

## CHAPTER 18 - PROFESSIONAL SERVICES CONTRACT, SELECTION & AWARD (Using Consultants)

### 18.1 GENERAL

18.1.1 The Department must ensure that when a Local Agency seeks reimbursement for consultant services, the Local Agency is in compliance with the procedures in this Manual, **Section 287.055, Florida Statutes (F.S.), 23 CFR 172, the Federal Brooks Act (40 USC 1101-1104)** and other applicable federal and state regulations. However, if a Local Agency chooses to retain a consultant at its own cost, only state procurement law applies. The Local Agency must follow the **Restrictions on Consultants' Eligibility to Compete for Department Contracts Procedure (Topic 375-030-006)** for all projects. A Local Agency may use consultant services for planning, project development, design and plans preparation, preparation of specifications and estimates, right of way acquisition support, and construction engineering and inspection (CEI).

18.1.2 When a Local Agency determines it needs the services of a consultant, it must proceed according to the procedures outlined in **Section 287.055, F.S.** These procedures apply to both the Department and the Local Agencies. Therefore, the Local Agency's procedures should be similar to the Department's **Acquisition of Professional Services Procedure (Topic 375-030-002)**.

18.1.3 Local Agencies are required to use consultants pre-qualified by the Department for projects on the National and State Highway System. The Local Agency may use its own pre-qualification process for all other projects. A Local Agency's consultant acquisition process may proceed up to contract execution prior to receipt of the Federal Highway Administration (FHWA) authorization and a notice to proceed from the Department.

### 18.2 SOLICITATION AND SELECTION OF CONSULTANTS

When procuring professional services for a project, with construction cost exceeding the estimated threshold amount for **Category Five (\$325,000)** as set forth in **Section 287.017, F.S.**, or for a planning or study activity when the fee for professional services exceeds the threshold amount provided for **Category Two (\$35,000)** as set forth in **Section 287.017, F.S.**, except in cases of public emergencies, the Local Agency selection process will comply with the following:

- A. Project is publicly announced in a uniform and consistent manner pursuant to **Section 287.055(3)(a)1, F.S.**
- B. Consultant qualification is verified by the Local Agency or through a Department

pre-qualified consultant. Department pre-qualified consultants are required as specified in **Section 18.1.3**

- C. Public meetings are held when necessary, are properly noticed, and minutes taken or recorded. Under Florida law, sealed bids, proposals, or replies received by a Local Agency pursuant to a competitive solicitation are exempt from public records until the Local Agency provides notice of an intended decision to make a contract award or until 30 days after opening the bids, proposals, or replies, whichever is earlier. Oral presentations, negotiations, vendor question and answer sessions, and discussions of negotiation strategies are all exempt meetings. A complete recording shall be made of an exempt meeting. No portion of the exempt meeting may be held off the record. The recording is exempt until such time as the Local Agency provides notice of an intended decision to make a contract award or until 30 days after opening the bids, proposals, or replies, whichever occurs earlier, pursuant to **Section 286.0113(2)(c), F.S.**
- D. All staff in a decision making or recommendation capacity are free from conflicts of interest, or have recused themselves where conflicts exist (**23 CFR 1.33 and Topic 375-030-002-I, Section 1**). A signed conflict of interest form must be returned to the Department (Form 375-030-50).
- E. Competing firms are evaluated on the basis of capabilities, adequacy of personnel, past record, experience, and other applicable factors.
- F. No fewer than three firms are shortlisted to submit proposals.
- G. Factors considered in shortlisting include: ability of professional personnel, past performance, willingness to meet time and budget requirements, recent, current and projected workloads, and volume of work previously awarded to each firm pursuant to **Section 287.055(4)(b), F.S.**
- H. For federal-aid contracts, a small locality presence criterion of no more than 10 percent may be used. This criterion cannot be based on political boundaries and should be used on a project-by-project basis for projects where a need has been established. If a firm currently outside the locality criteria indicates as part of its proposal that it will satisfy the criteria in some manner, such as establishing a local project office, it should be considered to have met the locality criteria.

### **18.3 LAP Simplified Acquisition and Small Purchase Process**

When a project meets the criteria established in **Category Two or Category Five**, as set forth in **Section 287.017, F.S.**, the project can be exempt from formal advertising and selection using the process called "Small Purchase." In the event that a contract is procured under the small purchase criteria, the total fee cannot exceed the appropriate limits established in **41 U.S.C. 403(11)**, or the state limit, whichever is lower at the time of the review. Although exempt from formal advertisement, at least three qualified consultants are considered and ranked in order of qualifications.

The small purchase procedures may be used under the following conditions:

A. Are the professional services directly related to the construction project? (e.g., Project Development and Environmental (PD&E) services, design services, surveying and mapping, or construction engineering inspection services).

- 1. If yes, is the construction project less than **\$325,000** (state Category Five threshold as set forth in **Section 287.017, F.S.**)?
- 2. If yes, is the total contract amount for the professional services less than **\$150,000** (federal threshold)?
- 3. If all are yes, then the small purchase process may be used. If the answer to one of the above questions is no, than the small purchase process cannot be used.

B. Are the professional services are for a study activity or for planning activity? (Professional services not directly related to a construction project are defined as a “study activity”).

- 1. If yes, is the total contract amount for the study activity or planning activity less than the state threshold of **\$35,000** (state Category Two threshold as defined in **Section 287.017, F.S.**)?
- 2. If yes, than the small purchase process may be used.

Please note, since the state threshold of **\$35,000** per study or planning activity is the lesser when compared with the federal threshold, the state threshold is the limiting factor.

## 18.4 NEGOTIATING THE CONSULTANT AGREEMENT

The Local Agency will attempt to negotiate a contract with the most highly qualified firm selected in accordance with **40 USC 1103** and in accord with **Section 287.055, F.S.** For more details on negotiations, the Local Agency may consult the Department’s Negotiation Handbook at <http://www.dot.state.fl.us/procurement/Negotiations.shtm> . The Local Agency must develop an independent staff-hour estimate to check the reasonableness of the consultant estimate and conduct an analysis of costs proposed by the consultant. The Local Agency negotiator will use resources available to conduct effective negotiations. These include, but are not limited to, the refined scope of work, the evaluation factors and their relative importance. The Local Agency may request a copy of the Department’s staff hour estimate guidance for assistance in developing their estimate. If the Local Agency is unable to negotiate a satisfactory contract with the firm, the Local Agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified firm. This process will be repeated until agreement is reached.

## 18.5 SECURING APPROVAL TO HIRE CONSULTANTS

Prior to executing the consultant agreement the Local Agency will submit a request to the District LAP Administrator for approval to execute the consultant agreement with the most qualified firm. This request will include a completed copy of the **Local Agency Program Checklist for Federally Funded Professional Services Contracts Federal and State Requirements (Form 525-010-49)** and required supporting documentation. The **Local Agency Program (LAP) Critical Requirements Checklist for Professional Services Certification (Form 525-010-48)** will be used during the certification and recertification process.

18.5.1 The District LAP Administrator will confer with functional area experts as necessary to complete their review of the documentation. The Local Agency will issue its notice to proceed once approval is obtained from the District LAP Administrator. Contracts where work has been performed prior to approval and a notice to proceed from the District LAP Administrator are not eligible for federal reimbursement.

## **18.6 PROFESIONAL SERVICES PROVIDED ON A CONTINUING BASIS**

As specified in section **18.2** of this chapter, the Local Agency must publicly announce each project in a uniform and consistent manner unless the specified criterion is met. Consequently, the use of General Engineering Consultant (GEC) Contracts is specifically prohibited when federal reimbursement is being requested. Continuing contracts for professional services will be restricted in use to services for projects which construction costs do not exceed \$2,000,000 each, or for each study activity when the fee for such professional service does not exceed \$100,000, or for work of a specified nature as outlined in the contract. Continuing Contracts must be limited in duration to a period not to exceed five years, unless otherwise approved by the appropriate federal agency. Continuing contracts must include the required federal provisions contained in **Appendix I** of the Department's **Standard Professional Services Agreement (Form 375-030-12)**. The required federal forms outlined below must also be signed as part of the continuing contract and the applicable federal provision must be a part of the original contract. These items cannot be added via an amendment, supplemental agreement or task work order.

## **18.7 CONTRACT AND DATA RECORDING**

Once the Local Agency issues its notice to proceed, the Local Agency will record the contract data in the Department's Local Agency Program Information Tool (LAPIT). This data includes the name of the consultant firm, the contract award amount and execution date. A copy of the executed agreement must be submitted to the District LAP Administrator. This information is vital to the monitoring and proper recording of Disadvantaged Business Enterprise (DBE) activities and sub recipient auditing.

Instructions for recording the contract data can be found in LAPIT.

## **18.8 MANAGING, MONITORING, AND EVALUATING THE AGREEMENT**

18.8.1 All Local Agencies shall assign one of their personnel as Project Manager to monitor the consultant's performance and ensure that quality products are received. This person must be a public employee that is in responsible charge. The Local Agency's Project Manager shall:

- A. Negotiate supplemental amendments to existing agreements for services beyond the scope of work of the original agreement and provide the Local Agency's independent estimate of the costs for the work involved.
- B. Ensure no work is done or costs incurred until the agreement(s) and supplement(s) are approved by the Department.
- C. Act as the contact between the Local Agency and the consultant to ensure compliance with the terms of the agreement.
- D. Monitor the consultant's progress reports to ensure that progress follows the schedule and the consultant reports problem areas and takes corrective action.
- E. Establish controls to monitor the time for completion of each agreement to ensure the consultant does not exceed specified time limitations.
- F. Validate the accuracy and approve invoices to ensure they match up to the work performed. The Local Agency should keep cumulative cost records for each agreement to ensure costs are allowable, allocable, and reasonable.
- G. Establish controls to prevent payment greater than the agreement amount.
- H. Monitor the consultant to ensure compliance with the Equal Employment Opportunity (EEO) provisions of the agreement.
- I. Monitor and validate any DBE/Minority Business Enterprise participation and compliance.

18.8.2 The Local Agency will ensure the consultant has met all terms and conditions of the agreement and has completed all services under the agreement before the final release of the consultant.

18.8.3 The Department will decide on the degree of monitoring, which will depend on the nature and character of each project. The Local Agency will submit quarterly reimbursement requests to the District LAP Administrator. The reimbursement requests will contain sufficient detail to determine the status of the project and all charges incurred by the Local Agency and the consultant where federal participation is requested. Project records shall be maintained in accordance with the provisions of **2 CFR 200.333**. Upon completion of the project, the Local Agency will provide the District LAP Administrator with a

copy of its consultant evaluation.

## **18.9 Forms**

**Local Agency Program (LAP) Critical Requirements Checklist for Professional Services Certification (Form 525-010-48)**

**Local Agency Program Checklist for Federally Funded Professional Services Contracts Federal and State Requirements (Form 525-010-49)**

**Standard Professional Services Agreement (Form 375-030-12)**

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Form 375-030-32)**

**Certification for Disclosure of Lobbying Activities (Form 375-030-33)**

**Conflict of Interest (Form 375-030-50)**

## **18.10 Training**

Training in this procedure will be included in periodic Local Agency Program Workshops and can be found on the LAP training page at:

<http://www.dot.state.fl.us/projectmanagementoffice/LAP/LAPTraining.shtm>