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Department of Transportation

## ACQUISITION OF PROFESSIONAL SERVICES

### AUTHORITY

Sections 20.23(3)(a) and 334.048(3) Florida Statutes (F.S.)

### STATEMENT OF POLICY

This procedure defines the procurement of qualified professional architectural; engineering; landscape architectural; surveying and mapping; planning; and right of way services, otherwise known as professional services, in compliance with state and federal requirements. The details of implementation shall be provided in the ***Professional Services Procurement Manual***.

#### 1. CONFLICT OF INTEREST

All Department staff that make decisions, approvals, disapprovals, or recommendations regarding the contract procurement are required to complete the ***Conflict of Interest /Confidentiality Certification Form, Form No. 375-030-50***, and attest to the absence of a conflict of interest on the project. The ***Conflict of Interest/Confidentiality Certification Form*** is required to be completed and signed by Technical Review Committee (TRC) members performing evaluations, technical advisors (Department and Consultant), the Professional Services Manager, and other Department staff directly involved in the contract acquisition process for every contract procurement. Selection Committee members are required to complete and sign the ***Conflict of Interest/Confidentiality Certification Form*** for every project Selection Committee meeting.

Department staff and Consultants shall adhere to eligibility restrictions as provided in ***Procedure No. 375-030-006, Conflict of Interest Procedure for Department Contracts***. All Consultants used for preparation of environmental management documents for PD&E contracts shall complete and sign the ***Consultant Affirmation, Form No. 375-030-18***.

## 2. COMPETITIVE SELECTION PROCESS

For professional services procurements, the Department shall utilize a competitive qualifications-based selection (QBS) process. The Professional Services Unit (PSU) will publicly advertise, in accordance with Florida law, on each occasion when professional services are required and the fee is in excess of the threshold amount of Category Two, Section 287.017, F.S., except in the case of a valid public emergency declared by the Department Secretary. PSU shall maintain contract records documenting the professional services procurement process, in compliance with applicable state and federal laws. These records shall be maintained for 10 years, in accordance with General Records Schedule GS1-SL for State and Local Government Agencies.

Only Consultants qualified in accordance with Procedure No. 375-030-001, Professional Services Consultant Qualification, may respond to professional services solicitations (i.e., submit Letters in response to a professional services advertisement). Unless the selection method is final ranking directly from Letter submittals (as specified in the project advertisement), the selection process will include the following steps: public advertisement; prequalified Consultants submit Letters; longlist by Project Manager, Department designee, or TRC; shortlist recommendation by Project Manager, Department designee, or TRC to Selection Committee; shortlist of no less than three firms (where available) by Selection Committee; PSU issuance of Request for Proposals (RFP); written technical proposals/interviews/oral presentations submitted by the shortlisted Consultant firms; technical evaluation scoring by TRC; final selection (final ranking of no fewer than three firms) deemed to be the most highly qualified by the Selection Committee. Consultant availability may be considered as a tie breaker.

If fewer than three Consultants respond to the advertisement, the Department will extend the advertisement, if the contract schedule permits. Alternatively, the Department will review its list of Consultants prequalified for the advertised major work type(s) and select no fewer than ten (10) prequalified Consultants (or all prequalified Consultants if fewer than 10) deemed to be the most highly qualified, based on qualification information on file. The Department will then contact each of the selected Consultants and solicit LORs for the project. Consultants may be contacted via email notification sent to all firms qualified in the major work types. If only two qualified consultants respond to an advertisement from which one contract is to be awarded, the contracting agency may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements which arbitrarily limited competition, and if due diligence is performed and documented to file as referenced herein, to attempt to solicit additional responses.

The minimum formal advertisement period will be 14 calendar days. For Federal-Aid Highway Program (FAHP) funded projects, federal approval must be obtained to shorten the advertisement period to less than 14 days. A scope of services or a project concept report will be provided with the advertisement. The advertisement shall specify requirements for submittals. Pursuant to **Section 287.055, F.S.**, and the **Federal**

**Brooks Act**, price shall not be an evaluation criterion during the advertisement and selection phase for professional services procurements.

Where multiple Consultants are needed for projects with similar requirements, one advertisement and one selection process may be used where practical. The advertisement for such projects will include a statement indicating the exact number of contracts intended to be awarded. Criteria for selection shall be included in the advertisement or RFP, as applicable.

### **3. EVALUATION CRITERIA FOR LONGLIST AND SHORTLIST RECOMMENDATIONS; AND FOR SELECTION COMMITTEE SHORTLISTING**

The following factors will be considered by the Project Manager, Department designee, or TRC in developing the longlist and shortlist recommendations: a) Past performance evaluations; b) Staff capabilities; c) Local presence- The location of the Consultant in relation to the work to be performed, for projects where Consultant proximity to project location is pertinent and adds value to the quality and efficiency of the project (e.g., Construction Engineering Inspection (CEI) project). If a Consultant from outside the locality area indicates that it will satisfy the local presence criterion by establishing a local office, that commitment shall be considered to have satisfied the local presence criterion. However, local preferences, i.e., State or local requirements that limit competition, are not permissible; d) Any qualification restrictions; e) Availability of proposed Consultant personnel; f) Technical approach, innovation, and any other information contained in the Letter.

The Selection Committee will shortlist no less than three Consultants, if available. Where multiple contracts are being selected with one advertisement, at least two more Consultants than number of contracts being awarded will be shortlisted.

Factors to be considered by the Selection Committee when making the shortlist decision include but are not limited to: a) Past performance evaluations; b) Workload, as evidenced by the number of similar projects the Consultant is shortlisted on that have not had a final selection, as well as the residual fees remaining to be paid to the Consultants on active agreements; c) Balancing the needs of the project to the abilities of the Consultants; d) Consultant's working relationship/experience with the Department on previous projects; e) General and specific information used to longlist the Consultants; f) Proposed subconsultant teaming (also applicable for projects advertised with Disadvantaged Business Enterprise (DBE) and Small Business goals; and g) Detailed Consultant Analysis Report, where available.

Race or gender set-asides, preferences or quotas shall not be considered when making contracting decisions.

#### 4. PREPARATION OF RFP

The RFP will be issued to shortlisted consultants, and should include information on project type, scope of services, submittal due dates, date for scope of services meeting (where applicable), estimated schedule for performance of the work (where applicable), standards, insurance requirements, reference to standard professional services agreement terms, schedule of events, final evaluation scoring criteria with relative weight, proposed method of compensation, consultant staff hour estimate proposal form (where applicable), required forms, etc. The RFP will specify that all subconsultants performing the standard types of work covered by **Chapter 14-75, F.A.C.**, must be technically prequalified with the Department or have an application for prequalification under review at the time that they are proposed.

The Department shall prepare an independent staff hour estimate which must be completed before proposals can be released to the Technical Review Committee.

#### 5. REQUIRED FORMS AND NOTICES (INCLUDING FEDERAL FORMS)

**Certification Forms to be included in the RFP: *Professional Services DBE or Small Business Commitment Form, Form No. 375-030-83*** (for non-Fixed Capital Outlay projects), ***MBE Planned Utilization Form, No. 375-040-24*** (for state funded Fixed Capital Outlay projects), and ***Truth in Negotiation Certification, Form No. 375-030-30***. The RFP should encourage use of DBE, Small Business, or Minority Business Enterprise firms. MBE shall be applicable for state funded contracts only.

**Vendor Certification Regarding Scrutinized Companies Lists: *Vendor Certification Regarding Scrutinized Companies Lists, Form No. 375-030-60***, shall be required in the RFP for professional services contracts.

**Federal Certification Forms:** If the project is anticipated to include federal funds, a ***Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Form, No. 375-030-32*** as required by **49 CFR, Section 29**; and ***Certification for Disclosure of Lobbying Activities, Form No. 375-030-33*** and ***Disclosure of Lobbying Activities, Form No. 375-030-34*** as required by **49 CFR, Section 20** will be included in the RFP and are required to be submitted with the proposal.

***Conflict of Interest/Confidentiality Certification No. 375-030-50*** shall be completed in accordance with Section 2.0 referenced above, and in accordance with the instances noted in the form.

**Notice of Restrictions:** For all contracts, the advertisement shall include notice that persons or entities convicted of public entity crimes may not submit bids or transact business with state agencies.

## **6. ABBREVIATED TECHNICAL PROPOSALS, INTERVIEWS, AND/OR ORAL PRESENTATIONS**

The RFP will indicate whether abbreviated technical proposals, interviews, and/or oral presentations will be required from the shortlisted Consultants, and the evaluation criteria will be included in the RFP. The following considerations may be used in establishing evaluation criteria: a) Awareness of Project Issues; b) Proposed Approach to Project; c) Proposed Project Staffing; and d) Other Considerations, such as communication ability, use of specialized equipment, commitment to satisfy the Department's needs, past performance on similar projects, etc.

The TRC will consider the staff hour estimates during the evaluation of the Consultants only in terms of understanding of the scope.

## **7. COMPETITIVE SELECTION FROM EXPANDED LETTERS OF RESPONSE (ELOR)**

The selection from letters process will occur using either of the following variations:

- (A) Final ranking is developed directly from responsive Expanded LORs submitted by Consultants in response to an advertisement. The TRC will independently evaluate and score all the responsive Expanded LORs, using the evaluation criteria and weightings published in the contract advertisement. The Selection Committee will review the TRC's recommendations and final rank, in order of preference, no fewer than three Consultants (where available).
- (B) The Project Manager, Department designee, or TRC shall longlist the responsive Expanded LORs, and shall recommend no less than three Consultants to be shortlisted for the project (where available), using the longlist/shortlist recommendation factors provided in Section 4. The Expanded LORs for the shortlisted Consultants are then independently scored by the TRC using the evaluation criteria published in the contract advertisement. The Selection Committee shall review the TRC's recommendations and final rank, in order of preference, no fewer than three Consultants (where available).

The Department's independent staff hour estimated must be completed prior to release of the Consultants' staff hour estimate, except where not applicable for task assignment type contracts. For task assignment type contracts, detailed scope of services and staff hour estimate are required at the time of each assignment.

## **8. NEGOTIATING CONTRACT FEES**

After final ranking, negotiations will begin with the number one ranked Consultant. At that time, the Consultant will be requested to submit a detailed staff hour estimate and Fee Proposal with support information to the Department. Staff hour estimates for PD&E, roadway and bridge design projects must be submitted in the staff hour

estimating spread sheet provided by the Department. The proposed costs must be submitted in the ***Automated Fee Proposal (AFP) Spreadsheet***. Contract negotiations shall be conducted in accordance with the ***FDOT Negotiation Handbook***, available on the Procurement Internet site.

PSU shall perform a detailed cost analysis of all firms (prime, subconsultants, subcontractors, and sub-vendors) on a professional services contract, to ensure the proposed compensation costs are fair, competitive, reasonable, accurate and allowable, pursuant to 23 CFR 172.7, and 2 CFR 200.333. Compensation means the amount paid by the Agency.

Arbitrary or across the board limitations on direct salary/wage rates which do not consider the factors prescribed in the ***Federal Acquisition Regulation (FAR)*** cost principles are contrary to the requirements of the ***Federal Brooks Act, 40 U.S.C. 1104(a)***, which requires fair and reasonable compensation considering the scope, complexity, professional nature, and value of the services to be rendered, as required in ***23 U.S.C. 112(b)(2)***. Additionally, if limitations or benchmarks on direct salary rates and total compensation are too low, they may limit the number of Consultants and the qualifications of the Consultants who submit proposals to perform work on projects. Furthermore, direct labor limitations or benchmarks not supported by the FAR cost principles create associated disallowed indirect costs which effectively limits the calculated indirect cost rate, contrary to ***23 U.S.C. 112(b)(2)(D)*** and ***23 CFR 172.11(b)(1)***. Arbitrary reduction or capping of indirect cost rates is not permitted under Federal laws and regulations.

## **8.1 OPERATING MARGIN**

The operating margin which is paid in a Consultant contract does not represent net profit to the Consultant. Operating margin is intended to compensate the Consultant for normal business expenses that are excluded from allowable overhead by Federal Regulation (e.g., interest, advertising, unrecovered direct costs, etc.). These legitimate costs cannot be recovered on Department contracts except through operating margin. Operating margin compensates the Consultant with a reasonable fee.

Operating margin in Department contracts is calculated as a percentage of direct salaries. The percentage is negotiated within a range of 12 to 42%. For federal-aid contracts, operating margin may not exceed 15% of the total direct labor plus indirect costs of the contract. This equates to the upper range of 42 percent operating margin calculated as a percentage of direct salaries only. The operating margin is negotiated based on project complexity, degree of risk assumed by the Consultant, project schedule, and Consultant cost controls.

The Operating Margin Guidelines table in the ***Negotiation Handbook*** on the Procurement Internet site provides guidelines on how these factors shall be weighted and considered.

For contracts of longer duration, the Department shall allow a Contract Duration Adjustment Factor (CDAF) to be applied as a multiplier to direct labor. CDAF is defined as an economic price adjustment, necessitated by instability of labor costs for an extended period of contract performance.

## 8.2 EXPENSES

Direct project expenses will be compensated using the direct expense rate which is required as a part of annual overhead audits.

## 8.3 ESTABLISHING THE METHOD OF COMPENSATION

The method of compensation to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. Compensation for professional services agreements will involve one or more of the following methods:

**LUMP SUM:** A firm fixed price not subject to adjustment due to the actual cost experience of the Consultant in the performance of the contract.

**COST REIMBURSEMENT:** The Consultant is reimbursed the actual costs incurred in the performance of the contract. FHWA only participates in cost reimbursement contracts in which the Consultant's operating margin is a lump sum or "fixed fee." In such instances, partially loaded hourly rates paid in conjunction with fixed fee shall exclude compensation for operating margin.

**COST PER UNIT OF WORK:** A negotiated unit rate for a repetitive task or deliverable product is established and paid for each unit produced.

**SPECIFIC RATES OF COMPENSATION:** Billing rates are established for units of time, usually per hour. These rates normally include wages, overhead, estimated expenses and operating margin. The Department has received approval from FHWA to use fixed hourly rates method of payment for professional services task assignment contracts, such as district-wide miscellaneous minor professional services contracts, continuing contracts, groupings, and also maximum limiting amount/cost reimbursement contracts. Only design contracts are excluded from use of this payment method for basic services, on federal-aid contracts. The Department shall utilize the lump sum method of payment for basic design services, where appropriate and where the level of effort and scope can be reasonably determined.

PSU is responsible for converting Consultant rate information into fixed hourly rates. In accordance with 23 USC 112; and 23 CFR 172.11(d), cost and rate data (audit information) shall be confidential and shall not be accessible or provided, in whole or in part, to another individual, firm, or to any government agency which is not part of the group of agencies sharing cost data, except by written permission of the audited firm.

**COST PLUS PERCENTAGE OF COST:** The cost-plus percentage of cost payment method shall not be used on federal-aid eligible contracts.

## 8.4 NEGOTIATION PROCESS

Compensation will be negotiated within the limits established by state and federal law, whichever is more restrictive. The negotiated compensation will be in an amount the Department determines is fair, competitive, and reasonable considering the scope and complexity of the project.

Should the Department be unable to resolve differences in the considered data or negotiate a fair and reasonable fee for the services as determined by the Department, the Department will terminate negotiations with the first ranked Consultant and provide written notice of termination to the Consultant. The Department will then initiate negotiations with the Consultant previously ranked second by the Selection Committee. Should the Department be unable to negotiate an agreement with the second ranked Consultant, the aforementioned process will be initiated with the third ranked Consultant.

## 9. THE AGREEMENT

Once a fair and reasonable fee is negotiated between the Department and the Consultant, the agreement shall be written. The contractual agreement with the Consultant will generally consist of: the **Standard Professional Services Agreement, Form No. 375-030-12**; Exhibit "A" - Scope of Services, Exhibit "B" - Method of Compensation, and other applicable attachments.

## 10. VENDOR ELIGIBILITY CHECK

Public entities may not contract with firms that have been excluded from participating in the public contracting process. Before awarding a contract, a check will be performed of the Department of Management Services (DMS) Convicted/Suspended/Discriminatory/Federal Excluded Parties/Complaints/Scrutinized Companies Vendor Lists. Additionally, federal law requires a check of the Federal Excluded Parties List (EPL) for businesses that have been debarred, suspended, or otherwise excluded from federally funded contracts. PSU shall complete and sign the **Vendor Eligibility Check Prior to Contract Award, Form No. 375-030-91** for each contract, checking for vendor eligibility to contract with the Department.

## 11. SPECIAL REQUIREMENTS FOR FEDERALLY FUNDED PROJECTS

Consultant contracts are eligible for federal-aid participation where federal requirements are followed, and costs may be allocable to a particular federal-aid project. This section prescribes requirements necessary for conformance with 23 U.S.C. 112(b)(2)- Contracting for Engineering and Design Services; 23 CFR 172- Procurement,

Management, and Administration of Engineering and Design Related Services; and the process which will be followed when federal funds are to be requested.

In fulfillment of federal regulations, Central Office Procurement shall be responsible for maintaining **Topic No. 375-030-002, Professional Services Procurement Manual**, which constitutes the standard operating requirements, instructions and processes for professional services contract procurement.

## **12. OVERSIGHT CLASSIFICATION**

### **12.1 PROJECTS OF DIVISION INTEREST (PoDI)**

The Projects of Division Interest (PoDI) are those projects that have an identified elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement to enhance meeting program or project objectives. Project selection for PoDI is completed for each performance year (June 1 to May 31) and stewardship and oversight activities are directed toward addressing identified risks. Identification of these projects allows Federal Highway Divisions to concentrate resources on project phases or areas that add the most value to the Division. PoDI projects could include projects either on or off the National Highway System. PoDIs may also be either State DOT administered projects or LAP-administered projects.

FHWA provides Central Office Procurement with a copy of the PoDI list, which includes all PoDIs and the activities that will be conducted as part of the focus oversight. The plan identifies which projects may include oversight in the consultant program area.

For the aforementioned FHWA PoDI projects, the District Project Manager should consult with the appropriate FHWA Transportation Engineer, or Technical Specialists, to discuss the PoDI plan activities pertaining to the Consultant Program Area. As a minimum, a draft scope of services, in-house cost estimate, and RFP (when applicable) will be reviewed. A cost estimate for this purpose will be completed using in-house staff hour estimates prepared by the Project Manager. Concurrent with submittal of the final cost estimate and draft contract to FHWA, a funding request will be made through the District Federal-Aid Coordinator. The professional services acquisition process may proceed up through contract execution prior to receipt of the FHWA Electronic Signature Authorization/Modification Document, but a notice to proceed will not be issued until approval is received from FHWA. Approval for oversight contracts shall be maintained by PSU in the electronic contract file.

FHWA reviews and approves all Consultant contracts where a Consultant performs in a management support role. Management support role means performing engineering management services or program or project administration role on behalf of the Department.

## 12.2 OVERSIGHT OF PLANNING CONTRACTS

The State Planning and Research (SPR) is the work program outlining use of federal Highway Planning (HP) funds for each fiscal year. The SPR is coordinated through the Department's Office of Policy Planning (OPP) and is submitted by OPP to FHWA for approval for the upcoming fiscal year, by June 15<sup>th</sup>. Amendments to the SPR may be submitted throughout the fiscal year. Please refer to the [SPR and FHWA Reviews SharePoint](#) for additional information.

Scopes of work do not need to be submitted by OPP's SPR Coordinator to FHWA for additional review unless specifically identified in the SPR Work Program Approval letter. If the scope of work changes from the activity described in the SPR Work Program spreadsheet, then an additional SPR Amendment will be required from OPP's SPR Coordinator prior to authorizing federal funds. The updated task description will be sent with the SPR Amendment for FHWA review. As long as the activity provides the details outlined in the draft consultant procedures, no further FHWA review of the scope is necessary.

Prior to beginning procurement of a planning contract, the Project Manager must determine if HP funds will be or may be used for the proposed scope of services. If HP funds will be or may be used, then the Project Manager must ensure that the scope of services complies with allowable activities described in federal code 23 U.S.C. 134 Metropolitan Transportation Planning; 23 U.S.C.135 Statewide and Nonmetropolitan Transportation Planning, and 23 U.S.C. 420 Planning and Research Program Administration.

### **For project-specific contracts utilizing HP funds:**

The Project Manager must ensure that the project is eligible for HP funding, included in the Approved SPR, and consistent with the project's Activity Description, Financial Project, and funding amount.

The Project Manager must then request Department approval of the scope of services by uploading the draft scope of services to the [SPR and FHWA Reviews SharePoint](#) site, for review by Strategic Development Finance and Administrative Services Team. As part of the review, additional instructions regarding submittal of the scope of services to the FHWA Transportation Planning Specialist may be provided, as applicable.

Strategic Development Finance and Administrative Services Team will provide an internal reference number. The internal reference number shall be maintained by the PSU in the contract electronic file.

After approval for eligibility and consistency with the SPR, the Project Manager may route the draft scope of services to PSU for advertisement. No additional reviews of the contract scope will be performed by FHWA prior to contract execution.

**For task assignment contracts that are anticipated to utilize HP funds:**

The Project Manager must request approval of the task assignment contract scope of services by uploading the draft scope of services to the Department's [SPR and FHWA Reviews SharePoint](#) site, for review by the Strategic Development Finance and Administrative Services Team. As part of the review, additional instructions regarding submittal of the scope of services to the FHWA Transportation Planning Specialist may be provided, as applicable.

Once the contract draft scope is approved, Strategic Development Finance and Administrative Services Team will provide a confirmation email. After approval of the contract scope for eligibility and consistency with the SPR, the Project Manager may route the draft scope of services to PSU for advertisement.

Prior to issuance of individual task work orders involving HP funds, the Project Manager must ensure the task work order scope aligns with the project's Activity Description, Financial Project, and funding amount in the approved SPR Work Program.

The Project Manager must then request approval of the task work order and cost estimate through the Department's [Strategic Development Task Work Order Reviews SharePoint](#) site. This applies to all task work orders using HP funds, whether the tasks are issued by Central Office or the District.

Strategic Development Finance and Administrative Services Team will provide an internal reference number for the task work order. The internal reference number must be noted in the Project Manager's contract file and provided to the Federal Aid Management Office in the Office of Work Program and Budget. Approval must be received prior to encumbrance of funds and execution of the task work order.

After approval for consistency with the SPR, the Project Manager must route the task work order following their internal routing procedures as appropriate.

Federally funded planning contracts (including planning task assignment type contracts) are subject to a five-year term, \$5 million budgetary ceiling.

### **12.3 OVERSIGHT DELEGATED TO THE DEPARTMENT**

Responsibilities for oversight are assumed by the Department for FHWA projects classified below:

- (A) Miscellaneous minor professional services contracts (also known as district-wides);
- (B) Other federally funded task assignment contracts (non-districtwides & non-planning). This would include groupings of professional service assignments for substantially similar activities, and continuing contracts for professional services;

- (C) Project specific contracts, unless those identified for oversight of consultant procurement;
- (D) Right of way acquisition projects;
- (E) Planning contracts implementing tasks which have sufficient detail described in the UPWP or SPR Work Program.

The cost/time limitations for federally-funded miscellaneous minor professional services contracts (also known as District-wides) shall be a \$1.5 million overall contract limit, \$300,000 per task assignment, and contract term of five years. No new task assignments on District-wides will be started after the five year term ends, with the exception of post design work/plans update, which would not be federally funded after the five year contract period. FHWA approval is not required to extend contracts beyond five years to complete task assignments previously authorized before the end of the five year limit. Proper justification for the extension must be kept on project file.

Other federally funded task assignment contracts are subject to the contract term limit of five years, and \$5 million budgetary ceiling. This includes groupings of professional service assignments for substantially similar activities, and continuing contracts for professional services. No new task assignments will be started after the five year term ends (with the exception of post design work/plans update, which would not be federally funded after the five year contract period). FHWA approval will not be required to extend contracts beyond five years to complete task assignments previously authorized before the five year limit. Proper justification for the extension must be kept on project file.

Project specific contracts are not subject to time or monetary thresholds.

Due to the recurring nature of the services, and in order to promote contract turnover and ensure open competition, bridge inspection contracts will be subject to a five year limit and \$5 million budgetary ceiling. This guidance does not apply to bridge inspections performed on asset maintenance contracts, which are not professional services.

Project specific contracts, where work is done as task assignments in order to facilitate design & post-design phase closure are not subject to the five year limit or any monetary thresholds.

For the aforementioned delegated contracts only, the Department provides an electronic copy of executed professional services contracts to FHWA.

On federally funded projects, Notice to Proceed (NTP) or authorization to start work must not be delivered to the consultant until the Department receives federal authorization of the contract. Copies of this authorization must be provided to the PSU, and the Office of the Comptroller.

The Consultant must not commence work without an executed contract and funds approval in place.

## **12.4 CEI AND DESIGN CONTINUING CONTRACTS USED BY LOCAL AGENCY PROGRAM (LAP)**

Districts may establish a dedicated continuing services task work order driven contract to be utilized exclusively for delivery of LAP projects, for CEI and Design. Contracts shall be procured by the District. Task work orders shall be issued for individual LAP projects, by the Department's Project Manager. The Department's Project Manager shall be responsible for maintaining the contract budget, ensuring task work orders amendments are timely and appropriately issued, approval and payment of invoices, and contract and task work order oversight. The local agencies shall be responsible for developing the task work order scope, and cost estimate, and shall be in responsible charge of the task services. The task work orders shall be administered in accordance with ***Procedure No. 525-010-300, Local Agency Program Manual***. Continuing contracts for delivery of LAP projects must comply with Department Conflict of Interest policies.

## **12.5 FHWA MONITORING**

FHWA will perform independent process reviews to evaluate the program. In accordance with federal requirements, and ***Procedure No. 700-000-005, FHWA-FDOT Stewardship and Oversight Agreement***, FHWA is required to approve the procedures to hire consultants using federal-aid funding. The approved procedures are required to be followed for both PoDI and state delegated federal-aid projects.

In support of this requirement, Central Office Procurement shall be responsible for a Quality Assurance Review (QAR) of a statistical sampling of professional services contracts, on a two-year cycle. An annual summary report of the QARs performed, including findings, will be submitted to FHWA with an action plan on how to correct any deficiencies noted. Representatives from FHWA shall be invited to all scheduled QARs with sufficient advance notice, to validate the FDOT QAR process.

## **13. EMERGENCY CONTRACTS**

Whenever there is an emergency declaration for a project for which FHWA funds are to be requested, FHWA will be notified immediately by the PSU that the Department intends to deviate from its normal selection process. FHWA will be provided a copy of the emergency declaration and the preliminary scope of services. FHWA's prior approval will be required for FHWA financial participation. Emergency procurements of professional services must be performed in accordance with Department ***Procedure No. 375-040-130, Emergency Procurement During Governor Declared Emergencies***.

## 14. EXEMPT CONTRACTS

Purchases of professional services for a project where the basic construction cost is estimated to be less than the threshold amount of Category Five (\$325,000) as referenced in s. 287.017, F.S., are exempt from competition. For federal-aid projects, the additional limiting constraint is that the contract fee may not exceed the simplified acquisition threshold of \$150,000 established in 48 CFR 2.101.

Contracts involving studies or activities not associated with a construction project are exempt from competition where the total professional services fee is less than Category Two threshold (\$35,000).

For work under the referenced thresholds, at least three qualified Consultants should be considered, ranked in order of preference, and negotiations initiated with the number one ranked Consultant. If this process is not followed, the contract file will be documented as to the reasons for the selection.

## 15. PERFORMANCE EVALUATIONS

For professional services contracts, the Department procedure for performance evaluation, ***Procedure No. 375-030-007, Professional Services Consultant Work Performance Evaluation***, will be followed.

## TRAINING

Training on this procedure will be included in periodic Project Manager and professional services training programs.

## FORMS

A list of forms related to this procedure can found in the ***Professional Services Procurement Manual***