

## **SECTION 200.00 AGREEMENT REQUIREMENTS**

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## **SECTION 200.00 – AGREEMENT REQUIREMENTS**

### **SECTION 210.00 - REGULATION OF PROFESSIONAL SERVICE AGREEMENTS**

Federal Regulations mandate, and Idaho Code allows for, qualification-based selection procedures for professional services. Selection of professional service firms must follow federal guidelines when the services involve federal funds. State-funded agreements generally follow the same procedures as federally-funded agreements and must conform to state statutes and fiscal controls. The main difference is that prior FHWA approval must be obtained if a noncompetitive selection is used on a federally-funded agreement.

The following regulations shall be used to ensure fair and equitable treatment of all phases of the Professional Service Agreement contracts.

#### ***Code of Federal Regulations (CFR),***

***23 CFR 172.*** Administration of Engineering and Design Related Service Contracts.

***48 CFR 31.*** Contract Cost Principles and Procedures (Federal Acquisition Regulations "FARs").

***49 CFR 18.*** Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Rule).

***Title VI of the Civil Rights Act of 1964,*** as amended, provides that no person shall on the grounds of race, color, national origin, sex, age, and handicap/disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

***Disadvantaged Business Enterprise (DBE).*** The USDOT DBE Program applies to all USDOT-assisted transportation-related contracts administered by the Idaho Transportation Department (ITD). When soliciting consultants for professional services, the procedures for establishing DBE commitments must be used. These are outlined in ITD's approved DBE Plan. Technical assistance may be obtained from the department's Contract Compliance Officer.

***Idaho Code, Section 67-2320.*** Professional service contracts with design professionals, construction managers, and professional land surveyors.

***Idaho Department of Administration,*** Division of Purchasing Rules and Regulations.

#### ***ITD Board and Administrative Policies,***

***B-01-09 and A-01-09,*** Authority to Sign Contracts, Agreements, or Grants and Their Registration,

***B-06-08 and A-06-08,*** Professional Service Agreements.

***B-18-07 and A-18-07,*** Code of Fair Employment Practices, which states that the department will have procedures and guidelines to ensure that the department does not enter into any agreements, which have the effect of sanctioning, prohibited forms of discrimination. Department activities, programs, functions, and practices including the execution of contracts shall be accomplished so as not to deny anyone fair and equal benefit on the basis of race, color, gender, religion, national origin, age or disability.

Additionally, the department is committed to complying with the requirements of Title VI of the Civil Rights Act, by monitoring transactions and procedures of consultant procurement.

The Consultant Administration Unit (CAU) will work with the EEO Office to assure that consultant procurement complies with Title VI and the department's Code of Fair Employment Practices.

**Agreements for the Division of Motor Vehicles and agreements that are not negotiated** under the following procedures must comply with the Division of Purchasing regulations.

Copies of the regulations may be obtained from the CAU.

## **SECTION 220.00 – LOCAL PROFESSIONAL AGREEMENTS**

Local agreements that are federally funded must comply with federal regulations. When federal-aid is used in preliminary engineering, the State shall be responsible for ensuring the management of the Local Agency engineering agreements.

When no federal-aid is used for preliminary engineering, the District Local Project Coordinator (LPC) can assist the Local Public Agency (LPA) with the engineering agreement upon request.

A representative of the LPA can be named as the agreement administrator and the District LPC provides assistance as requested.

A list of consulting firms who have Term Agreements is maintained by the department for utilization on local projects. Other qualified local consultants who are not on the list may also be considered for local projects by using the open solicitation and selection process.

## **SECTION 230.00 – APPROVAL REQUIREMENTS**

For projects with no scheduled PC in the STIP, supplemental agreements (including the original agreement) that would bring the department's obligation to more than \$1,000,000 for routine engineering and right of way agreements or \$25,000 for non-routine agreements must be approved by the Board. If the project was originally set up in the STIP with more than \$1,000,000 scheduled for PC, that is considered to be approved by the Board and does not require additional Board approval when processing the agreement/supplemental agreement. If not originally scheduled in the STIP, then Board approval is required.

Revised agreement proposals must be resubmitted to the Board when the cost is 10% higher than the amount originally approved or the project significantly changes in scope.

Board approval is not required for Work Task Agreements under the Term Agreement format, or for Local Road agreements for professional services. A Task Agreement shall not exceed \$500,000, and the accumulated amount of the tasks should not exceed \$1,500,000, except with prior approval of the Board.

A pre-award review must be completed by Internal Review for any agreements in excess of \$100,000 on local agreements and \$200,000 on all other agreements (see Board and Administrative policies [B-06-08](#) & [A-06-08](#), Professional Services Agreements).

For Full Oversight Projects and contracts for management and administration, approval from FHWA must be obtained prior to final execution of the agreement, and subsequent supplementals.

## **SECTION 240.00 – METHODS OF PROCUREMENT**

When professional services are needed, four methods of procurement can be used: Competitive Selection, Non-competitive Selection, Term Agreements, and Minor Agreements.

### **Competitive Negotiations**

Competitive Negotiations shall follow qualification-based selection procedures. Selection of the highest qualified firm is based on one of the following methods:

- Statements of Interest, the Proposals, and interviews of the top three firms.
- Proposals and interviews of the top three firms.
- Proposals only.

Negotiations are held with the highest qualified firm to determine a price that is reasonable and fair to the public, after considering the estimated value, the scope, the complexity, and the nature of the services.

When the department and the highest qualified firm are unable to negotiate a satisfactory contract or agreement, negotiations are formally terminated and the department may undertake negotiations with the next most qualified firm. If a satisfactory contract or agreement cannot be negotiated with any of the selected firms, the department may repeat the selection and negotiation process until a contract or agreement is reached. Alternatively, the department may utilize non-competitive negotiation procedures.

### **Non-competitive Selections**

Non-competitive selection of a single firm is allowed to take place only when the following specific conditions exist:

- The service is available only from a single sole source; or
- An emergency exists that does not permit the time necessary to conduct competitive negotiations;  
or
- After solicitation of a number of sources, competition is determined to be inadequate.

When federal-aid highway funds are used in the contract, prior approval to use non-competitive negotiations must be obtained from FHWA.

### **Term Agreements**

Term Agreements use a qualification-based selection procedure to pre-qualify consultants who can then be available to perform services as the need arises. The agreement uses Work Tasks to detail the work to be performed. (See [Section 600](#), Term Agreements)

### **Minor Agreements**

Minor Agreement procedures are used for agreements where:

- The cost of the service does not exceed \$50,000 per firm, and
- The services needed are in an area of expertise where no Term Agreement exists.

Minor Agreement procedures allow a great deal of flexibility in solicitation. (See [Section 700](#), Minor Agreements)