

## **3.0 Preliminary Engineering (PE) Consultant Selection and Agreement**

### **3.1 Introduction**

The LPA may engage consultants to perform engineering and design 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.

### **3.2 Participating**

QBS procedures must be followed when procuring engineering and design related services using federal or state funds where those services are directly related to a construction project. Therefore, the LPA must follow the selection and contracting provisions of the [Brooks Act](#) when PE is a participating project cost. This Act requires contracts for engineering design services utilizing federal/state funds to be awarded on the basis of demonstrated competence and qualifications for the type of professional services required and negotiation of a fair and reasonable compensation.

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.

In order to be reimbursed for PE as a participating work phase, QBS procedures must be followed. The LPA will make their consultant selection from the approved list of consultants furnished by KDOT for participating PE services (see link). [Preliminary Engineering Pre-Qualified Consultant List - by Category](#)

#### **3.2.1 QBS Process**

QBS is required by state statute when federal **or** state dollars are involved in the PE and/or CE of 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 LPA sends "Letters of Interest" to (minimum of 5) qualified consultants. KDOT recommends the LPA set up a selection 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 consultant is contacted for negotiations.

### **3.2.3 Justification**

The LPA sends the approved PE proposal and estimate to BLP for the justification process. BLP will review the man hours, costs, and expenses for concurrence with the LPA's selected consultant.

### **3.2.4 Agreement/ Supplemental Agreement**

After BLP's approval of the Consultant's proposal, a three-party Agreement is created by KDOT between the Consultant, the LPA and KDOT. Three original copies of the Agreement are sent to the Consultant for signatures. Once the three copies of the Agreement are signed by the Consultant, they forward them to the LPA for signatures. All original copies are then returned to KDOT for further processing. The executed original agreements are then distributed to the respective parties.

Supplemental agreements are changes to the original Agreement due to change of scope or some other amendment. 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. The Monthly Progress of Plans & Estimated Construction Costs form is available at:

[http://www.ksdot.org/Assets/wwwksdotorg/bureaus/burlocalproj/Forms/Progress\\_Report.pdf](http://www.ksdot.org/Assets/wwwksdotorg/bureaus/burlocalproj/Forms/Progress_Report.pdf)

## **3.3 Non-Participating**

If funds are not participating in the engineering and design related services contract, the LPA may procure the professional services in accordance with its own established policies and procedures which reflect applicable State and local laws.

BLP can provide the LPA with a recommended PE agreement template on request.

## **3.4 Conflict of Interest**

Federal and State laws and regulations provide for the protection of the public's interest against fraud, waste, and abuse of government resources. All consulting engineering firms employed on projects administered by BLP 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 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:

- 1) *The Consultant warrants they have no public or private interest, and shall not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the work under this Agreement. Specifically, the Consultant is prohibited from performing contractor construction staking or any other work that is the construction Contractor's responsibility on this Project.*
- 2) *The Consultant will not, without written permission from KDOT, engage the services of any person(s) in the employment of KDOT for any work required by the terms of this Agreement.*

In addition, every contract for engineering services will include a Code of Conduct Certification, known as Special Attachment No. 2, 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.

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 all other professional responsibilities, code of ethics, or law applicable to the services being provided.

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