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## Federal-aid Program Overview Consultant Services Consultant Services Overview

[www.fhwa.dot.gov/federal-aidessentials](http://www.fhwa.dot.gov/federal-aidessentials)

*Certain Federal requirements apply to engineering and design-related consultant services contracts*



When Federal-aid funds are used to hire a consultant to provide engineering and design-related services, certain Federal requirements apply. These requirements address how to hire the consultant and how to manage and administer the contract. The hiring process for a consultant firm is fundamentally different from selecting a construction contractor based on a lowest bid price. The following information will help you understand and comply with these requirements when using Federal funds for engineering and design-related consultant services.



First, the Federal Highway Administration, or FHWA, defines engineering and design-related services as program management, construction management, preliminary engineering, engineering, design, surveying and mapping, and architectural-related services.

However, if your State provides a broader definition of engineering services in law or regulations, the broader definition applies, and these additional services are subject to Federal requirements.

Consultant procurement requirements affect how you solicit, evaluate, select and contract



with a firm. Any agency using Federal-aid funds for engineering and design-related consultant services must have written procurement policies and procedures. Some State departments of transportation, or State DOTs, provide and require the use of policies and procedures specifically developed for local public agencies using Federal funds.

The required written policies and procedures must address:

- Preparing a scope of work and cost estimate for selecting a consultant
- The solicitation, evaluation, ranking, and selection of consultants
- Negotiation of consultant reimbursement
- Monitoring a consultant's work
- Consultant errors and omissions.

Depending on the circumstances, one of three procurement methods may be used to hire a consultant to provide engineering and design-related services:

- Competitive negotiation
- Small purchase
- Noncompetitive procurement



Competitive negotiation procedures generally apply when the engineering and design-related services you need directly relate to a construction project. We commonly refer to these as “qualifications-based selection” procedures. The requirements that apply to competitive negotiation procedures are defined within a Federal law known as the Brooks Act.

Unlike low-bid contracting, the Brooks Act requires the selection of a consultant based on its qualifications to provide the needed services. The Brooks Act also requires basing the contract amount on a fair and reasonable cost that is negotiated by the agency and the selected firm.

Under competitive negotiation procedures, the goal is to determine and agree to contract terms for “fair and reasonable” compensation, considering the scope and complexity of the work. Agencies are required to develop an independent cost estimate to serve as a basis for negotiations with the selected consultant.

One item that cannot be negotiated is the consulting firm’s indirect cost rates. These rates are either established by or submitted to a Federal agency or State DOT for approval of compliance with the Federal Acquisition Regulation, or FAR, cost principles. FAR is the principle set of requirements used to determine allowable costs on consultant services contracts when Federal funds are used.



An accepted and approved indirect cost rate must be used for purposes of contract estimation, negotiation, and administration and it

cannot be negotiated or arbitrarily capped. You may need to contact your State DOT to verify that any indirect cost rate a consultant proposed is in compliance with the FAR cost principles.



Small purchase procedures are relatively simple and less formal than competitive negotiation procedures, and the specific requirements will vary from State to State.

These procedures apply when total contract costs will not exceed the Federal simplified acquisition threshold of \$150,000. If a State has an established threshold lower than the Federal \$150,000 threshold, the lower State threshold will apply to the use of Federal-aid funds. If the total contract costs are below the established threshold, applicable State small-purchase procedures may be used to procure engineering and design-related consultant services.



Noncompetitive procurement refers to situations where the use of a competitive process is not feasible. This method may be used in limited circumstances where the service is available only from a single source, an emergency exists, or where competition is determined to be inadequate after a solicitation has been made. You must obtain approval from FHWA for each use of this procurement method.

Remember, competitive negotiation, small purchase or noncompetitive procedures apply to engineering or design-related consultant services that directly relate to the construction of a project. If your needed consultant services are not determined to be engineering or design related, then simply follow your State or local procedural requirements.

Once an agreement is executed, the consultant’s work must be monitored for the life of the contract for services. Agencies must be adequately staffed to oversee this work, and at a minimum must provide at least one full-time agency employee in responsible charge of the consultant’s work. The agency should monitor the consultant’s work for quality and completeness, and invoices must be consistent with the contract terms and the FAR cost principles.

When a consultant services contract is completed, you are required to evaluate the consultant's performance of the contract scope of work. This evaluation should be retained and used in the assessment of past performance of the consultant when competing for future work.

All records pertaining to your Federal-aid consultant services contract are required to be kept on file a minimum of three years following submittal of your final voucher to FHWA by your State DOT. Record retention will help you demonstrate compliance with all requirements just covered.

Any agency that uses Federal-aid funds to hire consultants for engineering and design-related services accepts the responsibility to follow the requirements just outlined.



Make sure to establish and follow written policies and procedures that detail how a consultant is hired and how the subsequent contract will be administered and monitored. Each State DOT has the oversight responsibility for consultant services procurement and administration activities in that State. As such, the State DOT can help answer any questions prior to contracting with a consultant using Federal-aid funds so you can meet all applicable Federal and State laws and regulations.

## Additional Resources

- Information on FHWA's consultant services policy and guidance  
<http://www.fhwa.dot.gov/programadmin/consultant.cfm>
- Additional regulation on administration of engineering and design-related service contracts  
<http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&sid=88df046e4fbccfb189a147f0e13d2e15&rgn=div5&view=text&node=23:1.0.1.2.3&idno=23>
- Federal regulations on administration of engineering and design-related service contracts  
<http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&sid=2d0307d68fc3ad4e117788370d178f2e&rgn=div5&view=text&node=48:1.0.1.5.30&idno=48>
- Information on consultant services in Q & A format  
<http://www.fhwa.dot.gov/programadmin/172qa.cfm>

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH61-11-D-00024 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.