

EDC Innovations Series Webinar: Q&A May 28, 2014

Locally Administered Projects; Consultant Services Flexibilities

webinar Chat Pod Questions & Answers

<http://www.fhwa.dot.gov/hfl/innovations/webinars.cfm> is URL for EDC website if recording.

Iowa Q&A, Charlie Purcell: the Iowa DOT state program for pre-qualified firms for local agency procurement of consultant services.

1. Q: in Iowa, what criteria do the LPAs use to select between the three prequalified firms (for the abbreviated schedule?)

A: The criteria is not pre-defined. LPAs are required to use such things as the firms past experience with similar projects. We really don't have anything that is predefined in terms of the things they have to consider. So it's fairly open-ended in terms of their ability to evaluate the qualifications of those consultants.

2. Q: Tied to that, what if your state doesn't have a qualified consultant list? Do you have something in Iowa such as a non-abbreviated list(i.e another process in place)?

A: Iowa has chosen to make pre-qualification a requirement for its small purchase procedures (abbreviated process). The use of the abbreviated process in Iowa saves time and energy in the process allowing a local agency to pick somebody from the prequalified list.

Iowa does have a "full process" that can be used, if the local government wants to use a consultant not on the prequalified list, that puts them into the full process as approved by FHWA/IDOT.

3. Q: Does Iowa limit the process in any way by the estimated construction cost, or is it just the cost of the \$150,000 threshold is with respect to the cost of the consultant services?

A: No, in regards to limiting construction costs. We allow LPAs to use typical for percentages to estimate consultant costs. Those are based on the estimate of construction cost. It is the estimate of the consultant cost that determines whether they can use the abbreviated process.

4. Q: A follow-up to that, do some local agencies do some of their own work and then only use consultants for other parts to keep below the limit?

A: Yes. Some local governments do that. That is allowed as long as they are clear and terms of their proposed scope of work that they want to hire a consultant for. They make it clear that they are

only hiring for the design services, and the local government can provide the construction and inspection.

5. Q: What are your procedures or processes in place and how do you prequalify the consultants?

A: We have a whole section in our DOT Office of Design that is in charge of the prequalification process. For each category a firm wishes to be prequalified for, the firm must provide a statement of qualifications that addresses their past project experience, staffing, and other considerations. Details of the DOT's policies on prequalification are available at <http://www.prof-tech-consultant.dot.state.ia.us/outsourcing/outsourcing.htm>.

6. Q: What are the suggested steps for projects that have tight schedules?

A: Use of the abbreviated process is the best solution when using Federal-aid for consultant services. If even the abbreviated process would take too long, the LPA may choose to forego Federal-aid participation in their consultant costs. In this case, they may select a consultant without DOT review or approval

7. Q: Are you willing to share future standardized contract forms on your website when that is developed? Do you have a time frame for when that might happen?

A: Yes. The current sample contract is available as Appendix D to our I.M. 3.305 as noted as a url below. This I.M. is currently being revised, and in the next update, use of the sample contract will be required. http://www.iowadot.gov/local_systems/publications/im/3305d.pdf.

8. Q: Does the LPA draft a state estimate for the contract to make it federal aid eligible, or does the state have to do a independent estimate (According to Federal Regs, a "State Estimate" is required prior to negotiations.)

A: The LPA prepares the initial estimate, the state does a reasonableness check. If the office is looking at an estimate and say it sure doesn't look like it fits within what we know about the project. They may send it to our folks and the consultant administration section. We also have the folks in the pre-audit section in the Office of Finance that can help by looking at the reasonableness of the hourly rates and so forth used to determine if the estimate is being provided in the ballpark.

9. Q: Is one consultant allowed to be doing PE and CE in Iowa? Is that one contract or are they separate contracts ?

A: One consultant may provide both PE and CE service, even using a single contract. Of course we need to make sure that there is a local government person that's able to give adequate oversight to the consultant.

10. Q: Is the \$150,000 threshold applied individually to the PE and CE part of contracts?

A: It's for the combination of both PE and CE when they are included in one contract. If PE and CE are separate contracts, then the limit is independent.

11. Q: As costs come in and you see the \$150,000 threshold is exceeded, what are your options to cover the extra costs?

Supplemental agreement, re-advertise a new contract scope, etc.?

A: If we find the \$150,000 threshold has been exceeded, We would review on a case-by-case basis, but in general, any supplemental agreement that exceeds the threshold would be non-participating. If it appears the LPA was not making a good faith effort to follow the abbreviated process, Federal participation in the entire contract could be forfeited. Cancelling the contract and starting over with the full qualifications based process might be an option, but the specifics of the situation would need to be considered first.

Additional Questions not answered during the webinar:

12. Q: Can locals use the GSA (US General Service Administration)schedule ?

A: No. The GSA schedule is for use for Federal agency procurement, the FHWA Federal-aid program is a state administered program that does not allow the use of the GSA schedule.

13. Q: Does Iowa limit this process in any way by the estimated construction cost?

A: The primary consideration is the estimate cost of consultant services. However, if the estimated consultant services don't appear to be in line with the estimated construction cost, based on the typical percentages, we may require additional information from the LPA before allowing them to proceed with the abbreviated process

14. Q: How does a consultant obtain experience to achieve prequalification if the consultant needs to be prequalified to get the work?

A: Response to the RFP must show that they have the personnel and management capabilities to meet the qualifications identified in the RFP. A consultant is not required to be pre-qualified if their services will not be Federal-aid participating, and many local governments elect to use their Federal funds for construction only. In addition, consultants may also use work done on other transportation projects that had neither Federal nor state funding to establish their qualifications.

15. Q: What Payment method do you typically use for Construction Engineering & Inspection contracts (CE&I)? Labor hours or cost plus?

A: We encourage the use of a "standard hourly rate" type contract where the rate includes labor, overhead, and profit. Cost-plus fixed fee is also acceptable for construction services. Use of lump sum is discouraged since the duration of services during construction is often difficult to predict.

16. Q: At construction completion when a project file review is conducted, it has been found that proper documentation is lacking or missing etc. What does Iowa do when it finds the consultant has not followed the FHWA regs and rules? Do you penalize the Local Agency or the consultant?

A: Unfortunately, often the LPA suffers the consequences in terms of reduced Federal participation. We encourage LPAs to include provisions in their contract with the consultant for recovery of additional costs due to design errors or poor documentation.

17. Q: Regarding of conflicts of interest, some small communities may have a Consultant on board to represent the LPA. In this case, do you allow the Consultant representing the LPA perform either the PE or CE?

A: It depends on exactly what capacity the consultant is "representing" the LPA. If the consultant performs miscellaneous engineering services for the LPA via a separate on-call contract and is not involved in the selection process or serving in a program management role, this would not be a problem. If however, the consultant is acting in a program management role for the LPA, further review would be required to determine if they can provide PE or CE services for a specific project. Our procedures will be updated in the future to provide better guidance on conflicts of interest.

Oregon Q&A: Kim Rice and Mary Wandell: subject of the presentation was the Oregon two-tier procurement process for consultant services used by local agencies

1. Q: Does the LPA decide which consultants off your master list to send the mini-RFP to, or do they send it to all that are on the master list?

A: Our process is to send them to all of the firms that are selected, with price agreements.

2. Q: Is the ODOT two-tier process only for small purchases?

A: No, this process is a Qualification Based System (QBS) process. It is not limited to a small procurement threshold. Is similar to other on call agreements that are allowed under state law and Federal provisions.

3. Q: Are you using just a QBS process for selecting the consultants from the mini-RFP process?

A: Yes. QBS is used in the prequalification and price setting under the first tier. The second tier "mini-RFP" matches the needs with abilities of the firms.

4. Clarification on the last answer about the QBS. Do you use the QBS process for selecting the mini RFP?

A: For the original set we do the qualifications based on selections for a broad range of services that can be provided from basically cradle-to-grave. The preliminary engineering through construction engineering. When we are dealing with any solicitations we still require the selections be based on the standard types of QBS criteria that are allowed for under the state and federal rules and regulations, regarding experience and qualifications.

A: For the mini-RFP, it is really just experience with that type of project, they don't have to look at the qualifications to do all facets of the project necessarily. They don't have to look at the whole picture as far as their environmental experience and things like that. Especially if there is limited environmental work on the project. So it is much more streamlined. Typically there are two or three criteria we require them to look at. We try to limit the proposals to very short statements, we recommend one or two pages, sometimes the LPA will do more than that. It keeps it very streamlined that way.

5. Q: Are the consultant contracts limited to a percentage of construction estimate?

A: We don't use that method other than for determining a ballpark figure for cost. We do an individual breakdown cost analysis for each project. So the general ballpark issue would be in line with a typical

or standard 15% of the construction cost. Those are not hard numbers. It comes down to what is appropriate for the project you're working on.

6. Q: How much training on this process and selection is provided by ODOT to the LPA ?

A: Generally it is on a one-on-one basis, as a local public agency is working with a local agency liaison (state DOT person). We do have some classroom training we provide to ODOT staff that is also open to local public agency staff.

7. Q: How many different local agencies typically would use these consulting contracts in one year?

A: I don't know about in a given year, but there are 56 LPA that have projects in the state and each typically would use these price agreements.

Connecticut Q&A: Joe Scalise: topic of presentation is the CTDOT Local Federal-aid Bridge Program use of consultant oversight process and

1. Q: What is the oversight for the CLE by the CTDOT?

A: We (Connecticut DOT) are ultimately the contract manager and any oversight that is provided is for the federal-aid program. The LPAs are not involved in oversight of the CLEs, the oversight of the CLE comes from the department since the CLE is an extension of the state DOT staff. It is our CTDOT managers that ultimately sign any documents, whether it is advice we are giving in advancement of the design or whether it is a structural review coming from the CLE's, they go through our state DOT office. The CLEs provide technical review and guidance for the local agencies (either the agency personnel or hired consultants) for any design projects. Checking that the design is advances within state and federal guidelines. We utilize them much like department staff in assisting towns, advancing the project to the design.

2. Q: Is the CLE program flexible enough to be used for emergency bridge repairs?

A: Yes. The CLEs are effectively CTDOT staff reviewers and technical assistance for local agency bridge projects. If an eligible bridge is damaged, we can use the CLEs to review applications and designs. I cannot utilize the CLE to provide the design services on an emergency basis but having them on staff helps because I can immediately review an application for a structure that maybe literally closed overnight, but still the CLE only provides the an on call service to the department for the federal and local bridge program.

3. Q: What is the maximum length and cost of your CLE contracts?

A: We use three year durations, with the possibility of two, one-year extensions. Effectively, we utilize the QBS process for solicitations for CLEs every five years. Typically, we see six or seven interested consultant liaison engineering firms for each solicitation. The CTDOT solicits to cover the services of federal bridge program and the state list bridge program in one contract.

4. Q: Does the reimbursement come from the LPA budget? Or does it come from the state budget?

A: No, nothing for the CLEs comes from local funds. The state pays for the CLEs and is reimbursed by the Federal-aid bridge program at a rate of 80%. The project designs are prepared by separate consultant firms that are not CLEs.

5. Q: Do the CLE's do detailed checks of the plans or is it just cursory review for paperwork?

A: They do detailed structural reviews. They do detailed environmental reviews. They also do hydraulic engineering reviews, one of the biggest tasks it seems more and more and probably the largest time-consuming reviews since preliminary engineering is now filled with hydraulic analyses. This also carries over into environmental permitting. One of the applications we see is flood management certification permitting processing.

6. Q: Follow-up to some of the differences, do you have CLE's for use in your state DOT program or is this just for local agencies?

A: We use consultant liaison engineering in the state program as well. A little different because they provide a little more than mere management reviews and advice. They actually do a preliminary engineering reports within the state bridge program as opposed to the federal local bridge program where the QBS selected engineer for the town provides all of the preliminary engineering, engineering design, permitting.

7. Q: How difficult would it be to upscale the use of CLE's from 40 projects per year in Connecticut, to a larger goal - a larger agency program.

A: I think that's the biggest advantage. It only takes authorization by FHWA to approve what would be a larger contract value, but the basis is in place to have as many CLEs as needed to keep reviews within appropriate timing. If we saw an extreme spike in the need for deck replacements, a manager could double the applications that were currently seeing by hiring more engineers. The CLE would support that additional staff not the state as long as there was funding available for those contracts. I doubt that we will ever need to downscale, but we could manage the spikes and declines outside of your state employees by using the CLE's

8. Q: What is the real advantage for the local agencies?. Does this speed up the process for them?

A: I believe it does. The review process is consistent since we have CLEs available for on call reviewing.

9. Q: Do you see opportunity for advancing the concept further?

A: What I am looking into currently, to take the town administrators out of the operation for the design phase. Possibly having a program that allows the towns to turn a bridge over to the state of Connecticut during that design phase. The advantage would be that a local agency with a very small public works staff could avoid having to solicit for engineering and administrative project work. The local agency would

only have to provide the 20% match for the design phase, then turn it back to the local agency to advertise and administer construction.