that final design activities may not proceed until the NEPA process is complete.
37. The Administering Office sends a copy of the 4 signed original authorized agreementcontract to both the LPA and consultant; and provides 1 copy each to the Office of Finance (Project Accounting & Payables) and External Audits. The Administering Office retains one copy of the original prime agreementcontract for their file.

- \* 38. The LPA forwards copies of the executed subconsultant contracts (if not previously obtained) to the Administering Office. Upon receipt, the Administering Office sends a copy of the subconsultant contract to the Office of Finance (Project Accounting & Payables) and External Audits. The Administering Office retains one copy for their file.
- \* 39. After a payment has been made to the consultant, the LPA may submit a request for reimbursement to the Administering Office. For more information on reimbursement requests, refer to the “Contract Administration” section of [I.M. 3.305](#).
40. The Administering Office processes the billings received from the LPA for reimbursement.
- \* 41. After all work covered by the consultant contract is complete, including any approved supplemental contracts, and all deliverables have been received and accepted, the LPA makes final payment to the consultant in accordance with the final payment procedures in the Contract Close-out section of I.M. 3.305.
- \* 42. ~~After the consultant has been paid in full, all work covered by the consultant agreement is complete, including any approved supplemental agreements,~~ the LPA requests final reimbursement for the consulting services. Along with the request for final reimbursement of consulting services, the LPA shall also complete and include ~~a copy~~ 2 copies of the DBE Payment Information ([Form 517011](#)). ~~It~~ is ~~submitted electronically, hard copies are not required.~~ This form is required, even if no DBE goal was set or no DBE commitment has been made. For more information, refer to the instructions included with the form.
43. The Administering Office reviews [Form 517011](#). If complete, the Administering Office forwards ~~1 a~~ copy of this form to the ~~Office of Contracts~~OES-CRT.
44. The Administering Office reviews the final reimbursement request, and if acceptable, processes the final reimbursement for consultant services.
45. ~~Upon receipt of the LPA's request for final reimbursement for consulting services, the~~The Administering Office requests a final audit or a final review from External Audits. External Audits conducts a final review or audit in accordance with the ~~For more information on final audit or final review procedures in~~, refer to the “Contract Close-out” section of [I.M. 3.305](#).
46. After the final review or audit is completed, the Administering Office provides a copy of the audit findings, if any to the LPA,~~processes the final reimbursement for the LPA's consultant costs.~~
- \* 47. 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.
- \* 48. The LPA completes the LPA Consultant Evaluation ([Form 517024](#)) and sends a copy to the Administering Office. ~~The Administering Office completes its portion of the evaluation form and returns a copy to the LPA, the consultant,~~ and the Office of Local Systems.
49. Upon FHWA approval of the final closure document, the Administering Office will notify the LPA and the consultant of the record retention date.
- \* 50. The LPA and consultant keep all records associated with the project for at least 3 years from the record retention date.

## **Guidelines-Requirements for Federal-aid Consultant Contracts**

There are a number of provisions in Federal-aid consultant contracts that are required either by Federal regulations or for effective and efficient oversight by the Iowa DOT. Therefore, use of the Standard Consultant Contract, as shown in in Attachment D to I.M. 3.305, is required.

Nevertheless, the Standard Consultant Contract can and should be modified to fit the needs of the project and the desired services. Even so, modifications should be made only when necessary, and substantive modifications to required contract provisions will not be allowed. A substantive change is one that affects the meaning or application of the provision in a way that circumvents the original intent. Keeping changes to a minimum will help speed up the review by the Iowa DOT and ensure that all the Federal requirements are met.

The purpose of this attachment is to show which provisions in the Standard Consultant Contract may not be substantively modified. These provisions are listed below, with a reference the appropriate Article(s) or page numbers in Standard Consultant Contract shown in parenthesis.

~~This attachment lists both the required and recommended contract provisions for prime consultant contracts that will be reimbursed with Federal funds. For each provision, cross-references to the corresponding sections of the Sample Standard Consultant Contract, as shown in Attachment D to I.M. 3.305, are shown in parenthesis. If the Sample Consultant Contract is not used, the required contract provisions should be copied from cross-referenced sections and inserted in the proposed contract.~~

~~A few of the required provisions for prime contracts are also required for subconsultant contracts. Such provisions are specifically identified below. However, the Iowa DOT recommends that all of the required and recommended provisions for prime consultants also be included in any subconsultant contracts.~~

### **Required Contract Provisions**

The following provisions are requirements and must be included in all Federal-aid consultant contracts between a Local Public Agency (LPA) and its consultant. These provisions must also be included in all subcontracts between the prime consultant and its subconsultants. ~~The proposed contract~~Such contracts shall:

1. Clearly define the parties to the contract (page 1).
2. Set forth the time of beginning and completion of work under the contract (1.4).
3. Include a provision that prohibits beginning final design activities until after FHWA Environmental Concurrence has been obtained. For more information on this requirement, see the "Contract Administration" section of [I.M. 3.305](#) (1.4.3).
4. Include the name of the project for which services are being provided (page 1).
5. Include a general description of the services to be performed (page 1).
6. Contain a scope of services section that specifically details each individual task to be performed and describes what each task is to accomplish (Attachment A – Scope of Services).
7. Clearly define the specifications for the consultant contract work, such as the quantity and format of the project deliverables. Project deliverables may include hard and / or electronic copies of plans, specifications, and other electronic files (Attachment B – Specifications)
8. Include provisions that require approval of both the Owner and the Iowa DOT before the prime consultant may use cost underruns associated with subcontracts (3.2).
9. Set forth the terms under which the consultants may be compensated for extra work (4.7)
10. Include provisions that apply in the event that the contract is terminated or suspended. ~~These provisions shall also be included as part of any subconsultant contracts.~~ (4.11, 4.12)

11. ~~Include arbitration provisions for settling disputes regarding the contract. These provisions shall also be included as part of any subconsultant contracts. (See 4.8 and 4.9)~~
12. Include a clause stating that the consultant shall defend, indemnify and hold harmless the LPA, the State of Iowa and the Iowa DOT Local Public Agency (LPA), the Iowa Department of Transportation (Iowa DOT), the Federal Highway Administration (FHWA), its ~~agencies,~~ agents, employees, representatives, assigns and assignees from all claims and liabilities due to negligent acts, errors, or omissions of the consultant, its members, agents, stockholders or employees in connection with performance of the contract (4.9.1).
13. Include a ~~conflict of interest provision non-raiding clause~~ stating that the consultant shall not engage the services of any person or persons, in the employ of the LPA, Iowa DOT, or FHWA for work covered by the contract without addressing potential conflicts of interest and obtaining the written consent of the employers of such persons (4.10).
14. Include a statement that the consultant agrees to comply with all federal, state and local laws and ordinances applicable to the work (2.3).
15. Include provisions prohibiting ~~assignment or transfer of subletting, assigning or transferring~~ any portion of the contract without the written approval of the LPA and concurrence of the Iowa DOT and FHWA, if applicable (4.14).
16. ~~Include provisions stating that the consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure the contract and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the contract. For breach or violation of this warranty, the LPA shall have the right to annul the contract without liability, or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or counterpart fee. (See 4.14) (Note: This is already covered in item 31 below)~~
17. Include provisions that require a licensed engineer or architect in the State of Iowa to certify the plans and specifications (4.3).
18. Contain provisions ensuring compliance with the nondiscrimination and Disadvantaged Business Enterprise (DBE) requirements contained in Title 49 of the Code of Federal Regulations and the nondiscrimination requirements of the Code of Iowa (4.17, 4.18). ~~These provisions shall also be included as part of any subconsultant contracts.~~
19. Include provisions that provide for access to the consultant's records and sets forth the time of record retention as three years from the date of final payment under the Contract (4.15). ~~These provisions shall also be included as part of any subconsultant contracts.~~
20. Include provisions acknowledging that the consultant's work is subject to the review and approval of the Iowa DOT and FHWA (when applicable), and that both have the right to participate in conferences between the owner and the consultant (4.16).
21. ~~Include provisions for inspection and acceptance of the consultant's work by the Owner (4.4, 4.5, and 4.6.1)~~
22. ~~Include a clause requiring the consultant to perform such additional work as may be necessary to correct errors in the work required under the contract. The consultant should complete the additional work without undue delays and without additional cost to the owner. In addition, the consultant should be held responsible for additional costs in subsequent related construction work, resulting from errors or omissions which are a result of gross negligence or carelessness on the part of the consultant (4.6.2)~~
23. ~~Include provisions for time extensions (4.8).~~
24. Include a page for signature by the contracting agency and the consultant. This page shall also include the following signature block for the Iowa DOT (page 10):

**Iowa Department of Transportation**  
Accepted for FHWA Authorization\*

By \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

\* The Iowa DOT is not a party to this agreement. However, by signing this agreement, the Iowa DOT is indicating the work proposed under this Agreement is acceptable for FHWA authorization of Federal funds.

25. Contain a section covering fees and payments to the consultant. This section shall the method(s) of payment (Attachment C – Fees and Payments).
26. Include a clause stating that the consultant agrees to reimburse the Owner for any overpayment determined by final audit (Attachment C – Fees and Payments).
27. Contain a section whereby the consultant agrees to comply with the cost principles specified by the Federal Acquisition Regulations found in [48 CFR 31](#) (Attachment C – Fees and Payments).
28. If the contract uses a Cost Plus Fixed Fee or Fixed Overhead Rate method of compensation, attach a detailed itemized cost estimate that includes a summary of staff hours, fees, indirect costs and any subcontract costs. Any costs not eligible for Federal-aid participation should be clearly identified (Attachment C – Fees and Payments, Cost Plus Fixed Fee and Fixed Overhead Rate options).
29. If the contract uses a Specific Rate of Compensation or Unit Price method of compensation, attach a fee schedule that specifies the rates or unit prices that will be used (Attachment C – Fees and Payments, Specific Rate of Compensation and Unit Price options).
30. Include a consultant certification regarding suspension and debarment (Attachment D).
31. Include a consultant certification regarding unauthorized brokering, commissions, fees, contributions or other considerations in connection with procuring or carrying out the contract (Attachment E).
32. Include an owner certification regarding unauthorized commissions, fees, contributions or other considerations received in connection with awarding the contract (Attachment F).
33. If the contract includes construction engineering (CE) services, include a provision for withholding retainage. For other types of services, the retention provision is optional.
- ~~34. Include the following certifications, which are included as attachments to the Sample Standard Consultant Contract, which is included as Attachment D to I.M. 3.305. These attachments shall also be included as part of any subconsultant contracts:
  - a) Attachment D – Certification Regarding Debarment, Suspension and Other Responsibility Matters – Primary Covered Transactions
  - b) Attachment E – Certification of Consultant\*
  - c) Attachment F – Certification of Owner\*~~

*(Note: This item was split into the three separate items, 30-32, as shown above)*

**Recommended Contract Provisions**

~~The following provisions are recommended, but not required. The proposed contract should:~~

- ~~1. Contain a definition section that identifies terms/pronouns that may be substituted for other terms/nouns. (See p. 4)~~

- ~~2. Contain a section that outlines general contract provisions and responsibilities. (See p. 1)~~
- ~~3. Set forth the time of beginning and completion of work under the contract. (See 1.4)~~
- ~~4. Include clauses that define what constitutes the entire contract. (See 2.1)~~
- ~~5. Include provisions for the ownership of documents produced. (See 4.1)~~
- ~~6. Include provisions for inspection and acceptance of the consultant's work by the Owner. (See 4.2.1, 4.4, and 4.5)~~
- ~~7. Include a clause requiring the consultant to perform such additional work as may be necessary to correct errors in the work required under the contract. The consultant should complete the additional work without undue delays and without additional cost to the owner. In addition, the consultant should be held responsible for additional costs in subsequent related construction work, resulting from errors or omissions which are a result of gross negligence or carelessness on the part of the consultant. (See 4.2.2)~~
- ~~8. Include provisions for time extensions. (See 4.7)~~
- ~~9. Include a severability clause that specifies how the validity of the contract is affected if any part(s) of the contract is ruled invalid. (See 4.19)~~

## Payment Methods

### Types of Payment Methods

Several types of payment methods are available for use in Federal-aid consultant contracts. All payment methods must be based on supportable and reasonable costs within the consultant's accounting system. A reasonable cost is one that does not exceed that which would be incurred by a prudent person in the conduct of a competitive business.

The ~~Sample Standard~~ Consultant Contract, included as [Attachment D](#) to I.M. 3.305, contains a different "Attachment C – Fees and Payments" for each type of payment method described below. ~~If the Sample Consultant Contract is not used, the language from these attachments should be used as a guide.~~

#### 1. Cost Plus Fixed Fee

This method should only be used for contracts that are estimated to be 18 months or more in duration, OR are estimated to be \$250,000 or more in total costs.

Using this method, the consultant is reimbursed for actual documented costs incurred and, in addition, receives a predetermined fixed fee. This method of payment is appropriate when the scope, complexity, character and duration is indeterminable at the time of negotiations, or where the work is of a nature that the contracting authority does not have experience or knowledge to permit an evaluation of the consultant's proposal on any other basis.

This method requires, as a prerequisite to equitable negotiations, that the contracting authority and consultant define as fully and completely as possible, and agree upon, the scope of services.

By definition, cost plus fixed fee includes payment of:

a. Direct costs incurred, including:

- Direct labor.
- Direct non-salary costs incurred, such as the cost of materials incorporated into the contract work, travel expenses, computer charges, printing costs, expendable supplies, and payments to sub-consultants.

Direct costs should be estimated by classification/category of expense. Categories can include, but are not limited to: CADD, computer, mileage, printing, telephone, copying, meals and lodging. All direct cost categories, estimated by the consultant, need to be charged consistently to all types of contracts to be eligible for reimbursement.

- b. Indirect cost: Salary-related expenses and general overhead costs, which are calculated as percentages of direct labor. The overhead rate used should normally be estimated at the last verified rate. Under circumstances where the last verified rate is more than two years old, or where the last verified rate is not representative of the current business trend, an attempt should be made to negotiate a rate taking these circumstances into account. A three year average may be an acceptable alternative.
- c. Fixed fee: A fixed amount (fixed fee) over and above direct and indirect costs. The determination of the amount of fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The establishment of the fixed fee shall be project-specific. Fixed fees normally range from 6 to 15 percent of the estimated total direct and indirect costs. When determining a fixed fee, exclude travel expenses, printing costs, miscellaneous expenses, contingency, and any subconsultant fees.
- d. Contingency: An amount established to provide for reimbursement of unforeseen costs associated with the original contract items. The amount is normally 10% of direct and indirect costs, excluding any subconsultant fees. Under circumstances where the scope is not well defined, it may be appropriate to increase the amount of contingency.

Contingency is normally used to cover increases in wage rates and overhead cost and, under some circumstances, to cover a limited amount of unforeseen costs. Contingency is not to be used without the

prior written approval of the contracting authority and concurrence of the Iowa Department of Transportation (DOT), unless it is for overhead increases.

## 2. Fixed Overhead Rate

This method should **only be used** for contracts that are estimated to be less than 18 months in duration, OR are estimated to be less than \$250,000 in total costs.

This method is the same as the Cost Plus Fixed Fee describe above, except that the overhead rate is fixed for the duration of the contract instead of being adjusted each year.

## 3. Lump Sum

Using this method, the consultant undertakes to perform the services stated in the contract for an agreed amount as full compensation. This method of payment is appropriate only if the contracting authority has established the scope, complexity and duration of the work required to a degree that just compensation can be determined and evaluated by all parties at the time of negotiations. This method would be most appropriate for use on small and repetitious items of work of no more than 18 months in duration. Use of contingency on a lump sum contracts is not appropriate.

## 4. Specific Rates of Compensation

Using this method, the consultant is paid at an agreed and supported specific fixed hourly or daily rate for each class of employee directly engaged in the work. Such rates of pay include the consultant's estimated costs and net fee. This method of payment should be considered only for relatively minor items of work of indeterminable extent ~~over which the contracting authority maintains control of the class of employee to be used and the extent of such use.~~

This method is recommended for CE services because of the indeterminate duration of the work.

Direct non-salary costs may be either set forth as an element of the specific rate or may be included in the contract as independent cost items. The specific rates, so determined, should be established by the consultant and found by the contracting authority to be reasonable and proper.

## 5. Unit Prices

Using this method, the consultant is paid on the basis of units of work performed. A unit of work may be defined as a measurement of work, such as linear feet (meters) of borings, number of right-of-way plats, tons (megagrams) of structural steel, or pounds (kilograms) of reinforcing steel. This method is appropriate when the cost of the work per unit can be determined, in advance with reasonable accuracy, but the extent of the work is indefinite.

### **Estimate of Proposed Consultant Fees**

For all the types of contracts listed above, the consultant shall prepare a cost estimate to support the proposed fees. This estimate shall include direct and indirect costs the firm expects to incur, contingency (if any), and the expected fixed fee. For contracts using the Cost Plus Fixed Fee and Fixed Overhead Rate payment types, a similar estimate shall be attached to and made part of the contract (referenced as Attachment H – Consultant Fee Proposal in the Sample Standard Consultant Contract). For the contracts using the other payment types, the cost estimate does not need to be part of the contract, but shall accompany the draft contract when submitted for review by the LPA and the Iowa DOT. An example cost estimate is shown in the Standard Consultant Contract ~~on the following page.~~

The cost estimate shall also include subconsultant expenses. Subconsultant expenses should represent total estimated cost of work to be completed by an identified subconsultant. The estimated fee for the subconsultant should include direct labor, overhead, direct expenses, fixed fee and contingency, if any. The cost estimate should identify the type of payment method that will be used for each subconsultant. The subconsultant should also submit an estimate similar to one above so the subconsultant's expenses can be reviewed in the same manner as the prime consultant's.

## Retention

A consultant contract may provide that a percentage of monthly payments be withheld until final payment is made or until final audit. This amount is often referred to as “retention” or “retainage.”

When the scope of the contract includes CE services, the contract shall provide for retention. The amount retained shall be held until the Iowa DOT has verified the consultant has provided all the construction documentation necessary for final reimbursement of construction costs. Once verified, the Administering Office will notify the LPA that the amount retained shall be released. The LPA shall not withhold retainage on CE services if the remaining documentation is not the responsibility of the consultant, or if the delay is for reasons beyond the ability of the consultant to control.

For contracts that do not include CE services, retention is optional. If the LPA desires to use retention, this should be specified in the consultant contract.—Situations which may warrant the use of retainage include, but are not limited to, the following:

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

When used for CE services, the Iowa DOT recommends that the amount retained be at least 3% but not exceed 5% of the amount payable. Lesser amounts of retainage may be used for services other than CE services.

Contract No. [XXXXXX]  
Owner Project No. [XXXXXX]  
Iowa DOT Project No. [XXXXXX]

**Standard Consultant Contract**  
**For Local Public Agency Consultant Contracts with Federal-aid Participation**

*(Areas intended for modification are shown in [bracketed blue text with grey highlight]. Drafting instructions are shown with yellow highlight and should be removed when drafting. The header information should also be removed or modified when drafting.)*

This **AGREEMENT**, made as of the date of the last party's signature below, is by and

**BETWEEN** [name of Local Public Agency], the **Owner**, located at:

[street address]  
[city, state, zip]  
Phone: (xxx) xxx-xxxx  
FAX: (xxx) xxx-xxxx

and [Insert Company Name], the **Consultant**, located at:

[street address]  
[city, state, zip]  
Phone: (xxx) xxx-xxxx  
FAX: (xxx) xxx-xxxx

For the following Project: [insert a description of the Federal-aid project here, consistent with the description in the Statewide Transportation Improvement Program]

The **Owner** has decided to proceed with the Project, subject to the concurrence and approval of the Iowa Department of Transportation (Iowa DOT), and the Federal Highway Administration (FHWA), U.S. Department of Transportation (when applicable).

The **Owner** desires to employ the **Consultant** to provide [insert general description of services to be provided here] services to assist with the development and completion of the Project. The **Consultant** is willing to perform these services in accordance with the terms of this Agreement.

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[\[Attachment J – Any other attachments are to be listed here\]](#)

## ARTICLE 1 INITIAL INFORMATION

This Agreement is based on the following information and assumptions.

### 1.1 Project Parameters

The objective or use is: [Identify, if appropriate, proposed use or goals and insert here]

### 1.2 Financial Parameters

1.2.1 Amount of the **Owner's** budget for the **Consultant's** compensation is:  
[Insert amount here]

1.2.2 Amount of the **Consultant's** budget for the subconsultants' compensation is:  
[Insert amount here]

### 1.3 Project Team

1.3.1 The **Owner's** Designated Representative, identified as the **Contract Administrator** is:  
[insert name here]

The **Contract Administrator** is the authorized representative, acting as liaison officer for the **Owner** for purpose of coordinating and administering the work under the Agreement. The work under this Agreement shall at all times be subject to the general supervision and direction of the **Contract Administrator** and shall be subject to the **Contract Administrator's** approval.

1.3.2 The **Consultant's** Designated Representative is:  
[insert name here]

1.3.3 The subconsultants retained at the **Consultant's** expense are identified in the following table:

<u>Subconsultant</u>	<u>Amount Authorized</u>	<u>Maximum Amount Payable</u>	<u>Method of Payment</u>
[Insert first subconsultant]	[Insert amount]	[Insert amount]	[Insert type (from 3.1.2)]
[Insert 2nd subconsultant]	[Insert amount]	[Insert amount]	[Insert type (from 3.1.2)]
[Insert 3rd subconsultant]	[Insert amount]	[Insert amount]	[Insert type (from 3.1.2)]

### 1.4 Time Parameters

1.4.1 The **Consultant** shall begin work under this Agreement upon receipt of a written notice to proceed from the **Owner**.

1.4.2 Milestones for completion of the work under this Agreement as follows:

1. Preliminary design plans including type/size/location for all structures (preliminary design) and detail elements for a design public hearing and construction right-of-way needs shall be completed and accepted on or before [Insert date here] or [Insert days] calendar days after receiving the notice to proceed (whichever is greater).
2. Final design, contract plans and specifications and estimates shall be completed and in a form acceptable to the **Owner** on or before [Insert date here].
3. Completion of all work under this agreement shall be on or before [Insert date here] unless extended by written approval of the **Contract Administrator** or adjusted by supplemental agreement.

*(the above examples may be edited to fit the needs of the project)*

1.4.3 The **Consultant** shall not begin final design activities until after the **Owner** has been notified by the Iowa DOT that FHWA Environmental Concurrence has been obtained. Upon receipt of such notice, the **Owner** will provide the **Consultant** notice to proceed with final design activities.

## 1.5 Prequalification

1.5.1 The **Consultant** shall remain prequalified in work category [Insert all applicable work categories here], as defined in Iowa Department of Transportation Policy and Procedure No. 300.04. Failure to do so will ~~exclude the Consultant from consideration for future Federal-aid contracts, until the Consultant regains pre-qualification status, result in termination of this Agreement.~~

1.5.2 All services within this agreement shall be performed by the **Consultant** or subconsultant prequalified ~~by the Iowa DOT with the Owner~~ in that particular category of work. If no work category exists for a particular service, normal methods of acceptance shall be used, such as experience, typical licensure, certification or registration, or seals of approval by others.

## ARTICLE 2 ENTIRE AGREEMENT, REQUIRED GUIDANCE AND APPLICABLE LAW

2.1 **Entire Agreement of the Parties.** This Agreement, including its attachments, represents the entire and integrated agreement between the **Owner** and the **Consultant** and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both **Owner** and **Consultant**. This Agreement comprises the documents listed as attachments in the Table of Contents. The work to be performed by the **Consultant** under this Agreement shall encompass and include all detail work, services, materials, equipment and supplies necessary to prepare and deliver the scope of services provided in Attachment A.

2.2 **Required Guidance.** All services shall be in conformity with the Specifications outlined in Attachment B, the Iowa Department of Transportation Federal-aid Project Development Guide, Instructional Memorandums to Local Public Agencies (I.M.s), and other standards, guides or policies referenced therein. In addition, applicable sections of the U.S. Department of Transportation Federal Aid Policy Guide (FAPG) shall be used as a guide in preparation of plans, specifications and estimates.

2.3 **Applicable Law.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the exclusive jurisdiction for the proceeding shall be brought in the [county name] County District Court of Iowa, [city name], Iowa. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the **Owner**. The **Consultant** shall comply with all Federal, State and local laws and ordinances applicable to the work performed under this Agreement.

## ARTICLE 3 FORM OF COMPENSATION

### 3.1 Method of Reimbursement for the Consultant.

3.1.1 Compensation for the **Consultant** shall be computed in accordance with one of the following compensation methods, as defined in Attachment C: *(mark method selected with an [X])*

- .1  Cost Plus Fixed Fee - Attachment C
- .2  Lump Sum - Attachment C
- .3  Specific Rate of Compensation - Attachment C
- .4  Unit Price - Attachment C
- .5  Fixed Overhead Rate - Attachment C

3.1.2 When applicable, compensation for the subconsultant(s) shall be computed in accordance with one of the payment methods listed in section 3.1.1. Refer to section 1.3.3 for identification of the method of payment utilized in the subconsultant(s) contract. The compensation method utilized for each subconsultant shall be defined within the subconsultant contract to the **Consultant**.

3.2 **Subconsultant's Responsibilities for Reimbursement.** The **Consultant** shall require the subconsultants (if applicable) to notify them if they at any time determine that their costs will exceed their estimated actual costs. The **Consultant** shall not allow the subconsultants to exceed their

estimated actual costs without prior written approval of the **Contract Administrator**. The prime **Consultant** is cautioned that cost under-runs associated with any subconsultant's contract are not available for use by the prime **Consultant** or other subconsultant unless the **Contract Administrator**, [Iowa DOT](#), and [FHWA](#) (when applicable) have given prior written approval.

## ARTICLE 4 TERMS AND CONDITIONS

### 4.1 Ownership of Engineering Documents

**4.1.1** All sketches, tracings, plans, specifications, reports on special studies and other data prepared under this Agreement shall become the property of the **Owner** and shall be delivered to the **Contract Administrator** upon completion of the plans or termination of the services of the **Consultant**. There shall be no restriction or limitation on their future use by the **Owner**, except any use on extensions of the project or on any other project without written verification or adaptation by the **Consultant** for the specific purpose intended will be the **Owner's** sole risk and without liability or legal exposure to the **Consultant**.

**4.1.2** The **Owner** acknowledges the **Consultant's** plans and specifications, including all documents on electronic media, as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become the property of the **Owner** upon completion of the services and payment in full of all moneys due to the **Consultant**.

**4.1.3** The **Owner** and the **Consultant** agree that any electronic files prepared by either party shall conform to the specifications listed in Attachment B. Any change to these specifications by either the **Owner** or the **Consultant** is subject to review and acceptance by the other party. Additional efforts by the **Consultant** made necessary by a change to the CADD software specifications shall be compensated for as Additional Services.

**4.1.4** The **Owner** is aware that significant differences may exist between the electronic files delivered and the respective construction documents due to addenda, change orders or other revisions. In the event of a conflict between the signed construction documents prepared by the **Consultant** and electronic files, the signed construction documents shall govern.

**4.1.5** The **Owner** may reuse or make modifications to the plans and specifications, or electronic files while agreeing to take responsibility for any claims arising from any modification or unauthorized reuse of the plans and specifications.

### 4.2 Subconsultant Contract Provisions and Flow Down

**4.2.1** All provisions of this Agreement between the **Owner** and **Consultant** shall also apply to all subconsultants hired by the **Consultant** to perform work pursuant to this Agreement. It is the **Consultant's** responsibility to ensure all contracts between **Consultant** and its subconsultants contain all provisions required of Consultant in this Agreement. The only recognized exceptions to this requirement are under provision 1.5.2 when the subconsultant is required to be prequalified in a different work category than the **Consultant** and under provision 3.1.2 when the subconsultant has a different method of reimbursement than the **Consultant**.

**4.2.2** The **Consultant** may not restrict communications between the **Owner** and any of the subconsultants. The **Consultant** will encourage open communication among the **Owner**, the **Consultant** and the subconsultants.

**4.3** **Consultant's Endorsement on Plans.** The **Consultant** and its subconsultants shall endorse and certify the completed project deliverables prepared under this Agreement, and shall affix thereto the seal of a professional engineer [or architect \(as applicable\)](#), licensed to practice in the State of Iowa, in accordance with the current Code of Iowa [and Iowa Administrative Code](#).

**4.4** **Progress Meetings.** From time to time as the work progresses, conferences will be held at mutually convenient locations at the request of the **Contract Administrator** to discuss details of the design and progress of the work. The **Consultant** shall prepare and present such information and studies as may

be pertinent and necessary or as may be requested by the **Contract Administrator**, to enable the **Contract Administrator** to pass judgment on the features and progress of the work.

**4.5 Additional Documents.** At the request of the **Contract Administrator**, the **Consultant** shall furnish sufficient documents, or other data, in such detail as may be required for the purpose of review.

#### **4.6 Revision of Work Product**

**4.6.1** Drafts of work products shall be reviewed by the **Consultant** for quality control and then be submitted to the **Contract Administrator** by the **Consultant** for review and comment. The comments received from the **Contract Administrator** and the reviewing agencies shall be incorporated by the **Consultant** prior to submission of the final work product by the **Consultant**. Work products revised in accordance with review comments shall constitute "satisfactorily completed and accepted work." Requests for changes on work products by the **Contract Administrator** shall be in writing. In the event there are no comments from the **Contract Administrator** or reviewing agencies to be incorporated by the **Consultant** into the final work product, the **Contract Administrator** shall immediately notify the **Consultant**, in writing, that the work product shall constitute "satisfactorily completed and accepted work."

**4.6.2** In the event that the work product prepared by the **Consultant** is found to be in error and revision or reworking of the work product is necessary, the **Consultant** agrees that it shall do such revisions without expense to the **Owner**, even though final payment may have been received. The **Consultant** must give immediate attention to these changes so there will be a minimum of delay to the project schedule. The above and foregoing is not to be construed as a limitation of the **Owner's** right to seek recovery of damages for negligence on the part of the **Consultant** herein.

**4.6.3** Should the **Contract Administrator** find it desirable to have previously satisfactorily completed and accepted work product or parts thereof revised, the **Consultant** shall make such revisions if requested and directed by the **Contract Administrator** in writing. This work will be paid for as provided in Article 4.7.

**4.7 Extra Work.** If the **Consultant** is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement, and constitutes "Extra Work," it shall promptly notify the **Contract Administrator** in writing to that effect. In the event that the **Contract Administrator** determines that such work does constitute "Extra Work", the **Consultant** shall promptly develop a scope and budget for the extra work and submit it to the **Contract Administrator**. The **Owner** will provide extra compensation to the **Consultant** upon the basis of actual costs plus a fixed fee amount, or at a negotiated lump sum. Prior to receipt of a fully executed Supplemental Agreement and written Notice to Proceed, any cost incurred that exceeds individual task costs, or estimated actual cost, or the maximum amount payable is at the **Consultant's** risk. The **Owner** has the right, at its discretion, to disallow those costs. However, the **Owner** shall have benefit of the service rendered.

**4.8 Extension of Time.** The time for completion of each phase of this Agreement shall not be extended because of any delay attributed to the **Consultant**, but may be extended by the **Contract Administrator** in the event of a delay attributed to the **Owner** or the **Contract Administrator**, or because of unavoidable delays beyond the reasonable control of the **Consultant**.

#### **4.9 Responsibility For Claims And Liability**

**4.9.1** The **Consultant** agrees to defend, indemnify, and hold the **Owner**, **the State of Iowa, the Iowa DOT, their agents**, employees, representatives, assigns and successors harmless for any and all liabilities, costs, demands, losses, claims, damages, expenses, or attorneys' fees, including any stipulated damages or penalties, which may be suffered by the **Owner** as the result of, arising out of, or related to, the negligence, negligent errors or omissions, gross negligence, willfully wrongful misconduct, or breach of any covenant or warranty in this Agreement of or by the **Consultant** or any of its employees, agents, directors, officers, subcontractors or subconsultants, in connection with this Agreement.

**4.9.2** The **Consultant** shall obtain and keep in force insurance coverage for professional liability (errors and omissions) with a minimum limit of \$1,000,000 per claim and in the aggregate, and all such other insurance required by law. Proof of **Consultant's** insurance for professional liability coverage and all such other insurance required by law will be provided to the **Owner** at the time the contract is executed and upon each insurance coverage renewal.

#### **4.10 Current and Former Agency Employees**

The **Consultant** shall not engage the services of any current employee of the **Owner or the Iowa DOT** unless it obtains the approval of the **Owner or the Iowa DOT, as applicable**, and it does not create a conflict of interest under the provisions of Iowa Code section 68B.2A. The **Consultant** shall not engage the services of a former employee of the **Owner or the Iowa DOT, as applicable**, unless it conforms to the two-year ban outlined in Iowa Code section 68B.7. Similarly, the **Consultant** shall not engage the services of current or former FHWA employee without prior written consent of the FHWA, and the relationship meets the same requirements for State and local agency employees set forth in the above-referenced Iowa Code sections and the applicable Federal laws, regulations, and policies.

#### **4.11 Suspension of Work under this Agreement**

**4.11.1** The right is reserved by the **Owner** to suspend the work being performed pursuant to this Agreement at any time. The **Contract Administrator** may effect such suspension by giving the **Consultant** written notice, and it will be effective as of the date established in the suspension notice. Payment for the **Consultant's** services will be made by the **Owner** to the date of such suspension, in accordance with the applicable provisions in Article **4.12.2** or Article **4.12.3** below.

**4.11.2** Should the **Owner** wish to reinstate the work after notice of suspension, such reinstatement may be accomplished by thirty (30) days' written notice within a period of one year after such suspension, unless this period is extended by written consent of the **Consultant**.

**4.11.3** In the event the **Owner** suspends the work being performed pursuant to this Agreement the **Consultant** with approval from the **Contract Administrator**, has the option, after 180 days to terminate the contract.

#### **4.12 Termination of Agreement**

**4.12.1** The right is reserved by the **Owner** to terminate this Agreement at any time and for any reason upon not less than thirty (30) days written notice to the **Consultant**.

**4.12.2** In the event the Agreement is terminated by the **Owner** without fault on the part of the **Consultant**, the **Consultant** shall be paid for the reasonable and necessary work performed or services rendered and delivered up to the effective date or time of termination. The value of the work performed and services rendered and delivered, and the amount to be paid shall be mutually satisfactory to the **Contract Administrator** and to the **Consultant**. The **Consultant** shall be paid a portion of the fixed fee, plus actual costs, as identified in Attachment C. Actual costs to be reimbursed shall be determined by audit of such costs to the date established by the **Contract Administrator** in the termination notice, except that actual costs to be reimbursed shall not exceed the Maximum Amount Payable.

**4.12.3** In the event the Agreement is terminated by the **Owner** for fault on the part of the **Consultant**, the **Consultant** shall be paid only for work satisfactorily performed and delivered to the **Contract Administrator** up to the date established by the termination notice. After audit of the **Consultant's** actual costs to the date established by the **Contract Administrator** in the termination notice and after determination by the **Contract Administrator** of the amount of work satisfactorily performed, the **Contract Administrator** shall determine the amount to be paid to the **Consultant**.

**4.12.4** This Agreement will be considered completed when the scope of the project has progressed sufficiently to make it clear that [insert controlling milestone -- for example "construction"] can be

completed without further revisions in that work, or if the **Consultant** is released prior to such time by written notice from the **Contract Administrator**.

- 4.13 **Right to Set-off.** In the event that the **Consultant** owes the **Owner** any sum under the terms of this Contract, the **Owner** may set off the sum owed to the **Owner** against any sum owed by the **Owner** to the **Consultant** under any other contract or matter in the **Owner's** sole discretion, unless otherwise required by law. The **Consultant** agrees that this provision constitutes proper and timely notice of the **Owner's** intent to utilize any right of set-off.
- 4.14 **Assignment or Transfer.** The **Consultant** is prohibited from assigning or transferring ~~all or a part of its interest in~~ this Agreement, ~~if any federal funds are utilized. The Consultant may assign or transfer this Agreement if only state funds are utilized and unless~~ written consent is obtained from the **Contract Administrator** ~~and concurrence is received from the Iowa DOT and FHWA, if applicable.~~
- 4.15 **Access to Records.** The **Consultant** is to maintain all books, documents, papers, accounting records and other evidence pertaining to this Agreement and to make such materials available at their respective offices at all reasonable times during the agreement period, and for three years ~~from the date of final closure of the Federal-aid project with FHWA,~~ for inspection and audit by the **Owner**, ~~the Iowa DOT,~~ the FHWA, or any authorized representatives of the Federal Government; and copies thereof shall be furnished, if requested.
- 4.16 **Iowa DOT and FHWA Participation.** The work under this Agreement is contingent upon and subject to the approval of the ~~Iowa DOT and~~ FHWA, when applicable. The ~~Iowa DOT and~~ FHWA shall have the right to participate in the conferences between the **Consultant** and the **Owner**, and to participate in the review or examination of the work in progress as well as any final deliverable.
- 4.17 ~~Nondiscrimination Requirements Compliance with Title 49, Code Of Federal Regulations, Part 21~~
- 4.17.1 During the performance of this Agreement, the **Consultant** agrees to comply with the regulations of the U.S. Department of Transportation, contained in Title 49, Code of Federal Regulations, Part 21 ~~and the Code of Iowa~~. The **Consultant** will not discriminate on the grounds of race, religion, age, physical disability, color, sex, ~~sexual orientation,~~ or national origin in its employment practices, in the selection and retention of subconsultants, and in its procurement of materials and leases of equipment.
- 4.17.2 In all solicitations, either by competitive bidding or negotiation made by the **Consultant** for work to be performed under a subcontract, including procurement of materials or equipment, each potential subconsultant or supplier shall be notified by the **Consultant** of the **Consultant's** obligation under this contract and the regulations relative to nondiscrimination on the grounds of race, religion, age, physical disability, color, sex, ~~sexual orientation,~~ or national origin.
- 4.17.3 In the event of the **Consultant's** noncompliance with the nondiscrimination provisions of this Agreement, the **Owner** shall impose such contract sanctions as it, the ~~Iowa DOT,~~ or the FHWA may determine to be appropriate, including, but not limited to withholding of payments to the **Consultant** under the Agreement until the **Consultant** complies, ~~or the Agreement is otherwise suspended or terminated, cancels, terminates or suspends the Agreement.~~
- ~~4.17.4. The Consultant shall comply with the following provisions of Appendix A of the U.S. DOT Standard Assurances~~
- ~~During the performance of this contract, the Consultant for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:~~
- ~~1. Compliance with Regulations: The Consultant shall comply with the Regulations relative to non-discrimination in Federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.~~

2. Nondiscrimination: The **Consultant**, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The **Consultant** shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the **Consultant** for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the **Consultant** of the **Consultant's** obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, national origin, sex, age, or disability.

4. Information and Reports: The **Consultant** shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the **Owner**, the Iowa Department of Transportation or Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a **Consultant** is in the exclusive possession of another who fails or refuses to furnish this information the **Consultant** shall so certify to the **Owner**, the Iowa Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the **Consultant's** noncompliance with the nondiscrimination provisions of this contract, the **Owner** shall impose such contract sanctions as it, the Iowa Department of Transportation or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the **Consultant** under the contract until the **Consultant** complies, and/or
- b. cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The **Consultant** shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The **Consultant** shall take such action with respect to any subcontract or procurement as the **Owner**, the Iowa Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that, in the event a **Consultant** becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the **Consultant** may request the **Owner** or the Iowa Department of Transportation to enter into such litigation to protect the interests of the **Owner** or the Iowa Department of Transportation; and, in addition, the **Consultant** may request the United States to enter into such litigation to protect the interests of the United States.

#### 4.18 Compliance with Title 49, Code of Federal Regulations, Part 26

- 4.18.1 The **Consultant** agrees to ensure that disadvantaged business enterprises (DBEs) as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard the **Consultant** and all of its subconsultants shall take all necessary and reasonable steps in compliance with the Iowa DOT DBE Program to ensure disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts.
- 4.18.2 Upon notification to the **Consultant** of its failure to carry out the requirements of this Article, the **Owner**, the Iowa DOT, or the FHWA may impose sanctions which may include termination of the Agreement or other measures that may affect the ability of the **Consultant** to obtain future U.S. DOT financial assistance. The **Consultant** is hereby advised that failure to fully comply with the requirements of this Article shall constitute a breach of contract and may result in termination of this Agreement by the **Owner** or such remedy as the **Owner**, Iowa DOT or the

FHWA deems appropriate.

**4.19 Severability.** If any section, provision or part of this Agreement shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Agreement as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officials thereunto duly authorized as of the dates below.

**[INSERT CONSULTANT NAME]**

By \_\_\_\_\_ Date: \_\_\_\_\_

[Name of Person Signing for Consultant]  
[Position of Person Signing for Consultant]

ATTEST:

By \_\_\_\_\_ Date: \_\_\_\_\_

**[INSERT OWNER NAME]**

By \_\_\_\_\_ Date: \_\_\_\_\_

[Name of Person Signing for the Owner]  
[Position of Person Signing for the Owner]

**IOWA DEPARTMENT OF TRANSPORTATION**  
Accepted for FHWA Authorization\*

By \_\_\_\_\_ Date: \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

\* The Iowa DOT is not a party to this agreement. However, by signing this agreement, the Iowa DOT is indicating the work proposed under this Agreement is acceptable for FHWA authorization of Federal funds.

**ATTACHMENT A  
Scope of Services**

*Insert scope of services here, as developed and agreed upon jointly by the **Owner** and the **Consultant**.*

*Consider including within the project administration portion of the scope of services something similar to the following for progress reporting and 85% budget notification requirements:*

It is understood by the **Owner** and the **Consultant** that the level and frequency of Progress Reporting shall be mutually established for each project, taking into account the complexity and duration of the work to be performed. For this specific project it is agreed that progress reporting will be [Choose: waived / provided on a monthly basis].

It is understood by the **Owner** and the **Consultant** that the task detail associated with the 85% budget notification shall be mutually established for each project in relation to the complexity and duration of the work to be performed. For this specific project it is agreed that all work contemplated in the agreement will be considered as [Choose: one / or insert number] task(s). It is further agreed that the 85% budget notification requirements will be [Choose: waived / required] for this Agreement based on the volume of work assigned, duration, complexity, and rate of progress anticipated on the project.

*Also, for those projects involving road, engineering survey, or geotechnical design tasks, consider including something similar to the following within the project administrative portion of the scope of services:*

The **Consultant** will monitor and review updates to the [Iowa DOT's Instructional Memorandums \(I.M.s\)](#), Road Design Manual, Standard Road Plans, Road Design Details. Updates requiring no additional effort on the part of the **Consultant** will be incorporated into the work by the **Consultant**. If the **Consultant** is of the opinion additional effort will be required, the **Consultant** will so notify the **Contract Administrator**, in accordance with Paragraph 4.7. The **Contract Administrator** will provide written approval or disapproval for the **Consultant** to incorporate said update into the work and indicate how payment for such work will be addressed.

**ATTACHMENT B**  
**Specifications**

*Insert appropriate project specifications here. These should include specific standards or specifications that will govern the production of work products or other deliverables to be provided by the consultant under the contract. Examples may include electronic file specifications, plan formatting, report requirements, etc.*

**ATTACHMENT C (referenced from 3.1)  
Cost Plus Fixed Fee**

**3.1.1 FEES AND PAYMENTS**

**3.1.1.1 Fees.** For full and complete compensation of all work, materials, and services furnished under the terms of this Agreement, the **Consultant** shall be paid fees in the amount of the **Consultant's** actual cost plus applicable fixed fee amount. The **Consultant's** actual costs shall include payments to any subconsultants. The estimated actual costs and fixed fee are shown below and are itemized in Attachment **C-1 (Insert Attachment Number)**. Subconsultant costs are not available for use by the prime **Consultant** or other subconsultants. A contingency amount has [has / has not] been established to provide for actual costs that exceed those estimated.

Estimated Actual Costs (Prime only)	\$ [Insert Costs]
Fixed Fee (Prime only)	\$ [Insert Fee]
Contingency (Prime only)	\$ [Insert Contingency, if applicable]
Total Prime Consultant Costs	\$ [Insert Costs]
Subconsultant (1)	\$ [Insert Costs]
Subconsultant (2)	\$ [Insert Costs]
Subconsultant (3)	\$ [Insert Costs]
Total Subconsultant Costs	\$ [Insert Costs]
Maximum Amount Payable	\$ [Insert Amount]

The nature of engineering services is such that actual costs are not completely determinate. Therefore, the **Consultant** shall establish a procedure for comparing the actual costs incurred during the performance of the work to the estimated actual costs listed above. The procedure will itemize prime consultant and subconsultant costs in association with each scoped task. The purpose is to monitor these two elements and thus provide for early identification of any potential for the actual costs exceeding the estimated actual costs. The procedure shall be used in a way that will allow enough lead time to execute the paragraphs below without interrupting the work schedule. Therefore once the accrued labor costs for a scoped task reach 85% of the estimated value for the prime or subconsultant, then the **Consultant** shall notify the **Owner** in writing.

It is possible that the **Consultant's** costs for the scoped tasks may need to exceed those shown in Attachment [Insert Attachment Number]. The **Consultant's** and subconsultants' costs for scoped tasks shall not be exceeded without prior written authorization from the **Contract Administrator**. Costs for scoped tasks that exceed estimated costs, if approved by the **Contract Administrator**, may be compensated via Supplemental Agreement, Work Order, Amendment, or Contingency as detailed in the paragraphs below. If the **Consultant** exceeds the estimated costs for scoped tasks for any reason (other than that covered in Section 3.1.1.2) before the **Contract Administrator** is notified in writing, the **Owner** will have the right, at its discretion, to deny compensation for that amount.

The fixed fee amount will not be changed unless there is a substantial reduction or increase in scope, character, or complexity of the services covered by this Agreement or the time schedule is changed by the **Owner**. The adjustment to fixed fee will consider both cumulative and aggregate changes in scope, character, or complexity of the services. Any change in the fixed fee amount will be made by a Supplemental Agreement, Work Order, or Amendment.

If a contingency amount has been established and at any time during the work the **Consultant** determines that its actual costs will exceed the estimated actual costs, thus necessitating the use of a contingency amount, it will promptly so notify the **Contract Administrator** in writing and describe what costs are causing the overrun and the reason. The **Consultant** shall not exceed the estimated actual costs without the prior written approval of the **Contract Administrator** and concurrence of the Iowa DOT. The **Owner** or Iowa DOT may audit the **Consultant's** cost records prior to authorizing the use of a contingency amount.

The maximum amount payable will not be changed except for a change in the scope. Changes due to an overhead adjustment are identified in Section 3.1.1.2. If at any time it is determined that a maximum

amount payable will be or has been exceeded, the **Consultant** shall immediately so notify the **Contract Administrator** in writing. The maximum amount payable shall be changed by a Supplemental Agreement, Work Order, or Amendment or this Agreement will be terminated as identified in Article 4.12.3. The **Owner** may audit the **Consultant's** cost records prior to making a decision whether or not to increase the maximum amount payable.

**3.1.1.2 Reimbursable Costs.** Reimbursable costs are the actual costs incurred by the **Consultant** which are attributable to the specific work covered by this Agreement and allowable under the provisions of the Code of Federal Regulations (CFR), Title 48, Federal Acquisition Regulations Systems, Subchapter E., Part 30 (when applicable), and Part 31, Section 31.105 and Subpart 31.2. In addition to Title 48 requirements, for meals to be eligible for reimbursement, an overnight stay will be required. The Title 48 requirements include the following:

1. Salaries of the employees for time directly chargeable to work covered by the Agreement, and salaries of principals for time they are productively engaged in work necessary to fulfill the terms of the Agreement.
2. Direct non-salary costs incurred in fulfilling the terms of this Agreement. The **Consultant** will be required to submit a detailed listing of direct non-salary costs incurred and certify that such costs are not included in overhead expense pool. These costs may include travel and subsistence, reproductions, computer charges and materials and supplies.
3. The indirect costs (salary related expenses and general overhead costs) to the extent that they are properly allowable to the work covered by this Agreement. The **Consultant** has submitted to the **Owner** the following indirect costs as percentages of direct salary costs to be used provisionally for progress payments for work accomplished during the **Consultant's** current fiscal year: Salary related expenses are [Insert Amount]% of direct salary costs and general overhead costs are [Insert Amount]% of direct salary costs.

Use of updated overhead percentage rates shall be requested by the **Consultant** after the close of each fiscal year and the updated overhead rate shall be used to update previous year invoices and subsequent years as a provisional rate for invoicing in order to more accurately reflect the cost of work during the previous and subsequent years.

Any actual fiscal year or fiscal year's audited or unaudited indirect costs rates known by the **Consultant** shall be used in computing the final invoice statement. All unverified overhead rates shall have a schedule of computation supporting the proposed rate attached to the final bill. Prior to final payment for work completed under this Agreement all indirect cost rates shall be audited and adjusted to actual rates through the most recently completed fiscal year during which the work was actually accomplished. In the event that the work is completed in the current fiscal year, audited indirect cost rates for the most recently completed fiscal year may be applied also to work accomplished in the current fiscal year. If these new rates cause the actual costs to be exceeded, the contingency amount will be used.

**3.1.1.3 Premium Overtime Pay.** Premium overtime pay (pay over normal hourly pay) will not be allowed without written authorization from the **Contract Administrator**. If allowed, premium overtime pay shall not exceed 2 percent of the total direct salary cost without written authorization from the **Contract Administrator**.

**3.1.1.4 Payments.** Monthly payments shall be made based on the work completed and substantiated by monthly progress reports. The report shall indicate the direct and indirect costs associated with the work completed during the month. The **Contract Administrator** will check such progress reports and payment will be made for the direct non-salary costs and salary and indirect costs during said month, plus a portion of the fixed fee. The **Owner** shall retain from each monthly payment for construction inspection or construction administration services [Insert Amount]% of the amount due.\* Fixed fee will be calculated and progressively invoiced based on actual costs incurred for the current billing cycle. Each invoice shall be accompanied with a monthly progress report which details the tasks invoiced, estimated tasks to be billed on the next invoice, and any other contract tracking information.

\* Retainage is required only if the contract includes construction inspection and / or administration

services. If the LPA elects to withhold retainage on other types of services, or if the contract does not include construction inspection and / or administration services, this sentence should be modified accordingly.

Invoices shall clearly identify the beginning and ending dates of the prime's and subconsultant's billing cycles. All direct and indirect costs incurred during the billing cycle shall be invoiced. Costs incurred from prior billing cycles and previously not billed, will not be allowed for reimbursement unless approved by the **Contract Administrator**.

Upon delivery and acceptance of all work contemplated under this Agreement, the **Consultant** shall submit one complete invoice statement of costs incurred and amounts earned. Payment of 100% of the total cost claimed, inclusive of retainage, if applicable, will be made upon receipt and review of such claim. Final audit will determine correctness of all invoiced costs and final payment will be based upon this audit. The **Consultant** agrees to reimburse the **Owner** for possible overpayment determined by final audit.

**ATTACHMENT C (referenced from 3.1)  
Lump Sum**

**3.1.1 FEES AND PAYMENTS**

**3.1.1.1 Fees.** For full and complete compensation for all work, materials, and services furnished under the terms of this Agreement, the **Consultant** shall be paid fees on a lump sum basis and payment of this amount shall be considered as full and complete compensation for all work, materials and services furnished under the terms of this Agreement. The lump sum amount shall be \$ [Insert Amount]. The estimated staff hours and fees are shown in Attachment C-1this-attachment\*

*\* Use of Attachment C-1, Cost Analysis Worksheet, is recommended, but not required for lump sum contracts. However, if not included in the contract, the consultant must still provide similar documentation to the LPA to justify the lump sum fee as part of the contract negotiations.*

The lump sum amount will not be changed unless there is a substantial change in the magnitude, scope, character, or complexity of the services from those covered in this Agreement. Any change in the lump sum amount will be by Supplemental Agreement.

**3.1.1.2 Reimbursable Costs.** Reimbursement of costs is limited to those that are attributable to the specific work covered by this Agreement and allowable under the provisions of the Code of Federal Regulations (CFR), Title 48, Federal Acquisition Regulation System, Subchapter E., Part 30 (when applicable), and Part 31, Section 31.105 and Subpart 31.2. In addition to Title 48 requirements, for meals to be eligible for reimbursement, an overnight stay will be required.

**3.1.1.3 Premium Overtime Pay.** Not applicable.

**3.1.1.4 Payments.** Monthly payments for work completed shall be based on the percentage of work completed and substantiated by monthly progress reports. The **Contract Administrator** will check such progress reports and payment will be made for the proportional amount of the lump sum fee. The **Owner** shall retain from each monthly payment for construction inspection or construction administration services (Insert Amount)% of the amount due.\*\*

*\*\* Retainage is required only if the contract includes construction inspection and / or administration services. If the LPA elects to withhold retainage on other types of services, or if the contract does not include construction inspection and / or administration services, this sentence should be modified accordingly.*

Invoices shall clearly identify the beginning and ending dates of the prime's and subconsultant's billing cycles. All direct and indirect costs incurred during the billing cycle shall be invoiced. Costs incurred from prior billing cycles and previously not billed, will not be allowed for reimbursement unless approved by the **Contract Administrator**.

Upon completion, delivery, and acceptance of all work contemplated under this Agreement, the **Consultant** shall submit one complete invoice statement for the balance of the lump sum fee. Payment of 100% of the total cost claimed, inclusive of retainage, if applicable, will be made upon receipt and review of such claim. The **Consultant** agrees to reimburse the **Owner** for possible overpayment determined by final audit.

**ATTACHMENT C (referenced from 3.1)  
Specific Rate of Compensation**

**3.1.1 FEES AND PAYMENTS**

**3.1.1.1 Fees.** For full and complete compensation for all work, materials, and services furnished under the terms of this Agreement, the **Consultant** shall be paid fees not to exceed the maximum amount payable under this Agreement of \$ [Insert Amount].

The maximum amount payable will not be changed unless there is a substantial change in the magnitude, scope, character, or complexity of the services from those covered in this Agreement. Any change in the maximum amount payable will be by Supplemental Agreement.

A contingency amount of \$ [Insert Amount] has been established for this Agreement and is included in the maximum amount payable. Written request by the **Consultant** indicating the need and written approval by the **Contract Administrator** are needed prior to usage of the contingency amount.

The current schedule of billing rates (direct labor rate, overhead, and fixed fee) are set forth in Attachment C-1 the following rate schedule. The **Consultant** may submit for approval a revised rate schedule once during the contract period. This revision may include a revised overhead rate and revised direct labor rates. The revised rate schedule should be submitted to the **Contract Administrator** for approval and by the **Contract Administrator's** written approval it shall become a part of this Agreement.

The example Cost Analysis Worksheet (Attachment C-1) may be modified for this method of compensation to show the schedule of specific rates instead of a breakdown of direct labor, overhead and fixed fee.

**3.1.1.2 Reimbursable Costs.** The **Consultant** shall be reimbursed for direct non-salary costs which are directly attributable and properly allocable to the work. The **Consultant** will be required to submit a detailed listing of direct non-salary costs incurred and certify that such costs are not included in the overhead expense pool. These costs may include travel and subsistence, reproductions, computer charges, and materials and supplies.

Reimbursement of costs is limited to those that are attributable to the specific work covered by this Agreement and allowable under the provisions of the Code of Federal Regulations (CFR), Title 48, Federal Acquisition Regulation System, Subchapter E., Part 30 (when applicable), and Part 31, Section 31.105 and Subpart 31.2. In addition to Title 48 requirements, for meals to be eligible for reimbursement, an overnight stay will be required.

**3.1.1.3 Premium Overtime Pay.** Not applicable.

**3.1.1.4 Payments.** Monthly payments for work completed shall be based on the services completed at the time of the billing and substantiated by monthly progress reports in a form that follows the specific rate schedule. The **Contract Administrator** will check such progress reports and payment will be made for the hours completed at each rate and for direct non-salary costs incurred during said month. The **Owner** shall retain from each monthly payment for construction inspection or construction administration services [Insert Amount]% of the amount due.\*\*

\*\* Retainage is required only if the contract includes construction inspection and / or administration services. If the LPA elects to withhold retainage on other types of services, or if the contract does not include construction inspection and / or administration services, this sentence should be modified accordingly.

Invoices shall clearly identify the beginning and ending dates of the prime's and subconsultant's billing cycles. All direct and indirect costs incurred during the billing cycle shall be invoiced. Costs incurred from prior billing cycles and previously not billed, will not be allowed for reimbursement unless approved by the **Contract Administrator**.

Upon completion, delivery and acceptance of all work contemplated under this Agreement, the

**Consultant** shall submit one complete invoice statement of costs incurred and amounts earned. Payment of 100% of the total cost claimed, inclusive of retainage, if applicable, will be made upon receipt and review of such claim. The **Consultant** agrees to reimburse the **Owner** for possible overpayment determined by final audit.

**ATTACHMENT C (referenced from 3.1)  
Unit Price**

**3.1.1 FEES AND PAYMENTS**

**3.1.1.1 Fees.** For full and complete compensation for all work, materials, and services furnished under the terms of this Agreement, the **Consultant** shall be paid fees on a unit price basis in accordance with the following fee schedule. Maximum amount payable is the total cost of \$ [Insert Amount].

The maximum amount payable will not be changed unless there is substantial change in the magnitude, scope, character, or complexity of the services from those covered in this Agreement. Any change in the maximum amount payable will be by Supplemental Agreement.

A contingency amount of \$ [Insert Amount] has been established for this Agreement and is included in the maximum amount payable. Written request by the **Consultant** indicating the need and written approval by the **Contract Administrator** are needed prior to usage of the contingency amount.

**3.1.1.2 Reimbursable Costs.** Reimbursement of costs is limited to those that are attributable to the specific work covered by this Agreement and allowable under the provisions of the Code of Federal Regulations (CFR), Title 48, Federal Acquisition Regulation System, Subchapter E., Part 30 (when applicable), and part 31, Section 31.105 and Subpart 31.2. In addition to Title 48 requirements, for meals to be eligible for reimbursement, an overnight stay will be required.

**3.1.1.3 Premium Overtime Pay.** Not applicable.

**3.1.1.4 Payments.** Monthly payments for work completed shall be based on the services completed at the time of billing and substantiated by monthly progress reports in a form that follows unit prices in fee schedule. The **Contract Administrator** will check such progress reports and payment will be made for the unit amounts completed. The **Owner** shall retain from each monthly payment for construction inspection or construction administration services [Insert Amount]% of the amount due.\*

\* Retainage is required only if the contract includes construction inspection and / or administration services. If the LPA elects to withhold retainage on other types of services, or if the contract does not include construction inspection and / or administration services, this sentence should be modified accordingly

Invoices shall clearly identify the beginning and ending dates of the prime's and subconsultant's billing cycles. All direct and indirect costs incurred during the billing cycle shall be invoiced. Costs incurred from prior billing cycles and previously not billed, will not be allowed for reimbursement unless approved by the **Contract Administrator**.

Upon completion, delivery and acceptance of all work contemplated under this Agreement, the **Consultant** shall submit one complete invoice statement of costs incurred and amounts earned. Payment of 100% of the total cost claimed, inclusive of retainage, if applicable, will be made upon receipt and review of such claim. The **Consultant** agrees to reimburse the **Owner** for possible overpayment determined by final audit.

[Attach Fee Schedule].

**ATTACHMENT C (referenced from 3.1)  
Fixed Overhead Rate**

**3.1.1 FEES AND PAYMENTS**

**3.1.1.1 Fees.** For full and complete compensation of all work, materials, and services furnished under the terms of this Agreement, the **Consultant** shall be paid fees in the amounts of the **Consultant's** actual cost plus applicable fixed fee amount. The **Consultant's** actual costs shall include payments to any subconsultants. The estimated actual costs and fixed fee are shown below and are itemized in Attachment [Insert Attachment Number]. Subconsultant costs are not available for use by the prime **Consultant** or other subconsultants. A contingency amount [has / has not] been established to provide for actual costs that exceed those estimated.

Estimated Actual Costs (Prime only)	\$ [Insert Costs]
Fixed Fee (Prime only)	\$ [Insert Fee]
Contingency (Prime only)	\$ [Insert Contingency]
Total Prime Consultant Costs	\$ [Insert Costs]
Subconsultant (1)	\$ [Insert Costs]
Subconsultant (2)	\$ [Insert Costs]
Subconsultant (3)	\$ [Insert Costs]
Total Subconsultant Costs	\$ [Insert Costs]
Maximum Amount Payable	\$ [Insert Amount]

The nature of engineering services is such that actual costs are not completely determinate. Therefore, the **Consultant** shall establish a procedure for comparing the actual costs incurred during the performance of the work to the estimated actual costs listed above. The procedure will itemize prime consultant and subconsultant costs in association with each scoped task. The purpose is to monitor these two elements and thus provide for early identification of any potential for the actual costs exceeding the estimated actual costs. The procedure shall be used in a way that will allow enough lead time to execute the paragraphs below without interrupting the work schedule. Therefore once the accrued labor costs for a scoped task reach 85% of the estimated value for the prime or subconsultant, then the **Consultant** shall notify the **Owner** in writing.

It is possible that the **Consultant's** costs for the scoped tasks may need to exceed those shown in Attachment C-1 [Insert Attachment Number]. The **Consultant's** and subconsultants' costs for scoped tasks shall not be exceeded without prior written authorization from the **Contract Administrator**. Costs for scoped tasks that exceed estimated costs, if approved by the **Contract Administrator**, may be compensated via Supplemental Agreement, Work Order, Amendment, or Contingency as detailed in the paragraphs below. If the **Consultant** exceeds the estimated costs for scoped tasks for any reason (other than that covered in Section 3.1.1.2) before the **Contract Administrator** is notified in writing, the **Owner** will have the right, at its discretion, to deny compensation for that amount.

The fixed fee amount will not be changed unless there is a substantial reduction or increase in scope, character, or complexity of the services covered by this Agreement or the time schedule is changed by the **Owner**. The adjustment to fixed fee will consider both cumulative and aggregate changes in scope, character, or complexity of the services. Any change in the fixed fee amount will be made by a Supplemental Agreement, Work Order, or Amendment.

If a contingency has been established and at any time during the work the **Consultant** determines that its actual costs will exceed the estimated actual costs, thus necessitating the use of a contingency amount, it will promptly so notify the **Contract Administrator** in writing and describe what costs are causing the overrun and the reason. The **Consultant** shall not exceed the estimated actual costs without the prior written approval of the **Contract Administrator** and concurrence of the Iowa DOT. The **Owner** or the Iowa DOT may audit the **Consultant's** cost records prior to authorizing the use of a contingency amount.

The maximum amount payable will not be changed except for a change in the scope. If at any time it is determined that a maximum amount payable will be or has been exceeded, the **Consultant** shall

immediately so notify the **Contract Administrator** in writing. The maximum amount payable shall be changed by a Supplemental Agreement, Work Order, or Amendment, or this Agreement will be terminated as identified in Article 4.12.3. The **Owner** may audit the **Consultant's** cost records prior to making a decision whether or not to increase the maximum amount payable.

**3.1.1.2 Reimbursable Costs.** Reimbursable costs are the actual costs incurred by the **Consultant** which are attributable to the specific work covered by this Agreement and allowable under the provisions of the Code of Federal Regulations (CFR), Title 48, Federal Acquisition Regulations System, Subchapter E., Part 30 (when applicable), and Part 31, Section 31.105 and Subpart 31.2. In addition to Title 48 requirements, for meals to be eligible for reimbursement, an overnight stay will be required. The Title 48 requirements include the following:

1. Salaries of the employees for time directly chargeable to work covered by the Agreement, and salaries of principals for time they are productively engaged in work necessary to fulfill the terms of the Agreement.
2. Direct non-salary costs incurred in fulfilling the terms of this Agreement. The **Consultant** will be required to submit a detailed listing of direct non-salary costs incurred and certify that such costs are not included in overhead expense pool. These costs may include travel and subsistence, reproductions, computer charges and materials and supplies.
3. The indirect costs (salary-related expenses and general overhead costs) to the extent that they are properly allowable to the work covered by this Agreement. The **Consultant** has submitted to the **Owner** the following indirect costs as percentages of direct salary costs to be used for the duration of the contract: Salary-related expenses are [Insert %] of direct salary costs and general overhead costs are [Insert %] of direct salary costs, for a composite rate of [Insert %].

**3.1.1.3 Premium Overtime Pay.** Premium overtime pay (pay over normal hourly pay) will not be allowed without written authorization from the **Contract Administrator**. If allowed, premium overtime pay shall not shall not exceed 2 percent of the total direct salary cost without written authorization from the **Contract Administrator**.

**3.1.1.4 Payments.** Monthly payments shall be made based on the work completed and substantiated by monthly progress reports. The report shall indicate the direct and indirect costs associated with the work completed during the month. The **Contract Administrator** will check such progress reports and payment will be made for the direct non-salary costs and salary and indirect costs during said month, plus a portion of the fixed fee. The **Owner** shall retain from each monthly payment **for construction inspection or construction administration services** [Insert Amount] % of the amount due.\* Fixed fee will be calculated and progressively invoiced based on actual costs incurred for the current billing cycle. Each invoice shall be accompanied with a monthly progress report which details the tasks invoiced, estimated tasks to be billed on the next invoice, and any other contract tracking information.

\* **Retainage is required only if the contract includes construction inspection and / or administration services. If the LPA elects to withhold retainage on other types of services, or if the contract does not include construction inspection and / or administration services, this sentence should be modified accordingly.**

Invoices shall clearly identify the beginning and ending dates of the prime's and subconsultant's billing cycles. All direct and indirect costs incurred during the billing cycle shall be invoiced. Costs incurred from prior billing cycles and previously not billed, will not be allowed for reimbursement unless approved by the **Contract Administrator**.

Upon delivery and acceptance of all work contemplated under this Agreement, the **Consultant** shall submit one complete invoice statement of costs incurred and amounts earned. Payment of 100% of the total cost claimed, inclusive of retainage, if applicable, will be made upon receipt and review of such claim. Final audit will determine correctness of all invoiced costs and final payment will be based upon this audit. The **Consultant** agrees to reimburse the **Owner** for possible overpayment determined by final audit.

**ATTACHMENT C-1  
Cost Analysis Worksheet**

Contract xxxxx, [Either insert "Base Agreement" or "Supplemental Agreement No. \_\_\_\_"]  
Project Number: \_\_\_\_\_

**I. Direct Labor Cost (Prime Only)**

<u>Category</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Amount</u>
Engineer I			
Engineer II			
Tech I			
Tech II			
Payroll total			\$ _____

**II. Combined Overhead (COH) & Facilities Capital Cost of Money (FCCM) Costs (Prime Only)**

IIA. Indirect Cost Factor: [Insert COH factor] (% X I) \$ \_\_\_\_\_  
**IIB. FCCM Factor: [Insert FCCM factor] (% X I) \$ \_\_\_\_\_ \***  
 Combined Overhead and FCCM total: \$ \_\_\_\_\_

**III. Direct Project Expenses (Prime Only)**

Phone/Fax \_\_\_\_\_  
 Mileage \_\_\_\_\_ miles @ \_\_\_\_\_  
 Reproduction \_\_\_\_\_  
 Postage \_\_\_\_\_  
 Total Direct Project Expenses \$ \_\_\_\_\_

**IV. Estimated Actual Costs (EAC) (Prime Only) (I + II + III)** \$ \_\_\_\_\_  
 (Rounded)

**V. Fixed Fee (Prime Only) ( \_\_\_\_\_ % X (I + IIA))** \$ \_\_\_\_\_  
**Less FCCM (IIB) - \$ \_\_\_\_\_ \***  
 Fix Fee total: \$ \_\_\_\_\_  
 (Rounded)

**VI. Contingency (Prime Only) \_\_\_\_\_ % X (I + II + III)** \$ \_\_\_\_\_  
 (Rounded)

**VII. Subconsultant Expenses (Designate if Cost Plus Fixed Fee [CP], Lump Sum [LS], etc. and include appropriate number of Attachment "I's" as necessary)**

List First Subconsultant Total Costs (EAC+FF+Cont.) CP \$ \_\_\_\_\_  
 List Second Subconsultant Total Costs (EAC+FF) LS \$ \_\_\_\_\_  
 List the remaining Subconsultant for this contract CP \$ \_\_\_\_\_

Total Subcontractor Costs \$ \_\_\_\_\_  
 (Rounded)

**VIII. [Indicate type of reimbursement] Agreement Total (IV + V + VI + VII)** \$ \_\_\_\_\_  
 (Maximum Amount Payable) (Rounded)

**\*Including the FCCM in the overhead rate is optional. If included in the overhead, it must be subtracted from the Fixed Fee amount. If FCCM is not included in the overhead, these lines may be omitted from the calculations.**

**ATTACHMENT D**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS**

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the definitions and coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State Antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application /proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

State of [\[Insert State\]](#)

[\[Insert County Name\]](#) County

I [\[Insert Name\]](#), [\[Insert Title\]](#) of the

[\[Insert Company Name\]](#) Company, being duly sworn (or under penalty of perjury under the laws of the United States and the State of Iowa) do hereby certify that the above Statements are true and correct.

\_\_\_\_\_  
(Signature)

Subscribed and sworn to this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
(month) (year)

**ATTACHMENT E**

**CERTIFICATION OF CONSULTANT**

I hereby certify that I, [name of signatory], am the [Title] and duly authorized representative of the firm of [Organization], whose address is [Address], and that neither the above firm nor I has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above **Consultant**) to solicit or secure this contract,
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above **Consultant**) any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract; except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Iowa Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal-aid highway funds, and is subject to applicable, State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT F**

**CERTIFICATION OF OWNER**

I hereby certify that I, [\[name of signatory\]](#), am the [\[title of signatory\]](#) and the duly authorized representative of the **Owner**, and that the above consulting firm or his representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

(a) Employ or retain, or agree to employ or retain, any firm or person, or

(b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the [to the Iowa Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation](#), in connection with this contract involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT G**  
**Page 1**

Consultant Name  
Consultant Address  
Consultant Address

**Cost Plus Fixed Fee Progressive Invoice**

Date

Invoice No.  
Invoice Period Covered  
Consultant Job No.

Client Project No.  
County  
Client Project Description  
Client Contract No.

	Contract Estimate	Cumulative To Date	Current Period
--	-------------------	--------------------	----------------

Labor Dollars  
Overhead  
Overhead Adjustments  
Direct Expenses  
    Mileage  
    Per Diem  
    CADD  
Estimated Actual Costs  
    [Prime Only] (See Note 1)

Subconsultants (including authorized contingency)  
    Name  
    Name  
    Name

Estimated Actual Costs  
    [Total Subconsultant Costs]

Total Estimated Actual Costs  
    [Prime + Total Subconsultant Costs]

Fixed Fee (See Note 2)  
Authorized Contingency  
    Total Authorized Amount  
Total Billed To Date  
Remaining Authorized Balance

Unauthorized Contingency  
    Prime  
    Subconsultant Name  
    Subconsultant Name

Labor Hours

Note 1: Do not include Subconsultant Expenses. Include Direct Labor, Overhead, and Direct Expenses for Prime Consultant only.

Note 2: Fixed fee shall be proportionate to the amount of actual costs invoiced compared to the actual costs estimated.

**ATTACHMENT G**  
**Page 2**

Consultant Name  
Consultant Address  
Consultant Address

**Cost Plus Fixed Fee Final Invoice**

Date

Invoice No.  
Invoice Period Covered  
Consultant Job No.

Client Project No.  
County  
Client Project Description  
Client Contract No.

	Contract Estimate	Cumulative To Date	Current Period
--	-------------------	--------------------	----------------

Labor Dollars (2001)

Labor Dollars (2000)

Labor Dollars (1999)

Overhead (2001)

Overhead (2000)

Overhead (1999)

Direct Expenses

Mileage

Per Diem

CADD

Estimated Actual Costs

[Prime Only]

Subconsultants (including authorized contingency)

Name

Name

Name

Estimated Actual Costs

[Total Subconsultant Costs]

Total Estimated Actual Costs

[Prime + Total Subconsultant Costs]

Fixed Fee

Authorized Contingency

Total Authorized Amount

Total Billed To Date

Remaining Authorized Balance

Unauthorized Contingency

Prime

Subconsultant Name

Subconsultant Name

Labor Hours (2001)

Labor Hours (2000)

Labor Hours (1999)

**ATTACHMENT G**  
**Page 3**

**Cost Plus Fixed Fee Final Invoice Instructions**

- Employee Labor Hours and Dollars: A final cumulative job cost report that shows a breakdown of labor by fiscal year, employee name, employee labor hours and employee labor rate is required. In lieu of a final job cost report, a summary of the aforementioned information is needed. The summary should be supported by monthly job cost detail.
- Overhead Rates: Overhead rates and labor dollars to which the overhead rates are applied should match the fiscal year in which the costs are incurred. Overhead rates applied to labor should be audit verified when available. When not available, proposed FAR adjusted rates for the fiscal year in which the labor is incurred should be used.
- Direct Expenses: A final cumulative job cost report that shows a breakdown of direct expenses by specific item (mileage, CADD, per diem, etc....) by fiscal year is required. Direct expense items charged should identify the number of units (miles, hours, prints, copies, feet, etc....) and the rate applied by fiscal year. In lieu of a final job cost report, a summary of the aforementioned information is needed. The summary should be supported by monthly job cost detail.
- Subconsultant: Final invoice requirements for subconsultants with cost plus fixed fee contracts are the same as the requirements for the prime consultant. It is the prime consultant's responsibility to assure such an invoice is acquired and attached to the prime's final invoice.

**ATTACHMENT G**  
**Page 4**

Consultant Name  
Consultant Address  
Consultant Address

**Lump Sum Progressive Invoice**

Date

Invoice No.  
Invoice Period Covered  
Consultant Job No.

Client Project No.  
County  
Client Project Description  
Client Contract No.

Total Lump Sum Amount [Prime only]  
Percentage Completed  
    Total  
Less Amount Previously Billed  
    [Prime only]  
    Total Current Bill [Prime only]  
Subconsultants  
    Name  
    Name  
    Name  
Total

Current Labor Hours  
Total Labor Hours Incurred To Date  
Total Estimated Labor Hours

Note: When submitting more than the final invoice on a lump sum project, each progressive invoice shall be identified as a "Progressive Invoice" (as in the above title).

**ATTACHMENT G**  
**Page 5**

Consultant Name  
Consultant Address  
Consultant Address

**Lump Sum Final Invoice**

Date

Invoice No.  
Invoice Period Covered  
Consultant Job No.

Client Project No.  
County  
Client Project Description  
Client Contract No.

Total Lump Sum Amount [Prime only]  
Percentage Completed  
    Total  
Less Amount Previously Billed  
    [Prime only]  
    Total Current Bill [Prime only]  
Subconsultants  
    Name  
    Name  
    Name  
Total

Current Labor Hours  
Total Labor Hours Incurred To Date  
Total Estimated Labor Hours

Note: When submitting a final invoice on a lump sum project, the final cumulative job cost report should be submitted with the final invoice.

**ATTACHMENT G**  
**Page 6**

Consultant Name  
Consultant Address  
Consultant Address

**Specific Rate Progressive Invoice**

Date

Invoice No.  
Invoice Period Covered  
Consultant Job No.

Client Project No.  
County  
Client Project Description  
Client Contract No.

	Contract Estimate	Cumulative To Date	Current Period
--	-------------------	--------------------	----------------

Labor Dollars  
Direct Expenses  
    Mileage  
    Per Diem  
    CADD  
Estimated Actual Costs  
    [Prime Only] (See Note 1)

Subconsultants (including authorized contingency)  
    Name  
    Name  
    Name

Total  
Authorized Contingency  
    Total Authorized Amount  
Total Billed To Date  
Remaining Authorized Balance

Unauthorized Contingency  
    Prime  
    Subconsultant Name  
    Subconsultant Name

Labor Hours

Note 1: Do not include Subconsultant Expenses. Include Labor Dollars and Direct Expenses for Prime Consultant only.

**ATTACHMENT G**  
**Page 7**

Consultant Name  
Consultant Address  
Consultant Address

**Specific Rate Final Invoice**

Date

Invoice No.  
Invoice Period Covered  
Consultant Job No.

Client Project No.  
County  
Client Project Description  
Client Contract No.

	Contract Estimate	Cumulative To Date	Current Period
--	-------------------	--------------------	----------------

Labor Dollars (2002)  
Labor Dollars (2001)  
Labor Dollars (2000)  
Labor Dollars (1999)  
Direct Expenses  
    Mileage  
    Per Diem  
    CADD  
Estimated Actual Costs  
    [Prime Only] (See Note 1)

Subconsultants (including authorized contingency)  
    Name  
    Name  
    Name

Total  
Authorized Contingency  
    Total Authorized Amount  
Total Billed To Date  
Remaining Authorized Balance

Unauthorized Contingency  
    Prime  
    Subconsultant Name  
    Subconsultant Name

Labor Hours (2002)  
Labor Hours (2001)  
Labor Hours (2000)  
Labor Hours (1999)

Note 1: Do not include Subconsultant Expenses. Include Labor Dollars and Direct Expenses for Prime Consultant only

**ATTACHMENT G**  
**Page 8**

**Specific Rate Final Invoice Instructions**

- Employee Labor Hours and Dollars: A final cumulative job cost report that shows a breakdown of labor by fiscal year, employee name, employee labor hours and employee labor rate is required. In lieu of a final job cost report, a summary of the aforementioned information is needed. The summary should be supported by monthly job cost detail.
- Direct Expenses: A final cumulative job cost report that shows a breakdown of direct expenses by specific item (mileage, CADD, per diem, etc....) by fiscal year is required. Direct expense items charged should identify the number of units (miles, hours, prints, copies, feet, etc....) and the rate applied by fiscal year. In lieu of a final job cost report, a summary of the aforementioned information is needed. The summary should be supported by monthly job cost detail.
- Subconsultant: Final invoice requirements for subconsultants with specific rate contracts are the same as the requirements for the prime consultant. It is the prime consultant's responsibility to assure such an invoice is acquired and attached to the prime's final invoice.

**ATTACHMENT H**  
**Consultant Fee Proposal**

*Insert prime consultant fee proposal here.*

**ATTACHMENT I**  
**Page 1 of x**  
**SUBCONSULTANT SCOPE AND BUDGET**

Project Number: [Insert Project Number]

State of [Insert State]

I hereby certify that I, [name of signatory], am the [Title] and duly authorized representative of the firm of [name of subconsultant firm], whose address is [Address], and do hereby certify that the below Scope of Services and Subconsultant Budget Proposals are a true and accurate copy of the Scope of Services and Subconsultant Budget. Any changes to the proposed Scope and Budget shall be documented, signed by both the **Consultant** and subconsultant, and approved by the **Contract Administrator**.

---

Signature

---

Date

[Insert Subconsultant Scope of Services]

[Insert Subconsultant Fee Proposal]

## Errors and Omissions

These following procedures shall be used for determining the extent to which a consultant that is responsible for the professional quality, technical accuracy, and coordination of services may be reasonably liable for the costs resulting from errors or deficiencies in the services it provides. These procedures are based on those used by the Iowa DOT with its consultants, adapted as needed for use with Local Public Agency (LPA) Federal-aid projects.

The contract shall specify that the consultant is responsible for damages incurred by the LPA due to an error or omission made by the consultant. The LPA Contract Administrator shall be notified upon discovery of an alleged consultant error or omission with the potential to result in damages. Following are the steps in the recovery process:

1. The LPA Contract Administrator shall:
  - a. Assess the preliminary information to determine whether the consultant may have some responsibility for the error or omission.
  - b. If the potential for consultant liability is found, notify the Iowa DOT Administering Office.
2. The LPA Contract Administrator shall notify the consultant either by telephone or in writing of the error or omission as soon as possible after discovery of the problem, and document all telephone conversations with a follow-up letter or e-mail. When notifying the consultant:
  - a. Allow the consultant to respond to the claim of error or omission.
  - b. Discuss with the consultant any conditions that must be met to reach a resolution that is acceptable to the LPA.
  - c. Inform the consultant that the LPA may take action to correct the issue without consultant assistance for any of the following reasons:
    - i. Notification by telephone or in writing to the consultant is not successful.
    - ii. Conditions created by the error or omission require an immediate response to avoid additional damages or construction costs.
    - iii. Other means of resolution with the consultant have been unsuccessful.
  - d. Establish deadlines for the consultant to provide a response
  - e. Inform the consultant that it needs to track all time spent resolving the issue separately.

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

3. The LPA Contract Administrator shall review the consultant's proposed resolution. If acceptable, forward to the Administering Office for review and concurrence.
4. The Administering Office reviews, and if acceptable, concurs with the proposed resolution.
5. If the LPA and the consultant either disagree on the extent of any negligence or are unable to come to a mutual agreement on the resolution, contact the Iowa DOT Administering Office for assistance resolving the disagreement. **The Administering Office will notify the Office of Local Systems, which will meet with the parties and attempt to informally resolve the matter. If this proves unsuccessful, the LPA and consultant may seek a resolution through binding arbitration in accordance with Iowa Code chapter 679A, litigation, or other means**
6. Upon implementation of the resolution, the LPA Contract Administrator shall review the financial information and:
  - a. Calculate the expected costs based upon a product without errors.
  - b. Determine the consultant's liability by subtracting the expected costs from the actual costs incurred.
  - c. The LPA Contract Office should request assistance from the Administering Office if needed.
7. Should there be a need for the consultant to pay for any costs to correct its negligence, the LPA Contract Administrator shall send a letter to the consultant requesting payment.
  - a. The consultant may either send a check for the amount or credit the dollar amount to a subsequent invoice.

- b. If the amount will be credited to an invoice, the contract maximum should be evaluated and may be lowered accordingly.
  - c. The consultant shall not be allowed to make payment directly to a third party to remedy any claimed negligence because of the difficulty in verifying and recording these payments.
8. If it is later determined that the consultant was not negligent, the LPA shall compensate the consultant accordingly.
9. The LPA Contract Administrator shall prepare a memorandum summarizing the negligence and all costs recovered. The memorandum shall also include:
  - a. All appropriate information including the letter requesting payment, copies of any payments received, and the consultant's summary of unbilled hours.
  - b. The summary of unbilled hours must list employee names, the number of hours for each employee, the dates worked and the accounting code numbers to which the hours were charged.
  - c. If any portion of the recovered costs were previously reimbursed with Federal or State funds, the LPA's proposed method of repayment. The LPA may either deduct the Federal and / or State share of the recovered costs from its future reimbursement requests for the project (if sufficient unreimbursed costs remain), or reimburse the Iowa DOT for the Federal and / or State share.
10. The LPA Contract Administrator shall send this memorandum and supporting documentation to the Administering Office.
11. The Administering Office will forward the information to the Iowa DOT Office of Finance for review and approval.
  - a. If the recovered costs were previously reimbursed with Federal funds, the Office of Finance, Accounts Payable will initiate a credit-bill with FHWA.
  - b. If the recovered costs were previously reimbursed with State funds, the Office of Finance, Accounts Receivable will issue an invoice to the LPA for the appropriate amount.
  - c. A copy of the LPA's memo and supporting documentation will also be provided to the Office of Finance, External Audit Section.
12. The Office of Finance will notify the Administering Office if the memorandum and proposed repayment method is acceptable. The Administering Office will in turn notify the LPA and the consultant.