

3.0 PE CONSULTANT SELECTION and AGREEMENT



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3.1 Introduction

The Local Public Authority (LPA) may engage consultants to perform engineering and related services to develop a Federal-aid and/or State-aid funded project. The LPA is encouraged to consult with BLP during the project programming process to identify if preliminary engineering (PE) is eligible to be a participating item for a particular project. The LPA must follow the selection and contracting provisions of the Brooks Act. This Act requires engineering and design contracts utilizing Federal/State funds be awarded on the basis of fair and open competitive negotiations, demonstrated competence and professional qualifications.

3.2 Participating

The LPA will select a consultant from the approved list of consultants furnished by KDOT for participating PE services. In order to be reimbursed for PE as a participating work phase, Qualification Based Selection (QBS) procedures must be followed.

Upon confirmation that PE is a participating work phase, BLP will send a QBS selection packet that contains instructions to guide the LPA through the QBS process.

3.2.1 QBS Process

QBS is required by state statute when Federal or State dollars are involved in the PE and/or CE in a project. The LPA can use the QBS process for PE and CE concurrently providing the LPA informs the qualified firms at the time of soliciting for the project. The selection packets outlining the necessary requirements and procedures are sent to the LPA at the time the project is programmed. The LPA sends "Letters of Interest" to (minimum of 5) qualified consultants. KDOT recommends the LPA set up a committee of no less than three members to review the consultants' qualification packets.

3.2.2 Review and Negotiation

The LPA reviews qualifications and/or interviews (minimum of 3) consultants based on the information supplied to them to select the best qualified firm for the project. The LPA and Consultant then negotiate the estimate for services. If a consensus cannot be reached, negotiations cease and the next ranked firm is contacted for negotiations.

3.2.3 Justification

The LPA sends the approved proposal and estimate to BLP for the justification process. BLP will review hours and costs for concurrence.

3.2.4 Agreement/ Supplemental Agreement

After approval of the consultant's proposal, an Agreement is created between the Consultant, LPA and KDOT. Three original copies of the agreement are sent to the Consultant and the LPA for signatures. All original copies are returned to KDOT for further processing. The executed original agreements are distributed to the respective parties.

Supplemental agreements are changes to the original agreement. They may be issued at the request of any party and are subject to approval by the same methods as the original agreement.

3.2.5 Notice to Proceed and Payment/Reimbursement

A Notice to Proceed must be issued by BLP before any participating consulting work can be performed. When PE is participating, the LPA will make the payment to the consultant then submit a request for reimbursement to BLP. BLP will review the request and reimburse the LPA. Monthly Progress Reports are required to verify that the payment corresponds with the work that has been completed. This form is available at: http://www.ksdot.org/burlocalproj/Forms/Progress_Report.pdf.

3.3 Non-Participating

When PE is a non-participating work phase, a PE agreement template recommended for use by the LPA is available on request.

3.4 Conflict of Interest

Federal and State laws and regulations provide for the protection of public's interest against fraud, waste, and abuse of government resources. All consulting engineering firms employed on projects administered by the KDOT Bureau of Local Projects are expected to exercise judgment and perform their duties in a way that supports the applicable policies and practices of the State of Kansas and the Local Public Authority. Any situation that would compromise the ability of the consulting firm or its employee(s) ability to act on behalf of the KDOT or the LPA is considered a Conflict of Interest.

Conduct or situations that are considered to be conflicts of interest include, but are not limited to, the following:

- A consulting firm or its employee has, either directly or indirectly, a financial or personal interest in a contractor, subcontractor, or material supplier connected to the project.
- A consulting firm or its employee unduly influencing decisions on scope changes, design changes, construction revisions, contract change orders and other related issues in order to minimize or ignore design errors or to positively benefit the firm.

All consultant contracts for Preliminary Engineering Design Services for work to be paid partially or wholly with federal or state dollars will include the following language under the Obligations of the Consultant.

To warrant the Consultant has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this agreement.

In addition, every contract for engineering services will include a Code of Conduct Certification, signed by the Consultant, Deputy Secretary of Transportation and State Transportation Engineer, and the LPA. By signing this form the three parties certify that there was no undue influence of any party in regard to executing or carrying out the agreement. Figure ___ shows a copy of this Certification form, which is known as Special Attachment No. 2 in the Agreement.

The consultant is responsible to identify and disclose any actual or potential Conflict of Interest on a project.

In addition to these requirements, the consulting firm and its employees shall comply with any other professional responsibilities, code of ethics, or law applicable to services being provided.