

SCDOT Manual for Procurement, Management and Administration of Engineering and Design Related Services

May 1, 2018



South Carolina Department of Transportation

This document was developed as part of the continuing effort to provide guidance within the South Carolina Department of Transportation in fulfilling its mission to provide a safe, efficient, and sustainable transportation system through dedicated teamwork and responsible leadership supporting economic development, environmental sensitivity and improved quality of life. This document is not intended to establish policy within the Department, but to provide guidance in adhering to the policies of the Department.

Your comments, suggestions and ideas for improvements are welcomed.

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DISCLAIMER

The South Carolina Department of Transportation maintains this printable document and is solely responsible for ensuring that it is equivalent to the approved Department guidelines.


MANUAL APPROVALS

The purpose of this manual is to provide SCDOT staff with guidance and direction with regards to the procurement, management and administration of engineering and design related services. Any modifications of this manual require approval of the Secretary of Transportation and the FHWA. Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, federal regulations, and policies and procedures. Unless allowed by 23 CFR section 1.9(b), federal funds shall not be paid on account of any cost incurred prior to authorization of FHWA to the SCDOT to proceed with the project or part thereof involving such cost.

This manual will be updated annually by the Professional Services Contracting Office. However, SCDOT reserves the right to make interim updates to the procedures to address lessons learned, evolving approaches, updates to federal, state, local laws, regulations, and policies provided those updates are reviewed with SCDOT and FHWA oversight.

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INTRODUCTION

The South Carolina Department of Transportation (SCDOT) Procurement, Management and Administration of Engineering and Design Related Services Manual was developed by SCDOT to provide guidance in acquisition of engineering and design related services in support of the construction, maintenance, and repair of bridges, highways and roads. This manual only covers the procurement and administration of engineering and design related services exempt from the South Carolina Procurement Code pursuant to Section 11-35-710(1). Non-exempt engineering and design related services and other professional services will be procured pursuant to the consolidated Procurement Code, Section 11-35-3220. Design Build procurement procedures can be located on the SCDOT Design Build website at: <http://www.scdot.org/business/design-build.aspx>

The policies and procedures covered herein are applicable to SCDOT contracting officers, program managers and their support personnel. This manual is also applicable to those sub agencies of the state, such as cities and counties that receive federal-aid highway and other United States Department of Transportation funding from SCDOT. The most significant components of the legal framework are:

- Title 23 United States Code § 106
- Title 23 United States Code § 112
- Title 23 United States Code § 114(a)
- Title 23 United States Code § 302
- Title 23 United States Code § 315
- Title 23 United States Code § 402
- Title 40 United States Code, Chapter 11§1101-1104
- 23 Code of Federal Regulations, Section 1.3
- 23 Code of Federal Regulations, Part 172
- 48 Code of Federal Regulations, Federal Acquisition Regulation (FAR), Part 31
- 49 Code of Federal Regulations, Section 1.48(b)
- 2 Code of Federal Regulations, 200
- Title 57, Code of Laws of South Carolina, 1976 as amended
- Section 11-35-710(1), Code of Laws of South Carolina, 1976 as amended
- FHWA Order 4470.1A, Policy for Contractor Certification of Costs in Accordance with FAR to Establish Indirect Cost Rates

The policies and procedures are based on state and federal regulations, which are covered herein. Adherence to these policies and procedures is necessary to ensure compliance with state and federal laws and to maintain the public trust.

This manual serves as the delegation of authority by the Federal Highway Administration (FHWA) to SCDOT under the approved procedures outlined in 23 CFR 172 for those

consultant contracts that provide for engineering and design related services and include federal funding. All procurement records for federally funded projects are available for FHWA review at any time.

The SCDOT Chief Procurement Officer (CPO) is delegated all rights, power and authority relating to the procurement of engineering and design related services exempt from the S.C. Procurement Code. The Professional Services Contracting Office (PSCO) has been established under the CPO for the procurement and administration of engineering and design related services contracts that are exempt from the SC procurement code for SCDOT. The PSCO ensures the appropriate procurement process is followed, protects the rights of outside funding sources and maintains uniformity of treatment within SCDOT and to the consultant firms. All SCDOT contracts that fall under the category of exempt engineering and design related services are subject to review and approval by the PSCO. Certain exceptions exist for agreements executed in emergency situations (Engineering Directive 35).

Engineering and design related services contracts are used for professional services that are specialized in nature. Engineering and design related services work are those services that require the oversight of those licensed by the state of South Carolina to practice the professions of architecture, engineering, surveying and/or certain other specialized services. These professional services are associated with the practice of research, planning, architecture, professional engineering, land surveying and landscape architecture pertaining to preconstruction and construction, as well as incidental services that members of these professions and those in their employment may logically or justifiably perform, including studies, investigations, survey & mapping, tests, evaluations, consultations, planning, program management, programming, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.

To further explain the exemption, the 2008 audit of SCDOT's exemption by the Material Management Office (MMO) made clear that the exemption included "construction related professional design services" (e.g., incidental construction, maintenance and repair related services). This audit pointed out for example, "...if SCDOT hires for aerial mapping services, the contract is not exempt from the (SC) Procurement Code if the services do not naturally lead to a construction, maintenance, or repair project involving bridges, highways and/or roads (the natural outcome of the service is a construction, maintenance or repair project)." However, if SCDOT hired an engineering firm to design a road and in order to provide this design the engineering firm provided aerial mapping services, then those services would fall within the exemption.

Management Services herein after referred to as "Management Support Role" are included in the exemption as well but are much more limited than the exemption for architectural, engineering and land surveying services. Management Support Roles under the exemption are limited to specific projects and do not include incidental services provided by subconsultants.

This manual covers the various processes involved in engineering and design related services contract acquisition from determination of need for a contract through the distribution of the executed contracts to the program managers for management and administration.

DEFINITIONS

Architectural & Engineering (A&E) Contracts: Contracts that are used for professional services that are specialized in nature. A&E work requires the oversight of those licensed by a state to practice the professions of architecture, engineering, surveying and/or certain other specialized services.

Audit: A formal examination in accordance with professional standards of a consultant's accounting systems, incurred cost records and other cost presentations to test the reasonableness, allowability, and allocability of costs in accordance with the federal cost principles as specified in 48 CFR Part 31.

Approved Rate: A certified overhead rate that has been approved by the SCDOT Contract Assurance Office. An overhead rate is an actual or budgeted overhead cost for a given period divided by the actual or budgeted measure of production activity (direct labor cost, or labor hours).

Code of Federal Regulation (CFR): The codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States. The CFR is divided into 50 titles that represent broad areas subject to federal regulation.

Chief, Professional Services Contracting (CPSC): The Department employee responsible for assuring compliance with the procedures and assisting Directors, or representatives, in selection, negotiation and administration of consultant contracts. The CPSC may choose to designate a specific employee to handle the responsibilities assigned to him or her.

Chief Procurement Officer (CPO): The Department employee responsible for planning, managing and directing all procurement required to support SCDOT.

Cognizant Agency: Any governmental agency that has performed an audit in accordance with generally accepted government auditing standards to test compliance with the requirements of the federal cost principles (as specified in 48 CFR Part 31) and issued an audit report of the consultant's indirect cost rate, or any prescribed agency that has conducted a review of an audit report and related work papers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). A cognizant agency may be:

- A. A federal agency,
- B. A state transportation agency of the state where the consultant's accounting and financial records are located, or
- C. A state transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred in writing by the state transportation agency identified in Paragraph B of this definition.

Commission: The administrative and governing authority of the South Carolina Department of Transportation appointed or elected in accordance with the Code of Laws of South Carolina, 1976, as amended.

Competitive Negotiation: Qualifications-based selection procurement procedures complying with 40 U.S.C. 1101–1104, commonly referred to as the Brooks Act.

Consultant: The individual or firm providing engineering and design related services as a part to the contract with a recipient or subrecipient of federal assistance as defined in 2 CFR 200.86 or 2 CFR 200.93, respectively.

Contract: A written procurement contract or agreement between a contracting agency and consultant reimbursed under a Federal Aid Highway Program (FAHP) grant or subgrant and includes any procurement subcontract under a contract.

Contract Modification (CM): An agreement modifying the terms or conditions of an existing contract.

Contracting Officer (CO): The Department employee in the PSCO designated to serve as the point of contact responsible for contract administration from the advertisement through execution of the contract including the record retention process covered in this manual.

Deputy Secretary: One of three administrative officers responsible by statute for the Engineering, Finance and Administration, and Intermodal Planning divisions of SCDOT.

Director: For purposes of this manual, the appropriate Department employee who has been authorized by his or her Deputy Secretary to initiate requests for consultant services and who is responsible for initiating such requests (e.g., Director of Construction, Director of Preconstruction, Director of Traffic Engineering, Director of Maintenance, etc.).

Disadvantaged Business Enterprise (DBE): A SCDOT certified DBE firm.

Additional Discussions: Additional discussions beyond the solicitation of, and response to a Request for Proposals (RFP), may be conducted with at least the top three highest ranking consultants for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. If discussions are held each of these consultants must be accorded that opportunity. At conclusion of the discussions the submitted proposals may be reevaluated based on the details outlined in the RFP.

Engineering and Design Related Services: Engineering and design related services are:

- A. Program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or architectural related services with respect to a highway construction project subject to 23 USC 112(a) as defined in 23 USC 112(b)(2)(A); and
- B. Professional services of an architectural or engineering nature, as defined by State law, which are required to or may logically or justifiably be performed or approved by a

person licensed, registered, or certified to provide the services with respect to a highway construction project subject to 23 USC 112(a) and as defined in 40 USC 1102(2), which may include studies, investigations, surveys, evaluations, consultations, environmental services, planning, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.

FAHP (Federal-Aid Highway Program): The FAHP is an umbrella term used to refer to most of the federal programs that provide highway funds to the different U.S. States. When used in a budgetary context, FAHP specifically refers to highway programs financed by contract authority out of the Highway Account of the Highway Trust Fund (HTF).

Federal Cost Principles: The principles contained in 48 CFR part 31 of the Federal Acquisition Regulation for determination of allowable costs of commercial, for-profit entities.

Fixed Fee (FF) - A sum expressed in U.S. dollars established to cover the consultant's profit and other business expenses not allowable or otherwise included as a direct or indirect cost.

Freedom of Information Act (FOIA): The Freedom of Information Act (FOIA) is a law that gives you the right to access information from the Federal Government. It is often described as the law that keeps citizens in the know about their government.

Highway Construction Project or Activity: The supervising, inspecting, actual building or reconstruction of a highway, including, but not limited to:

- Reconstruction, resurfacing, restoration, rehabilitation, and preservation;
- Elimination of hazards of railway-highway grade crossings;
- Elimination of roadside hazards;
- Improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, new location; or
- Channelization of traffic, traffic control systems, and passenger loading and unloading areas.

Management Services: See Management Support Role.

Management Support Role: Performing engineering management services or other services acting on the contracting agency's behalf, which are subject to review and oversight by agency officials, such as a program or project administration role typically performed by the contracting agency and necessary to fulfill the duties imposed by Title 23 of the United States Code, other federal and state laws, and applicable regulations.

Negotiation Team: A group of knowledgeable individuals responsible for the consultant negotiation and led by the CO.

Noncompetitive: The method of procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procurement methods.

Office of Contract Assurance (OCA): The office responsible for assisting SCDOT management by performing independent reviews of consultants, municipalities, railroads, utilities, and other third party recipients of state and federal funds. Reviews are designed to ensure funds expended through third party agreements are used efficiently, effectively and in compliance with the terms and conditions of the contract as well as relevant laws and regulations.

One Year Applicable Accounting Period: The annual accounting period for keeping records and reporting income and expenses established by each individual firm.

Program Manager (PM): The Department employee responsible for the day-to-day administration and management of a consultant contract after the contract has been executed, who is under the supervision of a Director. The PM is responsible for providing technical expertise during the procurement and contracting stage.

ProjectWise: A project collaboration and architecture, engineering, construction (AEC) information management software developed explicitly for the design and construction of AEC infrastructure projects while the work is in progress. It provides for work-sharing, content re-use and dynamic feedback. It is the electronic system used for submitting consultant proposals and managing documents during the negotiation process.

Professional Services Contracting Office (PSCO): The SCDOT department responsible for assuring compliance with the procedures and assisting Directors, or representatives, in selection, negotiation and administration of the procurement of consultant contracts.

Request for Proposals (RFP): This is the document used in the solicitation process that is posted in a public forum to request interested consulting firms to submit proposals for a particular scope of work.

Request for Qualification (RFQ): This is the document issued for a two-phase selection process. It typically describes the project in enough detail to let potential offerors determine if they wish to compete and forms the basis for requesting qualifications submissions from which the most highly qualified offerors can be identified.

Responsible Proposer: A person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

Responsive Proposer: A person or consulting firm who has submitted a proposal which has been determined to be in conformance with all material aspects of the request for proposals (RFP) or request for qualifications (RFQ).

South Carolina Business Opportunities (SCBO): The South Carolina Business Opportunities (SCBO) is a daily publication that lists proposed procurements involving goods, services, information technology and construction. According to the South Carolina

State Procurement Code, solicitations by South Carolina State Government Agencies that are worth at or above \$10,000 in estimated or actual value must appear in SCBO. Other governmental entities, such as cities, counties and school districts can voluntarily advertise in SCBO.

Scope of Services/Work: All services, work activities, and actions required of the consultant by the obligations of the contract.

Secretary of Transportation: The chief administrative officer of the South Carolina Department of Transportation.

Selection Committee: A group of knowledgeable individuals and technical experts appointed by the appropriate Deputy Secretary or designee to be responsible for the evaluation and ranking of consultant proposals.

Small Purchases: The method of procurement of engineering and design related services outlined in 23 CFR 172.7 where an adequate number (at least three) of qualified sources are reviewed and the total contract costs do not exceed the threshold established in Federal Simplified Acquisition Threshold (as defined in 48 CFR 2.101).

State Transportation Agency: The department or agency maintained in conformity with 23 U.S.C. 302 and charged with the responsibility for highway construction (as defined in 23 U.S.C. 101); and that is authorized by the laws of the State to make final decisions in all matters relating to, and to enter into, all contracts and agreements for projects and activities to fulfill the duties imposed by Title 23 United States Code, Title 23 code of Federal Regulations, and other applicable federal laws and regulations. For the state of South Carolina this is the South Carolina Department of Transportation (SCDOT).

Statewide Transportation Improvement Program (STIP): A statewide prioritized program of federally funded transportation projects or phases of projects. The STIP is a six year program and must be updated at least once every four years. The STIP must be consistent with the Statewide Comprehensive Plan and Metropolitan Planning Organization (“MPO”) Transportation Improvement Programs (“TIPs”). All federally funded projects and/or categories of projects are required to be included in the STIP in order to be eligible for federal funds pursuant to Title 23 and Title 49, Chapter 53 of the United States Code.

Subconsultant: The individual or firm contracted by a consultant to provide engineering and design related or other types of services that are part of the services which the consultant is under contract to provide.

Task Order: An order issued for a definite scope of work to be performed pursuant to an On-Call contract without established rates.

United States Code (USC): A consolidation and codification by subject matter of the general and permanent laws of the United States; is prepared and published by a unit of the United States House of Representatives.

United States Code of Federal Regulation Title 23 Chapter 1 Subchapter B Part 172 (23 CFR 172): United States Code of Federal Regulation for the Administration of Engineering and Design Related Service Contracts

Work Order: An order issued for a definite scope of work to be performed pursuant to an On-Call contract with established unit rates.

CHAPTER 1 – SELECTION OF THE PROJECT

1.1 Determination of Need

- A. Division director or designee shall determine what services or tasks will be completed in-house or procured through consultants.
- B. Needs are determined according to staff work load, project complexity and personnel expertise. Considerations may include, but are not limited to the following:
 - 1. A given project needs to be expedited but current staff is assigned to other projects and reassignment would jeopardize those projects.
 - 2. Division's workload is above the internal staff capacity.
 - 3. Unusual character or scope of a project requires specialized knowledge, expertise or experience beyond the capacity of SCDOT staff, or
 - 4. As determined by a Division Director.

1.2 PSCO Assessment of Procurement Type (State or Professional Services)

- A. Services may include those needed in furtherance of a highway construction project (i.e., the deliverables lead to a construction project). As an example, this may include NEPA or environmental contracts related to or that leads to a construction project.
- B. Federally funded services not engineering or design related, or for services not in furtherance of a highway construction project are not subject to the requirements of these procedures and shall be procured and administered under the requirements of 2 CFR 200 - the Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards rule and procedures applicable to such activities (non-exempt procurement).
- C. Qualified consultants are to be obtained through an qualifications-based selection procurement process.

1.3 Preparation of General Scope of Services

After a determination has been made to engage a consultant, the scope of services is to be prepared.

- A. Draft Scope: PM shall prepare a clear, accurate, and detailed description of the scope of services, technical requirements, and qualification of consultants necessary for the services rendered. The scope shall include the purpose of the project(s) and be developed to describe all work elements to meet the objectives of the project. It should clearly define the appropriate criteria, applicable standards, specifications, policies and assumptions to be applied to the work as well as the requirements of each task and subtasks to be completed including a list of deliverables for each task. It should include all the major work items required by the consultant. A project schedule also should be included identifying the duration and completion date of each task and phase of work.

1. In early design stages for large projects, certain details are incomplete (e.g., utility impacts, environmental considerations, etc.). The scope and estimate template are developed based upon the best available information, project parameters, relevant design criteria, realistic assumptions and engineering judgment relative to the experience on past projects of a similar nature, magnitude and complexity.
 2. During the preparation of the scope and estimate template, consideration should be given to associated risks and uncertainties likely to impact the level of effort required for successful completion of the project in order to determine the potential future costs.
- B. Scoping Meeting: The PM will provide the draft scope to the various offices affected by the project for their input and then to the CO for review to ensure sufficient information is included. A recommendation should be developed at this meeting to determine who will serve on the Selection Committee.
- C. If the scope of services for all phases or stages of work cannot be clearly defined until some of the initial work is completed, then a multi-phase professional services contract should be used.

1.4 Preparation of Internal Estimate

- A. The PM shall prepare an internal estimate of resources required to complete the project.
- B. The PM shall discuss the estimate with other divisions, seek input from the appropriate technical disciplines included in the scope of work, and request resource estimates from them as necessary. The PM is responsible for determining an estimate of man-hours and cost for consultants to perform the requested services. The CO is available to provide assistance in obtaining labor rates, indirect cost rates, and direct cost rates as needed to assist in preparing the internal cost estimate
- C. There are instances where additional effort and costs may arise from presently known and existing conditions, the effects of which are foreseeable within a reasonable limitation. These additional costs may be included in the estimate as a contingency in order to provide the best estimate of potential costs. These contingency line items are not to be used as a catch all and are not appropriate for every contract. Reasonable justification is required for their inclusion and must be provided to PSCO. When incorporated, separate contingency items should be set up in the scope and an estimate associated with each major element where additional future costs may be foreseen. Management of the use of these additional line items is essential and requires careful tracking. In all cases, justification must be submitted by the consultant to the PM requesting the use of these items. Written authorization for the use of each contingency item is required by the PM before the use of the item is allowed.

CHAPTER 2 – USE OF DISADVANTAGE BUSINESS ENTERPRISES (DBE)

2.1 Two Methods to Achieve DBE Participation: Evaluation Criteria or Goal

A. To the extent practical, SCDOT must achieve DBE program participation goals through race and gender-neutral measures (as specified in 49 CFR 26.39 and 26.51(a)). DBE participation on all engineering and design related services contracts funded with federal funds will be done in compliance with the DBE Supplemental Specification for the Procurement of Professional Services and may be counted toward overall DBE program participation goals. When overall DBE program participation goals cannot be met through race/gender-neutral measures, additional DBE participation on engineering and design related services contracts may be achieved through one of two methods:

1. DBE Evaluation Criterion: SCDOT may establish the use/participation of certified and qualified DBE subconsultant firms as an evaluation criterion. However, it is considered a non-qualifications based evaluation criterion. Non-qualifications based criteria can account for no more than ten (10) percent of the total evaluation criteria in assessing the qualifications of firms/teams to perform the solicited services. If no other non-qualifications based criteria are used, then the full 10% can apply to DBE participation. The ten (10) percent limitation should not be considered as a limitation for specific DBE contract goals established by SCDOT. In awarding points for a DBE participation criterion in the evaluation and selection of the most highly qualified consulting firm/team, evaluation/selection officials must consider the prime consultant's good faith efforts to engage DBEs, as demonstrated in the firm's response to the solicitation. Consulting firms which have demonstrated good faith efforts to engage DBE firms in the delivery of the solicited services shall be considered to have satisfied the DBE evaluation criterion. If, during the negotiation phase of the procurement process, work proposed to be performed by DBEs in the response to the solicitation is decreased or eliminated through negotiation of the scope of services, the prime consultant must use good faith efforts to provide for the participation of DBEs at the level indicated in its response to the solicitation. These good faith efforts should consider the use of DBEs to perform services in other areas of the project in order to obtain the level of DBE participation originally proposed. Failure of the most highly qualified (top-ranked) firm to make adequate good faith efforts during negotiation to provide for the proposed level of DBE participation permits the SCDOT to terminate negotiations and initiate negotiations with the number two-ranked firm. This is based on the fact that DBE participation was utilized as an evaluation criterion to rank the qualified firms/teams.
2. DBE Goal: DBE Goals are only on "project specific" procurements. If SCDOT establishes a DBE participation goal on a consultant services contract, SCDOT cannot disqualify a consultant for failing to meet the contract goal provided the

consultant made good faith efforts to meet the participation goal. SCDOT may place in the advertisement or solicitation that the prime consultant must meet the established contract DBE participation goal or demonstrate good faith efforts to meet it. The most highly qualified (top-ranked) firm would be required to demonstrate how the firm would meet the contract goal at the negotiation phase of the procurement process. If, during the negotiation phase of the procurement process, work proposed to be performed by DBEs in the response to the solicitation is decreased or eliminated through negotiation of the scope of services, the prime consultant must use good faith efforts to provide for the participation of DBEs to meet the established contract goal. The fact that the prime consultant could perform the work with its own forces does not relieve it from making good faith efforts to meet the DBE goal. If the top-ranked firm does not meet the goal and fails to demonstrate a good faith effort, SCDOT may terminate negotiations and initiate negotiations with the number two-ranked firm. Separate goals may be established for each phase of a multiphase contract.

- B. Use of quotas or exclusive set-asides for DBE consultants is prohibited, 49 CFR 26.43.
- C. The Disadvantaged Business Enterprise Supplemental Specifications for Professional Services must be adhered to.

2.2 Small Business Enterprises (SBE)

Any SBE goal criteria will be conducted in accordance with the requirements established by the DBE Office.

CHAPTER 3 – SELECTION OF PROCUREMENT METHOD, TYPE OF CONTRACT AND METHODS OF COMPENSATION

The type of procurement method, type of contracts and methods of compensation are to be recommended by the Division and approved by PSCO.

3.1 Type of Procurement Methods

The procurement of engineering and design related services related to a highway construction project (as defined by this manual for procurement purposes) shall be conducted in accordance with one of three methods:

A. Competitive negotiation (qualifications-based selection) procurement,

Procurement may involve a single step (RFP) or a two-step (RFQ/RFP) process. The RFP in the single step process is open to all interested consultants. In the two-step process, the RFQ is open to all interested consultants and the RFP is issued only to the short listed consultants.

B. Small Purchase procurement for small dollar value contracts (< \$150,00.00 contract value), and

C. Noncompetitive procurement where specific conditions exist allowing solicitation and negotiation to take place with a single consultant.

1. Sole Source, defined in Section 8.2

2. Emergency, defined in Section 8.3

3.2 Type of Contracts

A. **Project Specific Basic Contract:** A contract between SCDOT and the consultant for the performance of services and defined scope of work related to a specific project or projects. These contracts are for projects that have a specific budget, time, and site. These contracts are procured on a project-by-project basis and consist of a well-defined scope that includes schedule, budget, and deliverables. Project specific contracts will last the duration of a project and can receive time extensions or funding increases due to unforeseen scope adjustments through the use of contract modifications after the contract is executed. Services are limited to the scope included in the solicitation.

B. **Multiphase Contracts:** A project-specific contract where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses. Multiphase agreements are similar to project specific agreements in that the contract is with one consulting firm with a maximum contract amount. The phases need to be within the scope of the basic agreement. The determination of phases with any future exclusion(s) should be included in the advertised request for proposal solicitation.

- C. **On-Call or Indefinite Delivery/Indefinite Quantity (IDIQ) Contracts:** A contract for the performance of services for a number of projects, under task or work orders issued on an as-needed or On-Call basis, for an established contract period. (See Chapter 4 for detailed discussion)

3.3 Methods of Compensation

The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. A single contract may contain different payment methods as appropriate for compensation of different elements of work. The methods of compensation are:

- A. **Lump Sum (Firm-Fixed Price):** The consultant performs the services stated in the contract for an agreed upon price that is not subject to any adjustment on the basis of the consultant's cost experience in performing the contract. This method of payment is appropriate only if the extent, scope, complexity, character and duration of the work required can be established to a degree that just compensation, including a fixed fee, can be determined and evaluated by all parties at the time of negotiations. The use of lump sum is encouraged whenever feasible. This method of payment provides the maximum incentive for the consultant to control costs and perform effectively and imposes a minimum administrative burden on the SCDOT. Periodic payouts of lump sum agreements are allowed but the method defining payment shall be included in the contract (e.g., Based on percentage of work completed or completion of key project milestones).
- B. **Cost plus Fixed Fee:** The consultant is reimbursed for all eligible direct and indirect costs plus a negotiated Fixed Fee (FF) that is fixed at the inception of the contract. The FF does not vary with actual cost, but may be adjusted by contract modification as a result of changes in the work to be performed under the contract. Cost plus FF contracts are appropriate when the extent, scope, complexity, character or duration of the project cannot reasonably be defined at the time of negotiation. The contract includes a maximum amount payable under the agreement which shall not be exceeded unless adjusted by a contract modification. The FF shall be expressed as an amount, not a percentage. This type of agreement includes an attachment with a complete breakdown of estimated costs by major element or task.
 - 1. The determination of the amount of fixed fee shall consider the scope, complexity, contract duration, degree of risk borne by the consultant, amount of subcontracting, and professional nature of the services as well as the size and type of contract.
 - 2. The establishment of fixed fee shall be contract or task order specific.
 - 3. SCDOT typically allows fixed fees between 8 and 12 percent of the total direct labor and indirect costs. Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist, and is approved by the appropriate Deputy Secretary.

4. The entire amount of the fixed fee is paid to the consultant, regardless of actual cost to complete the work.
5. Fixed fee may be renegotiated based on changes to the contract scope of work. A Contract Modification will be needed to reflect the agreed upon changes. See Chapter 17 for details.

C. **Cost per Unit of Work (Unit Cost):** The consultant is paid on the basis of negotiated rate per unit of work performed. This type of contract is appropriate when the cost per unit can be determined with reasonable accuracy, but the extent of work is indefinite. This type contract is normally used for repetitive tasks. Rates are negotiated for specified tasks and the negotiated rates are in place for the life of the contract and may include escalation factors. The agreement should specify what is included in the rate. For example, if the consultant is allowed to charge travel expenses in addition to the negotiated rate, that fact should be included in the contract. This type of contract may include specific fixed hourly rates or daily rates for each employee classification directly engaged in the work. The agreed upon rates include the consultant's estimated costs, indirect cost and net fee. The contract shall specify a maximum amount payable which shall not be exceeded unless adjusted by a contract modification.

D. **Specific Rates of Compensation:** The specific rates of compensation payment method provides for reimbursement on the basis of direct labor hours at specified fixed hourly rates, including direct labor costs, indirect costs, and fee or profit, plus any other direct expenses or costs, subject to an agreement maximum amount. A specific rate contract shall only be used when it is not possible at the time of procurement to estimate accurately the extent or duration of the work or estimate costs with any reasonable degree of accuracy. The specific rates of compensation payment method shall be limited to contracts or components of contracts for specialized or support type services where the consultant is not in direct control of the number of hours worked, such as construction engineering and inspection (CE&I). When using this payment method, SCDOT shall manage and monitor the consultant's level of effort and classification of employees used to perform the contracted services.

3.4 Unallowable Methods of Compensation

The following methods of compensation shall not be used:

- A. Cost plus a percentage of cost.
- B. Percentage of construction cost.

3.5 Subconsultant Agreements

A subconsultant's agreement with the prime consultant may be lump sum even when the prime consultant's agreement with SCDOT is cost plus Fixed Fee. However, the type of contract should be based on the same principles as explained above.

3.6 Retainage

SCDOT may withhold retainage from payments in accordance with prompt payment requirements, as specified in 49 CFR 26.29. When retainage is used, the terms and conditions of the contract shall clearly define SCDOT requirements including periodic reduction in retention and the conditions for release of retention.

CHAPTER 4 – ADMINISTRATION OF ON-CALL INDEFINITE DELIVERY/INDEFINITE QUANTITY (IDIQ) CONTRACTS

4.1 On-Call Contracts

On-Call contracts are Indefinite Delivery/Indefinite Quantity (IDIQ) contracts. As services are needed, specific task orders or work orders are initiated by SCDOT by the procedures set forth under the Task Order/Work Order noted in Section 4.3.

4.2 On-Call Master Agreement

A Master Agreement for an On-Call must include the following:

- A. Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions, **which shall not exceed 5 years (23 CFR 172.9(a)(3)(i))**;
- B. Specify a maximum total contract dollar amount that may be awarded under a contract;
- C. Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services;
- D. Method used to distribute work under the On-Call as defined in the original solicitation (regional or additional QBS process).

4.3 Task Orders and Work Orders

The two types of On-Call or indefinite delivery/indefinite quantity contracts are:

- A. **Task Order:** A contract modification used to assign work to On-Call consultants that defines a specific scope of work for a specific project at a specified cost. The Secretary of Transportation authorizes use of On-Call consultants for task order contracts as part of the approval for the Master Agreement. The CO is responsible for ensuring the total amount of work authorized through task order agreements does not exceed the amount approved by the Secretary of Transportation.
- B. **Work Order/Unit Price On-Call Agreement:** A master agreement with negotiated unit prices for specific types of work (e.g., geotechnical testing). A work order is a contract modification used to assign work to these On-Call consultants that defines a specific scope of work for a specific project at a specified cost as detailed in the Master Agreement. The Secretary of Transportation authorizes use of On-Call consultants for work order contracts. No further Secretary of Transportation authorization is required for work order agreements. The CO is responsible for ensuring the total amount of work authorized through work order agreements does not exceed the amount approved by the Secretary of Transportation. For work order agreements, unit costs for specific tasks are negotiated as part of the Master On-Call agreement. Once the scope is defined, the PM will issue a work order to assign work to the selected consultant and a copy of the work order will be submitted to the CO.

1. Additional work: If it is determined additional work is required outside of the work order, a supplemental work order is required.
2. New Unit Prices: For anticipated reoccurring unit price work not in the original agreement, the PM will coordinate with the Professional Services Contracting Office in order to negotiate the new unit price(s). Exceptions to work outside pre-approved negotiated unit prices must be negotiated in coordination with the Professional Services Contracting Office. Unit rates may be reviewed upon request from the consultant to the PSCO

4.4 Monthly Status Reports

The CO will post monthly reports on the SCDOT Professional Services website, listing the amount of work authorized for On-Call agreements and any supplemental work orders that may be generated.

4.5 On-Call Assignments

The CPSC will assign the On-Call consultant for a particular project according to one of the following methodologies:

- A. Firms will be assigned work on a regional or geographical basis established for the particular On-Call contract. If this is the determined method for a particular On-Call, the SCBO ad and RFP will be fashioned to accommodate a regional methodology. Firms will be assigned to a particular region and will be awarded work in that area as required. Specific details will be included within each RFP and will be established based on the type of services needed.
- B. Firms on the On-Call list will be evaluated to determine the most qualified for the project being assigned as defined below:
 1. The PM will establish criteria for the project that will be utilized to determine the most qualified firm from the On-Call list.
 2. The original submitted proposals will be retained and utilized by the PM, the assigned CO, and any subject matter experts needed to evaluate the firms on the On-Call list. The proposals will be used to evaluate and rank the firms to determine the most qualified firm for the project being assigned. If a determination cannot be made utilizing the original submitted proposals then an additional proposal specific to the project may be requested by the PSCO from all firms on the On-Call list. This additional proposal will then be utilized by the PM, the CO, and any subject matter experts needed to evaluate and rank the firms based on the established criteria to determine the most qualified firm for the project.

A summary documenting the evaluation and selection process must be prepared by the PM and approved by CPSC, CPO, and the appropriate Director.

CHAPTER 5 – REQUEST FOR PROFESSIONAL SERVICES / FHWA APPROVAL / SECRETARY APPROVAL

5.1 Selection Committee

The Selection Committee, discussed during the scoping meeting, will be set by the final approval of Engineering Package A by the Deputy Secretary (Form 7). The Selection Committee will consist of a minimum of 3 voting members. FHWA will be invited to have a non-voting representative on the Committee for all Projects of Division Interest (PoDIs). This form will include a list of names of specific persons to serve on the Selection Committee proposed by the PM consisting of individuals with the applicable expertise for a given project. The committee chairman will be the PM who will provide the technical expertise and will facilitate the consultant proposal reviews and provide clarity on the selection criteria. Should non-voting members be needed, the list will clearly identify those that are non-voting; otherwise all listed will be assumed to be voting members. This Selection Committee will be set by the final approval of the CPO's signature on Form 1. A CO from the PSCO will be responsible for the selection process. Selection Committee Members may not be within the chain of command or in supervisory positions of each other.

5.2 Request for Professional Services

All requests for professional services will utilize the most recent request form on the PSCO website for the process of RFP preparation and advertisement. The PM will provide a project description and the key elements of the project on the professional services request form for approval. The Professional Services Request includes

- A. Project description
- B. Determination of need for professional services
- C. Scope of services
- D. Internal project estimate
- E. Project location map
- F. Desired method of procurement (Project Specific or On-Call)
- G. Desired compensation method (cost plus fixed fee, lump sum, unit rates, specific rates of compensation)
- H. Recommended selection criteria
- I. Recommended Selection Committee Members
- J. Estimated desired schedule of work
- K. Other project specific details or requirements (future possible work exclusions, emergency requirements, etc.)

5.3 Approval of Director and Deputy Secretary

The Professional Services Request is submitted to the appropriate Director for signature and then forwarded to the Deputy Secretary or designee for signature and approval. Once signed/approved, the Deputy Secretary will submit the request to the CPSC or designee.

5.4 FHWA Approval

Prior to the procurement of professional services, the CO will notify and obtain FHWA approval of the project RFP, in accordance with the Project Responsibility Matrix contained in the FHWA/SCDOT Stewardship and Oversight Agreement (S&O), or if required by the individual S&O plan for each Project of Division Interest. Once approved, the CO will move forward to advertise the project.

The Project Responsibility Matrix can be located in the Stewardship and Oversight plan located at the following link:

<http://www.dot.state.sc.us/business/fhwa-landing.aspx>

5.5 Secretary of Transportation Approval to Advertise

As a general rule for projects included in the STIP, the Deputy Secretary approval serves as the Secretary of Transportation authorization for the advertisement, selection and negotiation processes for professional services contracts. The execution of contracts requires approval by the Secretary of Transportation.

Advertisement of On-Call RFPs requires the approval of the Secretary of Transportation.

5.6 Advertisement

The following are two methods of advertisement are the standard:

- A. South Carolina Business Opportunities (SCBO) Advertisement
- B. Request for Proposal located on the Professional Service's web page

Upon receipt of all necessary approvals, the CO will advertise the approved Request for Proposals (RFP) in the South Carolina Business Opportunities (SCBO) as well as placing the RFP on the SCDOT Professional Services web page. Other publications may be used for advertisement where appropriate to ensure qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract in accordance with the qualification-based selection provisions of the Brooks Act and FHWA guidance. Advertisement fees will be charged to the appropriate charge code as determined by the PM. The CO will forward a copy of the advertisement as shown in SCBO upon publishing to the PM for their record. The CO will then begin preparing Professional Services Selection Process Summary and Recommendation.

CHAPTER 6 – REQUEST FOR PROPOSALS (RFP) - COMPETITIVE NEGOTIATION

6.1 RFP Content

- A. The RFP shall consider the following: scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered.
- B. Identify the requirements for any discussions that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals.
- C. Identify evaluation factors including their relative weight of importance in accordance with Section 6.3 below.
- D. Specify the contract type and method(s) of payment anticipated to contract for the solicited services.
- E. Identify any special provisions or contract requirements associated with the solicited services.
- F. Require that submission of any requested cost proposals or elements of cost be in a concealed format and separate from technical/qualifications proposals, since these shall not be considered in the evaluation, ranking, and selection phase. The cost proposals will not be opened until the qualifications based selection process is completed. It is then utilized as a starting point of the negotiation process. (SCDOT does not currently utilize this method as a “standard”)
- G. Provide an estimated schedule for the procurement process and establish a submittal deadline for responses to the RFP that provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal, which except in unusual circumstances **shall be not less than 14 calendar days from the date of issuance of the RFP. However, 21 days or more are allowed for submittal due dates.**
- H. Include Conflict of Interest statement and limitations on future phases of project.
- I. Include Suspension and Debarment statement (see 2 CFR 200.212).
- J. Include Questions and Clarification provision.
- K. Include Mentorship/Protégé program if applicable.
- L. Include DBE Utilization or DBE Goal forms per specification.

6.2 Additional Content Requirements for On-Call/IDIQ Solicitations

- A. Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions, **which shall not exceed 5 years (23 CFR 172.9(a)(3)(i));**
- B. Specify a maximum total contract dollar amount that may be awarded under a contract.

- C. Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services.
- D. If multiple consultants are to be selected and multiple On-Call or IDIQ contracts awarded through a single solicitation for specific services,
 - 1. Identify the approximate number of consultants that may be selected or contracts that may be awarded from the solicitation; and
 - 2. Specify the procedures SCDOT will use in competing and awarding task or work orders among the selected, qualified consultants. The following procedure options are:
 - a. Geographic or regional basis
 - b. Additional qualification based selection procedure

6.3 RFP Selection Criteria

- A. The PM will base the selection criteria on the specific needs of each project. Criteria used for evaluation, ranking, and selection of consultants must assess the demonstrated competence and qualifications for the type of professional services solicited. These qualifications-based factors may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, qualifications of personnel and knowledge of the project, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance. The weight of the each particular selection criteria must be included as part of the solicitation advertisement.
- B. Non-qualifications-based evaluation criteria are permitted under the specified conditions provided the combined total of these criteria do not exceed a nominal value of 10 percent of the total evaluation criteria to maintain the integrity of a qualifications-based selection. They are:
 - 1. **A local presence** may be used as a nominal evaluation factor where appropriate. This criteria shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant from outside of the locality area indicates, as part of a proposal, that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.
 - 2. **DBE:** The participation of qualified and certified Disadvantaged Business Enterprise (DBE) subconsultants may be used as a nominal evaluation criterion where appropriate in accordance with 49 CFR Part 26 and a contracting agency's FHWA-approved DBE program.

- C. Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
- D. In-State or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement for the minimum qualifications and competence of a consultant to perform the solicited services.

6.4 Pre-Submittal Questions and Clarifications

Questions must be submitted by the advertised question submittal deadline date. Questions received after that date will be answered at the discretion of the CO. Questions will not be considered or treated as confidential. Questions shall be submitted in writing only to the CO. The CO will post all answers on the website and/or issue a response as an addendum on the website.

6.5 Addendum to RFP

Any amendments to the RFP will be posted on the SCDOT Professional Services webpage. The RFP may be amended up to 5 days after the initial advertisement without adjustment to the submittal due date. After the 5 days, the submittal due date will be extended as deemed necessary by SCDOT to accommodate the level of the amendment. All actual or prospective consultants shall monitor the SCDOT website for issuance of amendments. Consultants shall acknowledge receipt of any amendment as specified in the amendment. If the RFP is amended, then all terms and conditions which are not modified remain unchanged.

6.6 Receipt of Proposals

- A. The CO will be responsible for receipt of all electronic proposals and will ensure appropriate personnel are available to verify that the proposals were uploaded by the time and date specified in the SCBO advertisement. PROJECTWISE will document the time and date of receipt of each proposal. The CO will complete Form 24 (Summary of Responding Firms) within Engineering Package B verifying the proposers and the time and date the proposals were received along with any comments concerning the proposals. Consultants are responsible for effecting delivery by the deadline date and time; late submissions will be rejected. SCDOT accepts no responsibility for misdirected or lost proposals.
- B. If less than three proposals are received, the CPO will review the RFP to examine if it was written in a manner that limited competition. This will include, but is not limited to the following:
 - 1. Review the solicitation for any items that may have been too specific or limiting.
 - 2. Contact non-responding firms to enquire why they did not respond to the advertisement.

3. Review whether the timing of the proposal limited firms from responding (ex. Holidays etc.).
- C. If the RFP is determined to have limited competition then appropriate revisions will be made and the RFP will be re-advertised.
 - D. If the RFP is determined to not have limited competition, then the contracting office will document all steps taken to make this determination. The contracting office will then continue with the review of received proposals.
 - E. In the event of unforeseen technical difficulties with PROJECTWISE, SCDOT reserves the right to extend the deadline for submittal of electronic proposals.
 - F. The CO shall review all proposals and document for responsiveness and responsibility prior to making the proposals available to the Selection Committee members. Reference Section 5.1 for details.
 1. A deficiency resulting from a minor informality may be clarified or waived at the sole discretion of the SCDOT.
 2. A deficiency resulting from a material non-conformity will not be waived. Proposers will not be given an opportunity to correct any material non-conformity and will be deemed non-responsive. Any proposal deemed non-responsive shall be retained by SCDOT and is subject to the Freedom Of Information Act (FOIA) unless clearly marked confidential. Non-responsive firms will be notified with an explanation prior to selection of the awarded firm. Responsive proposals will be forwarded to the Selection Committee for evaluation.
 3. Conditions that may cause a proposal to be deemed non-responsive include but are not limited to the following:
 - a. Failure to provide all information requested in the proposal
 - b. Failure to conform to the material requirements of the RFP
 - c. Failure to meet the contract DBE goal or make good faith efforts to meet the contract DBE goal
 - d. Conflict of interests
 - e. Conditional proposals
 - f. Failure to provide complete and honest information.

6.7 Proposal Distribution

- A. In compliance with the South Carolina Freedom of Information Act (FOIA) (S.C. Code Ann. §§ 30-4-10, *et seq.* (Supp. 2016), the CO will conduct a public meeting to announce the proposals submitted, and the names of the submitting consultants will be read aloud and posted. After announcement of the proposers, the CO will motion to go into executive session for the purpose of discussing matters incident to a

proposed contractual arrangement. The public in attendance will be excused. During the executive session, the CO will review the conflict of interest/confidentiality forms with the Selection Committee. If no conflicts are identified, the forms will be signed and collected by the CO. The CO will also review the contents of the Selection Committee Package with the Selection Committee.

B. The Selection Committee Package includes:

1. Proposals
2. Selection Form
3. Conflict of Interest and Confidentiality Certification

C. The CO will be responsible for:

1. Securing signed confidentiality forms from all Selection Committee members (voting and non-voting) during the proposal announcement meeting.
2. Scheduling Selection Committee meeting(s) and posting the required FOIA notices within 24 hours prior to the meeting.
3. Ensuring the Selection Committee properly goes into executive session when discussing the procurement.
4. Ensuring any action of the Selection Committee is not done in executive session, but made in public session.
5. Preparing minutes of the FOIA meeting.
6. Facilitating the Selection Committee meeting(s) and documenting the results.
7. Contacting any proposer for clarifications.

D. The CO will then discuss the proposals received and brief the Selection Committee on the selection procedures. At the end of discussion, the meeting will be returned to public session.

6.8 Selection - Two-Tier Selection Process

SCDOT will conduct a two-tier selection process for the evaluation of proposals.

A. Tier 1: A Selection Committee, with input from technical experts as necessary, will review responsive proposals and score based on the technical criteria contained in the RFP. Technical criteria may consist of, but are not limited to:

1. Experience, qualifications, and technical competence of the proposed staff in managing similar projects;
2. Team composition and demonstration that the team has the personnel and experience to provide all services for the development of plans and documents for any improvements that may be identified; and

3. Consultant's project approach to major engineering or other development challenges as well as expedited delivery solutions.
 - o Past performance of the firm/team on similar type projects based on performance evaluations and references.
- B. Tier 2: Designated Professional Services staff will review and score non-technical criteria contained in the RFP. Non-technical criteria may consist of but are not limited to:

Workload capacity: ability of proposed team to complete the project in an expeditious manner based on active work load or current commitments of key team members.

The relative weight of each criterion will be included in the RFP. Results of the technical scores will not be available to the professional services staff prior to scoring of the non-technical criteria and vice versa. The scores of all criteria will be combined at the completion of the scoring process to determine the final score for each proposal.

6.9 Tier 1 Selection - Committee Meetings

- A. Selection Committee meetings: Meetings will be facilitated by the CO. The CO shall ensure procurement rules and regulations are followed.
- B. Selection Committee scoring: Before each Selection Committee member finalizes his or her scores, the Selection Committee shall discuss the proposals and all other documents. The Selection Committee may request that the CO obtain additional information/clarification from the proposer(s) via written documentation and/or interviews. At the conclusion of these deliberations, each Selection Committee member will finalize his/her scores based on all selection criteria included in the approved Request for Proposals. Although the contract will be with the consultant, proposal evaluations shall consider the qualifications of the consultant and any subconsultants identified within the proposal with respect to the scope of work and established criteria. During evaluation, any proposal determined by the CO with input from the Selection Committee to be non-responsive will not be scored. Any proposal deemed non-responsive shall be retained by SCDOT and subject to FOIA unless clearly marked confidential. After notification of selection of the top 3 firms is posted on the Professional Services Website, Consultants with non-responsive Proposals will be sent a detailed explanation by the CO as to the reasons for determining non-responsiveness.
- C. Additional Discussions: Following RFP submission and evaluation, additional discussions may be held based on the size and complexity of the project. Discussions shall be conducted with at least three of the most highly ranked qualified consultants. Discussions may be written, by telephone, video conference, or by oral presentation/interview. Discussions are to clarify the technical approach, qualifications, and capabilities provided in the response to the RFP.

- D. Interviews: These may be scheduled with the consultants regarding their qualifications and ability to furnish the required services. Interviews may be performed in person, by teleconference, or by video conference, provided all Consultants are interviewed in the same manner. Prepared questions may be developed by SCDOT. These questions may be sent to the Consultants prior to the interviews and will be consistent for each interview. The interview details, such as the date, times and location, and the structure, will be developed by the CO and conveyed to the consultants. A suggested format for the consultant's presentation is:
1. Introduction of Selection Committee
 2. Presentation by consultant
 3. Questions from the Selection Committee on the presentation
 4. Wrap-up
- E. Topics for consultant interviews should address the evaluation factors and may include the following:
1. Team members and organization
 2. Professional qualifications
 3. Past experience on comparable projects or related services
 4. Approach or innovative solutions to the services to be provided
 5. Example work sequence and schedules
 6. Projected office workload and staff availability
- F. Following interviews with the consultants, the Selection Committee will complete their evaluation for their final selection.
- G. Selection Committee scores: From proposal evaluation and any subsequent discussions which may have been conducted, Selection Committee members input their scores electronically into the computer scoring system for this procurement. The scoring system will record the average of each the Selection Committee's scores.

6.10 Final Ranking

The scores of Tier 1 and Tier 2 evaluations will be conducted independently and combined to determine the final rankings.

6.11 Suspension and Debarment

Prior to providing written documentation to announce the highest ranking consulting firm, the CO must check to verify that both the prime consultant and the subconsultants have no suspensions or debarments. SCDOT and all subrecipients of federal-aid, and contractors and suppliers at all tiers of contracting must make a determination that consultants are not suspended or debarred from federal contracting. (See 2 CFR 180.335). To make this

determination, SCDOT and all of these entities should check the SAM.gov database and obtain certification from prime and lower tier consultants as soon as the information is available to ensure that the participants in the project are not presently excluded by suspension or debarment from participating in federally-funded contracts. As part of each federal-aid highway contract bid proposal and consultant agreement, prime contract bidders, lower-tier bidders, suppliers, and consultants are required to certify to the next higher tier of contracting, both their own current eligibility status and that of their principals. In addition, prime contractors should search SAM.gov for each lower-tier company and principal officer, including supplier companies and their principal officers, awarded a contract at a lower tier to the prime contract. These obligations exist for all tiers of contractors on federal-aid projects, under the requirements at 2 CFR Part 1200.

6.12 Conflict of Interest

CO shall check to ensure there are not conflict of interest issues with proposers. See Chapter 9 for additional information.

- A. Design Build Construction, Engineering & Inspection (CEI) Contracts: No member of the consulting firm, its subsidiaries and/or affiliates, shall be selected for CEI services on a design build project if they are part of the design build team. If a subconsultant is on the design build team, the CEI consultant candidate shall request approval from SCDOT to replace that subconsultant prior to CEI contracting in accordance with the **requirements outlined in the CEI RFP section: KEY INDIVIDUAL, STAFF AND TEAM CHANGES AFTER AWARD OF DESIGN BUILD CONTRACT**

6.13 Final Recommendation Report and Approval

- A. The CO will prepare a report for the CPSC to submit to the appropriate Director, Deputy Secretary or designee for review/concurrence. Once concurrence is received, it is forwarded to the CPO for approval. The CPO reserves the right to cancel and resolicit the procurement; however, re-solicitation requires a change in scope, funding or other modification to the original solicitation. If the committee's recommendation is rejected, the current solicitation will be terminated. The CPO is the final approval authority to begin negotiations with the highest ranked firm.
- B. The report will recommend selection of the highest ranked firm(s). The report shall include:
 - 1. The three most highly qualified firms (see Section 6.6.B if less than three proposals are received)
 - 2. Memorandum cover letter
 - 3. Scoring summary

6.14 Notification Letters

- A. Once the selection is approved by the CPO, the CO will send notification letters to the responding firms and will post the notification letter on the Professional Services

website indicating selection. The notification letter will be date stamped. The notification letter will include a list of the top 3 most highly qualified consulting firms on the selection list (project specific) or a listing of all the firms selected for the On-Call contracts. The intent is to enter into a contract with the top firm pending successful negotiations.

- B. Notification letter for Construction Engineering and Inspection (CEI) Design Build contracts will not be finalized and distributed until award letters are sent for the Design Build project. Design Build conflicts of interest will be addressed based on the requirements outlined in the RFP for the particular CEI Design Build project. See Section 6.12.
- C. The posted notification letter will also address the procedures for requesting a debriefing and protest.

6.15 Negotiations

SCDOT may enter into contract negotiations with the selected firm. The Negotiation Contracting Officer will work closely with the PM to assist in the negotiation process if required (See Chapter 11 for Negotiation Procedures).

6.16 Distribution of Executed Contract

One original copy of the executed contract is retained by the SCDOT PSCO. The PSCO will forward one original executed contract to the consultant and a copy to the PM. The agreement may be executed in counterparts, and if so executed, shall become effective when a counterpart has been executed and delivered to both Parties thereto. All counterparts taken together shall constitute one and the same agreement and shall be fully enforceable as such. The agreement or any counterpart may be executed on signature pages exchanged by facsimile or electronic mail of which signature pages shall be deemed originals.

6.17 Notice to Proceed

Once the contract is executed, the CO will notify the PM. The PM will prepare a written notice to proceed (NTP) signed by the PM. The PM will provide the signed notice to the CO to be included with the executed contract forwarded to the Consultant. If work is delayed by SCDOT, the NTP will not be included with the contract forwarded to the consultant.

CHAPTER 7 - RFP - SMALL PURCHASE CONTRACTS/SIMPLIFIED ACQUISITION

7.1 Small Purchase Contracts (Simplified Acquisition)

Small purchase/simplified acquisition procedures for engineering and design related services do not have to follow a competitive negotiation/qualifications based selection (Brooks Act) process given the amount of contract award. A benefit of the Small Purchase Process is that it increases SCDOT's available pool of consultants while at the same time affording opportunities to smaller firms to compete for SCDOT business and thereby establish a track record of performance. 23 CFR 172 allows SCDOT to establish a small purchase program. The total contract, including supplements and changes, cannot exceed the simplified acquisition threshold of \$150,000 per project per 48 CFR 2. 101

7.2 Requirements for Engineering and Design Related Small Purchase Contracts

- A. Firm's data, qualifications, past performance, and interest in small purchase contracts will be maintained in the SCDOT PSCO database by category.
- B. There must be a sufficient number (a minimum of three) firms qualified and capable of performing the contracted services to provide adequate competition. If the CO determines that there is not sufficient competition (at least three firms available), then the project specific solicitation process or use of an On-Call consultant will need to be utilized.
- C. The consultant can hold more than one small purchase contract at a time if the aggregate of the contracts together do not and will not exceed the SCDOT threshold listed in the small purchase contract.
- D. Projects or category-specific work will not be broken into smaller sizes simply to avoid the full solicitation process.
- E. The full amount of any contract modification or amendment that would cause the total contract amount to exceed the established simplified acquisition threshold is ineligible for federal-aid funding. The FHWA may withdraw all federal-aid from a contract if it is modified or amended above the applicable established simplified acquisition threshold.
- F. The CO (Small Purchase) will monitor contracts and is responsible for ensuring that the amount of work authorized under the small purchase process does not exceed the authorized limits and adjust the database accordingly
- G. By Commission Resolution dated April 17, 2014, the SCDOT Commission authorized SCDOT to utilize the Small Purchase Process. Approval of the advertisement, selection, negotiation and execution of Small Purchase contracts may be performed with no additional authorization. The Small Purchase Simplified Acquisition Process requires authorization by the Secretary of Transportation prior to the advertisement for the Request for Qualifications. Upon approval individual Request for Proposals may

be conducted with approval at the director level. A monthly summary report will be published on the SCDOT Professional Services website.

7.3 Small Purchase Qualification Process

- A. Public solicitations will request Statement of Qualifications (SOQ) from consultant firms who are interested in participating in Small Purchase contracts. Firms will be requested to submit their relevant experience and the project qualifications of key personnel via SF-330s in the categories of work for consideration. The CO will assemble a team of technical experts to determine whether or not a firm is deemed qualified for the specified work. Firms selected to participate in the Small Purchase Program will be added to a database of qualified firms by category.
- B. SCDOT will use a basic agreement embodying the terms and conditions negotiated as the contract. The CO (Small Purchase) will draft the agreement and obtain signatures from the appropriate Director and consultant. The CO (Small Purchase) will provide a copy of the agreement to consultant.

7.4 Small Purchase Selection Process

- A. PM initiation: SCDOT Program Managers (PM) wishing to utilize the Small Purchase Program will prepare a small purchase request and submit to the CO. The request must include the following:
 - 1. Scope of services
 - 2. Estimated cost of Consultant Services
 - 3. Funding information
- B. The CO will review the number of firms in the database that have expressed interest in small purchase for the type of services being requested. If the CO determines that there is not sufficient competition, then the project specific solicitation process or use of an On-Call consultant will need to be utilized.
- C. CO (Small Purchase) will choose a minimum of three (3) firms to submit proposals:
 - 1. The firms must be on the Approved Indirect Cost Rate list.
 - 2. The firms will be selected by the CO based on the following:
 - a. Qualification list for required task(s)
 - b. Amount of work from the small purchase programs compared to any maximum limitations set
- D. CO (Small Purchase) will request proposals from the selected firms and provide the firms with the following:
 - 1. Scope of services
 - 2. Instructions for uploading the proposals

3. Proposal requirements
4. Selection criteria with weighted values including how cost will be considered
5. Submittal deadline

E. The proposal must include the following:

1. Name of the Project Manager and or team assigned to the project
2. Consultant's proposed work program or their approach to work
3. Proposed project delivery schedule
4. Any additional requested information
5. Cost of services

The selected firms have a minimum of five (5) business days to respond and upload their proposals into the SCDOT ProjectWise system.

F. CO (Small Purchase) will provide the submitted proposals to the PM for evaluation, selection and recommendation.

G. Upon receipt of the proposals, the PM and any necessary Subject Matter Experts (SMEs) will meet to evaluate proposals based on the following criteria:

1. Knowledge and technical ability of the staff to be assigned to the project
2. Consultant's proposed work program or their approach to work
3. Demonstrated ability to meet project schedule
4. Past performance based on performance evaluations and/or references
5. Cost of services

Each criterion will be scored. The firm with the highest score will be awarded the project.

H. Subject to the foregoing considerations, the SCDOT may enter into contract negotiations with the selected firm. The CO (Negotiations) will work closely with the PM to assist in the negotiation process if required (See Chapter 11 for Negotiation Procedures).

7.5 Small Purchase Procedures Post Award

A. Project Specific Contract: SCDOT will use the standard consultant agreement modified to reflect the terms and conditions negotiated.

1. All contracts will be awarded on a lump sum basis.
2. The CO (Small Purchase) will draft the agreement; obtain signatures from the appropriate Director and consultant.
3. The PM will provide the Notice to Proceed to the CO.

4. The CO will provide a copy of the agreement and Notice to Proceed to the Consultant.
5. The CO will also notify the firms not selected for the solicitation.

B. Payment

1. The PM will monitor the consultant's work, review invoices to ensure that contract obligations have been met, and then submit a copy of the invoices along with supporting documentation with Form 608 to the Professional Services Contracting Office.
2. The Professional Services Contracting Office will process and forward the invoices to accounting for payment.

C. File Retention/Documentation

1. The completed Small Purchase file will be retained in the PSCO in accordance with the Record Retention schedule.
2. The CO (Small Purchase) will provide access to view the totals for the Small Purchase Program and provide an annual summary of contracts procured.
3. A list of executed small purchase contracts will be assembled monthly and posted on the SCDOT Professional Services website for informational purposes only.

CHAPTER 8 - NONCOMPETITIVE PROCUREMENT - SOLE SOURCE, EMERGENCY, AND INADEQUATE COMPETITION

8.1 Three Methods of Noncompetitive Procurements

- A. Noncompetitive procurement (as specified in 23 CFR 172.5(a)(3)) may only be used under limited circumstances. Circumstances under which a contract may be awarded by noncompetitive procurement procedures are limited to the following:
1. Sole Source: The service is only available from one source.,
 2. Emergency Contract: There is an emergency which will not permit the time necessary to conduct competitive negotiations, or
 3. Inadequate Competition: After solicitation of a number of sources, competition is determined to be inadequate.
- B. Allowability of contract costs for non-competitive procurement will be determined in accordance to federal cost principles.

8.2 Sole Source

Sole source service is only available from one source (Sole Source Agreement). A contract may be awarded without competition if the CPO or a designee determines in writing that there is only one source for the required service. The determination must include written documentation stating the determination and basis for the proposed sole source procurement. The determination shall be prepared by the CO and must be submitted in writing to the CPO for approval. In cases of reasonable doubt, competition must be solicited. Any decision that procurement be restricted to one potential consultant must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need. The approval of the Secretary or his/her designee, and the FHWA if federal funds are involved, is required.

8.3 Emergency Contract

Emergency procurement of consultant services shall be limited to those necessary to address the emergency. In order to ensure consultant services are procured in time to adequately handle the emergency, the consulting firm will be selected from the list of consultants with certified or exempt indirect cost rates. This list can be found at <http://www.scdot.org/business/ae-consultants.aspx>. Requests must include the basis for the emergency procurement and the selection of the particular consultant. The approval of the Secretary or his/her designee, and FHWA if federal funds are involved, is required.

8.4 Inadequate Competition

If less than three responses to a RFP are received then the procedures in Section 6.6 are to be followed. FHWA approval of the procedures outlined for inadequate competition constitutes approval of the corresponding requirements in 23 CFR 172.7(a)(3)(ii)(C).

CHAPTER 9 –CONFLICT OF INTEREST

9.1 Purpose

These conflict of interest requirements are provided to assure that SCDOT and its Consultants have not entered into an agreement where there may be a conflict of interest. The requirements will also assure that SCDOT meets federal requirements related to conflict of interest and will be consistent in the actions taken when a conflict arises.

9.2 Consultant Responsibility

When responding to an RFP, it is expected that firms will not submit proposals on projects where a conflict of interest exists. The consultant is required to submit a letter along with Conflict of Interest Disclosure Form to the CO disclosing a potential conflict of interest each time they submit a proposal. Consultants should not review or inspect work performed by themselves or their firm. Conducting Preliminary Engineering services for potential design build projects may prevent the firm from being allowed to be part of the design build team. If at any time the Consultant has any questions or concerns regarding a potential conflict they may contact the CO.

9.3 SCDOT Responsibility

- A. The CO will review the potential conflict identified in the Consultant's proposal and any agreement relationships and determine, in consultation with appropriate SCDOT staff, if a conflict of interest or the appearance of a conflict of interest exists. If a conflict is found to exist, SCDOT will determine the appropriateness of the proposed measures to mitigate the conflict. The determination needs to be balanced between the benefits to SCDOT and the potential issues that can arise if a Consultant or the affiliate (a corporate entity linked to the Consultant through common ownership) is responsible to more than one party on the same project. SCDOT will inform the Consultant that a conflict of interest does exist along with the proposed mitigation measures. If the Consultant chooses to retain the interest constituting the conflict, SCDOT may remove the Consultant from the selection for cause in accordance with the provisions stated in the RFP.
- B. For On-Call services, SCDOT managers/supervisors are responsible to avoid a conflict of interest by ensuring the consultant assigned the work and the embedded consultant reviewers are not employed by the same firm. Embedded consultants will not be involved in the consultant solicitation process, or the review of consultant fee proposals.

9.4 Actions to Be Taken if a Conflict is Identified

- A. During Selection: When submitting the RFP, and any time thereafter when a conflict is discovered, the Consultant is required to submit a letter along with the DISCLOSURE OF CONFLICT OF INTEREST FORM to the CO disclosing a potential conflict of interest. The CO shall determine, in consultation with the appropriate SCDOT staff, if a conflict or the appearance of a conflict of interest exists. If it is determined that a conflict of interest does exist, the Consultant will be given the opportunity to avoid,

neutralize or otherwise mitigate the conflict. If the Consultant cannot eliminate the conflict, the proposal will be considered ineligible for selection and the firm will be informed of the reason by the CO. If it is determined a conflict does not exist, the proposal will be submitted to SCDOT's Selection Committee for consideration.

- B. After Selection Approval but Prior to Award: SCDOT's CO will contact the CPO explaining the perceived conflict of interest. If the CPO concurs that a conflict exists, the Consultant will be given the opportunity to avoid, neutralize or otherwise mitigate the conflict. If the Consultant cannot eliminate the conflict, negotiations will be terminated and the next most qualified firm will be recommended for selection. A new selection approval will be processed through the Selection Committee.
- C. During the Performance of the Service: The PM will contact the CPO explaining the perceived conflict of interest. If the CPO concurs that a conflict exists, the Consultant will be given the opportunity to avoid, neutralize or otherwise mitigate the conflict. If it is determined by the CPO that a conflict exists and has not been resolved to the satisfaction of the CPO and SCDOT legal staff then the CPO will recommend action to SCDOT's Deputy Secretary of Finance and Administration. Possible actions are either termination of the agreement or continuing with the service with full disclosure required by the Consultant.

9.5 Disclosure of Conflict of Interest Form

By submitting a proposal, proposer agrees that, if an organizational conflict of interest is discovered after the proposal is submitted, the proposer must make an immediate and full disclosure to SCDOT that includes a description of the action that the proposer has taken or proposes to take to avoid or mitigate such conflict. If after award of the contract an organizational conflict of interest is determined to exist, SCDOT may, at its discretion, terminate the contract. If the proposer was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to SCDOT, then SCDOT may terminate the contract for default.

See Attachment 1

9.6 SCDOT Code of Conduct for Former SCDOT Employees

CURRENT AND FORMER SCDOT EMPLOYEES: To avoid the appearance of any real or perceived favoritism, unfair advantage, undue influence, or conflict of interest, a proposal will be disqualified that names, identifies, or includes in any way a current or former SCDOT employee serving in a management level position within 365 days of the submittal. No communication or appearance shall be made by such current or former employee with SCDOT on such proposal, or the proposal will be disqualified. In addition no current or former employee, who served in a management level position or above, may work on or invoice for services performed on a project within 365 days after their last day of employment with SCDOT. For the purposes of this bright line rule, "management level position" is defined as any SCDOT Pay Band 7 and above position, which includes, but is not limited to, Directors, Assistant Directors, District Engineering Administrators, District-level Engineers, Program Managers, Assistant Program Managers and Resident-level Engineers.

9.7 NEPA Conflict of Interest

A. Conflicts of Interest for Engineering and Design Related Services:

In accordance with the FHWA Procurement, Management, and Administration of Engineering and Design Related Services - Questions and Answers VIII guidance:

A contract may be awarded for final design services to a consulting engineering firm, prime or sub-consultant, which provided services during the environmental review and preliminary design engineering phase of the project provided a NEPA decision document has been issued or if the NEPA process is still underway, appropriate provisions are included in the solicitation and contract to indicate that the contracting agency is not obligated to proceed with final design for any alternative, that all reasonable alternatives will be evaluated and given appropriate consideration, and that the firm may not proceed with final design until the relevant NEPA decision documents have been issued.

B. Conflicts of Interest for Design Build Contracts concerning the NEPA process:

1. In accordance with 23 CFR 636.116, if the NEPA process has been completed prior to issuing the RFP, the contracting agency may allow a consultant or subconsultant who prepared the NEPA document to submit a proposal in response to the RFP
2. If the NEPA process has not been completed prior to issuing the RFP, the contracting agency may allow a subconsultant to the preparer of the NEPA document to participate as an offeror or join a team submitting a proposal in response to the RFP only if the contracting agency releases such subconsultant from further responsibilities with respect to the preparation of the NEPA document.

CHAPTER 10 – ALLOWABLE COST AND OVERSIGHT REVIEW

10.1 Annual Audit Review

An annual audit review will be performed by the OCA on all consultants and subconsultants with active contracts or proposing to provide engineering and design related services (as defined in 23 U.S.C. §112(b)(2)(A), 23 CFR §172.3, 40 U.S.C. §1102 and state laws and regulations) for federal-aid projects to SCDOT and its subrecipients. The review includes an examination of the accounting system and internal control structure, financial statements to determine financial capability, and the indirect cost rate(s) for compliance with federal cost principles and certification. SCDOT's requirements for annual submissions can be found at the following link: <http://www.scdot.org/business/ae-consultants.aspx>

10.2 Pre-Award Audits

Pre-award audits of cost proposals will be requested by the CPSC or designee on an as needed basis taking into consideration the following criteria:

- A. Complexity of the project
- B. Proposed costs appear questionable / unreasonable
- C. Significant findings in prior audits not addressed / corrected

10.3 Pre-Award Audit Findings Resolution

Pre-award Audit findings will be resolved by the CPSC with assistance from the CO prior to the execution of an agreement or contract modification. Explanation and assistance will be requested from OCA as necessary. The results of the resolution will be in writing by the CPSC to the Consultant with a copy to the CO.

CHAPTER 11 – NEGOTIATION PROCESS

11.1 Negotiation

Once a firm(s) is selected, the CO will contact the PM to establish the negotiation team and begin negotiations with the selected firm(s). The internal estimate shall serve as the basis for negotiation. The Negotiation Team will be led by the CO, and consist of at a minimum, the PM, as well as other members at the discretion of the CO and PM. The primary objective in negotiation is to reach agreement on a total contract amount which is fair and reasonable to SCDOT while providing the consulting firm the greatest incentive for efficient and economical performance. The focus of negotiations should be on improving identification of the scope/tasks to be performed, the level of effort required to complete those tasks, the experience and classifications of staff required/assigned to complete those tasks (which collectively result in total direct labor costs), other direct contract costs, and Fixed Fee (FF).

11.2 Order of Negotiations

- A. Prior to selection, SCDOT shall prepare a detailed internal estimate with an appropriate breakdown of the work and/or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The internal estimate shall serve as the basis for negotiation.
- B. If concealed cost proposals were submitted in conjunction with technical/qualifications proposals, SCDOT may consider only the cost proposal of the consultant with which negotiations are initiated. Due to the confidential nature of this data, as specified in 23 U.S.C. 112(b)(2)(E), concealed cost proposals of unsuccessful consultants may be disposed of in accordance with Section 19.6 of this manual.
- C. CO shall retain documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract (See 2 CFR 200.333). This documentation shall include the consultant cost certification and documentation supporting the acceptance of the indirect cost rate to be applied to the contract (See 23 USC § 172.11(c)).

11.3 Negotiation Meetings

- A. Meetings to discuss discrepancies between the internal scope and/or estimate and the consultants can be done via meetings or conference calls.
- B. These meetings must have a CO and the PM present.
- C. Meeting documentation will be maintained by the CO.

11.4 Indirect Cost Rates and Estimates

- A. SCDOT is not permitted to place limitations on indirect cost rates established in accordance with applicable FAR cost principles to allow for a fair and reasonable negotiation of costs. SCDOT must use and apply the consulting firm's cognizant agency approved indirect cost rate for estimation, negotiation, administration and payment of contracts for engineering and design related services. (See 23 U.S.C.

112(b)(2)(C)-(D) and 23 CFR 172.7(b)). Should the consulting firm choose to offer a lower indirect rate for the actual contract, this rate must be used in both the internal and consultant estimates. SCDOT shall not request or start negotiations to obtain a lower indirect cost rate than was established by a cognizant agency approved audit (See, 23 U.S.C 112(b)(2)(C)-(D)). A lower indirect cost rate may be used only if offered/submitted voluntarily by a consulting firm as part of a cost proposal during contract negotiations. A consulting firm's offer of a lower indirect cost rate shall not be a condition or qualification to be considered for the work or contract award (See 23 CFR 172.7(b)).

- B. FHWA, SCDOT, and subrecipients of federal funds may share audit information in complying with the subrecipient's acceptance of a consultant's indirect cost rates provided that the consultant is given notice of each use and transfer. Audit information shall not be provided to other consultants or any other government agency not sharing the cost data or to any firm or government agency for purposes other than complying with the subrecipient's acceptance of a consultant's indirect cost rates without the written permission of the affected consultants.
- C. All consultant estimates must be submitted using the approved cost estimate template established by SCDOT. The FF should be project specific and shall be negotiated after agreement on all other costs taking into consideration the financial and professional investment, extent, scope, complexity, duration of services, and the degree of responsibility to be assumed by the consultant and will be recorded in the record of negotiation.

11.5 Contingencies

- A. Contingencies are defined as activities that are identified as a possible result of findings while performing original work. Contingency is normally used to cover a limited amount of unforeseen costs. The contingency work may be included in the contract upon approval without the need for a contract modification. Contingency costs will be separate from the main cost of the contract. These costs will be noted in the contract separately, but are required to be negotiated and approved. A total maximum cost will be documented without the contingency costs and then an additional total maximum for the contingency amount will be negotiated specifying that this is not to be expended without written authorization by the PM. The SCDOT may audit the consultant's cost records prior to authorizing the use of a contingency amount.
- B. No contingency is allowed on lump sum contracts.
- C. When the PM determines that the use of the contingency is needed then the PM will obtain Director approval, notify PSCO and submit a written authorization to the consultant with a copy to the PSCO to place in the official contract folder.

11.6 Audited Indirect Cost Rates

In preparing their estimate, Consultants and their subconsultants should develop their estimates by applying their approved audited indirect cost rate (as determined by the SCDOT

OCA) to their direct labor costs. This rate should not exceed the approved audited rate. Any subconsultant without a current approved indirect cost rate must contact the OCA and obtain an approved rate before negotiations can be concluded. However, in certain cases, the Director of the OCA may authorize acceptance of a subconsultant's standard billing rates provided the Director deems the billing rates as fair and reasonable in the competitive market place. Refer to indirect cost rate process on the SCDOT Contract Assurance Office website.

11.7 Consultant Cost Estimates

The CO shall instruct the Consultant to develop its independent cost estimates based on the agreed upon scope. The Consultant will be instructed to only submit their estimate once requested by the CO. The Consultant will also be advised not to share any details of their cost estimate with the PM. All questions that arise during this process will be directed only to the CO to ensure the independent estimate process is adhered to. After receiving the Consultant's independent cost estimate, the estimate will be forwarded to the PM.

11.8 Estimate Evaluation

- A. The CO will prepare a comparison review of the SCDOT's internal estimate and the consultant's independent cost estimate and identify issues of concern. After completing the comparison, the CO shall meet, including by conference calls, with the Negotiation Team to discuss the issues of concern. During the internal meeting(s), the Negotiation Team will determine a cost objective/range that is fair and reasonable to both the SCDOT and Consultant. The detailed estimate will be the basis for negotiations when the issues of concern are discussed.
- B. The CO will then coordinate a negotiation meeting(s) between the Negotiation Team and the Consultant to negotiate a final price that is fair and reasonable to SCDOT and the Consultant. The CO shall address any concerns of the Negotiation Team members during the negotiations process. During the negotiation process, further adjustment(s) of the scope of services and cost estimates may occur. The CO shall ensure that the negotiations process does not violate any applicable laws and regulations. No additional internal estimate revisions are required unless there is a scope revision.
- C. In situations where there is a significant increase in the internal estimate from the Package A estimate or original fee template estimate with task orders, it is important that the PM informs their supervisor and/or appropriate Director during negotiation to ensure final approval of the negotiated contract price.
- D. The goal for the negotiation process is to obtain a fair and reasonable compensation considering the classification, experience, and responsibility of employees necessary to provide the desired engineering and design related services. When an assessment of reasonableness in accordance with the federal cost principles has not been performed, consulting firms actual direct salary or wage rates will be utilized.
- E. A firm should be requested to explain and support its estimate and to offer appropriate revisions when internal estimates of man-hours or levels of effort differ

from the consulting firm's estimate. The PM and CO will jointly determine if the explanation are justifiable.

- F. Profit/Fixed Fee should be negotiated such that a sufficient profit is allowed to stimulate efficient contract performance and to attract the best qualified firms. The establishment of the Fixed Fee should be project specific and shall consider scope, complexity, contract duration, degree of risk borne by the consultant, amount of subcontracting, and professional nature of the services to be rendered as well as the size and type of contract.
- G. Once the Negotiation Team and the Consultant have agreed upon a final "fair and reasonable" price, the CO shall assemble the Final Negotiation Package.

11.9 DBE Committal Sheet

- A. During the negotiation process the negotiating CO will compare the fee template to ensure that the DBE committal in the consulting firm's proposal is reflected in the fee template. If there is an unjustified deficiency it must be corrected or possible termination of negotiation will occur.

Justifiable examples include:

1. Change in scope that affect DBE percentage of work
 2. DBE firm is no longer available to perform the services and another DBE firm is also not available
- B. Upon completion of negotiations, the CO shall request and the consultant shall submit the DBE Committal Sheet reflecting the contract goal or Good Faith Efforts to meet the DBE contract goal. The consultant shall provide justification when the use of a DBE's services will not meet the DBE contract goal. Failure to meet the DBE contract goal or show Good Faith Efforts to meet the goal shall result in the termination of negotiation with the consultant. SCDOT will then commence negotiations with the next ranked consultant.

11.10 Termination of Negotiations

If the Negotiation Team determines that further negotiations will not result in an acceptable agreement, the CO will prepare a memo giving the reason(s) for recommending terminating negotiations for concurrence by the CPSC and CPO. Final concurrence will be given by the appropriate Deputy Secretary approving the termination of negotiations. The concurrence memo from the appropriate Deputy Secretary will include authorization to begin the negotiation process with the next firm in the ranking order from the selection process. The CPSC or designee will notify the firm in writing that negotiations are terminated stating the reason(s) given by the CO. A copy of this letter will be provided to the appropriate Director and PM. Justifications for termination include:

- A. The inability to agree to terms of the contract including but not limited to man-hours and Fixed Fee.

- B. Overall cost or bottom line price alone are not justification to terminate negotiations with a firm, as SCDOT must make a good faith effort to negotiate the scope, level of effort, and reasonable price with the highest rated firm. If SCDOT and the most highly qualified firm are unable to negotiate a fair and reasonable contract, SCDOT may formally terminate negotiations and undertake negotiations with the next most qualified firm, continuing the process until an agreement is reached (See 40 U.S.C. 1104(b)).
- C. SCDOT determines there is no longer a need for the project, or changes the scope of the project. Written notification that a contract is no longer needed must be provided to the PSCO by the PM prior to the PSCO notifying the consulting firm.

11.11 Record of Negotiation Form

The Record of Negotiation (RON) form will be completed by the CO to document the project negotiation process to include the Project Name, Original Agreement Contract Number, Date, File Number, PIN, Charge Code, etc. It will also document the sequence of estimates submitted and their value, including the final approved estimate. All explanations/justifications of cost changes in the SCDOT and Consultant estimates can be detailed in the comments section or attached documentation.

- A. The CO will prepare the appropriate contract document which will be part of the Final Negotiation Package.
- B. The CO, PM and the appropriate Director must sign and date the Record of Negotiation Form as to their agreement that the price negotiated is fair and reasonable and to execute the contract.

11.12 Contract Preparation

The CO will use the appropriate template to prepare two (2) original contract documents to be included in the Final Negotiation Package (Package B).

Once the contracts have been prepared, they will first be signed by the CPSC before inclusion in the Final Negotiation Package.

11.13 Delivery of the Final Negotiation Package

- A. The CO shall submit the Final Negotiation Package to the PM for their review and routing to the appropriate Director for signatures. Once the Director has approved the Final Negotiation Package, the package will be returned to the CO to obtain the consultant signatures. Following signature by consultant, the CO will then submit the final negotiation package to the CPO for signature and appropriate routing for Deputy Secretary signatures.
- B. The Final Negotiation Package documentation at a minimum shall consist of the following:
 - 1. The appropriate page from the current STIP/State Plan page (if applicable) showing the project priority and related funding information
 - 2. Record of Negotiation

3. Record Documents (summary sheet plus each individual *Record Document*)
4. Support Documents including the following:
 - a. Authorization Form for Contract Modifications or Engineering Package A cover sheet for project specific contracts
 - b. Copy of P2S Funding Approval
 - c. Secretary of Transportation Approval form (if submitting a contract modification)
 - d. Limited notice to proceed (if issued)
5. SCDOT Internal Final Estimate
6. Two (2) Contracts signed by the consultant with attachments (Final Scope, Final Consultant's Estimate, etc.)

CHAPTER 12 – CONTRACT CLAUSES

- A. All contracts and subcontracts shall include the following provisions, either by reference or by physical incorporation into the language of each contract or subcontract, as applicable:
1. Administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and provide for such sanctions and penalties as may be appropriate (disputes clause);
 2. Notice of contracting agency requirements and regulations pertaining to reporting;
 3. Contracting agency requirements and regulations pertaining to copyrights and rights in data;
 4. Access by recipient, the subrecipient, FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
 5. Retention of all required records for not less than 3 years after the contracting agency makes final payment and all other pending matters are closed;
 6. Standard DOT Title VI Assurances (DOT Order 1050.2);
 7. Disadvantaged Business Enterprise (DBE) assurance, as specified in 49 CFR 26.13(b);
 8. Prompt pay requirements, as specified in 49 CFR 26.29;
 9. Determination of allowable costs in accordance with the federal cost principles;
 10. Contracting agency requirements pertaining to consultant errors and omissions;
 11. Contracting agency requirements pertaining to conflicts of interest, as specified in 23 CFR 1.33 and the requirements of this part; and
 12. A provision for termination for cause and termination for convenience by the contracting agency including the manner by which it will be effected and the basis for settlement.
- B. All contracts and subcontracts exceeding \$100,000 shall contain, either by reference or by physical incorporation into the language of each contract, a provision for lobbying certification and disclosure, as specified in 49 CFR part 20.

CHAPTER 13 – CONTRACT EXECUTION PROCESS

- A. Suspension and Debarment: CO shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract. Re-examine the consulting firm prior to obtain signatures at the completion of the negotiation stage to verify that no suspension or debarments exist. The following website may be utilized for this verification: www.sam.gov.
- B. Following the signature of the consultant and appropriate Director, the CO will then submit the Final Negotiation Package to the Deputy Secretaries for Engineering, Finance and Administration, and Intermodal and Freight for approval. After receiving Deputy approvals the package will be submitted for approval by the Secretary of Transportation. After all necessary approvals are obtained, the approved Final Negotiation Package will be returned to the PSCO for execution.
- C. Contract Execution: The PSCO will be responsible for assigning a contract number and execution of the contract. Items from the final negotiation package needed for contract execution are as follows:
 - 1. Approved Secretary of Transportation Record of Approval form
 - 2. Record of Negotiation
 - 3. Limited notice to proceed
 - 4. Complete charge code
 - 5. Contract completion date
- D. Once the contract is executed, the PSCO will return the executed contract to the CO. The CO will then notify the PM to prepare a signed notice to proceed for the consultant. The PM will provide the approval notice to proceed to the CO. The notice to proceed should address when the contract was executed and instructions from the PM on when to begin work if other than immediately upon receipt of the notice. The CO will then send one of the original executed contracts along with the notice to proceed to the appropriate consultant and a copy of the contract to the PM.
- E. The PSCO is responsible for ensuring that all consultant contracts are executed in accordance with Departmental Directive 24, Approval and Execution of Contracts and Agreements.

CHAPTER 14 – DEBRIEFINGS

- A. Any proposer may request a debriefing by submitting a written request by letter or (email is acceptable) to the CPSC. All requests for debriefings must be received from the firm within three (3) days of posting of the notification letter on the SCDOT Professional Service website. SCDOT debriefings are generally conducted after the contract has been executed. However, firms may request a debriefing prior to contract award, such pre-award debriefing will be allowed at the discretion of SCDOT. Pre-award debriefings, while expeditious, render the firm ineligible for further consideration on that particular selections should negotiations prove unsuccessful with the selected firm. (Ref. 48 CFR Part 15).
- B. Once SCDOT receives the debriefing request, it is logged by the CO for selections on the “SCDOT Debriefing Listing Report”. This document tracks requests for debriefings by the following:
 - 1. Selection number
 - 2. Project description
 - 3. Name of requesting firm/consultant
 - 4. SCDOT staff to conduct debriefing
 - 5. Date firm/consultant email/letter request received
 - 6. Date SCDOT email/letter/phone response
 - 7. Date SCDOT contract(s) executed
 - 8. Date debriefing conducted and type of debriefing
- C. Once the contract is executed, the CPSC or CO from the selection process will contact the firm/consultant requesting the debriefing and the SCDOT Chairman of the Selection Committee to coordinate and schedule the debriefing.
- D. Debriefings can be conducted one of two ways (both not to exceed 30 minutes):
 - 1. Meeting in person
 - 2. Conference call
- E. Materials needed to conduct the debriefing are as follows:
 - 1. The firm/consultant’s past performance history with SCDOT
 - 2. Listing of current contract work
 - 3. Copy of the Form 24 – Summary of responding firms – Prime and sub information listing
 - 4. Copy of the proposal
 - 5. Selection Committee comments

CHAPTER 15 – CONSULTANT PROTEST PROCEDURES

15.1 Protest of Contents of RFP

Consultants may submit a written protest of anything contained in an RFP to SCDOT's Chief Procurement Officer (CPO), PO Box 191, Columbia, SC 29202, no later than five (5) business days of the date of posting of the RFP or any addendums to it on the SCDOT Professional Services website. Each protest must include the reasons for the protest and, if appropriate, any proposed changes to the RFP provisions, specifications or Contract terms. SCDOT may not consider any protest that is submitted after the submission deadline.

15.2 Protest of Consultant Selection

- A. Single Selection: In the event of selection to negotiate with a single Proposer, SCDOT shall post a copy of the selection notice of the highest ranked Proposer on the SCDOT Professional Services website. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to SCDOT's Chief Procurement Officer (CPO), PO Box 191, Columbia, SC 29202, no later than five (5) business days after the date of the posting of the selection notice on the SCDOT's website. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the services described in the RFP. All matters that could have been raised pursuant to the Protest of the Contents of the RFP section above may not be raised as a protest of the selection of the highest ranked Proposer.
- B. Multiple Selection for On-Call Contracts (shortlisting): In the event of selection to shortlist more than one Proposer, SCDOT shall post a copy of the selection notice of the highest ranked proposers on the SCDOT Professional Services website. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the SCDOT's Chief Procurement Officer (CPO), PO Box 191, Columbia, SC 29202, no later than five (5) calendar days after the date of the selection notices were posted on the SCDOT website. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the services described in the RFP. The number of Proposers short-listed is not grounds for a protest.

- C. Award of Contract: A Proposer who claims to have been adversely affected or aggrieved by the award may submit a written protest of the selection to the SCDOT's Chief Procurement Officer (CPO), PO Box 191, Columbia, SC 29202, no later than five (5) calendar days after the date of the award was posted on the SCDOT website. The protest must set forth relief requested with enough specificity to give notice of the issues to be decided.
- D. Effect of Protest Submission Deadline: SCDOT will not consider any protest that is submitted after the protest submission deadline referenced (2)(a) and (2)(b) above. If Proposer fails to file a timely protest, the selection shall be final.
- E. Exclusive Remedy: The rights and remedies granted in this section to Proposer, either actual or prospective, are to the exclusion of all other rights and remedies of the Proposer against the SCDOT.
- F. Resolution of Protests: A duly authorized representative of the Contracting Agency shall resolve all timely submitted protests within a reasonable time following the Contracting Agency's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

15.3 SCDOT Procedures for Protest

- A. Protest: A protest must be in writing, filed with the CPO, and set forth the grounds of the protest and the relief requested with enough specificity to give notice of the issues to be decided. The protest must be received by the CPO within the time provided above.
- B. Burden of Proof: The protestant challenging SCDOT's action bears the burden of proving the decision is arbitrary.
- C. Duty and Authority to Attempt to Settle Protests: Before commencement of an administrative review, the CPO or a designee of the CPO may attempt to settle by mutual agreement a protest of an aggrieved proposer, actual or prospective, concerning the solicitation or award of the contract. Any settlement reached by mutual agreement must be approved by the CPO.
- D. Administrative Review and Decision: If, after reasonable attempt, a protest cannot be settled by mutual agreement, the CPO, or a designee, shall promptly conduct an administrative review. The CPO shall commence the administrative review no later than five (5) business days after a reasonable settlement attempt and shall issue a decision in writing within five (5) business days of completion of the review. The decision must state the reasons for any action taken. The decision shall include findings of fact and conclusions of law, separately stated. A copy of the decision along with a statement of appeal rights set forth below must be mailed or otherwise furnished immediately to the protestant.

- E. Finality of Decision and Appeal: The SCDOT's decision pursuant to the above paragraph is final and conclusive. A protestant adversely affected by the final decision can appeal to circuit court and hereby waives a trial by jury regarding any protest arising out of this procurement and any such trial will be a non-jury trial before the South Carolina Circuit Court in Richland County.
- F. Stay of Selection and Award: The selection of Proposer and contract award are stayed until issuance of a final decision by SCDOT. Once a final decision is issued, the filing of a petition to appeal that decision does not itself stay enforcement of SCDOT's decision to award the contract. SCDOT may grant or the reviewing court may order a stay upon appropriate terms.
- G. All Freedom of Information (FOIA) requests must be sent to the FOIA Officer in the SCDOT Office of Chief Counsel.

CHAPTER 16 - LIMITED NOTICE TO PROCEED

16.1 Letter Contracts (Limited Notice to Proceed- LNTP)

- A. A letter contract is a written preliminary contractual instrument that authorizes the consultant to begin immediately performing services. Once the CO and PM make a determination that the schedule on a project(s) is critical and the consultant's services and expertise are required before contract negotiations can be completed, a letter contract may be issued by the CPO or designee upon concurrence of the appropriate Director (initials) and Deputy Secretary or designee.
1. A letter contract may be used when
 - a. SCDOT's interests demand that the consultant be given a binding commitment so that work can start immediately, and
 - b. Negotiating a final consultant contract is not possible in sufficient time to meet the requirement. However, a letter contract should be as complete and definite as feasible under the circumstances.
 2. Each letter contract shall contain
 - a. Specific tasks to complete; and
 - b. Maximum dollar limit for the work.
 3. The PSCO may, authorize an additional LNTP when warranted.
 4. No invoices will be submitted or payments made to the consultant until after the execution of the final contract. If, after exhausting all reasonable efforts, the CO and the consultant cannot negotiate a consultant contract because of failure to reach agreement as to price or fee, SCDOT may terminate the LNTP and reimburse the consultant in accordance with the LNTP. All work shall be provided to SCDOT as a deliverable.
 5. The Letter Contract shall contain a specific cost for the work anticipated. Any expenditure on the part of the consultant in excess of this specific cost will not be reimbursable. It is imperative that the consultant and PM monitor the expenditures. The man-hours expended during this time will be accounted for as actuals when negotiating costs for the final contract. The consultant shall provide supporting documentation for these man-hours.
 6. The Letter Contract shall contain the maximum liability of SCDOT which shall be the estimated amount necessary to cover the consultant's requirements for funds before finalization of the contract (negotiation completion and contract execution).

- B. A Letter Contract may be used only after the Deputy Secretary for Engineering or a designee concur that the circumstances warrant the LTNP. Letter contracts shall not
1. Commit SCDOT to the final contract in excess of the funds available at the time the letter contract is executed;
 2. Be entered into without competitive solicitation; or
 3. Be amended to satisfy a new requirement unless that requirement is inseparable from the existing Letter Contract. Any such amendment is subject to the same requirements and limitations as a new Letter Contract.
- C. Contract Clauses: The CO shall include in each Letter Contract that the LNTP shall be subject to the contract clauses of the final consultant contract contemplated.

CHAPTER 17 – CONTRACT MODIFICATIONS

17.1 Contract Modifications

Contract Modifications are written agreements used to incorporate unforeseen work incidental to the scope of work in the master agreement, task order or work order. Prior approval is required for a contract modification. The PSCO is responsible for ensuring the contract modification is within the original scope of the advertisement for the project.

- A. Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.
- B. A contract modification shall clearly define and document the changes made to the contract, establish the method of payment for any adjustments in contract costs, and be in compliance with the terms and conditions of the contract and original procurement.
- C. SCDOT shall negotiate contract modifications following the same procedures as the negotiation of the original contract.
- D. SCDOT may add to a contract only the type of services and work included within the scope of services of the original solicitation from which a qualifications-based selection was made.
- E. For any additional engineering and design related services outside of the scope of work established in the original request for proposal, SCDOT shall:
 - 1. Procure the services under a new solicitation;
 - 2. Perform the work itself using SCDOT staff; or
 - 3. Use a different, existing contract under which the services would be within the scope of work.
- F. Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee or lump sum reimbursed contracts.

17.2 Prior Approvals for Contract Modifications

Prior authorization by the applicable Deputy Secretary or his/her designee and FHWA (if the project is a PoDI and the oversight plan requires FHWA to take this action) is required to negotiate any contract modifications to project specific basic agreements. Prior authorization is also required to negotiate all task orders or work orders under On-Call Master Agreements. These authorizations will be obtained by using the “On-Call or Project Specific Contract Modification Request Form. Authorization from the applicable Deputy Secretary or designee is required prior to submittal to the PSCO. Execution of

Project Specific Contract Modifications that increase the cost of the project require Secretary of Transportation approval.

17.3 Unilateral Modifications

Unilateral modifications to the pricing of engineering and design related services contracts without engaging in good faith negotiations with the consulting firm are contrary to applicable federal laws and regulations. An arbitrary reduction of fees or overall contract costs is inconsistent with qualifications based selection procedures for negotiation of fair and reasonable compensation considering the scope, complexity, professional nature, and estimated value of the services to be rendered. Reductions to overall contract costs also creates a de facto ceiling on a firm's approved indirect cost rate required to be applied to contract negotiations and payment and creates an arbitrary reduction of direct salary/wage rates which does not provide consideration of the reasonableness provisions of the FAR cost principles. In order to reduce expenditures associated with existing engineering and design related services contracts, SCDOT may cancel or delay a contract as permitted within the provisions of the contract, re-negotiate the terms of the contract, or terminate the project.

17.5 Unilateral Discount Payment Terms

Unilateral discount payment terms (e.g. 2% 10 Net 30) on engineering and design related services contracts from a consulting firm's negotiated compensation due to early payment would be in violation of federal laws and regulations applicable to engineering and design related services contracts. Given the ability for most contracting agencies to promptly pay invoices via electronic methods, required discount payment terms would essentially provide SCDOT an arbitrary discount beyond the negotiated fair and reasonable compensation. A required discount of a firm's invoiced amount, if paid within an established time frame, essentially creates an arbitrary reduction of the negotiated fair and reasonable compensation required by the Brooks Act; creates an arbitrary ceiling on the firm's approved indirect cost rate required to be applied to contract negotiation and payments; and creates an arbitrary reduction of direct salary/wage rates which does not provide consideration of the reasonableness provisions of the FAR cost principles. As such, SCDOT may not require or request discount payment terms via a solicitation/request for proposal, during the subsequent evaluation and selection process, as a negotiation point, or through standardized contract documents/templates. However, if a consulting firm, in the interest of its own financial management of the contract, voluntarily offered a discount payment term in its price proposal during negotiations, SCDOT could accept the discount payment terms provided the firm's offer is not a condition or qualification to be considered for the work or contract award. FAHP funding participation would then be limited to the federal share of the discounted payments actually made by the SCDOT.

CHAPTER 18 – PAYMENT PROCESS AND OVERSIGHT

18.1 Payment Process – Invoices

- A. After the notice to proceed has been issued, work may begin on the contract. Progress payments will be made according to the terms of the subject contract. Consultants must submit an acceptable invoice to the SCDOT to receive payment.
- B. Details on specific requirements for each type of contract payment method are included below. PMs are responsible for ensuring consultants are aware of the requirements. All invoices must include a signed statement by a Principal Officer of the firm, certifying that all charges are true and accurate and in accordance with the contract.

18.2 Types of Invoices Based on Compensation Methods

A. Lump Sum Contracts

1. Partial invoicing allowed based on terms of the contract (e.g., total percent of each contract task completed to date, milestones completed)
2. Show amount paid to date
3. Show amount paid per task or work for the current invoice period
4. No contingency is allowed on lump sum contracts

Note: The basis for progress payments on lump sum contracts must be specified in the contract. PMs should ensure progress payments are appropriate under the terms of the agreement.

B. Cost Plus Fixed Fee Contracts

1. A completed invoice with separate section for each contingency when used
2. A cost summary which includes the following:
 - a. Billing period
 - b. Total labor costs
 - c. Indirect cost and fixed fee
 - d. Total direct cost with breakdown
 - e. Cost per subconsultant
3. A person-hour summary report (employee name, classification, rate, # of hours)
4. Direct expense break down
5. Status as specified by the PM

C. Unit Cost Contracts

1. A completed standard invoice

2. Total units completed to date
3. Total units completed during current billing cycle

D. Specific Rate of Compensation Contracts

1. Completed standard invoice
2. Total man-hours completed to date per category
3. Total man-hours completed per category for the billing cycle
4. Direct expense for the billing cycle

18.3 Invoice Review

- A. The PM will review the invoice to ensure costs billed are appropriate for work accomplished during the billing period. The PM will ensure the billing is in reasonable compliance with the contract and other written authorizations and in accordance with contract documents.
- B. If any errors are discovered that would prevent payment, the PM should contact the consultant immediately. The consultant should correct the errors and submit a revised invoice.
- C. Once the invoice is deemed acceptable, the PM initiates a SCDOT pay request. The PM recommends payment and a higher-level supervisor will approve. After appropriate signatures are obtained, the invoices along with a complete Form 608 should be sent to the PSCO for processing. The invoice is then forwarded to accounting for payment.

18.4 Final Payment

- A. The SCDOT pay request should indicate that this is the “Final Invoice” to be submitted on the contract. The PSCO will notify the OCA (OCA) that the final invoice has been paid on the contract.
- B. OCA will use a risk based approach to select projects for final audit. Criteria used in the risk assessment will include: dollar amount of contract, type of contract and experience with the consultants to include known problems or concerns about the firms performing work on the contract. If a final audit will not be performed, OCA will notify PSCO that the contract can be closed. For contracts selected for a final audit, the audit report will be provided to the CPSC. The CPSC will take appropriate action based on the final audit report. The CPSC should copy OCA with the letter mailed to the consultant on resolution of the audit findings. Once final payment has been made or the required refund is received, the contract may be closed.

18.5 Closeout Process - A list of closed contracts will be sent to the OCA for review and final audit, if required. Once closure approval is given from the OCA, the CO will follow the proper record retention schedule for destruction.

CHAPTER 19 – CONTRACT ADMINISTRATION

19.1 Templates of Standard Contracts

Templates of standard contracts are developed and maintained by the Legal Office. Any proposed changes will require approval by the Legal Office.

19.2 Contract Administration & Monitoring

- A. Responsible Charge: A full-time, public employee of SCDOT qualified to ensure that the work delivered under contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract shall be in responsible charge of each contract or project. While an independent consultant may be procured to serve in a program or project management support role (See 23 CFR § 172.7(b)(5)), or to provide technical assistance in review and acceptance of engineering and design related services performed and products developed by other consultants, SCDOT shall designate a public employee as being in responsible charge. A public employee may serve in responsible charge of multiple projects and SCDOT may use multiple public employees to fulfill monitoring responsibilities. The public employee's responsibilities shall include the following:
1. Administering inherently SCDOT activities including, but not limited to, contract negotiation, contract payment, and evaluation of compliance, performance, and quality of services provided by consultant;
 2. Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
 3. Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;
 4. Scheduling and attending progress and project review meetings commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
 5. Ensuring consultant costs billed are allowable in accordance with the federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
 6. Evaluating and participating in decisions for contract modifications; and
 7. Documenting contract monitoring activities and maintaining supporting contract records, as specified in 2 CFR 200.333.
- B. The PM, as designated by the Director, shall administer the contract under all applicable guidelines and procedures established by this directive, state and federal procurement procedures and departmental policies. It is the PM's responsibility to

maintain documentation of all decisions affecting the contract and contract modifications. Any modifications will be coordinated with the PSCO.

- C. Consultants providing design services will not be used to perform construction management and engineering inspection (CE&I) on the same project. When federal funds are used, the appropriate Deputy Secretary and the FHWA must approve exceptions to this restriction. This restriction does not apply to design services performed during construction such as shop drawing reviews or responding to design or value engineering issues that arise during construction.
- D. When the PM and consultant agree that the use of the contingency is needed then the consultant will submit a written justification with a concurrence line for the PM authorization. A separate request will be submitted for each contingency when needed. Copies of these authorizations will be furnished to the Office of PSCO to place in the official contract folder.

19.3 Performance Evaluations

- A. SCDOT shall prepare an evaluation summarizing the consultant's performance on a contract. The performance evaluation should include, but not be limited to, an assessment of the timely completion of work, adherence to contract scope and budget, and quality of the work conducted. SCDOT shall provide the consultant a copy of the performance evaluation and an opportunity to provide written comments to be attached to the evaluation. SCDOT should prepare additional interim performance evaluations based on the scope, complexity, and size of the contract as a means to provide feedback, foster communication, and achieve desired changes or improvements. Completed performance evaluations should be archived for consideration as an element of past performance in the future evaluation of the consultant to provide similar services.
- B. The PSCO is responsible for completion of the Semi-Annual Consultant Performance Evaluation (CPE) Report. The purpose is to provide feedback to the consultants and to address corrective measures or actions associated with a project if necessary.
- C. PMs evaluate consultants on April 1st and October 1st each year and at the completion of a contract. The PM will evaluate and discuss interim contract performance with the consultant and submit the performance evaluation to the CO. All performance evaluations and the summary evaluation report will be noted "Confidential" and not to be shared with any firm except for the individual performance evaluation for that particular firm. The CO will provide a semi-annual summary performance evaluation report to the Secretary of Transportation, Deputy Secretary for Engineering, Chief Engineers and Directors.
- D. The CO in coordination with the PM will make a recommendation for corrective action for any consultant with a performance score of 1 (Consistently Fails to Meet Expectations) in any of the performance criteria. This recommendation will be included in the semi-annual report.

- E. The CO will provide each Selection Committee a complete performance evaluation summary for those consultants responding to specific advertisements. Upon substantial completion of a project, the PM will conduct a final performance evaluation with the consultant and prepare and submit a final performance evaluation report to the CO.

19.4 Errors and/or Omissions

If any errors and/or omissions are discovered, the procedures are outlined in Engineering Directive Memorandum 38.

19.5 Records and Retention

- A. All contract records will be retained for 7 years after cancellation or after final payment and all pending matters are closed.
- B. The following documentation will be maintained by the specified SCDOT departments or offices:

1. PSCO

- a. Documentation of authorization (i.e., Director, Deputy Secretary and Secretary approvals)
- b. Commission/Secretary of Transportation Authorization Form (when required)
- c. Original contract and/or contract modifications
- d. Documentation of negotiation process
 - I. Record of negotiation form (inclusive of documentation of process)
 - II. Approved cost estimate template(s) - internal and consultant
 - III. Audit reports (when required)
 - IV. Negotiation Minutes
- e. Performance evaluations (if applicable)
- f. Claims
- g. Proposals/letters of interest

2. Accounting Department

- a. Invoice and Form 608

19.6 Instructions on Proper Disposal of Concealed Cost Proposals

(23 CFR 172.5(c)(9))

- A. Unsuccessful Cost Proposals shall be retained for 5 years per the SCDOT Retention Policy. This is a “specific” type of retention file (Record No. 13840) and is for record of

bids, bid tabs, award notices, price changes, product lists, extension / re-bid notices, usage reports, extension agreements, cancellation notices, and other backup documentation for procurement actions taken.

- B. Unsuccessful Bidders Proposals: (Retention Record No. 13438) - Documents of unsuccessful bidders proposals for state and federal projects includes the name and address of contractor, area under proposal, county, length of project, file number, state and/or federal project number, bid bond, special provisions, contract time, proposal form, schedule of prices, and disadvantage business enterprise committal forms. For state projects the retention period is three (3) months after award date then destroy. For federal projects the retention period is seven (7) years after award date then destroy. This supersedes HPT-EN-CA-3.

CHAPTER 20 – CONSULTANT SERVICES IN MANAGEMENT SUPPORT ROLE

20.1 FHWA Approval of consultant services for management support roles:

When FAHP funds participate in a consultant services contract, SCDOT shall receive approval from FHWA before utilizing a consultant to act in a management support role for the SCDOT. Use of consultants in management support roles does not relieve the SCDOT of responsibilities associated with the use of FAHP funds (See 23 U.S.C. 302(a) and 23 U.S.C. 106(g)(4)), and should be limited to large projects or circumstances where unusual cost or time constraints exist, unique technical or managerial expertise is required, and/or an increase in SCDOT staff is not a viable option.

A. Management support roles may include, but are not limited to:

Providing oversight of an element of a highway program, function, or service on behalf of SCDOT or may involve managing or providing oversight of a project, series of projects, or the work of other consultants and consultants on behalf of SCDOT.

B. Conflicts of Interest with consultants services for management support roles:

The use of consultants or subconsultants in management support roles requires appropriate conflicts of interest standards and adequate SCDOT staffing to administer and monitor the management consultant contract (see 23 CFR § 172.9(d)). A consultant serving in a management support role may be precluded from providing additional services on projects, activities, or contracts under its oversight due to potential conflicts of interest.

C. FAHP funds shall not participate in the costs of a consultant serving in a management support role where the consultant was not procured in accordance with federal and state requirements, See 23 CFR 1.9(a).

D. Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles applicable to the contracting agency, as specified in 2 CFR part 200, subpart E—Cost Principles.

CHAPTER 21 –SUBRECIPIENT CONTRACT ADMINISTRATION

21.1 Subaward/Subrecipient Requirements

- A. SCDOT shall administer subawards in accordance with State laws and procedures as specified in 2 CFR part 1201, and the requirements of 23 U.S.C. 106(g)(4), and 2 CFR 200.331. Administering subawards includes providing oversight of the procurement, management, and administration of engineering and design related consultant services by subrecipients to ensure compliance with applicable federal and state laws and regulations. Nothing in these procedures shall be taken as relieving the SCDOT of its responsibility for the work performed under any consultant agreement or contract entered into by a subrecipient.
- B. SCDOT shall ensure that subrecipients develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design related consultant services, reimbursed in whole or in part with FAHP funding as specified in 23 U.S.C. 106(g)(4)(A). Responsibilities of the subrecipient shall include the following:
1. If a federal funded project:
 - a. Adopting written policies and procedures prescribed by the SCDOT for the procurement, management, and administration of engineering and design related consultant services; or
 - b. Preparing and maintaining its own written policies and procedures in accordance which meet all state and federal requirements; or
 - c. Submitting documentation associated with each procurement and subsequent contract to SCDOT for review to assess compliance with applicable federal and state laws and regulations.
 2. If state funded project:
 - a. Procuring goods and services in accordance with one of the following
 - i. The South Carolina Consolidated Procurement Code (S.C. Code Section 11-35-10, et seq.) and the regulations promulgated pursuant thereto; or
 - ii. The PARTICIPANT's own procurement procedures, provided they have been properly adopted and are substantially in accordance with the Model Procurement Ordinance proposed by the Budget and Control Board pursuant to S.C. Code Section 11-35-50.
- C. Regardless of which of the above procedures are followed, the subrecipient must receive prior written approval (through the SCDOT's assigned Contact Person) from the SCDOT's Deputy Secretary to use either of the following project delivery methods:

1. Design/build, or
 2. A method where the same contractor or consultant is performing both management and construction services.
- D. All procurements that require advertising shall be advertised in South Carolina Business Opportunities (SCBO) published by the Materials Management Office of the State Budget and Control Board in addition to any other publication in which the subrecipient deems it appropriate to advertise.
- E. At the completion of the project, the subrecipient shall complete and submit to the SCDOT a Certification of Procurement certifying that all the procurement requirements have been met for the project and providing a list of all consultants, contractors and vendors used on the project, and the total dollar value paid to each.

ATTACHMENTS

Attachment 1

DISCLOSURE OF CONFLICT OF INTEREST FORM

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST CERTIFICATION

CONFLICT OF INTEREST: By submitting a proposal, proposer agrees that, if an organizational conflict of interest is discovered after the proposal is submitted, the proposer must make an immediate and full disclosure to SCDOT that includes a description of the action that the proposer has taken or proposes to take to avoid or mitigate such conflict. SCDOT considers it a conflict of interest for a consultant to represent more than one party in relation to any given project regardless of which phases of the service are involved. If after award of the contract an organizational conflict of interest is determined to exist, SCDOT may, at its discretion, cancel the contract. If the proposer was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to SCDOT, then SCDOT may terminate the contract for default.

The Consultant by signing this disclosure, certifies it does not have any financial or other interest in the outcome of the project, that it has no agreement, enforceable promise, or guarantee with any individual or company to provide any work on the project, that it does not have any association or professional or business relationships with anyone who has a financial interest in the outcome of the project, nor does anyone with a financial interest in the outcome of the project, exercise any control over the consultant’s pay, employment, bonuses, or other area subject to external influence.

The Consultant, by signing this disclosure, further certifies that it is in compliance with the CONFLICT OF INTEREST (SCDOT COMMISSION): Section 23 of Act 40 of 2017 [now codified as S. C. Code Section 57-1-350(G)] prohibits a member of the SCDOT Commission serving on July 1, 2017 (the effective date of the Act) or thereafter, from having an interest, direct or indirect, in any contract awarded by the department during the member’s term of appointment and for one year after the termination of the appointment. Therefore, any proposal or bid submitted to SCDOT in violation of this law will be disqualified.

The Consultant, by signing this disclosure, further certifies that it is in compliance with the CURRENT AND FORMER SCDOT EMPLOYEES policy: To avoid the appearance of any real or perceived favoritism, unfair advantage, undue influence, or conflict of interest, a proposal will be disqualified that names, identifies, or includes in any way a current or former SCDOT employee serving in a management level position within 365 days of the submittal. No communication or appearance shall be made by such current or former employee with SCDOT on such proposal, or the proposal will be disqualified. In addition no current or former employee, who served in a management level position or above, may work on or invoice for services performed on a project within 365 days after their last day of employment with SCDOT. For the purposes of this bright line rule, “management level position” is defined as any SCDOT Pay Band 7 and above position, which includes, but is not limited to, Directors, Assistant Directors, District Engineering Administrators, District-level Engineers, Program Managers, Assistant Program Managers and Resident-level Engineers.

Consultant hereby indicates that it has, to the best of its knowledge and belief has:
 Determined that no potential organizational conflict of interest exists.
 Determined a potential organizational conflict of interest as follows:

Attach additional sheets as necessary.

- 1. Describe nature of the potential conflict(s):
- 2. Describe measures proposed to mitigate the potential conflict(s):

Signature of Authorized Official

Date

Print Full Legal Name of Authorized Official

Company Name

If a potential conflict has been identified, please provide name and phone number for a contact person authorized to discuss this disclosure certification with Department of Transportation contract personnel.

Name

Phone

Company