

11.0 Construction Engineering (CE) Consultant Selection and Agreement

The LPA may engage consultants to perform CE and related services for a federal-aid and/or state-aid funded project. The LPA must follow the selection and contracting provisions of the 23 CFR 172. This regulation requires engineering and design contracts utilizing federal/state funds be awarded based on fair and open competitive negotiations, demonstrated competence and professional qualifications, known as Qualification Based Selection (QBS).

It is necessary for any personnel providing inspection, sampling or testing duties to be CIT certified in the required classifications. (CIT Certified inspection is not required for Surface Preservation (SP) category projects in the CCLIP Program.) The LPA will make their consultant selection from the approved list of consultants furnished by KDOT.

11.1 Inspection Options

Six months prior to the scheduled letting, BLP will contact the LPA to discuss whether they intend for CE to be participating or non-participating. If they wish for CE to be participating, the LPA has two options for the inspection of federal or state funded projects:

1. Inspect the project utilizing their own certified LPA staff. (To supplement staff, option 2.b. must be used.)
2. Request the services of a certified consultant.
 - a. Select the consultant from the approved As-Needed list of consultants furnished by KDOT.
 - b. Utilize the QBS process. Refer to [Section 3.0 PE Consultant Selection and Agreement](#) in this Manual for the QBS process.

BLP will send a packet outlining the necessary requirements and procedures that are appropriate for the chosen selection path.

11.2 Funding Options

The LPA may fund the CE inspection entirely with LPA funds (non-participating) or utilize matching funds (participating).

11.2.1 Participating

For a KDOT Let project, BLP will provide the LPA with working days or a calendar completion date to be used to submit a proposal and estimate to BLP for approval. Refer to [Section 3.0 PE Consultant Selection and Agreement](#) in this Manual for agreement procedures.

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. Net fee can only be included in a supplemental if there is a change in the scope of the project. A CE supplemental agreement may be requested either during construction or after the construction is complete. Any supplemental request will be submitted to the KDOT field office with written documentation and a new Work Fee Estimate (Exhibit B-1) that provides justification for extra compensation or time extension. Approval by the local KDOT construction office and the LPA is necessary before the request is reviewed and approved by the KDOT District Engineer and the KDOT Bureau of Construction and Materials. Once the supplemental agreement request has the necessary approvals, BLP will create the supplemental agreement. BLP will distribute the supplemental agreement to the necessary parties for signatures. Originals are to be returned to KDOT Office of Chief Counsel for further processing.

11.2.1.1 LPA Inspection

The LPA will submit a CE proposal, a Work Fee Estimate (Exhibit B-1), and a list of KDOT certified inspectors to BLP. For projects where the LPA is using their own KDOT certified inspectors or those from another government agency, they cannot include a Net Fee and can only include Salary Overhead if they have a Federally established and approved rate. If the LPA needs additional inspection staff, the LPA may enter into a contract with a qualified sub-consultant. The LPA will pay the sub-consultant directly. To receive reimbursement, the sub-consultant must have been selected utilizing the QBS selection process. The sub-consultant must be a part of the CE proposal and estimate approved by BLP.

11.2.1.2 Consultant Inspection

Consultants on the As-Needed list have been selected using the QBS process.

Refer to [Section 3.0 PE Consultant Selection and Agreement](#) in this Manual for details on the QBS process.

The working days or a calendar completion date are provided to the Consultant by the LPA. The Consultant provides BLP with a proposal of hours needed for the project. Once those hours are approved, the

Consultant will be asked to provide a detailed estimate of costs, a list of KDOT certified inspectors, a Certificate of Indirect Costs, and a Tax Clearance Certificate. A Consultant may enter into an independent agreement with a sub-consultant if additional certified inspection staff is necessary. The Consultant will forward the proposal and original detailed estimate to BLP for review. BLP will forward the estimate to the LPA for approval. On approval, BLP will initiate a three-party agreement. Refer to [Section 3.0 PE Consultant Selection and Agreement](#) in this Manual for agreement procedures.

11.2.1.3 Reimbursement

When CE is participating, the Consultant will submit a request for reimbursement to the same KDOT District Area Office that is also handling the Construction phase payments with the Payment Request Form located at: [Consultant Services – BLP PE/CE Payment Request Form](#). An invoice showing breakdown of hours/overhead/net fee/direct expenses must be attached.

11.2.2 Non-Participating

The LPA has the option not to use Federal or State-Aid in the inspection. This option allows the LPA to utilize LPA forces and/or consultant services without utilizing the QBS process. If consultant services are used, a KDOT qualified consultant must be selected due to the use of federal or state-aid in the construction. The LPA will pay the Consultant directly with no reimbursement coming from KDOT.

11.3 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 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 to minimize or ignore design errors or to positively benefit the firm.

As part of the Selection Process, a Code of Conduct Certification will be signed and submitted by the LPA. By signing this form, the LPA certifies that there was no undue influence of any party regarding executing or

carrying out the consultant selection process. The Consultant is responsible to identify and disclose any actual or potential Conflict of Interest on a project to the LPA.

All consultant contracts for Construction Engineering Inspection 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 to these requirements, the consulting firm and its employees shall comply with all other professional responsibilities, code of ethics, or law applicable to services being provided.