

# **Policies for the Use of Consultants on Local Traditional Projects**

## **Effective March 30, 2006**

### **Purpose**

This document establishes policies for administration of consultant contracts **when Federal funds are used in LPA traditional projects**. 23CFR172 directs ODOT to require subrecipients of Federal funds (LPAs) to also comply with 23CFR172. This document provides a summary of policies and procedures that must be followed by LPAs and ODOT in the use of consultants on LPA traditional projects. For LPA Local Let projects, policies are included in the Manual of Procedures, Locally Administered Transportation Projects.

### **Reference Documents**

#### **Federal Rules**

23 CFR 172 - FHWA rules governing consultant selection and contract administration, invokes the Brooks Act

United States Code Title 40, Chapter 11 - Brooks Act - Requires qualifications based selection of consultants

#### **ODOT PRELIMINARY LEGISLATION - RC 5521.01**

##### **"SECTION VI - Consultants and Authority to Sign**

The text of this section is provided as Appendix A. The complete document is available on the Office of Estimating website:

<http://intranet.dot.state.oh.us/estimating/legislation.htm>

#### **ODOT's Website <http://www.dot.state.oh.us/CONTRACT/consultant.htm>**

Sample Request for Proposal documents and procedures for using ODOT's website are included under the heading "Local Government".

#### **Ohio Revised Code sections 153.65 through 153.71**

#### **ODOT's Consultant Contract Administration Manual**

This document is available through ODOT's Website:

[http://www.dot.state.oh.us/CONTRACT/consult\\_contract\\_adm\\_manual.htm](http://www.dot.state.oh.us/CONTRACT/consult_contract_adm_manual.htm)

## **ODOT/LPA “Letter-Form Agreement”**

Standard agreement between LPA and Department for LPA traditional projects. Document provided as Appendix B.

### **Summary of Requirements**

- LPA must select an ODOT prequalified consultant/ consultant team
- The LPA must incorporate ODOT's "Specifications for Consulting Services" as a contract document in all of its consultant contracts.
- The LPA must require, as a scope of services clause, that project development follow ODOT's Project Development Process, and that all plans prepared by the consultant conform to ODOT's current design standards, or state approved LPA standards.
- The LPA consultant agreement must provide for ongoing consultant involvement during the construction phase of the Project.
- The LPA consultant agreement must include a completion schedule acceptable to ODOT.
- The LPA must assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.
- The LPA must assign the agreement to ODOT in order to allow ODOT to direct additional or corrective work, and to recover damages due to errors or omissions.
- If Federal Funds are used to pay the cost of any consultant contract, the LPA must comply with 23 CFR 172 in the selection of its consultant and the administration of the consultant contract.

### **Procedures for LPA Selection of Consultants for Agreements that Include Federal Funds**

When Federal funds are used in an LPA consultant agreement, 23 CFR 172 charges ODOT with oversight responsibilities for:

- Selection Procedures
- Negotiation of Fair and Reasonable Fee
- Administration of Agreement

LPA agreements will be administered in a manner similar to that of ODOT held agreements, with the Office of Consultant Services role and responsibilities similar to those described in the Department's Consultant Contract Administration Manual. Responsibilities for consultant selection activities are included below under **Primary Roles and Responsibilities**.

## **Federal Highway Administration Approval**

For agreements that **include Federal funds** in the preliminary engineering phase, FHWA approval is required prior to incurring consultant costs. Federal approval is divided into two subphases: Preliminary Engineering Environmental and Preliminary Engineering Detail Design. Federal Authorization for these two sub-phases of Preliminary Engineering must be requested and approved individually.

District Offices must coordinate with the Office of Payroll and Federal Accounting to obtain approval of "Report FMIS D06A" for each subphase. Federal Authorization for work authorized prior to Federal PE approval will not be eligible for compensation.

## **Consultant Selection Procedures**

Consultant selection procedures must comply with Ohio Revised Code sections 153.65 through 153.71, and Federal Regulation 23 CFR 172.

Selection procedures should be based on the size and complexity of the project as follows:

1. Direct Selection of Consultants for Exempt Projects – These are projects that are determined to be emergency and immediate action is required, or projects with estimated fee less than \$25,000 (Ref ORC 153.71).
2. "Programmatic" Selection Process – This process is a one-step, simplified selection process designed for projects that are routine in nature. It should be utilized for most projects instead of the Technical Proposal Process. (The term "Programmatic" is used by ODOT to describe the one-step selection process.) Public announcement is required in accordance with ORC 153.67.
3. Technical Proposal Selection Process – A two-step selection process designed for larger, more complex projects. A short list of firms is selected based on the initial letter of interest and a more detailed technical proposal is requested from the short listed firms. Public announcement is required in accordance with ORC 153.67.

Sample consultant selection documents including announcements for both the programmatic and technical proposal selection processes are available on ODOT's website at <http://www.dot.state.oh.us/CONTRACT/consultant.htm> Sample letters for use in requesting technical proposals in the two-step process are also included.

## **Announcements of Available Contracts**

ODOT's website shall be used for all announcements of available contracts to ensure compliance with State and Federal requirements. The LPA should consult with the ODOT District for assistance. Announcements shall include:

1. Project designation (County-Route-Section);

2. A description of the project including the location;
3. Specific services required;
4. The ODOT prequalification required to provide the service;
5. The approximate construction cost if available;
6. Major work elements involved;
7. Any important aspects (ODOT uses the term subfactor) of a project, if any, that will play a large role in the consultant selection process;
8. Estimated date of authorization;
9. Time period in which the work must be completed;
10. A statement regarding any local statutes or policies concerning MBE or DBE participation, and method for considering such participation during the selection process;
11. A description of the selection process to be used, including the number of steps (direct selection based on the information provided, or a two-step process with a short list and second submittal, etc.), and the selection rating criteria to be used. Selection factors must be qualifications based factors that meet the requirements of 23CFR172 and the Brooks Act. ;
12. Instructions for submitting a letter of interest including content and required format. The information requested should be consistent with the rating criteria. ;
13. Name and address of the official to whom the letter of interest is to be sent; and
14. Date that the letter of interest is due. The minimum response time shall be two weeks from the initial posting date.

ODOT rates consultant performance on ODOT-held agreements through the Department's Consultant Evaluation System. Performance ratings for specific consultants will be furnished to LPAs upon request, but shall not be further distributed by the LPA.

### **Documentation of Consultant Selections**

The LPA shall maintain a consultant selection file that includes the following information:

- A copy of the Request for Proposal and the date posted on ODOT's website;
- A listing of firms that submitted Letters of Interest;
- Letters of Interest from all firms that submitted;
- Selection rating forms and any supporting notes and documentation, including membership of the selection committee;

- A listing of firms selected to submit technical proposals (if applicable), copies of the technical proposals, and related correspondence;
- Selected consultant's Price Proposal;
- Negotiation records, if any; and
- A copy of the Agreement, Scope of Services, authorization letter, Invoice and Project Schedule, and any other documents relevant to the agreement.

Upon completion of the agreement, the LPA shall provide copies of all documents to the District for their files.

## **Agreements**

The Office of Consultant Services will prepare both the LPA/Consultant Agreement, and the "letter-form" Agreement between the Department and LPA. Both agreements will be transmitted to the LPA through the District Office. A copy of the executed LPA/Consultant Agreement and the signed "letter-form" Agreement shall be returned to Consultant Services. The "letter-form" agreement between the Department and LPA will be executed and copies distributed to the LPA and District.

## **Administration of Consultant Agreements**

After authorization, LPAs shall administer consultant agreements in accordance with ODOT's Consultant Contract Administration Manual.

## CONSULTANT SELECTION PROCEDURES PRIMARY ROLES & RESPONSIBILITIES

### LPA Traditional Consultant Agreements that Include Federal Funds

PRIMARY TASK	Cons Servs	District	LPA
PRESCOPE OF SERVICES PHASE		District to advise if needed	X
DETERMINE SELECTION PROCESS - PROGRAMMATIC or TECHNICAL PROPOSAL		District to assist if needed	X
PREPARE ANNOUNCEMENT - REFER to the LOCAL GOVERNMENT SECTION OF ODOT'S WEBSITE	CS to advise if needed	District to advise if needed	X
POST ANNOUNCEMENT ON ODOT WEBSITE	X		X LPA E-mails to ODOT
RECEIVE LETTERS OF INTEREST (LOI)			X
RATE AND SELECT FIRM		District to advise if needed	X
SCOPE OF SERVICES MEETING	X	X	X
COMPLETE SCOPE OF SERVICES MINUTES, REQUEST PRICE PROPOSAL		District to advise if needed	X
RECEIVE PRICE PROPOSAL	LPA Reviews and forwards to District & CS	LPA Reviews and forwards to District & CS	X
PERFORM PRE-AWARD EVALUATION	X		
ANALYZE PROPOSED FEE	X	X	X
ACCEPT FEE OR NEGOTIATE A REVISED FEE	X	X	X
PREPARE AGREEMENT INCLUDING LETTER FORM AGREEMENT WITH LPA	X		
ENCUMBER FUNDS	X		
AUTHORIZE AGREEMENT	X		X

**Appendix A** - The following language is included in ODOT's Preliminary Legislation

**ODOT PRELIMINARY LEGISLATION - RC 5521.01**

**"SECTION VI - Consultants and Authority to Sign**

The \_\_\_\_\_ of said \_\_\_\_\_ is hereby empowered on behalf of the \_\_\_\_\_ to enter into contracts with ODOT pre-qualified consultants for the preliminary engineering phase of the Project and to enter into contracts with the Director of Transportation necessary to complete the above described project. Upon the request of ODOT, the \_\_\_\_\_ is also empowered to assign all rights, title, and interests of \_\_\_\_\_ to ODOT arising from any agreement with its consultant in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

The LPA agrees that if Federal Funds are used to pay the cost of any consultant contract, the LPA shall comply with 23 CFR 172 in the selection of its consultant and the administration of the consultant contract. Further the LPA agrees to incorporate ODOT's "Specifications for Consulting Services" as a contract document in all of its consultant contracts. The LPA agrees to require, as a scope of services clause, that all plans prepared by the consultant must conform to ODOT's current design standards and that the consultant shall be responsible for ongoing consultant involvement during the construction phase of the Project. The LPA agrees to include a completion schedule acceptable to ODOT and to assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System."

**Appendix B** - Standard agreement between LPA and Department for LPA traditional projects. References the LPA/Consultant agreement and states the terms for reimbursement of the LPA for consultant costs.

\*\*\*\*

Re: Agreement No. \*\*\*\*  
crs  
PID No.  
Federal Project No.  
\*\*\*\*, Consultant

Dear Mr. \*\*\*:

The Department has reviewed the Consultant's qualification and proposal and proposed Agreement No. \*\*\*\* for the above project and has taken the following action:

1. The Consultant was approved for the project.
2. Compensation to the Consultant was approved as follows:

Actual costs plus a net fee of \*\*\*\*. However, the maximum prime compensation shall not exceed \*\*\*\*.

Accordingly, the \*\*\*\* may execute the Agreement with the \*\*\*. The \*\*\* may submit either monthly invoices or one (1) final invoice, after the work has been completed and accepted, to the District Deputy Director of District \*\* for reimbursement of costs incurred by the \*\*\*\*. Reimbursement of costs eligible for Federal participation shall be limited to an amount not to exceed \$\*\*\*\* (\*\*% of \$\*\*\*\*). The \*\*\*\*'s invoice(s) shall be supported by a copy of the Consultant's invoice(s) and proof of payment by the \*\*\*\*.

Upon execution of this Agreement and the enclosed forms of "Certification of \*\*\*\*" and "Certification of Consultant," the \*\*\*\* may authorize the Consultant to proceed with the work.

State participation is limited by the above terms and by the approval under \*\*\*\* enacted \*\*\*\*, by the \*\*\*\* as recorded in \*\*\*\*.

To formalize acceptance of the aforementioned action, please sign the letter-form Agreement and return the original letter-form Agreement together with one (1) reproduced copy of fully executed Agreement and the appropriate Certifications, and your letter authorizing the Consultant to proceed with \*\*\*\* to the District Deputy Director of District \*\*\*\* who will forward the documents to the Office of Consultant Services, 1980 West Broad Street, Columbus, Ohio 43223.

During the performance of the Agreement, the Consultant agrees to fulfill the requirements of the Department of Transportation's "Specifications for Consulting Services" dated January 1998 and further agrees:

- (1) That in the hiring of employees for the performance of work under this Agreement or

for any subcontract related thereto, the Consultant or Subconsultant shall not, by reason of race, color, religion, sex, sexual orientation, age, disability, Vietnam veteran era status, national origin or ancestry, discriminate against any citizen in the employment of a person qualified and available to perform work to which this Agreement relates; and

- (2) That the Consultant, Subconsultant, or any person acting on behalf of the Consultant or Subconsultant shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired under this Agreement on account of race, color, religion, sex, sexual orientation, age, disability, Vietnam veteran era status, national origin, or ancestry; and
- (3) That the Consultant shall maintain an Ohio Department of Transportation approved written Affirmative Action Program for the employment and effective utilization of persons from the economically disadvantaged groups identified by Section 122.71 (E)(1) of the Ohio Revised Code, and shall annually file an updated Affirmative Action Program and a progress report on its implementation with the State.
- (4) In carrying out this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, handicap, age or Vietnam era veteran status. The Consultant will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, national origin, or ancestry, disability, age or Vietnam era veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.
- (5) The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, national origin, disability, age or Vietnam era veteran status. The Consultant shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subconsultants for any part of such work to incorporate such requirements in all subcontracts for such work.

It is the policy of the Department of Transportation that disadvantaged business enterprises (DBEs) as defined in Title 49 Code of Federal Regulations Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal and/or State funds under this Agreement. Consequently, the requirements of Title 49 Code of Federal Regulations apply to this Agreement.

- (1) The Consultant agrees to ensure that eligible businesses as defined in Title 49 Code

of Federal Regulations Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal and/or State funds provided under this Agreement. In this regard, the Consultant shall take all necessary and reasonable steps in accordance with Title 49 Code of Federal Regulations to ensure that eligible businesses have the maximum opportunity to compete for and perform contracts. The Consultant shall not discriminate on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin, or Vietnam era veteran status or ancestry in the performance of this Agreement.

In the event of the Consultant's non-compliance with the provisions of this Clause, the State shall impose such sanctions as it or FHWA may determine to be appropriate, including but not limited to:

- (1) Withholding of payments to the Consultant under this Agreement until the Consultant complies; and/or
- (2) Termination or suspension of this Agreement, in whole or in part.

Respectfully,

Gordon Proctor  
Director

GP:\*\*\*

The foregoing is accepted as a basis for the allocation of Federal funds.

Date: \_\_\_\_\_

(Option 1)

CITY/COUNTY

By: \_\_\_\_\_

Title: \_\_\_\_\_

(Option 2)

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

APPROVED AS TO FORM:

By: \_\_\_\_\_

Title: \_\_\_\_\_