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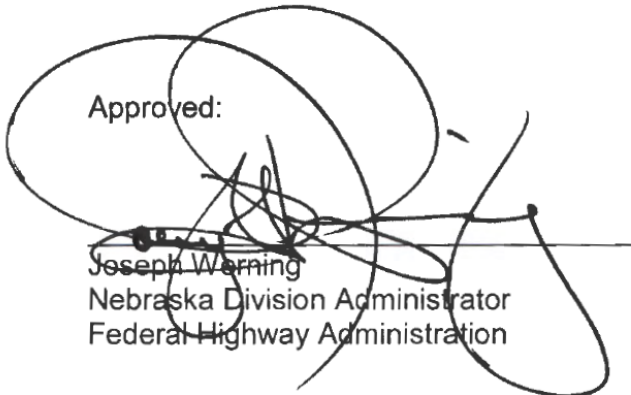
**Federal Highway
Administration**



Nebraska Department of Roads Policies and Procedures for the Procurement of Professional Services

January, 2016

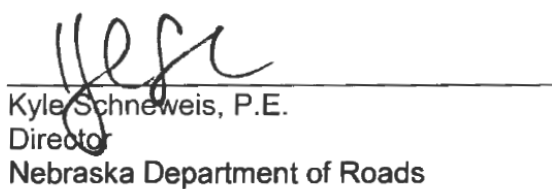
Approved:



Joseph Warning
Nebraska Division Administrator
Federal Highway Administration

Date: 2/22/2016

Approved:



Kyle Schneeweis, P.E.
Director
Nebraska Department of Roads

Date: 1/25/16

Table of Contents

INTRODUCTION	1
CHAPTER 1 – CONSULTANT SERVICES	3
1.1 – Determination of Need for Outside Services	3
1.2 – Applicable State and Federal Laws and Regulations.....	4
1.3 – Consultant Certification	6
1.3.1 – General Certification	6
1.3.2 – National Environmental Policy Act (NEPA) Studies Certification	7
1.3.3 – Wetland Delineation Qualifications.....	8
1.4 – Methods of Procurement.....	8
1.5 – Disadvantaged Business Enterprise (DBE) Consideration	9
CHAPTER 2 – LARGE PURCHASE PROCUREMENT PROCEDURES	11
2.1 – Selection Committee Members.....	11
2.2 – Administrative Approval	11
2.3 – Developing the Request for Proposal (RFP).....	12
2.3.1 – Scope of Services (SOS)	12
2.3.2 – Selection Criteria.....	12
2.3.3 – Federal Highway Administration Coordination.....	12
2.3.4 – Contents of RFP	12
2.3.5 – RFP Review	14
2.4 – Solicitation	14
2.4.1 – Newspaper Advertisement Procedures.....	14
2.4.2 – Internet Advertisement Procedures.....	15
2.4.3 – RFP Inquiries.....	15
2.4.4 – Inadequate Responses	15
2.5 – Analysis and Selection.....	16
2.5.1 – Evaluation of Consultant Proposals	16
2.5.2 – Interviews and Final Ranking.....	16

Table of Contents

January 2016

2.5.3 – Debriefings	18
2.5.4 – Consultant RFP Folder	18
CHAPTER 3 – SMALL PURCHASE PROCUREMENT PROCEDURES	19
3.1 – NDOR’s Selection Representative	19
3.2 – Administrative Approval	19
3.3 – Developing the Request for Proposal (RFP).....	20
3.3.1 – Scope of Services (SOS)	20
3.3.2 – Selection Criteria.....	20
3.3.3 – Federal Highway Administration Coordination.....	20
3.3.4 – Contents of RFP	20
3.3.5 – RFP Review	20
3.4 – Solicitation	20
3.5 – Analysis and Selection.....	20
3.5.1 – Receipt and Evaluation of Consultant Proposals	20
3.5.2 – Debriefings	21
3.5.3 – Consultant RFP Folder	21
CHAPTER 4 – NON-COMPETITIVE PROCUREMENT PROCEDURES	22
4.1 – Definitions and Application (Sole Source, Emergency, and Inadequate Competition).....	22
4.2 – Justification and Approval of Non-Competitive Procurement.....	22
4.3 – Contracting Services.....	22
CHAPTER 5 – INDEFINITE DELIVERY//INDEFINITE QUANTITY PROCUREMENT PROCEDURES FOR ON-CALL SERVICES	24
5.1 – Procurement Procedures	24
5.2 – Multiple Award Preference.....	24
5.3 – Selection Process for Task Orders	25
CHAPTER 6 – SCOPING AND NEGOTIATING	26
6.1 – Detailed Scope of Services and Scoping Meeting	26
6.2 – Detailed Work Plan Matrix.....	26

6.3 – NDOR’s Independent Cost Estimate (ICE)	27
6.4 – Consultant’s Fee Proposal.....	28
6.5 – Negotiation and Scoping/Negotiations Folder	29
CHAPTER 7 – AGREEMENTS.....	31
7.1 – Professional Services Agreements	31
7.1.1 – Master Agreements and Task Orders	31
7.2 – Notice-to-Proceed (NTP)	32
7.2.1 – Early NTP’s	32
7.3 – Supplemental Agreements.....	32
7.4 – Consultant Work Order Form.....	34
7.4.1 – Consultant Work Order Process	34
7.5 – Agreements Folder	35
CHAPTER 8 – PAYMENT METHODS.....	36
8.1 – Lump Sum (LS)	36
8.2 – Cost Plus Fixed Fee (CPFF)	37
8.3 – Specific Rates of Compensation (SRC)	37
CHAPTER 9 – INVOICES, PROGRESS REPORTS, & COST BREAKDOWN FORM	38
9.1 – Invoice Packages.....	38
9.1.1 – Components of an Invoice.....	38
9.1.2 – Progress Reports	39
9.1.3 – Cost Breakdown Form	39
9.2 – Invoice Reviews	39
CHAPTER 10 – ADMINISTRATION OF THE AGREEMENT.....	41
10.1 – PC Roles and Responsibilities	41
10.2 – Insurance	41
10.3 – Agreement Provisions.....	42
10.4 – Errors and Omissions	42

Table of Contents

January 2016

10.5 – Ethics in Contracting.....	42
10.6 – Use and/or Release of Privileged or Confidential Information	43
10.7 – Suspension, Abandonment, or Termination.....	44
10.8 – Consultant Evaluations	44
10.9 – Change in Consultant’s Project Team.....	46
10.10 – Shifting Effort/Costs within Agreements	46
10.11 – Retention of Documents	47
CHAPTER 11 – AUDIT REVIEW SERVICES AND AGREEMENT CLOSE-OUT PROCESS ...	48
11.1 – General.....	48
11.2 – Pre-Award Audit Review	48
11.3 – Overhead (Indirect Cost) Rate	50
11.4 – Facilities Capital Cost of Money (FCCM).....	50
11.5 – Agreement Close-Out Process and Final Cost Audit Review.....	51
11.5.1 – Notification of Completion – Pre-letting Professional Services (DR Form 39)	51
11.5.2 – Final Cost Audit Review	52
CHAPTER 12 – DISPUTE RESOLUTION	53
CHAPTER 13 – CONFLICT OF INTEREST	56
13.1 – Purpose	56
13.2 – Consultant Responsibility.....	56
13.3 – NDOR Responsibility.....	56
13.4 – Organizational Conflicts of Interest Which May Exist.....	57
APPENDIX A – ACRONYMS	60
APPENDIX B – DEFINITIONS.....	61

INTRODUCTION

The Nebraska Department of Roads (NDOR) has prepared this manual to establish procedures for the procurement of professional services such as architectural, engineering, landscape architecture, or surveying services to be performed by a Consultant. These Policies and Procedures have been approved by FHWA to be used on Federal-aid projects. Therefore, deviations from these Policies and Procedures must be approved by FHWA.

The Nebraska Local Guidelines Manual for Federal-aid Projects provides guidance for the procurement of professional services conducted for Federal-aid projects on the local system.

For the purpose of this manual the term “Consultant” refers to the primary firm, person or organization selected by NDOR for a particular project or service. The term “subconsultant” refers to any ancillary firm, person, or organization that is contracting with the Consultant to work on a particular service.

The term “Professional Services” includes not only consultation, advice and expert testimony, but also the furnishing of extensive and diversified services. These professionals draw upon the combined talents of designers, technical analysts, specification writers, technicians, inspectors, surveyors and other experienced staff, utilizing the expertise of practitioners and specialists in many fields.

The consultant procurement process is administered and managed by the Consultant Services Section in the Planning and Project Development Division of NDOR. The term “Agreements Engineer” includes the following Consultant Services Section staff: Consultant Services Engineer, Agreements Engineer, Assistant Agreements Engineer, and Highway Agreements Specialist.

To assist in the procurement process, a variety of professional and support services have been identified by NDOR as Standard Work Categories. A list and description of these Standard Work Categories may be found at <http://www.transportation.nebraska.gov/rfp>. If the services procured are not covered by a Standard Work Category, a more detailed description will be provided in the Request for Proposal (RFP).

The Standard Work Categories include:

- 100. Corridor Studies
- 101. Environmental Studies
 - A. NEPA Studies
 - B. Other Environmental Studies
- 102. Transportation Planning
- 103. Traffic Operation Studies
- 104. Traffic Operation Design
- 105. Highway Design-Major
 - A. Rural
 - B. Urban
- 106. Highway Design - Minor
 - A. Rural
 - B. Urban

- 107. Bridge Design
 - A. Major
 - B. Minor
- 108. Railroad Design
- 109. Construction Inspection
 - A. Bridge
 - B. Roadway
 - C. Traffic Control Devices
 - D. Railroad Construction and Improvement Projects
- 110. Building Design and Inspection
- 111. Electrical and Mechanical Design
- 112. Railroad Planning
- 113. Intelligent Transportation Systems (ITS)

B. Support Services

- 200. Aerial Photography
- 201. Aerial Photogrammetry
- 202. Engineering Surveying
- 203. Geodetic Surveying
- 204. Land Surveying
- 205. Materials Testing
- 206. Bituminous Design
 - A. Surfacing
 - B. Resurfacing
- 207. Geological Studies
- 208. Bridge Structural Analysis
- 209. Hydraulic and Hydrologic Studies
- 210. Right of Way Design
- 211. Public Involvement
- 212. Value Engineering

NDOR staff and Consultants should become familiar with this manual in order to minimize unexpected issues from arising during the procurement and delivery of services which may cause a delay in negotiations, contracting, supplemental agreements, payments, etc.

CHAPTER 1 – CONSULTANT SERVICES

1.1 – Determination of Need for Outside Services

The Nebraska Department of Roads (NDOR) may supplement its staff by hiring a Consultant to provide professional services. In order for the Consultant to be eligible to respond to NDOR's Request for Proposals (RFP), the Consultant must first be certified by NDOR to perform the Scope of Services requested. The Consultant certification process is outlined in more detail in Section 1.3.

Professional services are generally retained when:

1. A project requires an aggressive schedule which NDOR staff are unable to meet,
2. The work program for an NDOR division is larger than its current staff can accommodate, or
3. The unusual character of a project requires specialized knowledge, expertise or experience.

Professional services may also be used to obtain:

1. An opinion, advice or skill which is needed temporarily and which is not available within the agency or from another state agency.
2. Outside expertise to provide a broader perspective or objective opinion on critical or sensitive issues.
3. Benefits of specialized developments in industry, university, or foundation research.
4. A deliverable that is an individually tailored application of a product already developed by an outside firm and is available more economically and expeditiously than a comparable product developed in-house.
5. Performance of one-time tasks or activities of limited duration.

Each Division Engineer/Manager is responsible for determining when outside services are needed to accomplish their work objectives. This is determined by analyzing current staff assignments compared with future work that needs to be accomplished or identifying the need of specialized expertise. The Division Engineer/Manager will contact the Agreements Engineer to begin the procurement process or to select a Consultant from the on-call services list (described in more detail in Chapter 5). They will assign a Project Coordinator (PC) who will be responsible for the project. Division staff managing professional services must be knowledgeable of the policies and procedures in this manual.

If there are other divisions involved in the projects, the Agreements Engineer will contact them to inquire if supporting services will be provided by Consultant or performed by NDOR staff. For example: If Roadway Design has determined that a project is to be designed by a Consultant, other divisions such as Bridge, Right-of-Way, and Planning and Project Development will be contacted to see if those services are to be provided by NDOR staff or the Consultant.

All procurement of and contracting for professional service for NDOR are administered by the Consultant Services Section in the Planning and Project Development Division. Once the procurement and contracting phases have been completed, the services are managed by the division to which the project/task is assigned.

1.2 – Applicable State and Federal Laws and Regulations

Those involved in the procurement of Consultants shall be familiar with the following regulations governing Consultant selection and administration. Please note that these regulations may be revised, added or deleted as mandated by the Nebraska State Legislature or the Federal Highway Administration.

- [Neb Rev. Stat. 81-1701 to 81-1721](#) – Nebraska Consultant’s Competitive Negotiation Act provides managerial control over competitive negotiations by the State for acquisition of professional architectural, engineering, landscape architecture, or land surveying services.
- Nebraska Administrative Code [Title 413 Chapter 1](#) provides procedures for the selection of Consultants to perform professional services for the Nebraska Department of Roads.
- [23 U.S.C. 112](#), Letting of Contracts – This regulation consists of sections relative to bidding requirements and contracting for engineering and design services.
- [40 U.S.C. 1101-1104](#), Selection of Architects & Engineers “The Brooks Act” – This policy of the Federal Government requires publicly announcing all requirements for architectural and engineering services and negotiating contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.
- [23 CFR 1.9](#), Limitation on Federal Participation – Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State law, the regulations in this title, and policies and procedures prescribed by the Federal Highway Administrator. Federal funds shall not be paid on account of any cost incurred prior to authorization by the Federal Highway Administrator to the State highway department to proceed with the project or portion thereof involving such cost.

Participation of Federal-aid funds may be approved if certain conditions are met with detailed descriptions of relevant circumstances, facts and explanations given as to incurring the costs in question.

- [23 CFR 1.11](#), Engineering Services – This regulation stipulates that the costs of various engineering services performed by the State highway department or other governmental well-qualified engineering organizations may be eligible for Federal participation under certain conditions.

In addition, the State highway department may utilize services of well-qualified engineering organizations of the affected railroad companies for railway-highway crossing projects and of the affected utility companies for projects involving utility installation.

The State highway department is not relieved of its responsibilities if services of engineering organizations referred to in the above paragraphs are utilized.

- [23 CFR 1.33](#), Conflict of Interest – No official or employee of a State highway department who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in such contract or subcontract.

No person performing services for a State highway department in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State highway department, in any contract or subcontract in connection with such project.

No officer or employee of such person retained by a State highway department shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department, and such officer, employee or person has not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.

[23 CFR 172](#), Procurement, Management, and Administration of Engineering and Design Related Services: This prescribes the requirements for the procurement, management, and administration of engineering and design related services under 23 U.S.C. 112 and as supplemented by the Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards guidance (as specified in [2 CFR 200](#)). It also is relevant to ensure that a qualified consultant is obtained through an equitable qualifications-based selection procurement process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost. Recipients of Federal funds shall ensure that sub-recipients comply with the requirements of 23 CFR 172.

Other guidance supplementing Federal laws and regulations related to the procurement, management, and administration of engineering and design related services using Federal-aid highway program (FAHP) funding can also be found at [23 CFR 172](#).

- [48 CFR 16](#), Types of Contracts – This describes types of contracts that may be used in acquisitions. It prescribes policies and procedures and provides guidance for selecting a contract type appropriate to the circumstances of the acquisition.
- [48 CFR 31](#), Cost Principles and Procedures – This contains cost principles and procedures for (a) the pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed and (b) the determination, negotiation, or allowance of costs when required by a contract clause.
- [2 CFR 200](#), Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards (“common grant rule”) Costs and Agreements – This regulation establishes uniform administrative requirements, cost principles and audit requirements for Federal awards to non-Federal entities. The requirements of the common grant rule shall apply except where inconsistent with the requirements of 23 CFR 172 and other laws and regulations applicable to the Federal-aid highway program (FAHP). This regulation consists of six subparts as follows:

Subpart A - Acronyms and Definitions.

Subpart B - General Provisions.

Subpart C - Pre-Federal Award Requirements and Contents of Federal Awards.

Subpart D - Post Federal Award Requirements.

- Standards for Financial and Program Management
- Property Standards
- Procurement Standards
- Performance and Financial Monitoring and Reporting
- Subrecipient Monitoring and Management
- Record Retention and Access
- Remedies for noncompliance
- Closeout
- Post-Closeout Adjustments and Continuing Responsibilities
- Collection of Amounts Due

Subpart E- Cost Principles

- General Provisions
- Basic Considerations
- Direct and Indirect (F&A) Costs
- Special Consideration for States, Local Government and Indian Tribes
- Special Consideration for Institutions of Higher Education
- General Provisions for Selected Items of Cost

Subpart F- Audit Requirements

- General
- Audits
- Auditees
- Federal Agencies
- Auditors
- Management Decisions

1.3 – Consultant Certification

1.3.1 – General Certification

In order for a Consultant to be considered by NDOR to perform professional services, they must first be certified by the agency as qualified to perform such services. In order for a Consultant to be certified, they must complete and submit the DR Form 497, "Architect, Engineer & Related Services Annual Certification Form." This form may be obtained via NDOR's website at <http://www.transportation.nebraska.gov/rfp>. The Agreements Engineer will determine the Consultant's eligibility for certification and provide written notification when the DR Form 497 has been reviewed and accepted. Additional information may be requested to clarify Consultant's submittal. If it is determined that the Consultant does not have the appropriate staff or experience in certain work categories, the certification will not be accepted and written notification with justification will be provided to the Consultant. The list of certified Consultants and submittal instructions, respectively, is located at:

<http://www.transportation.nebraska.gov/rfp/downloads/pdf/cert-consult.pdf>

<http://www.transportation.nebraska.gov/rfp/downloads/pdf/cert-instruc-annual-certification.pdf>

Certification is renewed annually and expires every June 30th. Consultants who apply for certification during the “open” period between April 1st and May 31st and are accepted, will be included in the Certified Consultants List on NDOR’s website. Consultants who submit DR Form 497 after May 31st may not be included in the list.

Consultants not currently certified may submit their DR Form 497 for general certification at any time during the year to become certified. If accepted, these certifications will be valid through the current certification period. The certification process for NEPA Studies is different (see Section 1.3.2 below). Consultants adding to or subtracting from their work force that changes their ability to provide services for specific work categories must submit a revised DR Form 497.

In addition to information identifying the submitting Consultant, including staff by discipline, Consultants also must indicate on the DR Form 497 the type of work they are qualified to perform as described in the Standard Work Categories. A copy of the latest version of the Standard Work Categories may be obtained via NDOR’s website at:

<http://www.transportation.nebraska.gov/rfp>.

The Consultant shall indicate whether this form is being submitted on behalf of a parent firm or a branch office. The branch office submissions must list only staff in, and experience of, that office. The number of staff in other offices may be provided to complement the submittal.

Completed DR Forms 497 may be submitted electronically or by postal service:

DOR.PDAnnualCertification@nebraska.gov

Nebraska Department of Roads
Attention: Information Processing Center
P.O. Box 94759
Lincoln, NE 68509-4759

1.3.2 – National Environmental Policy Act (NEPA) Studies Certification

Consultants that desire certification for Standard Work Category 101A to prepare Categorical Exclusions, Environmental Assessments, and/or Environmental Impact Statements (NEPA Studies) for NDOR must provide additional information to become certified. The Consultant must demonstrate qualified education and experience by the Project Manager, Principle NEPA Author and Key Staff. The list of certified NEPA Consultants and submittal instructions, respectively, are located at:

<http://www.transportation.nebraska.gov/rfp/downloads/pdf/cert-list-NEPA.pdf>

<http://www.transportation.nebraska.gov/rfp/downloads/pdf/cert-instruc-NEPA-studies.pdf>

Certification for Standard Work Category 101A is only considered annually between April 1st and May 31st.

1.3.3 – Wetland Delineation Qualifications

Wetland delineations and evaluations must meet Executive Order 11990 – *Protection of Wetlands*, as well as Sections 404 and 401 of the Clean Water Act. As such, wetland and stream impact data must be collected and evaluated by a Wetland “Qualified Scientist”. The necessary qualifications include: 1) Bachelor’s Degree in Biology, Botany, Soils, Ecology, Landscape Architecture, or related natural resource field and 2) Completion of a 40-hour basic Wetland delineation training course, focused on application of the 1987 Corps of Engineers Wetland Delineation Manual *Technical Report Y-87-1, Corps of Engineers Wetlands Delineation Manual* (1987 Manual). The list of approved wetland delineation Consultants and submittal instructions, respectively, can be found at:

<http://www.transportation.nebraska.gov/gov-aff/pdfs-docs/consultants/app-wetland-del-consult-list.pdf>

<http://www.transportation.nebraska.gov/gov-aff/pdfs-docs/environmental/wetlands/qualified-scientist-qualification-requirements.pdf>

Consultant’s employees may submit qualifications for wetland delineation services at any time.

1.4 – Methods of Procurement

As required by State and Federal laws and regulations, NDOR uses a Qualifications-Based Selection (QBS) process to select Consultants to provide professional services at a fair and reasonable price. The objective is to select a qualified Consultant for the proposed services in a manner providing full and open competition. In a QBS process, price cannot be a selection factor; a bidding process for professional services is prohibited.

The selection of Consultants to perform right-of-way appraisal, negotiation, and relocation activities is not subject to the requirements of a QBS process.

NDOR uses one of the three following procedures for procuring professional services.

1. Large Purchase (Competitive Negotiation)
2. Small Purchase, or
3. Non-Competitive (Sole Source, Emergency, and Inadequate Competition)

The Large Purchase Procurement procedures must be used for projects where professional services for all phases of the project from conception through construction are anticipated to exceed \$60,000 or if a project’s basic construction cost is estimated to be more than \$580,000. The State Department of Administrative Services maintains the dollar value of these thresholds, and may adjust the dollar values every four years beginning January 1, 2002, to account for inflationary and market changes in accordance with Neb. Rev. Stat § 81-1712(1). Accumulation of all costs associated with the project is independent of the funding source.

The Small Purchase Procurement procedures may be used for projects where professional services from all phases of the project from conception through construction engineering and inspection are anticipated to be less than \$60,000 and the project’s basic construction cost for the project is estimated to be less than \$580,000. Both requirements must be met. In this case,

NDOR may follow either the large or small procurement procedures. Small Purchase Procurement procedures are an abbreviated version of the Large Purchase Procurement procedures. The criteria used to determine which procurement procedure to follow is summarized in the table below:

Professional Services Procurement Procedures

Procurement Procedure	Federal and/or State Funds for Professional Services:	Cost Thresholds	
		Professional Services	Project Construction
Large	Yes	≥\$60,000	or ≥\$580,000
Small ^{1,2}	Yes	< \$60,000	and <\$580,000

¹If an estimate is close to the threshold (\$60,000 or \$580,000), it is recommended that NDOR use the Large Purchase Procurement procedures since supplemental agreements or change orders may result in costs exceeding the threshold which may jeopardize Federal and/or State funding.

²The contract cannot be separated into smaller contracts merely to permit the use of the Small Purchase Procurement procedures.

Chapter 2 and Chapter 3 describe State and Federal procedures for the procurement of professional services for Large Purchase, Small Purchase, and Non-competitive.

1.5 – Disadvantaged Business Enterprise (DBE) Consideration

NDOR will give consideration to DBE consultants in the procurement of engineering and design related service agreements subject to [23 USC 112\(b\)\(2\)](#) in accordance with [49 CFR 26](#).

NDOR will do this in the following manner:

- Assure that full consideration is given to the use of prequalified, certified DBEs as prime or subconsultants and that a good faith effort is made in meeting a DBE involvement goal.
- Assure that the consultants considered are furnished with the names of prequalified, certified DBE consulting firms that could be involved as subconsultants.
- As appropriate, include DBE Participation goals in consultant procurement solicitations and contracts using federal-aid highway funds, requiring that the prime consultant either achieve those goals or demonstrate a good faith effort to do so.
- The Contracts and Agreements Engineer will work with the Disadvantaged Business Manager to establish DBE goals for each solicitation using federal-aid highway funds.
- Each signed agreement with a consultant (and each subcontract with other subconsultants) must include the following assurance: The Consultant and subconsultant shall not discriminate on the basis of race, color, national origin, or sex, age or disability in the performance of this contract.
- NDOR certifies DBE consultants.

- NDOR manages a list of all consultants that respond to RFP's and identifies those that are certified as DBE's.
- NDOR shall not discriminate on the basis of race, color, national origin, sex, age or disability in the award and performance of any NDOR-assisted contract or in the administration of its DBE Program or the requirements of [49 CFR 26](#).

NDOR's DBE Program is documented at the following link:

<http://www.transportation.nebraska.gov/letting/DBE/DBE%20Program.pdf>

CHAPTER 2 – LARGE PURCHASE PROCUREMENT PROCEDURES

The Large Purchase Procurement procedures must be used for projects where professional services for all phases of the project from conception through construction engineering and inspection are anticipated to exceed \$60,000 or if a project's basic construction cost is estimated to be more than \$580,000. Examples of different phases on a project may include, but are not limited to, feasibility studies, planning, preliminary design, survey, environmental services, final design, and construction engineering and inspection. Accumulation of all costs associated with the project is independent of the funding source. The State Department of Administrative Services maintains the dollar value of these thresholds, and may adjust the dollar values every four years, beginning January 1, 2002, to account for inflationary and market changes in accordance with Neb. Rev. Stat § 81-1712(1).

Activities included in the procurement of services for a Large Purchase Procurement include the following activities:

- Identifying the Selection Committee Members
- Requesting administrative approval
- Developing the Request for Proposals (RFP)
- Carrying out the solicitation process
- Analyzing and selecting Consultant(s)

2.1 – Selection Committee Members

The Selection Committee consists of the following:

- Deputy State Engineer, or their designated representative
- Division Head or District Engineer for which services are being procured, or their designated representative
- Agreements Engineer, or their designated representative and
- Two (2) members-at-large as designated by the Director.

2.2 – Administrative Approval

The Agreements Engineer will submit a memorandum to the Director, through the Planning and Project Development Division Engineer and Deputy Director, requesting approval of the following:

- Projects or services to be advertised
- Selection Committee members
- The proposed procurement schedule

Once approval of the above is obtained, the Agreements Engineer, with assistance from involved divisions, shall complete the procurement process as described in this chapter.

2.3 – Developing the Request for Proposal (RFP)

2.3.1 – Scope of Services (SOS)

The Agreements Engineer will coordinate with the Project Coordinator (PC) to develop a Scope of Services (SOS). The SOS will provide: a description of the project, project limits, extent of the study area; services to be provided, deliverables to be provided, estimated schedule for the performance of the services, and applicable standards, specifications, and policies.

The Agreements Engineer will contact other divisions that will provide support services included in the project (e.g., Roadway Design, Bridge Design, Right-of-Way Design, Environmental Studies) to determine if these services will be provided by NDOR or Consultant. The Agreements Engineer will coordinate with these divisions to develop a SOS for the RFP and, if needed will coordinate SOS reviews with the Legal Counsel and Federal Highway Administration (FHWA).

2.3.2 – Selection Criteria

The Agreements Engineer will contact the PC to determine the appropriate selection criteria for the project or service. The Agreements Engineer will provide the PC with an example set of selection criteria used on past similar projects. The PC has the option to modify the criteria to fit their specific project needs. See Section 2.5.2 for more details regarding selection criteria.

2.3.3 – Federal Highway Administration Coordination

Prior to the procurement of professional services, NDOR will notify FHWA, in accordance with the current Stewardship and Oversight Agreement, when the project has been identified as a Project of Division Interest (PoDI) or when the project is a federal major project (23 U.S.C. 106(h)).

2.3.4 – Contents of RFP

The RFP shall provide all information and requirements necessary for interested consultants to provide a response to the RFP and compete for the solicited services. The RFP must include the following items:

1. Provide a clear, accurate, and detailed description of the scope of services, technical requirements, and qualifications of consultants necessary for the services to be provided. An explanation of the contents of the SOS is described in Section 2.3.1.
2. 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.
3. Selection criteria, including their relative weight of importance, that will be used to evaluate the responding Consultants for short-listing and final selection. Criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services 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, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance. The following non-qualifications based evaluation criteria are permitted as described below, but cannot exceed 10% of the total evaluation criteria:

- a. A local presence where it will add value to the quality and efficiency of the project.
 - b. Disadvantaged Business (DBE) participation where appropriate and in accordance with Section 1.5 of this document.
4. The method of payment(s) anticipated to be used.
 5. Submittal and selection protocol including: proposal page limits, software/hardware requirements, deadline & address for submittal, contact for questions, schedule for the review of the proposals, duration and method of interview, notification procedure, and any other special provisions and relevant details.
 6. Professional licenses (engineer, architect, and surveyor), NDOR specialist certifications (NEPA and wetlands).
 7. Provide a copy of the template agreement which outlines contract requirements.
 8. For Indefinite Delivery/Indefinite Quantity (IDIQ) solicitations, the following additional information is required in accordance with 23 CFR 172.9(a)(3):
 - a. Specify the length of the contract period, including the number and period of any allowable contract extensions, which shall not exceed 5 years.
 - b. Specify a minimum and maximum total contract dollar amount that may be awarded under a contract.
 - c. If multiple consultants are to be selected:
 - (1) Identify the number of consultants that may be selected from the solicitation.
 - (2) Specify the procedures that will be used in competing and awarding Task Orders among the selected, qualified consultants. This selection will be based upon the following criteria:
 - Professional qualifications of the firm
 - Specialized experience and technical competence in the type of work required
 - Past performance of similar type of work
 - Capacity of firm to perform the work in a timely manner
 - Local presence to add value to the quality and efficiency of the project (nominal, no greater than 10%).
 - To fulfill the minimum guarantee
- NOTE:** For additional information regarding the IDIQ process, see Chapter 5.
9. A list of items required in the Consultant's response to the RFP, such as:
 - Letter of interest
 - Organization chart of the team, identifying the Project Manager and other key staff
 - Narrative approach to the project and project schedule
 - Experience on similar projects

Large Purchase Procurement Procedures – Chapter 2

January 2016

- DR Form 498 “Architect, Engineer & Related Service Detail Statement”. This form may be obtained via NDOR’s website at <http://www.transportation.nebraska.gov/rfp>.

Applicable past studies, location maps, or related information may be included with the RFP to help ensure the best responses from the Consultants.

2.3.5 – RFP Review

The Agreements Engineer will send a copy of the draft RFP and supporting documents to divisions involved in the project for review and comment. When the project has been identified as a Project of Division Interest (PoDI) or identified as a federal major project (23 U.S.C. 106(h)), the draft RFP shall also be sent to the appropriate FHWA representative for their review and comment.

Once necessary changes have been made, the final draft RFP may be sent to the affected divisions for one final review.

2.4 – Solicitation

2.4.1 – Newspaper Advertisement Procedures

Upon final approval of the RFP documents, the Agreements Engineer will prepare the RFP advertisement for publication along with the supporting documents for NDOR’s website.

The newspaper advertisement typically includes a list of the projects and services to be included in the RFP. The advertisement should also include the web address where consulting firms will find the details of the RFP and supporting documents.

An example of a newspaper RFP advertisement is as follows:

<p style="text-align:center">NEBRASKA DEPARTMENT OF ROADS REQUEST FOR PROFESSIONAL CONSULTING SERVICES SEPTEMBER 2015</p> <p>The Department plans to select consulting firms to provide professional services for the following projects:</p> <ol style="list-style-type: none">1. Grand Island West- Environmental Document and Roadway Design2. Wetlands Delineation, on-call services3. Merritt Reservoir State Recreation Area4. Bridge Design, on-call services <p>For more detailed information, please access the Department’s web page at: www.transportation.nebraska.gov/rfp/ or contact the Agreements Engineer at (402) 479-4778.</p> <p>EQUAL OPPORTUNITY EMPLOYER</p> <p>Director</p>

The Agreements Engineer shall send this advertisement to the newspapers with a request for publication. Generally, the advertisement will be placed in the Lincoln Journal Star for local coverage and in the Omaha Daily Record for statewide coverage. For national coverage, the Agreements Engineer will post the RFP on NDOR's website. Typically, the RFP is advertised in the newspapers for three consecutive Wednesdays. The submittal deadline for response to an RFP shall not be less than 14 calendar days from the date of issuance of the RFP (23 CFR 172.7(a)(1)(ii)(G)). The request for publication should be received by the newspaper(s) the Friday prior to the first Wednesday of the publication. At NDOR's discretion, Consultants may be notified directly of the RFP in an effort to obtain sufficient responses.

Written evidence of the newspaper advertisement shall be included in the Consultant RFP folder.

2.4.2 – Internet Advertisement Procedures

Simultaneously with the newspaper publications, the Agreements Engineer will submit the RFP and supporting documents to NDOR's Webmaster for posting on NDOR's website. Typically all documents are converted to PDF format, excluding any forms that the Consultants may submit electronically.

At the time of posting, all Consultants that are subscribed to the *GovDelivery*® service will be notified by email or text message. *GovDelivery*® is a free email or mobile service that enables website visitors to receive notifications on topics of interest, such as when NDOR posts RFPs. A link to subscribe to this service is available on NDOR's RFP website.

2.4.3 – RFP Inquiries

Consultants interested in providing the requested services may download the RFP and supporting documents from NDOR's website.

Consultants choosing to respond to the advertisement should direct inquiries to the contact listed in the RFP. If other NDOR staff is contacted, they shall refer the Consultant to the Agreements Engineer who shall discuss or give information of a general nature, so that each Consultant is guided in a uniform and fair manner with equal access to information and agency staff. The Agreements Engineer may direct inquiries to other NDOR staff as long as the information is disseminated in a uniform and fair manner.

If additional relevant information becomes available on the project that is necessary for the preparation of Consultant proposals, a revision will be made to the RFP. Revisions to the RFP may occur no later than one week prior to the RFP submittal deadline. The revised RFP will be posted on NDOR's website and anyone subscribed to the *GovDelivery*® service will be notified by email or text message.

2.4.4 – Inadequate Responses

In the event less than three (3) firms respond to an RFP, NDOR will determine if additional solicitation efforts can and should be made, or if the original advertisement was sufficient. Additional solicitation efforts may include re-advertising or extending the advertisement period to elicit more responses. NDOR must document, to the best of their knowledge, the lack of competition, and file in the Consultant RFP Folder. If it is determined that the responding

Consultants are qualified and there is no other interest in the project, NDOR may proceed with the final selection process. If only one Consultant responds and is selected, a justification memo must be prepared and approved as outlined in Chapter 4.

2.5 – Analysis and Selection

2.5.1 – Evaluation of Consultant Proposals

Upon receipt of the Consultant Proposals (Proposals) in response to an RFP, the Proposals will be date stamped, logged, and a receipt-of-proposal email will be sent to the Consultant. Proposals delivered after the deadline stated in the RFP will not be accepted and the Consultant will be notified accordingly.

The Agreements Engineer will organize the Proposals and deliver a package to each Selection Committee member. The package will include ranking forms, a copy of the final RFP and Proposals.

The Selection Committee will review and evaluate Proposals submitted in response to an RFP. The Proposals will be evaluated and scored using established Selection Criteria and ranking forms.

The RFP will identify the number of Consultants anticipated to be interviewed. When the number of Consultants responding exceeds this number, a short-list evaluation will be performed to reduce the number of Consultants to be considered for interviews. A minimum of three (3) short-listed Consultants will be further evaluated in the final selection process.

Selection Criteria to be considered in the short-list selections should be specific to the services requested and should include, but not be limited to, items such as:

- Professional qualifications necessary for satisfactory performance.
- Specialized experience and technical competence in the type of work required.
- Past performance on agreements with government agencies and private industry.
- The capacity to accomplish the work in the required time.
- Understanding of the project or services requested.
- Approach to the project or services requested.

Upon completing the evaluation of the Consultants' proposals, a short-list meeting may be conducted to discuss the final rankings. The selection committee members shall submit their ranking forms to the Agreements Engineer at the conclusion of the short-list meeting.

2.5.2 – Interviews and Final Ranking

Interviews will be scheduled with the short-listed 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 NDOR. 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 Agreements Engineer and conveyed to the short-listed Consultants.

A suggested format for the Consultant's presentation is:

1. Introduction of Selection Committee (5 minutes).
2. Presentation by Consultant (10-20 minutes).
3. Questions from the Selection Committee on the presentation or handouts (5-10 minutes).
4. Wrap-up (5-10 minutes).

Topics for Consultant interviews should address the evaluation factors and may include:

- Team members and organization
- Professional qualifications
- Past experience on comparable projects or related services
- Approach or innovative solutions to the services to be provided
- Example work sequence and schedules
- Projected office workload and staff availability

Following interviews with the short-listed Consultants, the Selection Committee will complete their Consultant Ranking Form for their final selection. The evaluation scoring may then be converted into established points with the first place firm receiving the greatest number of points. For example, the first place firm of three firms would receive 3 points, the second place firm 2 points and the third place firm 1 point. If more than three firms are short-listed, the Agreements Engineer will develop an appropriate point distribution. Documentation of the final scoring will be summarized by the Agreements Engineer and filed in the Consultant RFP folder.

Selection Criteria to be considered in the final selections should be specific to the services requested and should include, but not be limited to, items such as:

- Professional qualifications necessary for satisfactory performance
- Specialized experience and technical competence in the type of work required
- Past performance on agreements with government agencies and private industry
- The capacity to accomplish the work in the required time
- Understanding of the project or services requested
- Approach to the project or services requested
- Quality of the interview and responses to questions by the Selection Committee

The Selection Committee will submit to the Agreements Engineer the final ranking and scoring information along with additional information relative to the rankings. The Agreements Engineer will submit a summary of the final ranking with a memorandum to the Director, through the Planning and Project Development Division Engineer and Deputy Director, requesting approval of final selection(s); Upon receipt of approval, the Agreements Engineer will notify the selected Consultant(s). A listing of the final selections will be posted on NDOR's website shortly thereafter.

2.5.3 – Debriefings

After the Consultant(s) have been selected and notified, the other submitting Consultants may request a debriefing. Debriefings may be by telephone, email or in person. A consultant is entitled to justification when not selected for a project or service. Requests shall be made to the Agreements Engineer.

NDOR may provide information on how selected consultants met selection criteria. Information given must be factual and presented in a manner intended to help the Consultant improve future submissions.

The Agreements Engineer will be responsible for gathering information from the Selection Committee members regarding the selections. This information will be used to provide the Consultant with feedback supporting NDOR's selection.

2.5.4 – Consultant RFP Folder

The Agreements Engineer shall file all documentation pertaining to the Consultant RFP Selection process in a Consultant RFP folder. This folder will include, but not be limited to, the following applicable information:

- Posted RFP and supporting materials
- Proof of public advertisement
- Short-listed firms and interview schedule
- Final selections
- Selection Committee ranking forms and applicable notes
- Approval memos from the Director
- Proposals for short-listed and selected Consultants
- Consultant notifications

CHAPTER 3 – SMALL PURCHASE PROCUREMENT PROCEDURES

The Small Purchase Procurement procedures may be used for projects where professional services for all phases of the project from conception through construction are anticipated to be less than \$60,000 and the project's basic construction cost is estimated to be less than \$580,000. Both requirements must be met. Examples of different phases on a project may include, but not be limited to, feasibility studies, planning, preliminary design, environmental services, final design, and construction inspection. Accumulation of all costs associated with the project is independent of the funding source. The State Department of Administrative Services maintains the dollar value of these thresholds, and may adjust the dollar values every four years beginning January 1, 2002, to account for inflationary and market changes in accordance with Neb. Rev. Stat § 81-1712(1).

The Small Purchase Procurement procedures are similar to large purchase procurement procedures, except that a public notice of the RFP and interviews are not required and the selection may be made by an NDOR representative designated by the Deputy Director instead of a committee. While a public notice is not required, there are still solicitation requirements as outlined below. NDOR, at its discretion, may conduct interviews and select by a committee. These procedures are outlined in Chapter 2 – Large Purchase Procurement Procedures.

Activities included for a Small Purchase Procurement include:

- Identifying NDOR's designated representative
- Requesting administrative approval
- Developing the Request for Proposals (RFP)
- Carrying out the solicitation process
- Analyzing and Selecting Consultant(s)

This chapter will identify the differences between the Large Purchase Procurement Procedures and the Small Purchase Procurement Procedures.

3.1 – NDOR Selection Representative

As interviews are not required, the selection may be made by an NDOR representative designated by the Deputy Director instead of a committee.

3.2 – Administrative Approval

The Agreements Engineer will submit a memorandum to the Director, through the Planning and Project Development Division Engineer and Deputy Director, requesting approval of the following:

- Projects or services to be advertised
- NDOR Selection Representative
- Method of solicitation
- The proposed procurement schedule

Once approval of the above is obtained, the Agreements Engineer, with assistance from all involved divisions, shall complete the procurement process as described in this chapter.

3.3 – Developing the Request for Proposal (RFP)

3.3.1 – Scope of Services (SOS)

Refer to Section 2.3.1 of this manual.

3.3.2 – Selection Criteria

Refer to Section 2.3.2 of this manual.

3.3.3 – Federal Highway Administration Coordination

Refer to Section 2.3.3 of this manual.

3.3.4 – Contents of RFP

Refer to Section 2.3.4 of this manual.

3.3.5 – RFP Review

Refer to Section 2.3.5 of this manual.

3.4 – Solicitation

NDOR will promote competition to the extent practicable. While a public notice is not required, NDOR shall provide the RFP to at least three certified firms. In the event less than three (3) firms respond, NDOR will determine if additional solicitation efforts can and should be made, or if the original advertisement was sufficient. Additional solicitation efforts may include contact of additional certified firms by phone or email, re-advertising or extending the advertisement period. NDOR will document the solicitation process in the Consultant RFP Folder. If it is determined that the responding Consultant(s) are qualified and there is no other interest in the project, NDOR may proceed with the final selection process.

3.5 – Analysis and Selection

3.5.1 – Receipt and Evaluation of Consultant Proposals

Upon receipt of the Consultant Proposals (Proposals) in response to an RFP, the Proposals will be date stamped, logged, and a receipt-of-proposal email will be sent to the Consultant. Proposals delivered after the deadline stated in the RFP will not be accepted and the Consultant will be notified accordingly.

The Agreements Engineer will organize the Proposals and deliver a package to the Selection Representative. The package will include ranking forms, a copy of the final RFP and Proposals.

NDOR representative will review and evaluate Proposals submitted in response to an RFP. The Proposals will be evaluated and scored using established criteria and ranking forms.

Selection Criteria to be considered in the final selections should be specific to the services requested and should include, but not be limited to, items such as:

- Professional qualifications necessary for satisfactory performance
- Specialized experience and technical competence in the type of work required
- Past performance on agreements with government agencies and private industry
- The capacity to accomplish the work in the required time
- Understanding of the project or services requested
- Approach to the project or services requested

NDOR representative will submit to the Agreements Engineer the final ranking and scoring information along with additional information relative to the rankings. The Agreements Engineer will submit the final ranking forms with a memorandum to the Director, through the Planning and Project Development Division Engineer and Deputy Director, requesting approval of final selection(s). Upon receipt of approval, the Agreements Engineer will notify the submitting Consultants of the results.

3.5.2 – Debriefings

After the Consultant(s) have been selected and notified, the other submitting Consultants may request a debriefing in accordance with Section 2.5.3 of this manual.

3.5.3 – Consultant RFP Folder

The Agreements Engineer shall file all documentation pertaining to the Consultant RFP/Selection process in a Consultant RFP folder as outlined in Section 2.5.4 of this manual.

CHAPTER 4 – NON-COMPETITIVE PROCUREMENT PROCEDURES

4.1 – Definitions and Application

Non-Competitive Procurement is the solicitation of a proposal from one source and may be used when it is not feasible to use competitive negotiation or small purchase procedures (ref. 23 CFR 172.5(3)). Circumstances under which a Consultant may be selected under the noncompetitive negotiation are limited to the following:

1. **Sole Source:** A sole source is applicable when NDOR has determined that only one (1) source or Consultant is qualified and capable of performing the services or a single source or Consultant possesses exclusive unique capabilities necessary for the required services.
2. **Emergency:** Non-competitive procurement may be used when there are unforeseen circumstances of a serious and/or urgent nature that threatens the performance of essential functions or may result in loss or damage, which will not permit the time necessary to conduct a competitive procurement process.
3. **Inadequate Competition:** After solicitation of a number of sources and only a single Consultant responds, competition is determined to be inadequate and the non-competitive procurement process may be used.

4.2 – Justification and Approval of Non-Competitive Procurement

When NDOR has determined that a non-competitive procurement process is appropriate, the Division Head, or their designee, will work with the Agreements Engineer to prepare a justification memo to the Director and, when applicable, to FHWA. FHWA approval is required when the project has been identified as a Project of Division Interest (PoDI) or when the project is a federal major project (23 U.S.C. 106(h)).

The justification memo should include, but not be limited to, the following information:

- Project Name, Number, and Control Number
- Contact Information from NDOR
- A brief description of the project and required services
- Public interest statement for Sole Source and Emergency
- Documentation of efforts made when there are inadequate responses
- Estimated cost of the services
- Name of the selected Consultant
- Request for approval

4.3 – Contracting Services

After the appropriate parties have approved the justification memo for Non-Competitive Procurement, the Agreements Engineer will contact the Consultant. If time permits, the scoping and negotiation process outlined in Chapter 6 will be followed. If time is limited, the selected Consultant will be provided a basic project description and description of services required, and

Non-Competitive Procurement Procedures – Chapter 4

January 2016

will be asked to submit a Fee Proposal. If federal funds are utilized for the services, the Agreements Engineer will submit an estimated cost of the services and request obligation of the federal funds.

At a minimum, the Consultant, and any subconsultants, will be required to submit the following items with their Fee Proposal:

- Formal acceptance of services requested
- Staffing Plan and Fee Proposal
- DR Form 498
- A Drug-Free Workplace Policy, if NDOR does not have one on file
- Proof of Insurance, if NDOR does not have one on file

Upon approval of the Fee Proposal package, the Agreements Engineer will prepare the agreement and upon full execution, provide the Consultant a Notice-to-Proceed. If appropriate, the Agreements Engineer may provide an early Notice-to-Proceed.

The Agreements Engineer will file all documentation pertaining to non-competitive procurement in a Consultant RFP folder.

Indefinite Delivery/Indefinite Quantity Procurement Procedures for On-Call Services – Chapter 5

January 2016

CHAPTER 5 – INDEFINITE DELIVERY/INDEFINITE QUANTITY PROCUREMENT PROCEDURES FOR ON-CALL SERVICES

Indefinite delivery, indefinite quantity (IDIQ) agreements, commonly called Master Agreements, provide for on-call services to be provided over a fixed time period when a recurring need is anticipated. On-call services are used when NDOR cannot predetermine, above a specified minimum, the specific services that NDOR will require during the contract period. Master Agreements help streamline the contracting process.

5.1 – Procurement Procedures

The solicitation requirements and selection process for on-call services must follow the qualification based selection process as detailed in Chapter 2 - Large Purchase Procedures, which include the following activities:

1. Identifying the Selection Committee Members
2. Requesting administrative approval
3. Developing the Request for Proposals (RFP)
4. Carrying out the Solicitation
5. Analyzing and Selecting Consultant(s)

The number of Consultants selected for an on-call service is dependent upon the value and frequency estimated for the service.

The Consultant(s) selected for on-call services are placed on an on-call list. Master Agreements are prepared and include the Scopes of Services to be provided under the on-call service. When specific services are needed, NDOR executes Task Orders with the Consultant to fulfill individual requirements. The Master Agreement typically allows for Task Orders to be executed for a two (2) year period (period of performance) and may include the option of extending for a short period in order to provide time to procure the services under a new term. Master Agreements and Task Orders are described in Chapter 7.

5.2 – Multiple Award Preference

In accordance with 48 CFR 16.504(c), NDOR will, to the maximum extent practicable, give preference to selecting more than one consultant for a Master Agreement under a single solicitation for the same or similar service. NDOR will consider the following when determining the number of Consultants to be selected:

- The scope and complexity of the services to be awarded.
- The expected duration and frequency of Task Orders.
- The mix of resources a Consultant must have to perform expected services.
- The ability to maintain competition among the Consultant's selected throughout the term of the Master Agreement.

Indefinite Delivery/Indefinite Quantity Procurement Procedures for On-Call Services – Chapter 5

January 2016

The multiple award approach should not be used if:

- Only one Consultant is capable of providing the services at the level of quality required because the services are unique or highly specialized;
- Based on the NDOR's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;
- The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;
- Multiple awards would not be in the best interests of NDOR.

NDOR will document the decision to use multiple awards in the Consultant RFP folder.

5.3 – Selection Process for Task Orders:

When NDOR identifies the need for on-call service under an existing Master Agreement, a DR Form 24 "On-Call Professional Services Consultant Selection Memo" will be completed to select Consultant in accordance with 48 CFR 16.505 and 23 CFR 172.9(a)(3)(iv)(B)(1) in order to:

- Ensure that all selected consulting firms have a fair opportunity to be considered for each task order
- Consider the minimum Task Order guarantee specified in the RFP
- Consider the potential impact on the other orders placed with the Consultant
- Match services with selected Consultant's unique qualifications

The DR Form 24 includes the criteria by which a Consultant will be selected. The criteria include:

- Professional qualifications of the firm
- Specialized experience and technical competence in the type of work required
- Past performance of similar type of work
- Capacity of firm to perform the work in a timely manner
- Local presence to add value to the quality and efficiency of the project (nominal, no greater than 10%).
- To fulfill the minimum guarantee

The DR Form 24 may be obtained from the Agreements Engineer.

The approved DR Form 24 will be submitted to the Agreements Engineer for review and approval and to begin the development of an SOS for the specific project or service. The SOS shall be within the scope outlined in the RFP, issued within the term of the Master Agreement, and be within the maximum value of the Master Agreement.

CHAPTER 6 – Scoping and Negotiating

6.1 – Detailed Scope of Services and Scoping Meeting

An effective detailed scope of services (SOS) is written in clear language and is an integral part of the agreement development process. Supplemental agreements can often be avoided with a well-written SOS and effective Consultant management.

The Agreements Engineer will coordinate the development of a detailed SOS with the Project Coordinator (PC) and subject matter experts. The SOS is a detailed version of the RFP SOS and standardized work categories outlined in the RFP. Services that do not fall under the scope identified in the RFP will not be included in the detailed SOS.

The PC is typically responsible for drafting the detailed SOS. Template SOS's for various consultant services are maintained by the Agreements Engineer and, when available, will be provided to the PC for their review to edit specifically for their project. In special circumstances, or when project tasks are unique or specialized, the Consultant may be asked to develop a draft detailed SOS.

The detailed SOS describes what services will be required, a schedule of milestones (including performance evaluations), a list of deliverables, design standards, applicable publications, and the responsibilities of both the Consultant and NDOR. The detailed SOS should also identify items to be provided by NDOR such as corridor studies, surveys, aerial photographs, mapping, traffic data, and appropriate environmental documentation.

If deemed necessary by the Agreements Engineer or the PC, an internal scoping meeting may be scheduled by the Agreements Engineer prior to meeting with the Consultant. Representatives from other divisions may be included to provide input on required supporting services.

Following the development of the draft detailed SOS, a scoping meeting will be scheduled by the Agreements Engineer. Attendance will include representatives of the consulting firm and, based on the nature of the project, the appropriate NDOR staff. During the meeting, the detailed SOS will be reviewed and appropriate revisions made. Discussions on the appropriate consultant staff to be assigned to perform the services will also take place during the scoping meeting. After this meeting, the Consultant will provide a staffing plan to the Agreements Engineer to be utilized during negotiations and to be included in the agreement.

The Agreements Engineer may utilize visual means, such as NDOR video log, Google Earth, or an on-site meeting to assist in the development of the detailed SOS.

6.2 – Detailed Work Plan Matrix

A staffing plan will be provided by the Consultant which contains employee classifications specific to the procured services and their associated labor rates. A detailed Work Plan Matrix is developed by merging the tasks from the detailed SOS and staffing plan into a spreadsheet. The detailed Work Plan Matrix will typically be created by NDOR and provided to the Consultant for their use in preparing the Fee Proposal. When project tasks are unique or specialized, the Consultant may be asked to develop the Work Plan Matrix.

Tasks contained in a Work Plan Matrix will correspond to the work requirements set out in the detailed SOS. The detailed SOS and Work Plan Matrix are based on known work and not upon what may happen. The Work Plan Matrix includes a detailed list of tasks (work categories and sub-categories) and a breakdown of employees, by classification, to be assigned to the work. This Work Plan Matrix is to be used independently to estimate work effort in hours for the development of NDOR's Independent Cost Estimate (ICE) and Consultant's Fee Proposal.

NDOR's ICE and Consultant Fee Proposal also include direct labor costs, the application of an overhead rate for indirect costs, and fee for profit rate, along with direct non-labor costs. NDOR has created a number of template excel Workbooks incorporating all this information. The first worksheet of each Workbook includes instructions for completing the Workbook. The Workbooks may include, but are not limited to, the following worksheets:

- Staffing Plan
- Estimate of Hours (Work Plan Matrix)
- Direct Expenses
- Cost by Task
- Project Cost
- Comparison of Hours
- Assumptions

6.3 – NDOR's Independent Cost Estimate (ICE)

An Independent Cost Estimate (ICE) is prepared by NDOR for new agreements and supplemental agreements. NDOR and the selected Consultant must separately and independently develop cost estimates. NDOR's ICE is documentation that the requested work and services are obtained at a fair and reasonable cost. It will be used for NDOR's negotiations with the selected Consultant.

NDOR's ICE will be prepared by the PC, and when required, the subject matter expert(s), and is based on a detailed list of tasks, labor rates by employee classification, work hours, indirect costs (overhead), a fee for profit rate, and direct non-labor costs. If estimates from supporting divisions are necessary, it is the PC's responsibility to gather these estimates and include them with their ICE. The Agreements Engineer will provide the PC with an applicable template Workbook, if available. If a template Workbook is not available, either NDOR or the Consultant may create one by modifying a generic template Workbook.

Because subconsultant labor rates and overhead rates may differ from the prime consultant, the PC will need to prepare a separate ICE for each subconsultant for negotiation purposes.

The fee for profit rate (percentage) is calculated by the PC and will be negotiated with the Consultant. This form is maintained by the Agreements Engineer and may be obtained via NDOR's website at <http://www.transportation.nebraska.gov/rfp>. The form calculates an appropriate fee for profit rate by predetermined weighting of the following parameters:

- Relative Difficulty (35%)
- Size of Contract (25%)
- Period of Performance (15%)
- Assistance and Overview by NDOR Staff (15%)
- Subcontracting (10%)

The total fee for profit (dollars) is calculated by multiplying the total labor costs and indirect costs (overhead) by the fee for profit rate. The fee for profit rate ranges between 10 and 15 percent.

If the PC modifies the template work plan matrix or template Workbook, they must notify the Agreements Engineer before they submit their ICE. Modifications recommended by the PC will be incorporated into the Workbook to ensure both parties are estimating the work effort based on the same list of tasks. Once the PC has prepared their ICE, they will submit it to the Agreements Engineer. The Agreements Engineer will independently receive NDOR's ICE and Consultant's Fee Proposal. These will be kept confidential until both are received and reviewed by the Agreements Engineer.

6.4 – Consultant's Fee Proposal

The Consultant shall prepare their preliminary Fee Proposal using the detailed Work Plan Matrix or workbook prepared after the scoping meeting. If subconsultants are providing professional services, separate Fee Proposals must be submitted with and included in the Consultant's Fee Proposal as a direct expense.

The fee for profit rate is calculated by the Consultant using the established form described in Section 6.3.

If the Consultant modifies the template work plan matrix or template Workbook, they must notify the Agreements Engineer before they submit their Fee Proposal. Modifications recommended by the Consultant and approved by the PC will be incorporated into the Workbook to ensure both parties are estimating the work effort on the same list of tasks.

When the Consultant's Fee Proposal and the PC's ICE are received, the Agreements Engineer will provide a copy of the Fee Proposal to NDOR's PC for review. The Agreements Engineer will also typically prepare a comparison of hour's worksheet of the ICE and the Consultant's Fee Proposal for review and negotiation purposes.

The SOS, NDOR's ICE, the Consultant's Fee Proposal and comparison of hour's worksheet will be reviewed by the PC and Agreements Engineer to determine whether the costs are fair and reasonable. If the costs are within \$20,000 or if the hour difference is within 10 percent, the proposal may be considered fair and reasonable and accepted as submitted. If the Consultant's Fee Proposal is found to be fair and reasonable, the PC will prepare an Acceptance Memorandum to be submitted to the Agreements Engineer and placed in the agreements

Scoping and Negotiation folder. If the comparison suggests that there is a misunderstanding in the SOS, the Agreement Engineer will set a meeting to negotiate the SOS which may require an adjustment in the Consultant's Fee Proposal.

If the Consultant's Fee Proposal is not accepted as submitted, NDOR's PC will prepare a preliminary negotiation memorandum and submit to the Agreements Engineer. This memo is intended to help NDOR prepare for the negotiations by identifying significant differences in work effort by task, work effort by classification, direct expenses, and fee for profit rate. The memo must clearly identify the PC, project name, project number, control number, service to be provided and objectives of the negotiations.

6.5 – Negotiation and Scoping/Negotiations Folder

The Agreements Engineer will provide the comparison of hour's worksheet of the ICE and the Consultant's Fee Proposal to both the PC and the Consultant for review prior to the negotiations. In preparation for the negotiations meeting with the Consultant, an in-house review meeting may be conducted at the request of the PC or the Agreements Engineer.

The objective of the negotiations is to reach a complete and mutual understanding of the SOS, the work effort by classification, the direct expenses required for the services, and the schedule for completion of the work. The negotiations offer the opportunity for both parties to refine and clarify the SOS the work effort, and the compensation for these services. Cooperation and communication by both parties during this phase is essential.

During the negotiations, the tasks with significant differences in work effort and significant differences in the estimated direct expenses will be discussed in an attempt to reach an agreement. The purpose of the meeting is to negotiate a fair price for services that is acceptable to both parties. It may be necessary to refine the detailed SOS to more clearly define the expectations of tasks and subtasks.

The format of a negotiation meeting is a function of the complexity of the services required, and the differences in the cost estimates. Typical projects will require the Consultant and NDOR to meet in-person to negotiate the services. Simple projects, where the estimates between both parties are close, may be negotiated by phone, video conference, or email.

During negotiations, the SOS will be discussed in detail. Revisions to the SOS or the Consultant's Fee Proposal may be made to reflect a better understanding and clarification of the SOS and the work effort. Changes in the SOS to clarify the intent or better define responsibilities will be considered. The objective of the negotiations will be to:

1. Clarify the SOS,
2. Understand the expectations, and
3. Establish a reasonable fee for a quality project.

In the event a reasonable cost cannot be agreed upon with the most highly qualified (selected) Consultant, in accordance with 40 U.S.C.1104(b), negotiations shall be formally terminated and discussions with the next most qualified Consultant initiated. Approval must be granted by the Deputy Director to proceed in this manner. The process will continue until an agreement is reached with one of the short-listed Consultants. Once negotiations have been terminated with

a Consultant and begun with another, negotiations cannot be reopened with the former Consultant. If agreement cannot be reached with any of the short-listed firms, the project may be re-scoped and re-advertised, or the decision to utilize Consultant services revisited.

After negotiations have been completed, a final negotiation memorandum will be prepared by the PC documenting the agreed upon SOS changes, hours and associated costs. The memorandum will be filed in the Scoping/Negotiations Folder. The Consultant will incorporate the changes and resubmit their Fee Proposal for final approval by NDOR. See Section 10.10 for documents to be retained and stored in the Scoping/Negotiations folder.

The Scoping/Negotiations folder will include the following information:

- Consultant initial Fee Proposal, including staffing plan and fee for profit worksheet
- NDOR's ICE, including fee for profit worksheet
- Comparison of Hours Worksheet and comparison fee for profit worksheet
- Negotiation Memo
- Consultant final Fee Proposal
- Supporting Emails
- Final SOS

CHAPTER 7 – AGREEMENTS**7.1 – Professional Services Agreements**

Once the SOS and Fee Proposal have been negotiated with the Consultant, the Agreements Engineer will prepare the agreement for signatures. The exhibits to be attached to the agreement typically include, but are not limited to, the following:

- Final SOS (including the schedule)
- Associated location maps, if applicable
- Consultant’s Fee Proposal, including the staffing plan
- Fees and Payments
- Insurance Requirements
- Dispute Resolution Procedures

The agreement will be prepared and forwarded to the Consultant for signature. Upon receipt by NDOR of the signed agreement from the Consultant, the agreement will be reviewed to verify that the appropriate signature was obtained. The agreement is then routed internally for information purposes and to secure NDOR signature from the Division Head, or their designee, for which the services are being provided. Once the agreement is executed by both parties, the fully executed agreement is forwarded to the Consultant, and an electronic copy is placed in NDOR’s document management system.

7.1.1 – Master Agreements and Task Orders

Upon selection of a Consultant for on-call services (Chapter 5), a Master Agreement between NDOR and the Consultant is executed. The Master Agreement includes all the basic components of a standard NDOR professional services agreement, typically including, but are not limited to, the following:

- Term of the services (as defined in the RFP)
- Term of the Master Agreement
- Process by which Consultant is selected and Task Orders issued
- Relationship of Master Agreement and Task Order
- Language to be included in subsequent Task Orders
- Allowable Task Order payment methods

When a Consultant is selected to provide services covered under a Master Agreement, the fee will be negotiated in accordance with Chapter 6 and a task order agreement (Task Order) will be executed. The Task Order incorporates the provisions of the Master Agreement by reference and typically includes, but is not limited to, the following:

- Detailed scope of services
- Detailed description of deliverables
- Schedule for delivery of services

7.2 – Notice to Proceed (NTP)

The Agreements Engineer will correspond with the Project Coordinator (PC) and the Program Management Division to determine if federal funds will be utilized for professional services on a particular project or service. If federal funds are to be used, the Agreements Engineer will complete the Federal Obligation Request Form and submit it electronically to the Highway Funds Manager. The Highway Funds Manager will then enter the appropriate funding into the Fiscal Management Information System (FMIS) and notify the Agreements Engineer when the FHWA has authorized the federal funds.

Once the agreement is executed by both parties and, if federal funds are used, the obligation of federal funds is authorized, the Agreements Engineer will issue a written “Notice-to-Proceed (NTP) to the Consultant. **Any work performed prior to the NTP will not be eligible for reimbursement.**

7.2.1 – Early NTP’s

The Agreements Engineer will issue an early NTP to a Consultant for **State Funded** services, after receipt of the following information:

- Justification from the PC, including the required start date
- PC’s approval of the Consultant’s final Fee Proposal
- Approval from the appropriate Division Head or their designee

A copy of this information, including the written early NTP, will be placed in the Agreements folder. The NTP date will be identified in the final agreement.

7.3 – Supplemental Agreements

Supplemental agreements may be necessary if:

1. Consultant believes that certain services are not within the original SOS and additional work effort is therefore required,
2. NDOR requests that Consultant provide services that, in the opinion of Consultant, are in addition to or different from those set out in the agreement SOS, or
3. Schedule is delayed due to circumstances outside the control of either party.

If a supplemental agreement is determined necessary by NDOR, the Consultant shall prepare a proposal that describes the additional services and the cost to complete the services. The Consultant’s proposal will also provide clear justification and documentation why the supplemental agreement is required and describe that NDOR and the Consultant did not anticipate the conditions warranting the change. Additional services outside the SOS in the original agreement may include providing the same services but in a quantity larger than originally negotiated.

Consultant must receive written approval from NDOR before proceeding with the out-of-scope services. Before written approval will be given by NDOR, NDOR must determine that the situation meets the following criteria:

1. The additional work is beyond the scope of services initially negotiated with Consultant; and
2. The proposed services are within the scope of the Request for Proposal under which Consultant was selected and contract entered into; and
3. It is in the best interest of the State that the services be performed under this agreement.

Supplemental agreements are used for, but are not limited to, the following:

- Increasing or decreasing the scope, character or complexity of the original services to be provided.
- Adjusting the project schedule.
- Correcting errors or omissions in the wording of the original agreement.
- Adding phases of a multiphase agreement as advertised in the RFP.

Supplemental agreements cannot be used for the following:

- Changes to the SOS which are outside the standard work categories or Scope of Services defined in the RFP.
- Compensating the Consultant for changes in overhead rates.

Once the need for a supplemental agreement is established, NDOR will follow scoping and negotiation processes outlined in Chapter 6 of this manual. This includes, but is not limited to:

- Either party developing a detailed SOS and Workbook
- NDOR creating an ICE
- Consultant preparing a Fee Proposal
- Both Parties negotiating the supplemental services

If the amount of additional work to be covered in a supplemental agreement is less than \$60,000, the PC may review the scope and fee proposal and, if necessary, negotiate.

The fixed fee for profit on Actual Costs plus Fixed Fee Agreements, as described in Chapter 8, is fixed at the inception of the agreement. The fixed fee for profit does not vary with actual costs, but may be adjusted as a result of changes in the services to be performed under the agreement. The fixed fee for profit on supplemental agreements will be negotiated independently, but consistent with the process used to determine the fixed fee for profit for the original agreement.

When Federal funds are used for the professional services being supplemented, the Agreements Engineer will review the Federal funding obligated amounts to ensure adequate funds are in place for the additional services. If additional funds are needed, the Agreements Engineer will request additional Federal funds be obligated to cover the additional costs for the supplemental agreement (see Section 7.2). Upon notification of authorization of federal funds,

NDOR will issue the Consultant a written Notice-to-Proceed for the additional services. Any additional services performed by the Consultant prior to the date specified in the written Notice-to-Proceed are not eligible for reimbursement.

After preparing a supplemental agreement, the agreement will be prepared and forwarded to Consultant for signature. Upon receipt by NDOR of the signed agreement from the Consultant, the agreement will be reviewed to verify that the appropriate signature was obtained. The agreement is then routed internally for information purposes and to secure NDOR's signature from the Division Head, or their designee, for which the services are being provided. Once the agreement is executed by both parties, the fully executed agreement is forwarded to the Consultant, and an electronic copy is placed in NDOR's document management system.

7.4 – Consultant Work Order Form

The Consultant Work Order (CWO) form, DR form 251, can be used in time sensitive situations, as outlined below, to add a limited amount of professional services to an existing agreement utilizing federal funds. This form is generally used for services under \$40,000, but exceptions may be documented and approved by the Agreements Engineer on a case by case basis. Once the CWO form has been approved by the appropriate parties, a NTP can be given to the Consultant while the supplemental agreement is being reviewed and executed. This form is not intended to replace the supplemental agreement process or to begin work under a new agreement. The additional services must have been included in the standard work categories or the SOS identified in the original RFP to be eligible for this process. Justification for the additional services must be documented on this form. This form may be obtained via NDOR's website at <http://www.transportation.nebraska.gov/rfp>.

Appropriate uses of the CWO form may include, but are not limited to, services to be performed quickly due to:

- Safety concerns (e.g. unforeseeable bridge repairs)
- Weather conditions limitations (e.g. wetland delineations)
- Design requirements have changed requiring a change in the plans
- Services that are necessary on short notice

7.4.1 – Consultant Work Order Process

The Consultant or the PC may initiate the CWO process. Additional services shall be estimated and reviewed by the PC and negotiated with the Consultant. The PC will alert the Agreements Engineer that the CWO is being processed.

Once costs for the services to be provided by the CWO have been negotiated, the Consultant or PC will complete the CWO and both parties will sign and date the form. To expedite the process, email approvals may be used and included with the form. Once approved by both parties, the form will be sent to the Agreements Engineer for review. If acceptable, the Agreements Engineer will email the CWO to the appropriate parties. The CWO may be requested for documentation as part of the Federal-aid obligation process.

Once the CWO has been approved, the Agreements Engineer will provide NTP to the Consultant and date the form. The CWO process should take two to three working days to gather appropriate approvals. If local public agencies are participating in the project funding, the CWO may be delayed due to local approval process. The CWO form and approvals will be attached to the subsequent supplemental agreement. A copy of the completed form will be sent to the following individuals:

- Highway Funds Manager
- Consultant
- FHWA
- PC

Upon issuing a NTP to the Consultant, the Agreements Engineer will send a Federal Obligation Request form to the Highway Funds Manager with the completed CWO and request the obligation of the necessary federal funds. The Agreements Engineer will then prepare a supplemental agreement as described in Section 7.4 of this manual.

7.5 – Agreements Folder

The Agreements Engineer shall file all documentation pertaining to the agreement in an agreements folder. This folder should include the following information:

- Original agreement
- Copies of any supplemental agreements
- Consultant Work Orders, if applicable
- FMIS documentation, if federal funds are involved
- Notice-To-Proceed and time extension correspondence
- Consultant Evaluations
- Consultant Dispute Resolution documentation, if applicable
- Conflict of Interest documentation, if applicable
- Supporting Emails, including any time extensions, suspension notices, or termination notices
- Notification of Completion (Pre-Letting Consultant Professional Services) Forms
- Pre-award audit
- Audit requests
- Final Cost Audit Review
- Audit waivers
- Applicable audit correspondence

CHAPTER 8 – PAYMENT METHODS

Several types of payment methods are available for use in Federal-aid and state funded Consultant agreements. All payment methods must be based on supportable and reasonable costs within the consultant's accounting system. A reasonable cost is one that does not exceed that which would be incurred by a prudent person in the conduct of a competitive business. The method(s) of payment for services will be described in the agreement. A single agreement may contain different payment methods as appropriate for compensation of different elements of work.

The payment method varies according to factors such as the degree of responsibility assumed by the Consultant; the timeframe the services are to be provided; the estimated cost and complexity of the services; and the amount of the profit incentive offered to the Consultant for providing the services. Payment method and total costs for the Consultant services are closely related and should be considered together. The objective is to negotiate an agreement that will result in reasonable risk to the Consultant that also provides the Consultant with incentive for efficient and economical performance.

The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. The methods of payment shall be: Lump sum, cost plus fixed fee, cost per unit of work, or specific rates of compensation. A single contract may contain different payment methods as appropriate for compensation of different elements of work.

The following fixed price and cost-reimbursement payment methods are typically utilized by NDOR for Consultant agreements (CFR 172.9(b)). NDOR shall keep documentation showing why a particular payment method was chosen for each consultant agreement.

1. Lump Sum (LS)
2. Cost Plus Fixed Fee (CPFF) with maximum not to exceed
3. Specific Rates of Compensation (SRC) with maximum not to exceed

8.1 – Lump Sum (LS)

The Lump Sum payment method is used when the SOS is well-defined and the total consulting effort can be estimated accurately at the time of negotiation. A lump sum payment method is used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other agreement types should be considered.

With Lump Sum agreements, the Consultant agrees to perform the work for a single total lump sum amount. This amount includes all direct labor, overhead, profit, direct cost, and the direct cost of work and services by others. Once both parties have agreed to the SOS in an executed agreement, a change in the amount of lump sum can only be made if there is substantial evidence that the SOS is different than what was understood at the time of negotiation or if additional scope is required.

8.2 – Cost Plus Fixed Fee (CPFF) (with maximum not-to-exceed)

The Cost Plus Fixed Fee payment method is appropriate when the scope of services (SOS) is fairly well-defined, but the complexity, character and duration can only be estimated with a moderate level of certainty at the time of negotiations. The Consultant is eligible to be paid a total negotiated fee for profit that is fixed at the inception of the agreement in addition to actual costs incurred in the performance of the SOS, subject to a maximum not-to-exceed amount. The total fixed fee paid to the consultant does not vary with actual costs incurred, but may be adjusted as a result of changes in the SOS to be performed under the agreement. The fixed fee for profit is calculated based on a negotiated fee for profit rate that is applied to the estimated direct labor costs and overhead costs.

This is the most common method used by NDOR and reimburses the Consultant for actual direct and indirect costs attributable to the project plus a predetermined fixed fee for profit. The Consultant's final invoice may include any remaining fee for profit that had not been previously billed.

8.3 – Specific Rates of Compensation (SRC) (with maximum not-to-exceed)

The Specific Rates of Compensation payment method provides for acquiring services on the basis of:

1. Direct labor hours at specified fixed hourly rates that include: wages, overhead and profit for each employee or each class of employee directly engaged in the work.
2. Direct Costs.

This payment method is appropriate when the SOS, complexity, character and duration cannot be accurately determined at the time of negotiations, and it is not possible to accurately estimate costs with any reasonable degree of confidence. This method is often used for construction engineering and inspection type services in which weather conditions may affect the work effort.

This payment method provides no positive profit incentive to the consultant for cost control or labor efficiency. Therefore, appropriate oversight of consultant performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

Refer to Chapter 9 for information regarding invoicing for the different payment methods.

CHAPTER 9 – INVOICES, PROGRESS REPORTS & COST BREAKDOWN FORM

9.1 – Invoice Packages

After an agreement has been fully executed and a Notice-to-Proceed has been issued, the Consultant will submit invoice packages to NDOR no more frequently than monthly. The invoice package consists of an invoice, progress report, NDOR's cost breakdown form and documentation of subconsultant and other direct costs. If the Consultant has not performed any work or if the total of the service for a particular month is a nominal amount, the Consultant may choose to skip submitting an invoice that month and later submit an invoice for multiple months' services. All invoice packages will be submitted electronically thru NDOR's invoice workflow (*OnBase*).

NDOR's current invoice workflow is the *OnBase* system and will be used for submitting all invoice packages for review, approval, and payment. The user guide for the *OnBase* system along with training videos for this workflow can be found at <http://www.transportation.nebraska.gov/mat-n-tests/onbase/obinfo.html>.

9.1.1 – Components of an Invoice

The types of invoices are based upon the payment methods as follows:

- Lump Sum (LS): The invoice must show the percentage of work completed multiplied by the total agreement amount and the month that the invoice represents.
- Cost Plus Fixed Fee (CPFF): Invoices must present actual amounts of direct labor, overhead, direct non-labor costs as well as the fee for profit. The fee for profit rate is negotiated and is applied to the direct labor and overhead costs. The final invoice may bill for any remaining fee for profit not previously billed up to the maximum profit (fixed fee) allowed.
- Specific Rates of Compensation (SRC): Invoices must present actual amounts of: direct labor that includes wages, overhead, and profit; and direct costs.

For CPFF and SRC payment methods, receipts documenting subconsultant work and other major expenses are to be included with the submitted invoices. In addition, detailed receipts to support the direct expenses shall be kept and made available to NDOR when random or final audit(s) is performed.

The following provides a description of the components of an invoice:

- Direct Labor Costs are earnings that individuals receive for the time they are working directly on the project.
- Fixed Hourly Rates include wages, overhead and profit for individuals for the time they are working directly on the project.
- Direct Non-Labor Costs include all necessary, actual, and allowable costs related to the Consultant completing the services, including but are not limited to: meals; lodging; mileage; communication costs; reproduction and printing costs; special equipment and materials required for the project; special insurance premiums if required solely for the services required; subconsultant costs; and such other allowable items.

- Indirect Costs (Overhead) include indirect labor costs, indirect non-labor costs, and direct labor additives that are allowable in accordance with 48 CFR 31. Federal Acquisition Regulations (FAR) audit information and new overhead and payroll burden rates must be submitted annually to the Agreements Engineer. The overhead (indirect cost) rate should be based upon actual costs that are allowable per 48 CFR 31.2. Overhead costs are to be allocated to the project as a percentage of direct labor costs. The Overhead rate increases which occur during the project period will not be cause for an increase in the maximum amount established in the agreement.
- Fee for Profit is an amount over and above direct and indirect costs. The determination of the amount of fee for profit shall take into account the size, complexity, duration, and degree of risk involved in the work. The establishment of the fee for profit shall be project-specific. Fee for profit ranges from 10 to 15 percent of the estimated total direct and indirect costs. When determining a fee for profit, exclude travel expenses, printing costs, miscellaneous expenses, contingency, and any subconsultant costs.

9.1.2 – Progress Reports

Each Progress Report must be in a format acceptable to NDOR and shall include, as a minimum:

- Percent of work completed (by hours and by dollars) to date.
- A description of the work completed within the current billing period.
- A description of the work anticipated for the next billing period.
- Pending or unresolved issues related to providing the services defined in the agreement.

9.1.3 – Cost Breakdown Form

The invoice package must also include a “Cost Breakdown Form”. Depending on the type of invoice (*Actual Cost Plus Fixed Fee, Maximum not to Exceed, or Lump Sum*), the appropriate Cost Breakdown Form must be used. Associated forms may be obtained via NDOR’s website at <http://www.transportation.nebraska.gov/rfp>.

9.2 – Invoice Reviews

The PC will review the payment invoice to determine if the progress documented by the Consultant is reasonable and consistent based on the overall project status. The PC will also verify that the invoice is reasonable and in accordance with the approved agreement. Consultant shall not invoice for services not included in the original or supplemental agreement. Additional services shall be agreed to by both parties before the services are performed or invoiced.

The PC will review the progress report of the services to verify that the Consultant is within budget and that the services appear to be on schedule. Should the review show that proper progress is not being performed and/or that the project is not within budget, the PC and the Consultant will develop an action plan detailing the process to correct deficiencies in order to meet the schedule and budget. The Agreements Section will also be informed of this action. No payment will be made without a progress report covering the period of the invoice.

Invoices, Progress Reports & Cost Breakdown Form – Chapter 9

January 2016

The PC will review the following information in the invoice package:

- The invoice, progress report and cost breakdown form
- The amount invoiced is appropriate for the work performed and identified in the Progress Report
- The Progress Report reflects the actual work completed as of the dates listed
- The work shown in Progress Report is within the SOS identified in the agreement
- The percent of work complete correlates with the amount invoiced to date
- Pending and issues to be resolved
- PC's will occasionally review receipts to ensure they meet agreement requirements, and timesheets to ensure time billed is supported by timesheets.

If the PC approves of the invoice package, it will be submitted electronically to the Agreement Section for final review and processing. If the PC identifies issues with the invoice package, the invoice must be returned to the Consultant for corrections.

The Agreements Section will review the following:

- The invoice is set up and formatted as per the project agreement's requirements (project information, appropriate staff, labor rates, direct costs, etc.)
- Services fall between the NTP date and completion date
- Invoice amount is within the agreement limits
- The financial calculations
- Invoice matches the cost breakdown form
- Invoice number and dates are in sequence
- Agreement and appropriate funding is set up in NDOR's project finance system
- The overhead and fixed fee rates are properly applied as stated in the agreement
- Issues identified by the PC have been resolved

If the Agreement Section approves of the invoice package, it will be submitted electronically to Controller Division for payment processing. NDOR will make every effort to pay the Consultant within 30 days of NDOR's receipt of an acceptable invoice from the Consultant. Upon determination that the work was adequately substantiated and satisfactorily completed, payment will be made as per the invoice. Any inquiries on the Consultant's invoice should be directed to the Agreements Engineer.

At the completion of the services outlined in an agreement, the consultant shall complete and email a DR Form 39 to the PC. This form may be obtained via NDOR's website at <http://www.transportation.nebraska.gov/rfp>.

For more information regarding the agreement close-out process and final cost audit review refer to Section 11.5.

CHAPTER 10 – ADMINISTRATION OF THE AGREEMENT

10.1 – PC Roles and Responsibilities

The Agreements Engineer is responsible for the administration of the terms and conditions of the agreement, whereas the Project Coordinator (PC) is responsible for scoping and negotiating the services, and monitoring Consultant's progress and compliance with the scope of services, deliverables, and schedule. The PC is typically within the Division for which the primary services are being performed by the Consultant. The PC serves as the project manager and liaison with the consultant during the performance of the services.

PC's responsibilities generally include the following:

- Gathering, coordinating, and transmitting information both internally and externally as required for completion of the contracted services.
- Reviewing and approving consultant invoices in a timely fashion.
- Ensuring that no work is performed or costs are incurred until written authorization is given by the Agreements Engineer.
- Reviewing and approving scopes of services for additional services and Consultant's Fee Proposals for supplemental agreements and Work Orders.
- Working with other functional specialists and divisions to: coordinate plans, tasks and schedules; obtain commitments; and resolve problems.
- Coordinating with other entities such as FHWA, city, county, Federal and State regulatory agencies, citizen groups, and elected and appointed governmental officials.
- Reviewing consultant deliverables for accuracy and completeness.
- Answering consultant inquiries relating to NDOR's policies, practices and specifications.
- Scheduling and attending progress meetings, field reviews, agency meetings, etc.
- Approving time extension requests.
- Completing Consultant Evaluations as outlined in the Consultant's agreement

10.2 – Insurance

Proof of Insurance is required by NDOR for Consultants performing professional services. The Certificates of Liability Insurance (ACORD form) shall provide evidence that the insurance coverage, required by NDOR as outlined in the agreement, is in effect. The insurance requirements for professional service providers on NDOR projects may be obtained via NDOR's website at <http://www.transportation.nebraska.gov/rfp>. Renewal certificates shall be provided at intervals no longer than annually and whenever insurance coverage or carrier changes. The address below must be shown in the Certificate Holders Box commonly located in the lower left hand corner of the Certificate of Liability Insurance form:

State of Nebraska
Department of Roads
Attn: Construction Office
1500 Nebraska Hwy 2
P.O. Box 94759
Lincoln, NE 68509-4759

New or updated certificates can be sent or emailed to the following address:

Construction Office
Department of Roads
1500 Nebraska Hwy 2
P.O. Box 94759
Lincoln, NE 68509-4759
lucinda.dowding@nebraska.gov

Consultants may view the latest Insurance Information currently on file with NDOR by visiting the “Contractor Insurance Information Search” application at:
<http://www.transportation.nebraska.gov/letting/InsuranceInformation.htm>.

Prior to executing professional service agreements, the Agreements Engineer will confirm that the Construction Division of NDOR has a current Certificate of Insurance on file that meets the minimum coverage requirements of the agreement. Any specific requests for relaxations to NDOR’s current insurance requirements must be requested by the Consultant to the Agreements Engineer. The Agreements Engineer will review the request and determine if any changes can be made to the existing insurance requirements for that particular agreement.

10.3 – Agreement Provisions

All agreements and subagreements will include the required provisions in accordance with 23 CFR 172.9(c), as applicable.

10.4 – Errors and Omissions

NDOR’s policy is to take all reasonable steps to preclude errors or omissions in the process of delivering requested services. Upon discovery of an alleged error or omission, NDOR will take immediate action to minimize potential cost increases due to delay or other matters. This includes early communication with the Consultant. The Consultant must be made aware of the circumstances and be put on notice as soon as possible that there may be a claim against them for errors or omissions. The Consultant must be given an opportunity to help resolve potential errors and omissions.

All known facts surrounding the alleged error or omission will be carefully and fully reviewed by NDOR staff and affected Consultant as prescribed in Chapter 12.

10.5 – Ethics in Contracting

NDOR upholds and advances the integrity, honor and dignity of procuring professional services by:

1. using their knowledge and skill for the enhancement of human welfare;
2. preserving the confidentiality of their Consultants’ affairs and proprietary information;
3. being honest and impartial, and serving with fidelity their Consultants (including their employers) and the public; and
4. striving to increase the competence and prestige of the Consultant community.

The general rule of NDOR is to avoid a conflict of interest or the appearance of a conflict of interest with Consultant relationships. NDOR will endeavor to avoid or eliminate a potential conflict of interest between NDOR staff and Consultants that are seeking future work, negotiating effort and costs on services, or that may have a current project under contract where a change in staffing has occurred. Refer to Chapter 13 for information regarding conflict of interest.

Governmental business shall be conducted in a manner above reproach and, except as authorized by statute or regulation for non-competitive negotiations, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct.

10.6 – Use and/or Release of Privileged or Confidential information

Certain information provided by NDOR to the Consultant is confidential information contained within privileged documents protected by 23 U.S.C. §409. "Confidential information" means any information that is protected from disclosure pursuant to state and federal law and includes, but is not limited to, accident summary information, certain accident reports, diagnostic evaluations, bridge inspection reports, and any other documentation or information that corresponds with said evaluations or reports, and any other information protected by 23 U.S.C. §409. "Privileged document" means any document pertaining to any file or project maintained by NDOR that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications between NDOR employee and Legal Counsel. This confidential and privileged information is vital and essential to the Consultant in order that the Consultant adequately designs the project at hand on behalf of NDOR.

The Consultant will only use information or documentation that is considered to be privileged or confidential for the purposes of executing the services which it has agreed to render for NDOR. The Consultant will not reveal, disseminate, or provide copies of any document that is confidential and privileged to any individual or entity. Any information or documentation that is considered to be privileged or confidential that is provided to Consultant will be marked by NDOR with the following information:

“CONFIDENTIAL INFORMATION: Federal Law, 23 U.S.C §409, prohibits the production of this document or its contents in discovery or its use in evidence in a State or Federal Court. The State of Nebraska has not waived any privilege it may assert as provided by that law through the dissemination of this document and has not authorized further distribution of this document or its contents to anyone other than the original recipient.”

The Consultant must obtain the written approval of the State prior to the dissemination of any privileged or confidential information or documentation if it is unclear to the Consultant whether such information or documentation is in fact privileged or confidential.

Any unauthorized dissemination of any privileged or confidential information or documentation on the part of the Consultant will create liability on the part of the Consultant to the State for any damages that may occur as a result of the unauthorized dissemination. The Consultant will agree to hold harmless, indemnify, and release the State for any liability that may ensue on the

part of NDOR for any unauthorized dissemination of any privileged or confidential information or documentation on the part of the Consultant in each agreement executed between the parties.

In accordance with 23 CFR 172.11(d), the State may share audit information in complying with the State's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. 112 and this part 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 State's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. 112 and 23 CFR 172.11(d) without the written permission of the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance; however, should a release be required by law or court order, such release shall make note of the confidential nature of the data.

10.7 – Suspension, Abandonment or Termination

The State has the absolute right to suspend or abandon the work, or terminate an agreement at any time and such action on its part will in no event be deemed a breach of an agreement. The State will give the Consultant seven days written notice of such suspension, abandonment, or termination.

If the State suspends or abandons the work or terminates an agreement, the Consultant shall be compensated in accordance with the provisions of 48 CFR 31, provided however, that in the case of suspension, abandonment or termination for breach of an agreement, the State will have the power to suspend payments, pending the Consultant's compliance with the provisions of an agreement. For an abandonment or termination of an agreement, payment to Consultant will be prorated based on the percentage of work completed by the Consultant prior to abandonment or termination compared to the total amount of work contemplated by an agreement.

10.8 – Consultant Evaluations

During the course of a project, it is important that the Consultant's performance be monitored and evaluated to ensure there is a clear understanding of how well the Consultant is achieving the agreement requirements. Evaluations will typically be performed at major submittals or milestones of the project as identified in the agreement. A final evaluation is required after all services are accepted or after the termination of an agreement, when applicable. Additional evaluations may be performed, at any time, over the duration of an agreement, as determined by the PC.

The PC is responsible for ensuring the performance evaluations are completed. The evaluations should be completed within one (1) month of a designated date, or of a submittal outlined in the agreement. A Consultant Evaluation Form (DR Form 54) may be obtained via NDOR's website at <http://www.transportation.nebraska.gov/rfp>.

In completing the evaluation, the analysis must be completed in a fair and objective manner. Ratings shall be based on facts and documentation and the evaluation should consider only the performance of the Consultant for the services specific to the agreement. Constructive evaluation comments should be made to improve the Consultant's job performance and to

ensure that the Consultant's work is being completed in a professional and thorough manner. Attention must be paid to the ratings in the following seven areas of performance:

- Communication and cooperation
- Quality
- Completeness of agreement documents
- Timeliness of deliverable and responses to NDOR's requests
- Scope and budget
- Project manager
- Technical performance

Attention must be given to the rating values. A description of each rating is provided on the evaluation forms. If a PC ranks a Consultant within the "Outstanding" range shown on the form, additional comments must be included documenting what actions made that particular project successful.

Scores below satisfactory require supporting comments and corrective action. If the PC concludes that a Consultant's overall performance is unsatisfactory, the Consultant shall be advised in writing that a report of unsatisfactory performance is being prepared identifying the conditions leading to the unsatisfactory performance rating. If the Consultant submits any written comments, the PC shall include them in the report, resolve any factual discrepancies and make appropriate changes in the report. It is the responsibility of the PC to follow-up and conduct the recommended corrective action.

After the evaluation form has been prepared by the PC, the following steps shall be taken:

1. The evaluation will be reviewed and signed by the PC's Division Engineer/Manager
2. The evaluation will be sent to the Consultant with a copy to the Agreements Engineer

The Consultant may appeal the evaluation to the PC's Division Engineer/Manager. If the report is modified, the PC will make sure that any previously distributed copies of the original report are voided and that the modified evaluation is on record.

If an evaluation identifies unsatisfactory performance by the Consultant, a written notification to stop work may be issued by the Agreements Engineer until the concern or issue is resolved.

Copies of all evaluations are considered confidential and should be discussed with only NDOR staff and the Consultant.

Completed evaluations will be organized, filed and maintained by the Agreements Engineer in a manner such that they can be readily available. The Consultant evaluation forms will be retained for six (6) years as required by the Code of Federal Regulations, 48 CFR 36.604 (c). Evaluation reports may be used as performance data for consideration in the selection process for future RFPs.

10.9 – Change in Consultant’s Project Team

The Consultant’s project team is often the most important reason for selection of work by NDOR. During negotiations, the Consultant will provide NDOR with a staffing plan that identifies the employees who will be part of the project. The primary team members will be agreed upon and identified during negotiations and made a part of the agreement as an exhibit. During the life of the project, the Consultant may make occasional temporary changes to the primary team. However, any permanent change to the primary team will require prior written approval from NDOR. Any changes to the Consultant’s primary team will not constitute an increase to the negotiated agreement total, unless approved by NDOR. Changes to the Consultant’s team that are not considered significant (e.g. administrative work that doesn’t affect the deliverables of the agreement), does not need to be approved by NDOR.

Staff who are added to the staffing plan as replacements must be persons of comparable training and experience. Staff added to the staffing plan as new staff and not replacements must be qualified to perform the intended services. Copies of resumes and similar work experience may be requested by NDOR for approval prior to these new or replacement employees starting work on the project. Failure on the part of the Consultant to provide acceptable replacement staff or qualified new staff to keep the services on schedule will be cause for termination of this agreement.

10.10 – Shifting Effort/Costs within Agreements

During negotiations, NDOR and Consultant agree upon a certain effort and associated costs for major categories of the project. Examples of major categories on a typical project include, but are not limited to the following:

- Project Management
- Survey Services
- NEPA Services
- Preliminary Design
- Bridge Design
- Traffic Engineering
- Final Design

During the life of the project, the Consultant may formally request shifting effort and the associated costs from one major category to another with no increase to the contract maximum or fixed-fee for profit established in the agreement. If acceptable, this formal request will be approved by NDOR in writing and filed in the agreements folder. A supplemental agreement is not required. This process also applies to shifting effort or costs between the prime and any subconsultants.

Shifting effort or costs from one task within a broad category to another within that same category does not require approval from NDOR. An example of this would be shifting effort from the “Horizontal Alignment” task within the Preliminary Engineering category to the “Vertical Alignment” task within the Roadway Design category.

10.11 – Retention of Documents

All applicable documentation obtained during procurement of professional services by NDOR will be stored electronically on its document management system. The Agreements Engineer will be responsible for gathering and storing the following documentation:

(A) RFP and Selection

- Pre-RFP emails and documents regarding potential projects
- Posted RFP and supporting materials
- Short-listed firms and interview schedule
- Final selections
- Selection Committee ranking forms and applicable notes
- Approval memos from the Director
- Proof of public advertisement
- Proposals for short-listed Consultants

(B) Scoping and Negotiations

- Consultant initial Fee Proposal, including staffing plan and fee for profit worksheet
- NDOR's ICE, including fee for profit worksheet
- Comparison of Hours Worksheet and comparison fee for profit worksheet, if applicable
- Negotiation Memo
- Consultant's final Fee Proposal
- Supporting Emails
- Final SOS

(C) Agreements Documentation

- Original agreement
- Copies of any supplemental agreements
- Consultant Work Orders, if applicable
- FMIS documentation, if federal funds are involved
- Notice-To-Proceed and time extension correspondence
- Consultant Evaluations
- Consultant Dispute Resolution documentation, if applicable
- Conflict of Interest documentation, if applicable
- Supporting Emails, including any time extensions, suspension notices, or termination notices
- Notification of Completion (Pre-Letting Consultant Professional Services) Forms and audit requests

CHAPTER 11 – AUDIT REVIEW SERVICES AND AGREEMENT CLOSE-OUT PROCESS

11.1 – General

Audit review services are part of NDOR’s internal control policies and procedures implemented to ensure that all funds expended through Consultant agreements are in accordance with applicable laws and regulations.

Audit review services include:

1. Pre-Award Audit
2. Overhead (Indirect Cost Rate) and Facilities Capital Cost of Money (FCCM)
3. Cost Audit Review

11.2 – Pre-Award Audit Review

Following the selection of a Consultant, the Consultant needs to provide their latest overhead (indirect cost) rate schedule, certification of costs used to establish the overhead rate, cognizant rate approval letters/reports, if applicable, independent auditor’s report on schedule of indirect costs, if applicable, and at the discretion of NDOR, other appropriate information to be used by the Audit Section for a Pre-Award Audit Review.

The Consultant’s certification of final indirect cost shall read as follows:

Certificate of Final Indirect Costs:

This is to certify that I have reviewed this overhead rate proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this overhead rate proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) of title 48, Code of Federal Regulations (CFR), part 31; and
2. This overhead rate proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR of 48 CFR part 31.

Firm: _____
Signature: _____
*Name of Certifying Official: _____
Title: _____
Date of Execution: _____

*The “Certifying Official” must be an individual executive or financial officer of the Consultant at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the indirect cost rate for use under NDOR agreement.

The Agreements Engineer may request a pre-award audit review whenever one or more of the following circumstances exist:

1. There is insufficient knowledge of the adequacy of the Consultant's accounting system's ability to track direct labor costs, overhead rate and direct non-labor expenses, and its ability to keep separate non-allowable costs.
2. The Consultant's proposed overhead and the Facilities Capital Cost of Money (FCCM) rate has not been reviewed and accepted by the Audit Section or, additional assurances are needed that the labor and/or direct non-labor cost rates are representative of current actual rates.
3. There are questions about the propriety of any of the proposed cost items.

If the Agreements Engineer determines that a Pre-Award Audit Review is appropriate, they will submit a request, in writing, to the Audit Section. The request for services should be specific as to the areas that need review (e.g. accounting system, overhead rate, labor rates, direct non-salary rates, etc.). The request should identify the project number, control number, project name and a completion date, if applicable. The request should also include copies of documents pertinent to the objectives of the review; such as, the cost proposal, overhead/FCCM rate schedule, etc.

The purpose of a pre-award audit review is to communicate with the Consultant and NDOR regarding potential issues relative to the Consultant's cost accounting system, overhead rate and individual elements of the cost proposal.

Note: Federal Statutes (23 USC 112(b)(2)(C)) requires NDOR to accept indirect cost rates established in accordance with the Federal Acquisition Regulations for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

The pre-award audit review consists of verifying that the Consultant's accounting and invoicing is in accordance with applicable laws and regulations. This includes the following:

- The accounting system is capable of adequately recording accounting transactions and financial matters.
- The proposed overhead is acceptable.
- The FCCM percentage is acceptable.
- The basis of proposed labor rates and direct non-salary rates is reasonable.
- The proposed direct non-labor cost categories are eligible for inclusion as direct cost items. (A cost may not be charged as a direct expense and also be included in the indirect cost pool.)

When the pre-award audit review is completed, the Audit Section will send a written response to the Agreements Engineer detailing the findings. The Consultant may be required to furnish additional information for review of unresolved audit issues.

11.3 – Overhead (Indirect Cost) Rate

FAR audit information and new overhead and payroll burden rates must be submitted annually to the Agreements Engineer. The overhead rate should be based upon actual costs that are allowable per the Code of Federal Regulations Title 48, Federal Acquisition Regulations (FAR), Chapter 1, Part 31.2. The Agreements Engineer will send submitted overhead rate schedules to the Audit Section requesting a review and recommendation.

Consultants are encouraged to have their overhead rates audited by an independent Certified Public Accounting (CPA) firm. Audit reports issued by CPA firms should be conducted in accordance with *Government Auditing Standards* (also referred to as “Generally Accepted Government Auditing Standards”, “GAGAS” or “Yellow Book Standards”) promulgated by the U.S. Government Accountability Office. The Audit Report should be accompanied by a Report on Internal Controls Over Financial Reporting and On Compliance and Other Matters Based on an Audit Performed in Accordance with *Government Auditing Standards*.

The Audit Section will determine what type of audit review procedures to apply. Procedures include but are not limited to:

- In-depth audit examination by NDOR’s Audit Section staff.
- Desk audit review procedures by NDOR’s Audit Section staff.
- Recommend acceptance based upon immateriality, past favorable experience and assessment that the risk of material misstatement is low.
- Review of CPA’s working papers in accordance with the current edition of AASHTO’s Uniform Audit & Accounting Guide for Audits of Architectural and Engineering Consulting Firms.
- Travel to the Consultant’s office or their accounting firm, as appropriate, to examine documentation and/or to hold discussions with the company staff.

Upon completion of the overhead rate review, a written report will be provided to the Agreements Engineer.

Unless otherwise stated, the Consultant’s cost proposal should be computed using the overhead rate for the Consultant’s most recently completed fiscal year.

11.4 – Facilities Capital Cost of Money (FCCM)

Facilities Capital Cost of Money (FCCM) is an imputed cost intended to compensate Consultants for their investment in fixed assets and facilities. These costs are billed to a project as a percentage of direct labor. The FCCM percentage rate must be developed in accordance with the principles and procedures contained in 48 CFR Part 31.205-10.

Consultants are not required to include FCCM in their cost proposals or project invoices. However, if a Consultant chooses to bill FCCM, it must be specifically identified in the cost proposal relating to the agreement under which the cost is to be billed. If FCCM is not included in the negotiated cost proposal, the Consultant waives any right to claim it on its actual cost billings.

Audit Review Services and Agreement Close-out Process – Chapter 11

January 2016

If a Consultant chooses to develop an FCCM rate, the FCCM cost and resultant percentage rate should be shown as a separate line item in the overhead rate schedule, or disclosed in the notes. This is necessary to distinguish cost of money from the company's other expenses. This is required because, per FAR 15.404-4, profit/fee does not include amounts applicable to facilities capital cost of money.

The methodology for computing the FCCM rate involves determining the FCCM cost and dividing it by the appropriate allocation base (in most cases this is the direct labor base).

The FCCM cost represents the average book value of the fixed assets/facilities investment base multiplied by the appropriate cost of money rate for the Consultant's business year. The cost of money rate is the arithmetic mean of the Prompt Payment Act Interest Rates specified by the U.S. Secretary of Treasury. These rates are published semiannually in the Federal Register on or about January 1 and July 1. For a fiscal year ending December 31, the arithmetic mean would be the simple average of the rates for the January 1 through June 30 period and the July 1 through December 31 period. A history of prompt payment interest rates can be found on the Department of Treasury web site at: <http://www.fms.treas.gov/prompt/rates.html>

The allowable percentage for labor overhead allocable to a project is the ratio of a firm's total allowable overhead costs to a firm's total direct salary costs for a given period.

Suggested guidance for preparing overhead and FCCM rates is contained within the latest edition of the AASHTO Uniform Audit & Accounting Guide, available on-line at:

<http://audit.transportation.org/Documents/uaag-3%20final.pdf>

11.5 – Agreement Close-out Process and Final Cost Audit Review

11.5.1 Notification of Completion – Pre-letting Professional Services (DR Form 39)

At the completion of services outlined in an agreement, the consultant shall complete and email a DR Form 39 to the PC. This form may be obtained via NDOR's website at <http://www.transportation.nebraska.gov/rfp>.

The intent of this form is to notify NDOR that they may begin the agreement close-out process. The Consultant certifies, by completing and emailing this form, that:

- All services provided under a particular agreement are complete.
- The final work product has been delivered to the State in accordance with the agreement.
- The services and final work product have been accepted by the PC.
- There are no outstanding issues to be resolved regarding the services and work product under this agreement.
- The final invoice has been submitted.

Upon receipt of the DR Form 39, the PC will verify that all the services and work project are complete and, if applicable, delivered to the State. The PC will complete a consultant evaluation (DR Form 54 – See Section 10.8) and email the DR Form 39 and evaluation to the Agreements Specialist assigned to the project.

The Agreements Engineer will conduct a review of the documents and, as soon as the final invoice has been paid by the State, will email the DR Form 39 to the Audit Section to initiate the audit activities.

11.5.2 – Final Cost Audit Review

Receipt of the DR Form 39 by the Audits Section is their notification that the costs invoiced under an agreement are ready for a final cost audit review. The objectives of the cost audit review are to provide reasonable assurances that the submitted amounts are accurate; are supported by adequate accounting records; resulted from accomplished and duly authorized work; and, are allowable in accordance with laws, regulations, policies and procedures applicable to the project. If subconsultants costs are submitted for payment, they will also be subject to audit review to determine if costs and fee for profit are in accordance with the agreement and that overhead costs are in compliance with the requirements of the cost principles contained in 48 CFR Part 31.

The nature and extent of NDOR's cost audit review procedures will be determined on a case-by-case basis after an evaluation of the project costs and potential for noncompliance with the terms of the agreement, applicable laws, regulations, policies and procedures. Opinions expressed in the Governmental Agencies' Independent Auditor's Reports issued in accordance with OMB Circular A-133 will also be taken into consideration, when applicable. If circumstances warrant, cost audit requirements can be waived. A risk-based oversight assessment process as described in 23 CFR 172.11 will be utilized. The assessment will be conducted and documented on an annual basis considering risks of noncompliance with federal cost principles per consultant doing business with NDOR. The oversight process is documented in more detail in the NDOR Controller Finance Manual.

It is the Consultant's responsibility to supply NDOR, when requested, with the following: subconsultant agreements, source documentation (timesheets, lodging receipts, etc.), accounting records, and project records (construction diary, truck tickets, etc.). Subconsultants should provide similar source documentation for their direct labor cost, direct non-labor costs and overhead costs.

Based on the results of the cost audit review process, final reimbursement to the Consultant will be adjusted to exclude ineligible costs and include any additional costs that NDOR determines are eligible.

Controller Division will be responsible for gathering and storing the following documentation:

1. Consultant Invoicing packages
2. Pre-award audit
3. Final Cost Audit Review memos
4. Audit waiver memos
5. Applicable audit correspondence

CHAPTER 12 – DISPUTE RESOLUTION

During the time of services with Consultants, it is important that established procedures are in place in case disputes arise. These non-binding procedures are the steps that all parties will take to address disputes arising from work covered under the original and subsequent agreements.

The information presented is designed to assist all parties in identifying, managing and resolving conflict issues that may arise.

There are several guiding principles to be considered:

- Engage relevant representatives early, actively and continually in collaborative problem solving for work covered under the original and any supplemental agreements.
- Attempt to resolve disagreements at the earliest stage possible and at the appropriate organizational level.
- Seek resolution first by focusing on how to meet interests and needs in the context of existing laws and regulations in order to resolve the disputed issues.

Potential benefits to be gained from the above principles are:

- Minimizing or avoiding unnecessary delays in developing projects.
- Encouraging collaborative decision-making and coordination among all parties.
- Resolving disputes early in the process.
- Building trust and respect among all parties.

The relationship between the Consultant and NDOR staff should always be on the professional level. All parties of the agreement should have a thorough understanding of the dispute resolution process. Each party should make every attempt to fully understand the dispute and express honest statements of fact prior to initiating the dispute resolution processes.

FHWA involvement and approval is required when the project has been identified as a Project of Division Interest (PoDI) or when the project is a federal major project (23 U.S.C. 106(h)). NDOR will consider Federal-aid participation when the settlement includes monetary compensation or distribution.

Prior to initiating dispute resolution processes, the following activities should occur:

STAGE ONE – INFORMAL ACTION

1. Upon discovery there are contested issues; the PC will prepare a memo to the Agreements Engineer outlining the issues at hand.
2. Representatives of both parties will participate in a face-to-face meeting arranged and facilitated by the Agreements Engineer to discuss the specific issue(s).
3. The consulting firm will convey their firm's recommendations for resolving the issue(s) to the Agreements Engineer.

4. NDOR representatives will discuss the Consultant's proposed resolution and the Agreements Engineer will respond in a letter, outlining the dispute(s) and the next steps required by each party to resolve the dispute(s).
5. NDOR and the Consultant will attempt to negotiate a settlement.

If a settlement is not reached, Stage Two activities may be initiated by the Consultant.

STAGE TWO – REVIEW BY NDOR'S DEPUTY DIRECTOR'S REPRESENTATIVE

1. The Consultant may invoke this non-binding procedure in an attempt to resolve a dispute it has with any NDOR interpretation of the requirements of the agreement, so long as the rules set forth herein are met or followed.
2. The Consultant may invoke the Stage Two process by submitting to the Agreements Engineer, with a copy to the PC, a written statement setting out the following:
 - a. Facts of the dispute(s),
 - b. Listing and discussion of all applicable agreement provisions or law, and
 - c. Argument of the Consultant in support of their position.
3. The Deputy Director will designate an NDOR employee, who has not previously been involved in the dispute(s), to serve as his/her representative to consider the merits of the dispute(s). The Agreements Engineer shall notify the Consultant and PC of the name and contact information of the Deputy Director's Designated Representative. The Deputy Director's Representative shall not meet with either party's representative or otherwise independently investigate the dispute(s) while serving as the Deputy Director's Representative.
4. The PC will have 7 days after receiving the Consultant's written statement, to submit a written response to the Deputy Director's Representative, with a copy to the Consultant, including his/her understanding of the:
 - a. Facts of the dispute(s),
 - b. Listing and discussion of all applicable agreement provisions or law, and
 - c. Argument of the PC in support of their position.
5. The Consultant and PC will participate in a face-to-face meeting with the Deputy Director's Representative, within 7 days of the Deputy Director's Representative's receipt of NDOR's written statements, to discuss the submittals and to respond to the other party's facts and arguments concerning the dispute.
6. As soon as reasonably practical, the Deputy Director's Representative will provide a written recommendation to the Deputy Director supervising the Division charged with enforcing the Consultant agreement, setting out his/her:
 - a. Findings of fact,
 - b. Interpretation of the applicable agreement and legal provisions, and
 - c. A proposed resolution of the dispute(s).A copy of the written recommendation shall also be sent to the Agreements Engineer.
7. The Deputy Director shall review the findings and conclusions of the Deputy Director's Representative and may accept or reject the conclusions in whole, or modify the recommendations of the Deputy Director's Representative as deemed appropriate, and notify the Consultant of NDOR's official proposed resolution, if any, concerning the

dispute. A copy of NDOR's official proposed resolution shall also be sent to the Agreements Engineer.

8. The following statements apply to this non-binding dispute resolution process:
 - a. This process is non-mandatory. The process is in addition to, and does not replace, any other legal or equitable remedy or defense the Consultant or NDOR may have.
 - b. Because this process is non-mandatory, this process is not intended to delay or impact in any way the calculation of any applicable statute of limitations related to any claim of the Consultant under the subject agreement.
 - c. This process may only be used by the Consultant for an actual agreement dispute between NDOR and the Consultant. This process may not be used to determine a hypothetical question.
 - d. This process is non-binding, shall not be treated by NDOR or the Consultant as a contested case as that phrase is defined in Neb. Rev. Stat. § 84-901 et seq., and is not intended to provide either party with an independent right of appeal.
 - e. Failure to follow this process shall not constitute a breach of contract and shall not provide a separate basis for relief under the subject agreement.
 - f. The Consultant's decision to invoke this process shall not limit, in any way, the Consultant's right to simultaneously pursue any legal remedy.
9. If the Consultant does not agree with the findings and conclusions of the Deputy Director, the Consultant may avail itself of any additional remedy, including the filing of an agreement claim under Nebraska law.

STAGE THREE – MEDIATION

If the dispute resolution cannot be reached through the above processes, mediation may be used as the next step in the dispute resolution process. Both parties must agree to use mediation in order to implement this dispute resolution process. If mediation is used, the parties will share in its cost equally.

The mediation process utilizes a neutral third party who will work with both parties of the dispute in an attempt to help them reach a resolution. The mediator has knowledge of the dispute resolution process and the general terms of the dispute, but is not intimately knowledgeable of all project details.

When both parties agree to mediation, the Agreements Engineer will be responsible for obtaining a mediator. The mediator must be agreed to by both parties and will be chosen from a list developed jointly by NDOR and the ACEC. The Agreements Engineer will arrange the time and place of the mediation meeting. Participants in the meeting with the mediator will include representatives of NDOR and the consulting firm. If determined necessary by the parties, legal representation may be included.

Should the mediation result in the dispute's resolution, the Agreements Engineer will send the Consultant a letter confirming the resolution of the dispute and describing the details of the resolution. If mediation does not result in resolution of the dispute, the issue will return to the Deputy Director who will be given any additional information compiled during the mediation process for further review. Upon a decision by the Deputy Director, the Agreements Engineer and the Consultant's Principal will be notified in writing of the Deputy Director's final decision. The Deputy Director's final decision, following an unsuccessful mediation, completes the formal dispute resolution process and no further appeals from the Consultant will be considered.

CHAPTER 13 – CONFLICT OF INTEREST**13.1 – Purpose**

These conflict of interest requirements are provided for NDOR employees engaged in the award and administration of Consultant services and agreements and to provide for governing the conduct and roles of Consultants in the performance of services under such agreements to prevent, identify, and mitigate conflicts of interest in accordance with 2 CFR 200.112, 23 CFR 1.33, and 23 CFR 172.7(b)(4). The requirements will also assure that NDOR meets Federal requirements related to conflict of interest and will be consistent in the actions taken when a conflict arises.

13.2 – 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 to the Agreements Engineer disclosing a potential conflict of interest each time they submit a proposal.

Upon selection for on-call services: Embedded consultant staff is instructed to not review work performed by their firm.

If at any time the Consultant has any questions or concerns regarding a potential conflict they may contact the Agreements Engineer.

13.3 – NDOR Responsibility

The Agreements Engineer will review the potential conflict identified in the Consultant's proposal and any agreement relationships and determine, in consultation with appropriate NDOR staff, if a conflict of interest or the appearance of a conflict of interest exists. If a conflict is found to exist, NDOR will determine the appropriateness of the proposed measures to mitigate the conflict. The determination needs to be balanced between the benefits to NDOR 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. NDOR 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, NDOR may remove the Consultant from the selection for cause in accordance with the provisions stated in the agreement.

For on-call services, NDOR managers/supervisors are responsible to avoid a conflict of interest by ensuring the consultant assigned the work and the embedded consultant reviewer is not employed by the same firm. Embedded consultants will not be involved in the consultant solicitation process, or the review consultant fee proposals.

NDOR's employees shall not participate in selection or in the award or administration of a Consultant agreement if a conflict of interest, real or apparent, would be involved. Such a conflict arises when there is a financial or other interest in the Consultant selected for award by:

1. The employee;
2. Any member of his or her immediate family;
3. His or her partner; or
4. An organization that employs or is about to employ any of the above.

Accepting unsolicited advertising or promotional items such as calendars, pens, pencils, key chains, coffee cups, etc. is acceptable since these would not reasonably tend to influence the discharge of an employee's duties and they are of nominal value. Employees may accept food, beverages, and items of minimal nominal value offered to all participants of consultant sponsored seminars or events. Accepting items that would influence a selection committee's judgement is not acceptable. See the following for more information regarding this topic: NDOR's Human Resources Policies & Procedures Manual Sections 3.15, 5.1, and 7.3, and 2 CFR Section 200.318(c)(1) and (c)(2).

NDOR shall promptly disclose in writing any potential conflict of interest to FHWA.

13.4 – Organizational Conflicts of Interest Which May Exist

The following are examples:

- The Consultant, or its principals, own real property in a location where there may be a positive or adverse impact on the value of such property based on the recommendations, designs, appraisals, or other deliverables required by the agreement.
- The Consultant is providing other services to a governmental or private entity and the Consultant knows or has reason to believe, that the entity's interests are, or may be, adverse to the client's interests with respect to the specific project covered by the agreement. **Comment:** The existence of a business relationship with another entity would not ordinarily need to be disclosed. Rather, this focuses on the nature of services commissioned by the other entity. For example, it would not be appropriate for a Consultant to submit a proposal to NDOR if a local government has also retained the Consultant for the purpose of persuading NDOR to stop or alter the project plans.
- The agreement is for right-of-way acquisition services or related services (e.g., geotechnical exploration) and the Consultant has an existing business relationship with a governmental or private entity that owns property to be acquired pursuant to the agreement.
- The Consultant is providing real estate or design services to a private entity, including but are not limited to developers, whom the Consultant knows or has good reason to believe, own or are planning to purchase property affected by the project covered by an agreement, when the value or potential uses of such property may be affected by the Consultant's performance of work pursuant to the agreement. "Property affected by the project" includes property that is in, adjacent to, or in reasonable proximity to current or potential right-of-way for a project. The value or potential uses of the private entity's property may be affected by the Consultant's work pursuant to the agreement when such work involves providing recommendations for right-of-way acquisition, access

control, and the design or location of frontage roads and interchanges. **Comment:** This provision does not presume Consultants know, or have a duty to inquire as to, all information regarding cases where the Consultant has reason to believe that its viability of a project it is performing for a private entity may affect the Consultant's performance of work pursuant to the agreement.

- The Consultant has a business arrangement with a current NDOR employee or immediate family member of such an employee, including promised future employment of such person, or subcontracting arrangement with such a person, when such arrangements are contingent on the Consultant being awarded the project. This item does not apply to pre-existing employment of current or former NDOR employees, or their immediate family members. **Comment:** This provision is not intended to supersede any NDOR policies applicable to its own employees accepting outside employment. This provision is intended to focus on identifying situations where promises of employment have been made contingent on the outcome of this particular procurement. It is intended to avoid a situation where a Consultant may have unfair access to "inside" information.
- The Consultant has, in previous work for NDOR, been given access to information relevant to the procurement process or the project to be awarded that is classified as "private" or "nonpublic" and such data potentially provides the Consultant with an unfair advantage in preparing a proposal for the project. **Comment:** This provision will not, for example, necessarily disqualify a Consultant who performed some preliminary work from being awarded final design work, especially when the results of such previous work are public data available to all other Consultants. Rather, it attempts to avoid an "unfair advantage" when such information cannot be provided to other potential Consultants.
- The Consultant has, in previous work for NDOR, helped create the solicitation by performing work such as: writing the solicitation, or preparing evaluation criteria or evaluation guides for the solicitation.
- The Consultant, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to NDOR.

Actions to be Taken if a Conflict is Identified

1. **During Selection.** It is expected that Consultants will not submit proposals on projects where a conflict of interest exists. The Consultant is required to submit a letter to the Agreements Engineer disclosing a potential conflict of interest exists upon discovery of the potential conflict after an RFP is advertised. The Agreements Engineer shall determine, in consultation with the appropriate NDOR 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 Agreements Engineer. If it is determined a conflict does not exist, the proposal will be submitted to NDOR's Selection Committee for consideration.
2. **After Selection Approval But Prior to Agreement Award.** NDOR's PC will contact the Agreements Engineer explaining the perceived conflict of interest. If the Agreements Engineer 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.

3. **During the Performance of the Service.** The PC will contact the Agreements Engineer explaining the perceived conflict of interest. If the Agreements Engineer concurs that a conflict of interest exists, based on the service, progress of work and potential risks, the Agreements Engineer will recommend action to NDOR's Deputy Director-Engineering. Possible actions are either termination of the agreement or continuing with the service with full disclosure required by the Consultant.

Appendix A Acronyms

AASHTO	American Association of State Highway and Transportation Officials
ACEC.....	American Council of Engineering Companies
CPA	Certified Public Accountant
CWO.....	Consultant Work Order
FAR	Federal Acquisition Regulations
FCCM	Facilities Capital Cost of Money
FHWA	Federal Highway Administration
FMIS	Financial Management Information System
ICE.....	Independent Cost Estimate
IDIQ	Indefinite Delivery/Indefinite Quantity
NDOR	Nebraska Department of Roads
NEPA.....	National Environmental Policy Act
NTP	Notice to Proceed
PC.....	Project Coordinator
PoDI	Projects of Division Interest
QBS	Qualifications Based Selection
RFP	Request for Proposal
SOS.....	Scope of Services

Appendix B Definitions

Neb Rev. Stat. 81-1701 thru 1721 – Nebraska Competitive Negotiations Act provides managerial control over competitive negotiations by NDOR for acquisition of professional architectural, engineering, landscape architecture, or land surveying services.

Agreements Engineer –The term “Agreements Engineer” includes the following Consultant Services Section staff: Consultant Services Engineer, Agreements Engineer, Assistant Agreements Engineer, and Highway Agreements Specialist who are responsible for consultant certification, selection, negotiations, contracting, invoice payments, and performance.

Authorization – Approval by FHWA to incur costs on a project eligible for federal reimbursement.

Brooks Act – (40 U.S.C. 1101-1104) is the United States federal law that requires agencies to select engineering and architecture firms based upon their competency, qualifications and experience rather than by price.

Code of Federal Regulations (CFR) – is the annual codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the federal government of the United States.

Categorical Exclusion – Categorical Exclusion means a category of actions, based on similar actions, do not individually or cumulatively have a significant effect on the human environment.

Certified Consultant - A consultant certified by NDOR as qualified for specific standard work categories through the submission of credentials on DR Form 497. A list of certified consultants and standard work categories is maintained on NDOR's website.

Conflict of Interest – As per 23 CFR, no official or employee of a state or any other governmental institution who is authorized in their official capacity to negotiate, make, accept, approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract.

Consultant – An individual, public or private organization, or institution of higher learning having expertise in professional disciplines applicable to transportation programs and hired by NDOR.

Consultant Agreement – An agreement between NDOR and the selected consultant for professional services. Agreements are identified by their agreement number consisting of two (2) letters followed by four (4) numbers. These numbers identify the section the work is provided for, the type of agreement, the year the agreement is executed and the sequence (i.e. VK1501).

Consultant Proposal – A proposal prepared by a consultant, detailing their qualifications, experience, performance data, and other information to support consideration for selection to perform professional services.

Consultant Work Order (CWO) – A form and process used to expedite the approval of and notice to proceed for a limited amount of additional professional services prior to executing a supplemental agreement.

Cost Breakdown Form – NDOR’s standard form to be included with all invoice packages. Depending on the payment type (*Actual Cost Plus Fixed Fee, Maximum not to Exceed, Unit Prices, or Lump Sum*); the appropriate Cost Breakdown Form must be used. All applicable forms can be found on NDOR’s website at www.transportation.nebraska.gov/rfp.

Dispute Resolution – NDOR’s non-binding process to resolve disagreements and potential claims before reaching formal legal action.

District Engineer (DE) – Engineer in charge of managing the highways in one of the eight NDOR Districts.

Environmental Assessment (EA) – A document that is prepared for an action where the significance of the social, economic, and environmental impacts is not clearly established.

Environmental Impact Statement (EIS) – Federal Agencies are to prepare an environmental impact statement for major federal actions that significantly affect the quality of the human environment.

Federal Acquisition Regulations (FAR) – is the principal set of rules in the Federal Acquisition Regulation System. The FAR System governs the "acquisition process" by which the government purchases (acquires) goods and services.

GovDelivery® – A web-based email subscription management system that allows subscription to news and information updates on NDOR’s website. Whenever information is updated on a ‘subscribed to’ NDOR web page, subscribers will receive an email and/or mobile alert. Subscription profiles may be customized and managed to receive exactly the types of information desired, and may be cancelled at any time.

Independent Cost Estimate (ICE) – An independent cost estimate prepared by NDOR which includes labor, fee for profit, direct costs, and indirect costs necessary to perform the detailed scope of services to be provided by a Consultant.

Invoice – Consultant’s request for payment with an account of all costs incurred which has been approved by an individual representing the Consultant.

Invoice Package – An electronic document submitted by the Consultant to NDOR through the invoice workflow (OnBase). The invoice package consists of an invoice, progress report, and NDOR cost breakdown form.

Indefinite Delivery, Indefinite Quantity (IDIQ) – A method of contracting for “On-Call” services whereby a consultant or group of consultants is selected and utilized to perform an indefinite quantity of services for an established contract period.

Large Purchase Procurement Procedures – QBS procedures to be followed for the procurement of professional services that exceed \$60,000 for all phases of the project from conception through letting, or for a project whose basic construction cost is estimated to be more than \$580,000.

Master Agreement – An agreement between the Consultant and NDOR defining the general terms and Scope of Services to be provided under an indefinite delivery/indefinite quantity (IDIQ) contracting arrangement.

National Environmental Policy Act (NEPA) – is a United States environmental law that established a U.S. national policy promoting the enhancement of the environment. Additionally, it established the President's Council on Environmental Quality. The law was enacted on January 1, 1970.

Notice to Proceed (NTP) – Written notification given by NDOR authorizing the Consultant to begin work and incur costs under an agreement.

Obligation of Funds – The formal commitment by FHWA to participate in a share of a project's costs.

OnBase – NDOR's document management system. Consultants interact in a variety of ways within OnBase, including the upload of invoices.

On-Call Consultant(s) – A consultant or group of consultants selected under a qualifications based process to provide services through an indefinite delivery/indefinite quantity (IDIQ) agreement.

Ordering Limitations – The minimum and maximum amount of a Task Order issued under an IDIQ agreement. The consultant is not obligated to provide a service outlined in an IDIQ agreement if it is less than the minimum, or greater than the maximum amount specified in the RFP.

Project Coordinator (PC) – NDOR staff person responsible for the management of the project and coordination between NDOR and the Consultant.

Progress Report – A report included with the Consultant's invoice that includes, as a minimum: a description of the work completed for that period, a description of the work anticipated for the next pay period, percent of work completed to date, and pending or unresolved issues related to providing the services.

Qualification-Based Selection Process (QBS) – It is a competitive contract procurement process whereby consulting firms submit qualifications to NDOR who evaluates and selects the most qualified firm, and then negotiates the project scope of services, schedule, and consultant fee.

Request for Proposal (RFP) – A document prepared by NDOR requesting firms to submit qualifications and other supporting information to be considered for selection to perform work on a project or other required services.

Scope of Services- Basic – A scope of services used in the RFP to describe the general professional services required to accomplish the requested work.

Scope of Services- Detailed – A document defining the specific tasks to be performed, work products to be provided (deliverables), and submittal schedule for the services to be provided to NDOR under an agreement.

Selection Committee – The Selection Committee consists of the following: the appropriate Deputy State Engineer, or their designated representative; the appropriate Division Head or District Engineer, or their designated representative, for which services are being procured; the Agreements Engineer, or their designated representative; and two members-at-large as approved designated by the Director.

Short-List – A reduced number list of consultants to be considered from a larger pool, all pursuing the same NDOR project or work advertised in an RFP, who have been chosen to further define their qualifications in a discussion with NDOR, and from which the selected consultant will be chosen.

Small Purchase Procurement Procedures – QBS procedures to be followed for the procurement of professional services are less than \$60,000 for all phases of the project from conception through letting, and for a project whose basic construction cost is estimated to be less than \$580,000.

Sole Source – Often called non-competitive procurement, is the solicitation of a proposal from one source and may be used when it is not feasible to use competitive negotiation or small purchase procedures (ref. 23 CFR 172.7(a)(3)).

Standard Work Categories – Technical and professional work disciplines requiring registration by the Nebraska State Board of Examiners for Professional Engineers and Architects, Nebraska State Board of Examiners for Land Surveyors, or satisfactory work experience for the preparation or performance of studies, analyses, surveys, maps, reports, computations, charts, plans, specifications, electronic data, shop drawings, diaries, field books, and other documents.

Supplemental Agreement – An agreement that revises or amends a previous agreement between the Consultant and NDOR. These are primarily used to revise or add additional scope of services or to change language in the original agreement. Supplemental Agreements are identified by adding 2 digits to the end of the agreement number they are supplementing (i.e. VK1501-01).

Subconsultant – An individual, a public or private organization, or an institution of higher learning having expertise in professional disciplines applicable to transportation programs and providing these services through another Consultant (Prime) hired by NDOR rather than through a direct contract with NDOR.

Task Order – An agreement issued under the IDIQ process that outlines a detailed scope of services to be provided for a project or service under a Master Agreement.

USC – United States Code is the codification by subject matter of the general and permanent laws of the United States. It is divided by broad subjects into 51 titles.