

# Consultant Contract Services Manual

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# **CHAPTER 1 - INTRODUCTION**

## **1.0 Purpose**

This manual outlines the State of Louisiana, Department of Transportation and Development (DOTD) policies and procedures necessary to:

- A. Identify consulting firms interested in providing engineering and other professional services
- B. Evaluate and select such Consultants
- C. Negotiate the Scope of Services to be provided, develop the contract documents, and process and execute the applicable documents with the selected Consultant(s)
- D. Administer the contractual documents

## **1.1 Target Audience**

The audiences targeted by this manual are:

- A. Consultants wishing to offer their professional consultant services to DOTD
- B. DOTD personnel involved in the consultant contract process

## **1.2 Suggested Reading Order**

The reader should begin by reading the Table of Contents prior to reading each chapter contained in the Manual. It will also be advantageous to remember that DOTD uses both pre-determined (non-negotiated) and negotiated type scope of services and compensation contracts as covered by the following:

- Chapter 2: Contains information on all types of contracts.
- Chapter 3: Contains information on non-negotiated type contracts; where DOTD defines the scope of services and determines the compensation
- Chapter 4: Contains information on negotiated type contracts; where a scope of services is solicited from the Consultant resulting in a negotiated agreed to scope of services, and then the submission of a work assessment that is negotiated to determine the contract compensation
- Chapter 5: Contains information pertinent to administration of contracts.

## **CHAPTER 2 - CONSULTANT CONTRACTS**

### **2.0 Introduction**

This chapter contains information concerning topics relative to several types of contracts with particular emphasis upon the method of determining compensation and payments. The following types of contracts are primarily used by DOTD:

- A. Non-negotiated Contracts (Pre-determined compensation): either lump sum or actual cost plus fixed fee with a maximum compensation limitation;
- B. Negotiated Contracts: either lump sum or actual cost plus fixed fee with a maximum compensation limitation;
- C. Retainer Contracts: with a maximum compensation limitation and the Task Orders being either of the above Type A or B or, Type D (below); typically Retainer Contracts are chosen due to their flexibility to perform like kind services statewide or regionally for projects which may require urgency; Retainer Contracts are also well suited to maximize the use of limited resources.
- D. Other Types of Contracts: either non-negotiated or negotiated with a maximum compensation limitation can occasionally involve:
  - 1. Cost per unit of work; or
  - 2. Specific rates of compensation.

### **2.1 Decision Factors for Different Types of Contracts**

The most important consideration in determining the choice of contract type is the degree of confidence that DOTD has to reasonably determine the project scope and compensation, involving such elements as:

- A. Complexity
- B. Project/Contract scope of services and/or compensation size
- C. DOTD experience
- D. Potential for encountering unknowns during the prosecution of the work

Contracts for smaller projects that are low to moderate in complexity and for which the scope is well defined would typically be non-negotiated. This type of contract is generally lump sum, but may also be cost plus fixed fee with a

maximum compensation limitation. Contracts for projects that are more complex, larger, and particularly where the scope of services is difficult to determine or precisely develop, would be negotiated. This type of contract is generally cost plus fixed fee with a maximum compensation limitation, but may also be lump sum.

## **2.2 Consultant Procurement Process**

Louisiana Revised Statutes 48:285-294 and 39:1481-1526 establish DOTD's Consultant Procurement Policy. This Procurement Process is used for:

- A. Pre-construction Engineering
- B. Construction Engineering Services
- C. Research
- D. Planning
- E. Environmental & related activities
- F. Other engineering related services
- G. Professional Services (other than engineering)

For large and complex projects, a two-tiered selection with an interview and work plan in the second tier of the evaluation may be considered. A cost proposal may also be a factor which is considered in the second tier of evaluation for state-funded projects.

### **2.2.1 Justification for Consultant Procurement**

Three conditions that justify employment of a Consultant by DOTD are:

- A. The magnitude of work involved would place a demand upon DOTD's available work force if DOTD staff performs the contemplated work, to the extent that it would be necessary to defer other routine or essential work.
- B. The contemplated project is determined to be of such a specialized nature that DOTD would be required to go outside of its own staff for expertise in the appropriate field(s) to accomplish the work.
- C. The time frame within which the contemplated work must be completed is determined to be such that DOTD cannot undertake the work and maintain its current program on schedule.

Whenever a DOTD Section believes that Consultant services are needed, the Section Head must submit a written request through the appropriate Assistant Secretary or the Chief Engineer for permission to procure Consultant services.

### **2.2.2 Notice/Advertisement Process**

After approval has been obtained to procure Consultant services, the Project Manager designated by the appropriate Assistant Secretary, or the Chief

Engineer develops a scope of work for the Consultant Contract Services Unit for the subject project. Once completed, the Project Manager transmits the scope of services and estimate of work-hours required to perform the services to the Consultant Contract Services Unit. At a minimum, the scope of services includes the following:

- A. Project description
- B. Source and type of funding
- C. Scope of services and complexity
- D. Work elements
- E. Additional services required
- F. Items to be provided by DOTD
- G. Contract time and the estimated compensation
- H. Specialty and level of experience required
- I. Project limits and a vicinity map on 8½" X 11" format

There are basically two types of notices, differing somewhat in their content, and described as follows:

- A. Notice/Advertisement for Non-Negotiated Contracts: In general, these notices contain more information than notices for negotiated contracts. The additional information (i.e., the estimated number of plan sheets) is provided so that prospective Consultants may make their own assessment of DOTD's estimate of the contract compensation. Respondents to notices for non-negotiated compensation contracts are assumed to have evaluated the compensation in relation to the scope of services, and found it acceptable. Should it be found unacceptable, the Consultant should contact the Consultant Contract Service's Administrator for further action.
- B. Notice/Advertisement for Negotiated Contracts: These types of contracts will contain information necessary for a Consultant to best structure their own response.

All Notice/Advertisements will contain pertinent information such as:

- A. DOTD's consultant rating process, including evaluation criteria
- B. Instructions on how to respond to an Advertisement
- C. Deadline date and time for receipt of responses

- D. Disadvantaged Business Enterprises (DBE) participation requirements and/or encouragements (if applicable)
- E. When appropriate, instructions on obtaining packets for additional information
- F. Minimum personnel requirements
- G. Project limits and vicinity map (if applicable)
- H. Where to mail or deliver responses

Once the Notice/Advertisement has been prepared; the Consultant Contract Services Unit will transmit to the Chief Engineer or the appropriate Assistant Secretary and FHWA (if required) for review and approval.

A brief synopsis of the Notice/Advertisement is sent to “The Advocate” and the “Daily Journal of Commerce” for publication. The Notice/ Advertisement is then posted on the Consultant Contracts Services (CCS) Website. The Internet access site is <http://www.dotd.louisiana.gov>. The consulting firms will have a minimum of fourteen days to respond before the deadline date.

All Notice/Advertisements will require a completed, and current DOTD “Professional Engineering and Related Services”, Standard Form 24-102. Any consulting firm failing to submit any of the required information will be considered non-responsive. Name(s) of the Consultant/Team listed on the SF24-102 must precisely match the names filed with the Louisiana Secretary of State, Corporate Division, and the Louisiana State Board of Registration for Professional Engineers and Land Surveyors.

### **2.2.3 Competitive Selections**

The DOTD uses a shortlist selection process for competitive selection of consultants. The Consultant Evaluation Committee reviews the responses, applies a numerical rating system, and provides a shortlist containing the three highest scoring consulting firms/teams (if there are 3) to the DOTD Secretary for his consideration and selection of one consulting firm/team from the shortlist. All respondents will be notified via the CCS Website as to the DOTD Secretary’s final selection of the Consultant for a project. The Internet access site is <http://www.dotd.louisiana.gov>. Respondents can obtain information regarding the shortlist via a written request or a debriefing meeting with the Consultant Contract Services Administrator.

### **2.2.4 Non-Competitive Selections**

In special and rare circumstances, non-competitive selections may be utilized. These circumstances include:



- A. Specialty contracts where the necessary expertise is available only from a single, or possibly a few, source(s)
- B. A particular project for which the contract has been satisfactorily completed and closed out at an earlier date, and which may require additional services by the Prime Consultant and/or, if applicable, the Prime's Sub-consultant
- C. Contracts requiring immediate action

Whenever the need for a non-competitive selection is ascertained, the appropriate DOTD Section Head will submit justification to the Consultant Contract Services Unit. The justification will be reviewed and submitted through the appropriate Assistant Secretary or Chief Engineer to the Secretary for approval. The request will be in a written form and contain:

- A. Justification for this type of selection
- B. The recommended firm
- C. Reasons for recommending the selected firm
- D. Type of contract
- E. Estimated compensation
- F. Source of funding

The Federal Highway Administration (FHWA) must approve non-competitive selections on all projects involving Federal Aid.

### **2.2.5 Contract Execution**

After the selection of a Consultant has been made on non-negotiated type contracts or after the selection and negotiations have been completed, and the compensation provisions have been approved on negotiated type contracts; DOTD will send the selected Consultant a contract for review. If found acceptable, the Consultant is required to sign the contract with the approved signature as certified by a Board Resolution for Corporations or a Power of Attorney for Sole Proprietorships, and return the contract within ten days of receipt.

Forms required for proper and precise contract execution are:

- A. For Corporations and Companies: Corporate/Company Certified Board Resolution, clearly authorizing and designating an officer of the consulting firm, by name, to sign contracts for the firm. Also, a Disclosure of Ownership Certificate from the Secretary of State's Office. Corporations

domiciled outside Louisiana are required to submit a Certificate of Authority issued by the Louisiana Secretary of State.

- B. For Sole Proprietorships: A Power of Attorney/Affidavit is required.
- C. For Federally funded contracts; these additional forms are required to be signed by the authorized signatory:
  - 1. Certification of Consultant
  - 2. Certification of Non-procurement Debarment and Suspension
  - 3. Consultant's Statement of Sub-contractor Participation

D. Certification of Professional Liability Insurance

After all necessary approvals, signatures, and forms are obtained; a copy of the executed contract will be returned to the Consultant with a transmittal letter. The transmittal letter will usually contain a Notice-to-Proceed date, FHWA authorization date (if applicable), and the name of the DOTD Project Manager. Occasionally, the letter will state that a Notice-to-Proceed will be issued at a later date and by whom.

#### **2.2.6 Joint Ventures**

The Department will not consider joint ventures for Consultant services, except in rare cases and only with approval of a written request with justification prior to award.

#### **2.2.7 Prime Consultants and Sub-Consultants**

DOTD contracts only with Prime Consultants. It is the responsibility of the Prime and its sub-consultant(s) to contract with each other. Primes and their sub-consultants should present a reasonably accurate description of duties and percentage of total work for each in their respective responses to the Notice/Advertisement. At no time may the portion of the work to be performed by the sub-consultant exceed the portion of work to be performed by the Prime. This is necessary for the rating process, as each team member is rated individually. The individual scores are weighted; based on the percentage each team member will perform, and added to arrive at a team rating. For non-negotiated type contracts, it is desirable for the team members to reach their respective contractual agreements early, since the chosen Consultant (Prime) has only ten days to execute and return the contract to DOTD.

Occasionally, after the execution of the contract, the Prime Consultant may request the use of a sub-consultant or the replacement of an existing sub-consultant. A request must be submitted in writing to the Consultant Contract Services Administrator with justification. This justification will be reviewed and submitted to the Chief Engineer for a recommendation and DOTD's Secretary for approval.

In order to insure the stability of a selected consultant team, no substantial or significant changes in teaming partners and compensation can occur after the award has been made. DOTD requires that all sub-consultants shown on Standard Form 24-102 remain on the selected consultant team in the manner in which their role was described, since their qualifications were used in the selection process. However, since the successful completion of the project is the Prime Consultant's responsibility, the Prime has the option of changing a sub-consultant if the sub-consultant is in default. Under all circumstances, any proposed changes to the consultant team, after the selection has been made, must be submitted in writing to the Consultant Contract Services Administrator; with justification. The Consultant Contract Services Administrator will review this justification with the Chief Engineer for approval.

### **2.2.8 Staffing Plan**

DOTD requires that the key personnel shown on the Staffing Plan submitted with Standard Form 24-102 remains unchanged during the course of the project. Major changes to the Staffing Plan or key personnel assigned to the project must be submitted to the Project Manager and the Consultant Contract Services Administrator for approval.

## **2.3 Audits**

DOTD requires that all consultants conducting business with the Department allow the DOTD's Audit Section to perform an annual overhead audit of their books, or provide an independent Certified Public Accountant's (CPA) audited overhead rate of their firm. This rate must be developed using Federal Acquisition Regulation System (FARS) and guidelines provided by the DOTD's Audit Section. Audited field overhead rates may also be developed and used for field services when appropriate.

Consultants are also required to submit labor rate information twice a year to the DOTD's Audit Section. Newly selected firms must have audited salaries and overhead rates on file with the DOTD's Audit Section before starting any additional stage/phase of their contracts. All Qualification Statements submitted to DOTD will be considered non-responsive if the consultant is not in compliance with the above audit requirements.

Firms will be required to report audited overhead rates on their qualification response form (Standard Form 24-102). On projects with an estimated total contract compensation amount of \$1M and larger, the contract overhead rate for the selected firm may be subject to negotiation by the Consultant Contract Services Administrator. An unusually high overhead may cause DOTD to select another firm from the shortlist. When negotiated or self-imposed overhead rates are used as the contract overhead rate, the contract overhead rate will remain the same for the duration of that specific contract. At no time during the life of the contract can the contract overhead (negotiated or self-imposed) exceed the

audited overhead rate. In the absence of a current audited overhead rate, an overhead rate of 100% or self-imposed lower rate will be used when preparing compensation packages.

DOTD uses audit information in many ways. Prospective consultants can assist in making the audit process timely and accurate. An understanding of the ways in which audit information is gathered and used will facilitate the coordination between the consultant and DOTD.

### **2.3.1 Role of audit information in Contracts**

Due to certain professional standards and various Federal and State Directives, DOTD is required to assess the reasonableness of contract compensation provisions (See Chapters 3 and 4 for further information relative to the two types of contracts).

For Negotiated Contracts, this is a two-step process:

- A. The first step is to negotiate fair and reasonable work efforts (work-hours) and direct expenses.
- B. The second step is to set salary and overhead rates used in compensation computations to reasonable values. To accomplish this, it is necessary to define “reasonable and fair salary and overhead rates”, as well as to audit the proposed values.

For Non-Negotiated Type Contracts, DOTD determines fair and reasonable work-hours, and applies statewide average salaries and overhead rates to determine compensation, for the initial work. Compensation for supplements will be computed using the selected firm’s reasonable average salary and overhead rates.

Consultant Contract Services Unit will use the running average of the last three audits (if three available) for all lump sum contracts as the contract overhead rate to reduce the effects of annual fluctuation of overhead rates. Overhead audits older than five years will not be used in the running average computation. Supplements will use the latest audit information to revise the contract overhead rate.

The running average of the last three audits (if three available) will also be used as the provisional contract overhead rate for all cost plus fixed fee contracts. The contract overhead rate will be adjusted during the course of the contract, as necessary, to reflect the Consultant’s latest approved rate. Consultants will be allowed to invoice a lower overhead rate than the provisional rate if they know that their overhead rate is going to be lower during a certain period of the contract to avoid owing a large sum of money at the end.

The DOTD's Audit Section will make all overhead adjustments to invoices during the Interim Audit on a yearly basis through their annual review of open contracts or the Post Audit at the end of the contract.

### **2.3.2 Average Salaries and Overhead Rates**

The DOTD continuously gathers audit information by means of:

- A. Pre-Award and Post Audits on specific projects, and Annual Audits comprise the database used to define average salaries, and field and office overhead rates.
- B. Each calendar year, audit information on overhead rates is obtained from consulting firms not previously on record, to add to this database. Then the statewide average overhead rate is calculated and posted on the CCS Website.
- C. Salary information obtained from consultants is used to calculate the statewide average salaries for various classifications. Statewide average salaries are also posted on the CCS Website.
- D. DOTD statewide salary and overhead rates may be used to determine lump sum compensation, fixed fees, and maximum compensation limitation for contracts.

Consultants may bill at their actual salary and overhead rates. Lump sum compensation provisions, fixed fees, and maximum compensation limitations will not change as a result of differences between actual rates and the reasonable rates used in the compensation calculation. In the case of excessive time delays beyond the control of the Consultant, the fees may be adjusted to account for salary escalation. DOTD's standard contract language contains a clause concerning "Delays and Extensions".

### **2.3.3 Specific Project Audits**

A specific project pre-award report, from the DOTD's Audit Section, will be required for negotiated contracts under the following circumstances:

- A. When DOTD does not have sufficient knowledge of the Consultant's accounting system; to be assured that proper cost segregation will occur
- B. When the proposed negotiated lump sum compensation, or the maximum compensation limitation is greater than \$250,000
- C. When there is a history of unfavorable experience regarding the reliability of the Consultant's accounting system

- D. When the contract involves procurement of new equipment, supplies, and/or technology for which cost experience is lacking

Specific project post-audits are required for a cost plus fixed fee with a maximum compensation limitation contract; for the purpose of adjusting payment. If necessary, post-audits may be required for lump sum compensation contracts. The purpose of these audits is to provide data for negotiating future contracts.

#### **2.3.4 Future Hires**

The salary information submitted in a proposal may include future hires. The proposed rate will be used if the identity of the hire is known, and a reasonable salary rate has been agreed to and can be documented. Suitable documentation is a “letter of intent” signed by both the Consultant and the proposed new hire, and must be included in the proposal. If the rate has not been agreed to, or is not documented, then the statewide average rate will be used.

#### **2.3.5 Designated Personnel**

Direct salary costs are normally computed using the Consultant’s reasonable average audited salary rate for each required classification. If it is known that a specific employee will be performing task elements identified in the proposal, the Consultant may choose to designate such personnel for the related element of work. The Prime Consultant should submit a statement identifying all personnel to be designated, their classifications, and the work elements for which they are to be designated. Costs for the identified tasks will be computed using the audited rate for the designated person(s). Post audits will confirm actual costs.

### **2.4 Standard Contract Stages and Parts**

DOTD standard contracts are usually divided into the following stages and parts:

#### **Stage 0: Feasibility Studies**

- Part I: Feasibility Study
- Part II: Environmental Inventory

#### **Stage 1: Planning/Environmental**

- Part I: Corridor Study
- Part II: Line and Grade Study
- Part III: Environmental Evaluation
  - (a) Categorical Exclusion
  - (b) Environmental Assessment (EA)
  - (c) Environmental Impact Statement (EIS)
- Part IV: Conceptual Design
- Part V: Scope and Budget Development

#### **Stage 3: Design**

- Part I: Surveying Services
  - (a) Topographic Survey

- (b) Title Work
- (c) Property Survey
- (d) Title Updates
- (e) Right-of-Way (R/W) Maps
- (f) Title Take-Off
- Part II: R/W Acquisition and Utility Relocation
- Part III: Preliminary Plans
- Part IV: Final Plans
- Part V: Operational Services
- Part VI: Inspection Services
- Part VII: Construction Proposal
- Part VIII: Phase II Environmental Site Assessment
- Stage 5: Construction Engineering Service
  - Part I: Construction Support
  - Part II: Shop Drawings
  - Part III: Construction Engineering and Inspection (CE&I)

Although it is possible that a contract could have all of the above parts, a typical design contract will likely have only two or three parts.

Usually, only the compensation provisions for the first part of the contract will be set or initially negotiated. Whenever this first part of work is nearing completion; the scope and compensation for the next part will be determined and/or negotiated. The Notice/Advertisement will describe all Stages and Parts that are anticipated to be included in the contract. The original contract will also describe all anticipated Stages and Parts, and explain that Supplemental Agreement(s) will include compensation and contract time for subsequent work, upon satisfactory completion of the prior Stages and Parts.

The contract will segregate compensation according to the Stages and Parts. In cost plus fixed fee with maximum compensation limitation contracts, a separate maximum limit will be set for each Part of each Stage. Funds shall not be transferred from one Stage or Part to another without prior approval of Consultant Contract Services Administrator. The Consultant's accounting system must segregate costs by Stage and Part, as well as by Supplemental Agreement or Extra Work Letter.

## **2.5 Escalation**

Salary escalation is the practice of anticipating that salary rates will increase during the performance of a contract; and basing the compensation structure on an average of the current rate and the estimated future rate. No escalation is applied if the contract midpoint is a year or less from the current salary survey date.

Contracts with midpoints more than one year beyond the salary survey date, but whose total duration is not greater than three years, will be escalated to the



contract midpoint. Escalation for contracts with durations greater than three years will be computed annually and applied to the remainder of the contract amount.

The proposed escalation percentage is limited to DOTD's maximum. Maximum percentages are calculated annually based on Consumer Price Index (CPI-U), published by the United States Department of Commerce/Bureau of Economic Analysis. The escalation rate will be limited to a minimum of 0% and a maximum of 5%.

## **2.6 Profit/Fixed Fee Calculation**

In the following discussions the word "profit" should be understood to be synonymous with "fixed fee". DOTD's standard profit/fixed fees are used for all forms of contracts. The term "profit" is used for lump sum compensation contracts. The term "fixed fee" is used for cost plus fixed fee with maximum compensation limitation contracts. Despite the differences in terms, the computation is exactly the same.

Separate profit calculations are performed for the Prime and each sub-consultant, for each applicable Stage or Part thereof. A particular Prime or each sub-consultant may respectively have several profit calculations in a proposal.

Factors considered in determining profit percentages are:

- A. Type of project (Engineering or Field Services)
- B. Magnitude of the consulting firm's overhead rate
- C. Magnitude of the total estimated project cost

The profit percentage calculation consists of applying a base profit percentage, and multiplying it by two modifying factors, which are referred to as:

- A. Overhead factor (see Section 2.6.2 for more details)
- B. Compensation size factor (see Section 2.6.3 for more details)

The resultant profit percentage is then applied to the sum of direct salary costs, escalation provisions, and the overhead cost, excluding direct expenses, to determine the profit amount in dollars.

### **2.6.1 Base Profit Percentage**

The base profit is based upon the type of work to be performed. The base profit percentage is 15% for general engineering/related services and 12% for construction support/inspection and other field services.



### 2.6.2 Overhead Factor

Absent a self-imposed or negotiated overhead, the contract overhead used in the profit calculation (OH) will be the smaller of the proposed rate (by the Consultant) and the running average of the last three audits (if available). The Overhead Factor used in the profit computation is based upon the comparison of the overhead used (OH) to the Statewide Average Overhead. The overhead factor is  $C^2$ , where C is the ratio of statewide average overhead to contract overhead. The maximum value of the Overhead Factor,  $C^2$ , is 1.15.

### 2.6.3 Compensation Size Factor

The same compensation size factor is used for all profit calculations for the Prime and each sub-consultant. The contract compensation Size Factor is based on the magnitude of the total estimated project cost. For compensation up to \$100,000, the factor is unity. For compensation higher than \$100,000:

$$\text{Compensation Size Factor} = 1.5X^{-0.036}$$

Where X is the total estimated project cost. The compensation size factor may be negotiated for contracts larger than \$10,000,000.00.

## 2.7 Contingencies

DOTD includes contingencies in cost plus fixed fee with maximum compensation limitation contracts, when appropriate. Contingencies are included in larger and more complex contracts to compensate for lack of precision in estimating the work efforts to accomplish all tasks within the specified project scope. The contingency percentage varies from a minimum of 5 to a maximum of 20, with incremental mid-values of 5's (i.e. 5, 10, and 15).

## 2.8 Contract Amendments

The Consultant will make minor revisions in the described work without additional compensation as the work progresses. Considerations for minor revisions have been included in the compensation computations. If DOTD requires more substantial revisions or additional work which the Consultant believes to warrant additional compensation, the Consultant will notify DOTD in writing within thirty days of being instructed to perform such work. If DOTD agrees that the required work is necessary and warrants additional compensation, the contract will be augmented by one of the following methods:

**Extra Work Letter** - An extra work letter may be issued for additional work that does not constitute a change in scope, and for which the estimated compensation plus the compensation for all previous extra work letters does not exceed ten percent of the cumulative value of all contract compensation (exclusive of all extra work letters) to date. The Consultant Contract Services Administrator will issue extra work letters.

**Supplemental Agreement** – A supplemental agreement will be issued for the additional services required for the project. A supplemental agreement will be required when the additional work represents a change in the original scope of the contract, or when the estimated compensation for the additional work plus the compensation for all previous extra work letters exceeds ten percent of the cumulative value of all contract compensation (exclusive of all extra work letters) to date.

The Consultant shall not commence any additional work requiring extra compensation until one of the contract changes described above has been executed, and authority to proceed has been given in writing by the DOTD.

### **2.8.1 Proposal Format for Contract Amendments**

The formats to be used for contract amendment proposals are described as follows:

- A. Non-Negotiated Type Contracts: The Consultant may submit a detailed scope of services description and a list of appropriate descriptive line items for work-hour estimations (work-hours and compensation are not included). DOTD will review the proposal, reconcile any differences in perception of the scope of services, estimate the required work effort, and calculate the compensation. Usually, the Consultant's reasonable average salary and overhead rate information will be used in preparation of the compensation package.
- B. Negotiated Type Contracts: The proposed format differs from the above in that the Consultant supplies a scope of services, work-hours, direct expenses, and compensation calculations (see Chapter 4 for additional information).
- C. Extra Work Letters: Similar to A and B.

Proposals will:

- 1. Be typed on 8½" X 11" paper
- 2. Have all pages numbered consecutively
- 3. Have all documents dated
- 4. Bear the original signature of a Principal of the firm

Upon the request of the Project Manager, all contract proposals must be submitted to the Consultant Contract Services Administrator, for further distribution.

## **2.9 Overtime**

Unless considered in negotiations, and/or included in the compensation calculations, and specifically approved in writing in advance, overtime charges will not be allowed on any contracts. However, overtime charges may be allowed for construction inspection projects where the consultant is required to adhere to the contractor's schedule.

## **2.10 Claims**

DOTD's general definition of a claim is a request for additional compensation submitted after the work has been completed. These requests are for work performed, but not covered by the contract compensation provisions. Claims generally result from an initial unawareness that the work is additional and/or a reluctance to request additional compensation. As explained in Section 2.8 (Contract Amendments), it is the Consultant's responsibility to provide a written request for an amendment, if, in their opinion, significant additional work is required by the DOTD. Furthermore, this amendment must have prior approval, and a written Notice-to-Proceed issued by the Consultant Contracts Services Unit; before work can begin.

Occasionally, a Consultant and DOTD's Project Manager may, at some point during the contract, disagree that additional compensation is warranted. It is the Consultant's responsibility to continue the work, but it should be formally documented that additional compensation was requested. Under no circumstances should a Consultant proceed with the intention of making recovery through a claim without such documentation.

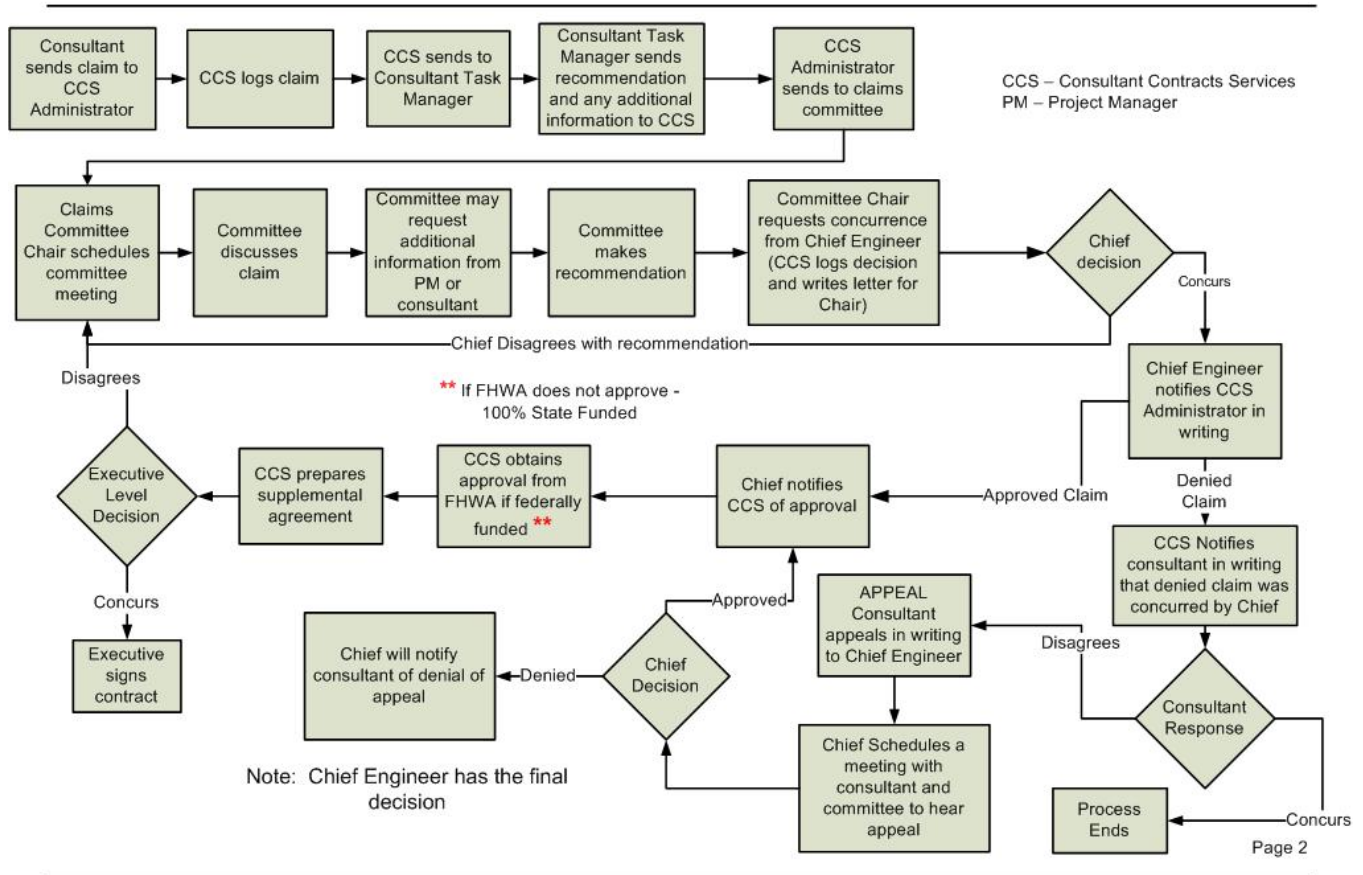
A claim must be filed with the Consultant Contract Services Administrator. The DOTD's Consultant Contracts Claims Committee will review the claim, and determine if the claim has merit in principle, and if so, how much additional compensation is warranted. The Consultant will be notified in writing of the Committee's recommendation. If accepted by the Consultant, and approved by the Chief Engineer and FHWA (for projects with federal funds), a supplemental agreement is drafted, and sent to the Consultant for signature.

The Consultant may appeal the Committee's recommendations to the Chief Engineer in writing. The decision of the Chief Engineer will be final, and the Consultant will be notified in writing.

The following is a diagram of the complete claims process:

## QCIP 005 - CONSULTANT CLAIMS PROCESS

TO BE



Claims should be avoided if possible; because of possible problems with personnel changes during or after the work is completed, misplaced information, recollection of pertinent facts, and other “mishaps”, that make it difficult to reconstruct events.

The format of a formal claim is similar to a proposal for a supplemental agreement. A detailed justification narrative is very important and required. The narrative should include:

- A. Reasons for believing that the claimed work is eligible for additional compensation
- B. Name of the Department representative authorizing the additional work
- C. A description of the work
- D. Time period in which the work was done
- E. Dated copies of supporting correspondence

Compensation calculations should be referenced in the narrative. Following are detailed descriptions of the acceptable reasons for claims and other miscellaneous information.

### **2.10.1 Claims Based On Additional Work**

DOTD's standard contract includes the following under the contract changes paragraph:

"The Consultant will make minor revisions in the described work without additional compensation as the work progresses. Considerations for minor revisions have been included in the compensation computation. If DOTD requires more substantial revisions or additional work which the Consultant believes to warrant additional compensation, the Consultant will notify the DOTD in writing within thirty days of being instructed to perform such work."

It is normal for a project to require minor revisions as the work progresses. The accumulation of many small revisions over the life of a contract may, in aggregate, be greater than that which could reasonably be considered normal. If this is the case, the "thirty day rule" may have been violated for the first instance(s), and a claim may be justified.

### **2.10.2 Claims Based on Underestimation**

DOTD recognizes underestimation as a potentially valid basis for a claim. Overestimation can also occur for a part or parts of the estimated work effort. Therefore, a complete accounting must be made for all lump sum type contracts for which a claim for underestimation is filed. An accounting report may also be required for a cost plus fixed fee with a maximum compensation limitation contract. This accounting report can normally be prepared only after a project is completed. A post audit will also be required. The results of the audit are used to determine if further investigation of the claim is warranted.

### **2.10.3 Claims Based on Time Delays**

The "Delays and Extensions" clause of DOTD's standard contract includes language indicating that compensation provisions may be reviewed if contract time is exceeded by twelve months, if the delays are not the fault of the Consultant. It further states that it is the Consultant's responsibility to request in writing additional compensation, and that no compensation adjustment will be made for work performed prior to such a request. All requests for additional compensation must be submitted to the Consultant Contracts Services Administrator. The Consultant Contracts Services Administrator will also resolve questions regarding the responsibility for time delays. If this procedure is followed, and if adjustments are warranted, a supplemental agreement is executed to account for predicted salary and overhead fluctuation for the

remaining work to be performed after the twelve-month delay period and the date of the request. Claims made for compensation adjustments due to salary or overhead increases for time periods before a formal request was made will not be considered.

#### **2.10.4 Role of Post Audits, Payroll Records, and Sheet Counts**

Post Audits, payroll records, and sheet counts are sometimes presented as proof of the worthiness and/or reasonableness of the compensation claimed. DOTD does not necessarily consider these types of information to be “proof” of the worthiness or reasonableness of the requested compensation. They may be useful as “indicators”.

#### **2.11 Equal Employment Opportunity/Affirmative Action**

It is the policy of DOTD to ensure that all transportation activities are free from any discriminatory elements or practices, and that affirmative actions are taken to foster the participation of Disadvantaged Business Enterprises in all such activities.

Specific programs are established to facilitate compliance with Federal and State Laws, Rules and Regulations pertaining to non-discrimination and affirmative action. These programs are administered by the DOTD Compliance Programs Section and are described below:

- A. Disadvantaged Business Enterprise (DBE) Program – concerned with locating, certifying, educating, assisting, and awarding DBE with a percentage of work financed all or in part by federal funds.
- B. Title VI – concerned in general with the social, economic, and environmental impact of DOTD’s activities that are federally funded.
- C. Contract Compliance – concerned with enforcing the Equal Employment Opportunity (EEO) provisions included in all federal-aid contracts.
- D. Local Government Compliance – concerned with monitoring those Louisiana governmental entities that are subject to civil rights responsibilities as a result of acceptance of federal transportation funding.
- E. Internal Personnel Practices – concerned with the treatment and effect of personnel practices on DOTD and prospective DOTD employees.

Each of these program areas may have a potential impact on any contract awarded to a Consultant. Therefore, it is beneficial to be aware that additional information and program manuals can be obtained from:

Department of Transportation and Development  
Attn: Consultant Contract Services Administrator



1201 Capitol Access Road  
Baton Rouge, LA 70802-4438, or

Post Office Box 94245  
Baton Rouge, LA 70804-9245

Telephone No. (225) 379-1989

FAX No. (225) 379-1859

### **2.11.1 Disadvantaged Business Enterprise Requirements**

It is the policy of DOTD and a requirement of the Federal Department of Transportation (DOT) that DBE firms as defined in Title 49, Code of Federal Regulations, Part 26 (49 CFR 26), shall have the maximum opportunity to participate in contracts awarded which are financed in whole or part with federal funds. In this regard, Consultants shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that DBE firms have the maximum opportunity to compete for and perform services relating to contracts.

Furthermore, Consultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of contracts. Consultants found to be in non-compliance with these regulations may be subject to sanctions.

### **2.11.2 DOTD Minority Goal**

The Federal Agency of the Office of Small and Disadvantaged Business Utilization (OSDBU) USDOT DBE Program, states that USDOT-assisted agencies evaluate their USDOT-assisted contracts throughout the year, and establish contract specific DBE subcontracting goals where these goals are needed, to ensure nondiscrimination in federally-assisted procurements. To comply with this directive, the Louisiana Department of Transportation's Consultant Contract Services Section will be using the following procedure to review contracts that are being advertised for applicability of minority goals.

In order for small disadvantaged firms, including those owned by minorities and women, to participate in the DBE program, they must apply for and receive certification as a DBE. The firms should contact the DOTD Compliance Section, if further information on certification is required. The website for the DOTD's Compliance Section is: [www.dotd.louisiana.gov/administration/compliance](http://www.dotd.louisiana.gov/administration/compliance). A complete list of those firms registered as DBE with their specialties can be found at: [www.dotd.louisiana.gov/cgi-bin/construction.asp](http://www.dotd.louisiana.gov/cgi-bin/construction.asp). A list by work type can be found at: [www.dotd.louisiana.gov/lettings/subsdbed/dbhq20070530.asp](http://www.dotd.louisiana.gov/lettings/subsdbed/dbhq20070530.asp)

Contracts which are greater than or equal to \$250,000 will be reviewed for minority goals. The work types with percentages will be identified by the Project Manager prior to the request being submitted to the Consultant Contract Services Section. The Compliance Section will gather the number of available DBE firms in the project area and the firms with specialties in the identified work categories, to assist in setting the goal.

This information will be presented to the evaluation committee. The **Evaluation Committee** will be comprised of the following positions: Consultant Contract Engineer; Representative from DOTD's Compliance Section; Representative from Design/Project Manager; FHWA's Area Engineer; and DOTD's Project Development Division Chief. The committee will discuss the projects and set the goals for the contract. Once the goals are established, DOTD's Consultant Contract Services Section will advertise the project.

## **2.12 Standard Contract Language**

Sections 2.12.1 through 2.12.4 excerpt certain portions of the current standard contract language for the benefit of those who are not familiar with DOTD contracts. The topics as excerpted address the items that are of most interest to the Consultant. This language is not negotiable for routine engineering, planning, management and related services. The language may be varied for specialty or unusual contracts.

### **2.12.1 Insurance Requirements**

The following is the clause entitled "Insurance Requirements":

"During the term of this Agreement the Consultant shall carry Professional Liability Insurance in the amount of \$1,000,000. This insurance shall be written on a "claims-made" basis. The Consultant shall provide, or cause to be provided, a Certificate of Insurance to DOTD showing evidence of such Professional Liability Insurance."

### **2.12.2 Indemnity**

The following is the clause entitled "Indemnity":

The Consultant agrees to indemnify and save harmless the DOTD against any and all claims, demands, suits, and judgments of sums of money (including attorney's compensation and cost for defense) to any party for loss of life or injury or damage to persons or properties arising out of, resulting from, or by reason of, any negligent act, or omissions by the Consultant, its agents, servants, or employees while engaged upon or in connection with the services required or performed by the Consultant hereunder.

### **2.12.3 Delays and Extensions**

The following is the entire clause entitled "Delays and Extensions":

The Consultant shall be given an extension of time for delays beyond its control or for those caused by tardy



approvals of work in progress by various official agencies. If the contract time for any individual Stage/Phase of the contract is exceeded by twelve (12) months due to delays beyond the Consultant's control or for those caused by tardy approvals of work in progress by various official agencies; shall be cause for review of the contract compensation. If, in the opinion of the DOTD's Chief Engineer, circumstances indicate a need for additional compensation, the compensation stipulated herein for work accomplished after the delay period shall be addressed. Subsequent Stages/Phases shall also be considered as delayed. It shall be the responsibility of the Consultant to request additional compensation promptly in writing. **No compensation adjustment shall be made for work performed prior to such request.**

#### 2.12.4 Errors and Omissions

It is understood that the preparation of Preliminary and Final Plans, specifications and estimates, and all other work required of the Consultant under Contract shall meet the standard requirements as to general format and content, and shall be performed to the satisfaction and approval of the DOTD. The DOTD's review, approval, acceptance of, or payment for the services required under this Contract shall not be construed to operate as a waiver of any of the DOTD's rights or of any causes of action arising out of or in connection with the performance of this Contract.

The Consultant shall be responsible for the professional quality and technical accuracy of all designs, drawings, specifications, and other services furnished by the Consultant. Ideally, errors or substandard work shall be revealed during normal work reviews. In such cases, the work should be returned for correction and payments withheld until delivery of an acceptable product. The Consultant shall, without additional compensation, also correct or revise any deficiencies discovered subsequent to final acceptance by the DOTD in its designs, plans, drawings, specifications or other services, resulting from any negligent act, or omissions by the Consultant. If the project schedule requires that the DOTD's staff make corrections due to oversight, errors or omissions by the Consultant, the Consultant shall be responsible for reasonable cost incurred by the DOTD to make the corrections. The Consultant shall be charged the actual payroll cost for making such corrections plus the applicable overhead cost not to exceed the allowable overhead for the Consultant's firm for this Contract. In addition to costs that may be necessary to make corrections to the plans, the Consultant (or his insurer) shall be responsible for costs to correct design errors during construction. This cost to be recovered shall include the administrative cost of processing the Change Order due to design errors and omissions.

A cost recovery process to assess the administrative costs associated with moving the letting date or issuing addenda to the plans/proposal for oversights, errors and or omissions, caused by the Consultant shall be charged to the Consultant. This cost shall cover the actual payroll cost, cost of a new advertisement and applicable overhead cost not to exceed the allowable overhead for the Consultant's firm for this Contract..

## **2.13 Information on Contract Action Status**

- A. Information about the Notice/Advertisement, composition of shortlist, and project award are posted on the Internet site: <http://www.dotd.louisiana.gov>.
- B. Information about the status of negotiations, Contracts, Supplemental Agreements and Extra Work Letters can be obtained by contacting the Consultant Contract Services Unit.

## **2.14 FHWA Review/Approval**

Advertisements, compensation proposals, contracts and supplemental agreements utilizing federal funds will require approval and authorization of FHWA for all non-exempt projects.

## **2.15 Requirements for Contract Time Extensions and Closures**

All contract extensions must be requested, with proper justification, through the Project Manager prior to termination of each phase or part of the contract. The contract expiration date is shown on the NTP letter and is the NTP date plus the contract time for that phase/part as stated in the contract. When a contract is not extended prior to the expiration date, costs incurred by the Consultant within the time gap between the contract expiration date and the NTP for the new supplement cannot be invoiced.

A suspension of work should be requested from the DOTD Project Manager for the time period that no work is being performed on the project to stop the contract time, as stated in the contract, from running out. DOTD Project Managers, upon their approval, will forward this request to the Consultant Contract Services Unit.

Upon the satisfactory completion of the project, the Project Manager will request closure of the contract from the Consultant Contract Services Unit. The Consultant Contract Services Unit will close the contract, notify the Project Control and the Construction Audit Units, and request a post audit from the Audit Section when necessary.

## **2.16 Procurement of Consultant Services by Other Entities**

DOTD will select consultants for all engineering and design related service contracts financed with state or federal aid highway funds. Metropolitan Planning

Organizations (MPOs) with consultant selection procedures approved in advance by the DOTD and by the FHWA may procure consultants for federally funded planning, environmental, and research type projects only. A copy of the procedures along with a description of the policies to be used in advertising and selecting a consultant shall be submitted to the Consultant Contract Services Unit for approval. The policies and procedures should follow closely those that are utilized by DOTD as outlined in the Consultant Contract Services Manual. These procedures will be reviewed periodically to ensure compliance with applicable state and federal laws and regulations.

MPOs that desire to procure consultants for a particular project must obtain written approval from the Chief Engineer, DOTD Secretary, and the FHWA (if federal funds will be used) prior to initiation of selection procedures. When PL funds are used, procurement of consultants requires approvals from the DOTD office of Planning and Programming and Consultant Contracts Services only. The MPO shall comply with the previously approved consultant selection procedures when selecting consultants. The MPO will submit the selection documentation and other relevant materials to the Consultant Contract Services Administrator for final approval by DOTD and FHWA prior to contract negotiation with the consultant.

## **2.17 Requirements for the Procurement of Professional Services**

All requests for procurement of professional services should be submitted to the Consultant Contract Services Unit for processing and contract preparation. Procurement of professional services (other than professional engineering services) are regulated by Louisiana Revised Statute 39:1481-1526 and are subject to the requirements of the Division of Administration (DOA), Office of Contractual Review (OCR) as defined in the LA Administrative Code, Title 34, Part V. A Request For Proposal (RFP) is required for contracts over \$50,000. A cost proposal must be submitted with all proposals. DOTD may enter into non-competitive professional services contracts with the appropriate justification (see Section 2.2.4). For contracts less than \$50,000, no DOA/OCR approval is required but the contracts are submitted to DOA/OCR for review. Professional services of \$20,000 or less are considered Small Purchase Contracts and are not subject to DOA/OCR review but they are required to be reported quarterly. For additional information please visit the DOA Website: [http:// www.doa.louisiana.gov/ocr](http://www.doa.louisiana.gov/ocr).

## **CHAPTER 3 – NON-NEGOTIATED CONTRACTS**

### **3.0 General Description**

For non-negotiated (pre-determined) scope and compensation contracts, DOTD defines the scope of services, and determines the compensation. The Notice/Advertisement for the original contract will:

- A. Describe the project
- B. Define the scope of services
- C. State the compensation
- D. Define the method of payment

Consultants are encouraged to examine the scope and compensation to see if, in their judgment, the scope is correct, and the compensation commensurate with such scope. If they agree that all is satisfactory, their signed response Standard Form 24-102 indicates acceptance of the compensation and terms in the Notice/Advertisement.

The firm that receives the award is expected to execute the contract and return it within ten days of receipt to DOTD. For this reason, it is suggested that preliminary agreements between Prime and Sub-consultant (if applicable) be relatively detailed at the time of response. (See Section 2.2.5 for more details).

Pre-determined (non-negotiated) contracts are simpler and faster to process and execute than negotiated compensation contracts. When their use is appropriate, pre-determined type contracts are preferable to negotiated contracts. There are limitations to the use of pre-determined contracts (see Section 2.1 for additional details on decision factors for different types of contracts).

### **3.1 Compensation for Original Contract**

DOTD maintains a large database relative to work effort (work-hours) required to perform various types of engineering design and related professional consulting services. This is also true of salary and overhead rates (see Section 2.3 for more details). The Consultant Contract Services Unit uses the specified work effort, work-hours, and rate information to prepare the compensation package.

A step-by-step description for computing the total compensation is:

- A. By using DOTD's work-hour database and statewide salaries, the direct salary costs are computed.

- B. Direct salary costs are escalated, if applicable (see Section 2.5).
- C. The contract overhead is established.
- D. The appropriate overhead rate (statewide average overhead rate) is applied to the escalated salary costs.
- E. The total estimated cost is the sum of:
  - 1. Direct salary costs
  - 2. Escalation
  - 3. Overhead
- F. The standard profit calculation is made (see Section 2.6 for more details).
- G. The direct expenses are calculated.
- H. If the contract type is cost plus fixed fee with a maximum compensation limitation, contingencies are computed by multiplying the appropriate contingency percentage (see Section 2.7) by the total estimated costs.
- I. The sum of the total estimated costs, profits (or fixed fee), direct expenses, and contingencies (if appropriate), yields the lump sum compensation or the maximum compensation limitation.

### **3.2 Initial Meeting**

As soon as possible after the award, the Project Manager will schedule an initial meeting with the selected Consultant, the Consultant Contract Services Unit, and appropriate personnel. The purpose of this meeting is to transfer data and materials from DOTD to the Consultant and discuss in detail the scope of the project. A guideline will be given to the Consultant, consisting of a list of references and miscellaneous information relative to invoicing, such as maximum percent payable at different “milestones” in the project development (see Section 5.2.1 for more details) and consultant performance rating criteria. The Consultant will be required to read these guidelines and return a signed copy to the Project Manager.

### **3.3 Contract Amendments for Pre-Determined Type Contracts**

Contract amendments for pre-determined type contracts are also non-negotiated. Pre-determined type contract amendments are simpler and faster to process and execute than negotiated type contract amendments. The compensation calculation for extra work letters, supplemental agreements, and Task Orders issued under a retainer contract is the same as for the original contract, except that the Consultant’s salary and overhead rate information will be used. The DOTD Consultant Contract Services Unit will confer with the Consultant on the calculated compensation. Contract amendments will be sent to FHWA for

approval, if required. For further information about pre-determined type contracts, supplemental agreements and extra work letters, see Section 2.4 “Standard Contract Stages and Parts”, Section 2.8 “Contract Amendments”, and Section 2.8.1 “Proposal Format For Contract Amendments”.

### **3.4 Post Audits for Pre-Determined Cost Plus Fixed Fee Contracts**

A post audit may be performed on pre-determined cost plus fixed fee with maximum compensation limitation contracts. The purpose of this audit is to:

- A. Establish the Consultant’s actual salary and overhead rates
- B. Establish the amount of work-hours expended
- C. Adjust the total amount paid
- D. Obtain documentation of direct expenses

The fixed fee and maximum compensation limitation are not changed as a result of differences in the actual rates and the rates used in the compensation calculations.

## CHAPTER 4 – NEGOTIATED CONTRACTS

### 4.0 Introduction

The two types of negotiated contracts normally used by DOTD are lump sum compensation and cost plus fixed fee with a maximum compensation limitation. There are many similarities between the two, as shown below:

- A. Pre-award audits may be required for both types (see Section 2.3 Audits for more details)
- B. Proposal format is identical
- C. Negotiation procedures are similar
- D. Profit/fixed fee calculation is similar
- E. Calculation procedure for the total estimated cost is identical

Negotiated cost plus fixed fee with a maximum compensation limitation contracts vary from negotiated lump sum compensation contracts in that:

- F. Post audits are required to determine the actual cost for negotiated cost plus fixed fee with a maximum compensation limitation contracts
- G. Contingencies may be added in the compensation computation for negotiated cost plus fixed fee with a maximum compensation limitation contracts
- H. The amount paid for the negotiated cost plus fixed fee with a maximum compensation limitation contract is the actual documented cost up to the negotiated maximum contract limitation while the amount paid for the negotiated lump sum compensation contract is the entire lump sum compensation, based on:
  - a. Work-hours
  - b. Salary and overhead rates
  - c. Direct expenses

Fixed fee and maximum compensation limitation amounts are not adjusted because of the post audit, (i.e. these amounts are not changed as a result of differences between the actual values, and those used to determine compensation for the contract).

DOTD maintains a database that is used to define work efforts and costs for future projects. A post audit may be performed on a lump sum compensation contract for the purpose of adding to this database. Lump sum compensation is not adjusted because of the post audit results.

#### **4.1 Initial Meeting**

Within fifteen days after the award, the DOTD Project Manager will schedule a meeting with the selected Consultant, the Consultant Contract Services Unit, and appropriate DOTD personnel. The purpose of this meeting is to transfer data and material from DOTD to the Consultant and discuss the scope of the project. A guideline will be given to the Consultant, consisting of a list of references and miscellaneous information relative to invoicing and project milestones. The Consultant will be required to read these guidelines and return a signed copy to the Project Manager.

The Consultant should initiate contact with the DOTD's Audit Section as soon as possible after receipt of the Notice of Award if the Department has not previously established an overhead rate. Failure to do so may delay the negotiation process.

#### **4.2 Scope of Services Proposal**

A scope of services proposal will be solicited at the initial meeting by the Project Manager. The proposal must not include work-hours or proposed compensation. DOTD and any other affected parties will review the scope and reconcile differences with the Consultant.

The proposal will be typed on 8½"X11" papers, with the pages numbered consecutively, and contain the following:

- A. A transmittal letter, signed by the Principal of the Prime firm
- B. A proposal index (optional)
- C. A detailed narrative describing the scope of services
- D. A list of line items which include:
  - 1. A description of the work to be performed by the Prime Consultant and each subconsultant, to which work-hours will be distributed at a later date, with each line item specifically and logically tied to the narrative. The personnel or salary classification shall be shown for each line item. The line item scope is developed for the purpose of estimating work efforts. However, the narrative scope will become the "Scope of Services" for the contract.



2. The proposed work divided into logical parts with the magnitude and number that facilitate the future estimation of work-hours. Caution should be exercised to make certain that work does not overlap between line items.

### 4.3 Compensation Proposal

After an agreement is reached on the scope of services, an independent work-hour estimate will be prepared by the Project Manager and other appropriate DOTD personnel (when warranted) and submitted to the Consultant Contract Services Unit. The Project Manager will then request in writing from the Consultant to submit a price proposal directly to the Consultant Contracts Services Unit. **The Consultant is cautioned not to submit the price proposal until the Project Manager requests it, as the FHWA requires DOTD to develop an independent estimate prior to receiving an estimate prepared by the Consultant.**

The Consultant's proposal will be typed on 8½"X11" papers, with pages numbered consecutively, and contain the following:

- A. A transmittal letter, signed by a Principal of the Prime firm, showing a summary of the proposed compensation
- B. A proposal index (optional)
- C. Previously agreed to scope of services
- D. Previously agreed to list of line items, with each item showing the estimated work-hours required for each appropriate salary classification
- E. A separate sheet of calculations, showing the:
  1. Total work-hours for each salary class multiplied by the appropriate reasonable salaries
  2. Sum of the amounts for each salary class (direct salary costs)
  3. Overhead percentage and amount
  4. Profit/fixed fee (see Section 2.6 for more details)
  5. Estimated direct expenses (in detail)
  6. Contingencies (Cost Plus Fixed Fee with a Maximum Compensation Limitation Contracts, see Section 2.7 for more details)
  7. Maximum limitation (Sum of Items 2, 3, 4, 5, and 6)

Items E1 through E7 are shown separately for each Phase and Part, and for each discipline such as Road Design or Bridge Design. When there are to be Sub-consultants, items E1 through E7 are shown separately for each Sub-consultant. A separate summary sheet for the Firm/Team is required. This sheet

shows the individual and total for lump sum(s), or fixed fee(s) and maximum limitation(s).

- F. A sheet showing the profit calculation
- G. A description of the method used to determine the salary rates in all salary classes, including those personnel to be used in each class, their salaries, and the computed averages in all classes (weighting is permissible)

#### **4.4 Negotiation Procedure**

The Consultant's proposal(s) are distributed to all reviewers and other interested parties by the Consultant Contract Services Unit. The Project Manager is responsible for integrating the input from all reviewers. The Consultant Contract Services Unit is responsible for:

- A. Comparing DOTD's estimate with the Consultant's by comparing the direct salary costs of the Department's work-hours to the Consultant's work-hours. Direct salary costs are computed using the total work-hours by salary class multiplied by the Consultant's reasonable salary rate for each class and summing the amounts.
- B. If negotiations are successful, a final compensation package is prepared that includes:
  - 1. The Consultant's compensation proposal
  - 2. Audit report (optional)
  - 3. The comparison of the Consultant's and the Department's work-hours
  - 4. Other miscellaneous information

The final compensation package is then:

- C. Submitted for approval to the Chief Engineer or the appropriate Assistant Secretary, and, if required, to the FHWA
- D. If approved, the final compensation package is the basis for the preparation of the contract

In general, DOTD's theory of negotiation is that the work effort (work-hours) is negotiated. The final compensation will be the lesser of the Consultant's proposed final compensation or the final compensation calculated by the Consultant Contract Services Unit. The final compensation calculated by the Consultant Contract Services Unit is derived using the Consultant's work-hours, the latest reasonable salary rate information, the smaller of the proposed overhead rate (by the Consultant) and the current contract overhead rate, profit, direct expenses subject to maximums, and contingencies. A "step-by-step" description of the negotiation process follows:

- E. The scope of services proposal is reviewed and any differences reconciled. It may be necessary to revise the proposal, depending on the extent of the changes required.
- F. A second independent review of work-hours may be requested by the Consultant Contract Services Administrator for contracts and supplements with the proposed price of \$250,000-\$500,000, or when warranted for multi-disciplinary projects. A second independent review of work-hours will be required for all contracts and supplements with the proposed price of larger than \$500,000.
- G. DOTD's direct salary cost estimate is calculated as:
  - 1. Compute the overall total of all DOTD work-hours in the various salary classes. (For each Stage, Phase)
  - 2. The work-hours are then multiplied by the Consultant's reasonable proposed salary rates. This yields the estimated direct salary costs for each salary class.
  - 3. The total direct salary costs are then calculated.
- H. DOTD's estimated direct salary costs are compared to the Consultant's direct salary costs. Phases, Parts, disciplines, and Sub-consultants may partition a proposal. The total direct salary costs for the DOTD and the Consultant are compared. Such costs include everything contained in the proposal. If the difference is within DOTD's allowed tolerance, and if agreement is reached on direct expenses, the negotiations are concluded and the Consultant's work-hours are accepted.
- I. If the difference is not within the allowed tolerance, the Consultant Contract Services Unit will advise the Project Manager or other reviewers on the Consultant's of areas of disagreement and will recommend a negotiation plan.
- J. The Project Manager and all other reviewers estimate the work effort required to accomplish the scope of services agreed upon.
- K. Ensuing evaluations and discussions may result in the submittal of a revised proposal from the Consultant. If the Consultant annotates the proposal to reflect suggested revisions, it is so noted.
- L. The above steps are repeated until DOTD's and the Consultant's estimate of direct salary costs is within the allowed tolerance. At this point, the Consultant's work-hours estimates are accepted.
- M. Once the negotiations are completed, the Consultant will submit a final compensation proposal. The Consultant Contracts Services Unit will compute the final compensation and file the Consultant's proposal along with the independent work-hour estimate (revised if necessary); an audit

report (optional); the comparison of the Consultant's and the Department's direct salary costs; and any other pertinent information.

- N. If, after several unsuccessful efforts to reach agreement within 10 days, the Consultant Contract Services Administrator's opinion is that further negotiations would be ineffective, a final offer will be made to the selected Consultant. This offer will consist of DOTD's estimated compensation based on DOTD's estimated work effort, and the Consultant's audited rates. If the Consultant accepts, the Project Manager will finalize and transmit the final compensation package. If the Consultant declines the final offer, the Consultant Contract Services Administrator will make a written recommendation for termination of negotiations. Then a new Consultant will be chosen from the project short list, and negotiations will begin with the new Consultant.

#### **4.5 Contract Amendments for Negotiated Type Contracts**

Contract amendments for negotiated type contracts are also negotiated. The compensation calculation for extra work letters, supplemental agreements, and Task Orders issued under a retainer contract is the same as for the original contract. Contract amendments will be sent to FHWA for approval, if required. For further information about negotiated type contracts, supplemental agreements and extra work letters, see Section 2.4 "Standard Contract Phases and Parts", Section 2.8 "Contract Amendments", and Section 2.8.1 "Proposal Format For Contract Amendments".

## **CHAPTER 5 - INVOICES AND PROJECT SCHEDULES**

### **5.0 Introduction**

Prompt, equitable and accurate payment for Consultant services is a DOTD goal. The consultant is jointly responsible for the attainment of this goal. An understanding of DOTD requirements will assist the Consultant in providing the necessary information and timely services.

### **5.1 Progress Schedules**

The following is found in the General Requirement Section of the DOTD Standard Contract. It is being repeated herein for the convenience of those who are not familiar with DOTD standard contracts. The language is basically the same for all forms of contracts.

Immediately upon receiving authorization to proceed with work, the Consultant will prepare and submit to the Project Manager a proposed progress schedule in the form of a bar chart, which shows in particular:

- A. Appropriate items of work
- B. Times for beginning and completion by calendar periods
- C. Other data pertinent to each schedule
- D. The chart shall be arranged so that the actual progress can be shown as each item of work is completed
- E. The schedule shall be in a form and arrangement, and include data required and approved by DOTD
- F. It shall be revised monthly and submitted with other required monthly data
- G. One original and two copies of this schedule shall be submitted to the Project Manager

DOTD has various review/checkpoints for services provided by consultants for engineering and other related activities. At these points, there are defined tasks that must be accomplished before a certain percent-complete status is acknowledged by DOTD.

These standard review/checkpoints and their defined tasks are not applicable to all projects. In such cases, the Consultant and the Project Manager should mutually agree upon applicable review/checkpoints before work begins. They should be incorporated into the progress schedule.

## 5.2 Invoices

A standard certified correct invoice should be submitted separately for each project or Task Order. A cost breakdown summary should also be submitted and must be approved by Consultant Contracts Services Unit any time funds are moved within parts or stages. DOTD's standard payment clauses are repeated here for the convenience of those who are not familiar with the standard contract.

### **I. For Lump Sum Compensation Contracts:**

- A. Payments (on undisputed amounts) to the Consultant for services rendered by the Consultant and/or sub-consultant will be made monthly based on a standard certified correct invoice directly proportional to the percentage of completion of work as shown in the monthly progress schedule as approved by the Project Manager.
- B. The monthly progress schedule shall show in detail the status of work and shall be of a form and with a division of items as approved by DOTD.
- C. The allowable costs shall be in accordance with the cost principles and procedures set forth in 48 CFR 31 of the Federal Acquisition Regulations System (FARS), as modified by DOTD's audit guidelines regarding maximum Consultant compensation and state travel regulations in effect on the date of the annual audit.
- D. The Consultant shall submit a standard certified correct monthly invoice (see samples posted on the CCS Website), reflecting the amount and value of work accomplished to the date of such submission, less 5% for retainage, directly to the Project Manager.
- E. The retainage will be released following completion of the work or upon written authorization of Consultant Contract Services' Administrator.
- F. The standard certified correct invoice shall show the total of previous payments on account for this contract, plus the amount due and payable as of the date of the current invoice plus the Prime's Federal Tax Identification Number.
- G. The standard certified correct invoice shall show the Notice to Proceed (NTP) and expiration date of the contract.
- H. A principal member of the Prime Consulting Firm to whom the contract is issued must sign and certify the invoice for correctness. An original and three copies of each invoice shall be submitted to the DOTD's Project Manager.

- I. Sub-consultants must be shown on the standard certified correct invoice with a breakdown of their portion of the work. Each sub-consultant's Federal Tax Identification Number is required.
- J. Upon receipt of each invoice, the DOTD shall check the invoice for correctness and return if required; upon acceptance and approval of a standard certified correct invoice the DOTD shall pay the amount shown to be due, and payable, within thirty days.

## **II. For Cost Plus Fixed Fee with Maximum Compensation Limitation**

**Contracts:** (Contracts differ somewhat from Lump Sum Compensation Contracts)

- A. Payments (on undisputed amounts) to the Consultant for services rendered by the Consultant and/or sub-consultant will be made monthly based on a standard certified correct and itemized invoice, detailed to show:

**Names of employees**

**Classification and rates of pay**

**Time worked (as outlined on the website)**

**Approved Audited overhead rate (%) to cover the costs of payroll additives and overhead**

**Detailed summary of direct expenses with a copy of the backup.**

**The date the audit of Overhead was performed, and the name of who developed the Overhead rate**

**The Prime and their sub-consultants Federal Tax Identification Numbers are required. Sub-consultants must also be shown on their own separate invoice with a breakdown of their portion of the work**

- B. Consultants cannot use overhead rates higher than their latest approved audited overhead rate on their invoices. Consultants will be allowed to invoice at a lower overhead rate than their latest approved audited rate, if they know that their overhead rate is going to be lower during a certain period of the contract, to avoid owing a large sum of money upon completion of the contract. Negotiated or self-imposed overhead rates remain the same during the course of the contract. At no time during the life of the contract can the contracts (negotiated or self-imposed) overhead exceed the latest approved audited overhead rates.

- C. Any charges for approved services other than labor shall be detailed to include vendor name, cost, and description. Final payment for these costs will be adjusted after Project completion to reflect the actual work performed and the direct expenses incurred by the Consultant during the course of this Contract; as determined by the DOTD's Audit Section following the post audit of this Contract.
- D. In no event shall such an adjustment allow the total contract cost to exceed the reasonable limitation imposed thereon.
- E. The allowable costs shall be in accordance with the cost principles and procedures set forth in 48 CFR 31 of the Federal Acquisition Regulation System (FARS), as modified by DOTD's audit guidelines regarding reasonable Consultant compensation and state travel regulations in effect on the date of the annual audit.
- F. The standard certified correct invoice shall be directly related to the monthly progress schedule. The DOTD will not approve any invoice in which the proportional amount of the total contract compensation exceeds the percentage of project completion by more than five percent.
- G. Payments (on undisputed amounts) will be made monthly for direct expenses chargeable and identifiable to this specific contract, provided such charges are substantiated by documentation subject to audit.
- H. The direct expenses will be disallowed if subsequent audits reveal that the Consultant has not maintained adequate bookkeeping.
- I. It is understood that the Consulting firm's entire books must segregate direct expense items out of general overhead costs.
- J. The standard certified correct invoice will show the total amount earned to the date of submission and the amount due and payable as of the date of the current correct invoice as well as the pro-rata share of the fixed fee and direct expenses.
- K. The standard certified correct invoice shall reflect a five percent deduction of the total sum, exclusive of direct expenses, as an amount to be retained by DOTD until satisfactory completion of the work required, or upon written authorization of the DOTD's Consultant Contract Services Administrator.



- L. A principal member of the Prime Consulting Firm to whom the contract is issued must sign and certify the invoice for correctness. An original and three copies of each invoice shall be submitted to the DOTD Project Manager.
- M. Upon receipt of each invoice, the DOTD shall check the invoice for correctness and return if required; upon acceptance and approval of a standard certified correct invoice, the DOTD shall pay the amount shown to be due and payable within thirty days.

**III. For Billable Rates Compensation Contracts:**

- A. Payments (on undisputed amounts) to the Consultant for services rendered by the Consultant and/or sub-consultant shall be made monthly based on a standard certified correct and itemized invoice (see samples posted on the CCS Website) showing the line item costs incurred plus their Federal Tax Identification Number.
- B. Any labor charges for other approved services shall include the names of the employees, their classification, and the time worked. These shall be reimbursed at the approved contract billable rate for that classification.
- C. Any charges for approved services other than labor shall be detailed to include vendor name, cost, and description. Final payment for these costs will be adjusted after Project completion, to reflect the actual work performed and the direct expenses incurred by the Consultant during the course of this Contract, and as determined by the DOTD's Audit Section following the post audit of this Contract. However, in no event shall such an adjustment allow the contract cost to exceed the maximum limitation imposed thereon.
- D. The allowable costs shall be in accordance with the cost principles and procedures set forth in 48 CFR 31 of the Federal Acquisition Regulations System (FARS), as modified by the DOTD's audit guidelines regarding reasonable Consultant compensation and state travel regulations in effect on the date of the audit, which are incorporated herein by reference as if copied in extenso, and available for inspection or copying in the office of the DOTD's Audit Director.
- E. The invoice shall be directly related to the monthly progress schedule, if applicable.
- F. The DOTD shall not approve any invoice in which the proportional amount of the total contract compensation exceeds the percentage of project completion by more than five percent.

- G. Payments shall also be made monthly for direct expenses chargeable and identifiable to this specific Contract; provided such charges are substantiated by documentation subject to audit.
- H. Direct expenses shall be disallowed if subsequent audits reveal that adequate bookkeeping has not been maintained. It is understood that the firm's entire books must segregate these items out of general overhead figures.
- I. The standard certified correct invoice will show the total amount earned to the date of submission and the amount due and payable as of the date of the invoice.
- J. The Prime and their sub-consultants' Federal Tax Identification Numbers are required. Sub-consultants must also be shown on their own separate invoice with a breakdown of their portion of the work.
- K. The standard certified correct invoice shall reflect a five percent deduction on the total sum, exclusive of direct expenses, as an amount to be retained by the DOTD until satisfactory completion of the work required or upon written authorization of the DOTD's Consultant Contract Services Administrator for the release of the retainage. As the Contract is completed and accepted by the DOTD, the retainage shall be released.
- L. The standard certified correct invoice shall also show the total of previous payments-on-account to this Contract and the amount due and payable as of the date of the current correct invoice.
- M. A principal member of the Prime Consulting Firm to whom the contract is issued must sign and certify the invoice for correctness. An original and three copies of each invoice shall be submitted to the DOTD Project Manager.
- N. Upon receipt of each invoice, the DOTD shall check the invoice for correctness and return if required, upon acceptance and approval of a standard certified correct invoice, the DOTD shall pay the amount shown to be due and payable within thirty days.

### **5.3 Department Review/Checkpoints**

After the Consultant has been selected and prior to the Notice to Proceed, the Project Manager will issue a letter notifying the Consultant and all applicable DOTD personnel of a meeting being scheduled to discuss the project scope, and to dispense data and pertinent information in DOTD's possession. Project review milestones, consultant evaluation, and other coordination efforts pertinent to successful completion of the project will be discussed during this meeting.

## **5.4 Consultant Evaluation**

On a continuous basis, the Project Manager will electronically complete a Consultant Rating Form at various project milestones. A report is then transmitted to the Consultant Contracts Services Administrator to be used as the past performance evaluation rating in the consultant selection process. Consultant Rating Forms for various project types are posted on the CCS Web site. Consultants past performance grades on DOTD projects will remain in the CCS database for a period of three years for use by the Consultant Evaluation Committee.