

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

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 project.

#### 3.1 Participating

Qualifications-Based Selection (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 23 CFR 172 when PE is a participating project cost. This regulation requires contracts for engineering design services utilizing federal/state funds to be awarded based on 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.

To be reimbursed for PE as a participating work phase, the LPA must follow QBS procedures. The LPA will make their consultant selection from the approved list of consultants furnished by KDOT for participating PE services (see link). [Categories - Pre-Qualified Consultants \(ksdot.gov\)](https://ksdot.gov/Programs/Local%20Programs/Qualification%20Based%20Selection%20of%20Consultants.aspx)

##### 3.1.1 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 solicitation for the project. The LPA must obtain the current edition of the ***Desk Reference for Quality Based Selection of Consultants*** from KDOT BLP prior to initiating the QBS process. This information is available at the following link: [Consultant Services](#)

This document will provide detailed instructions for the entire QBS process.

##### 3.1.2 Agreement/ Supplemental Agreement

After BLP and the LPA approve the Consultant's proposal, a three-party Agreement is created by KDOT between the Consultant, the LPA, and KDOT. An original copy of the Agreement is electronically sent to the Consultant for signatures. Once the Agreement is signed by the Consultant, they forward it to the LPA for signatures. The original with any pertinent attachments is then returned to KDOT's Office of Chief Counsel (with a copy to the BLP Programming Consultant II) for further processing. The executed original agreement is 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. A new Preliminary Engineering Fee Form that provides justification for extra compensation is required. Net fee can only be included in a supplemental if there is a change in the scope of the project. Approvals by the KDOT Project Manager and the LPA are required before a Supplemental Agreement can be initiated through the KDOT Office of Chief Counsel. The Supplemental Agreement original with any pertinent attachments is sent electronically to the Consultant for signatures. Once the Consultant has signed, they forward it to the LPA for signatures and the document is then returned to the Office of the Chief Counsel with a copy to BLP.

### **3.1.3 Notice to Proceed**

A Notice to Proceed must be issued by BLP before any participating consulting work can be performed.

### **3.1.4 Reimbursement**

When PE is participating, the LPA will make the payment to the Consultant then submit a request for reimbursement to BLP with the Payment Request Form located at:- [BLP PE/CE Payment Request FormPE-CE-PaymentRequestform.xls \(live.com\)](#). A copy of the invoice provided by the Consultant showing breakdown of hours/overhead/net fee/direct expenses and proof that payment has been made to the consultant must be attached. 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: [BLP Progress Report FormProgress\\_Report.pdf \(ksdot.gov\)](#)

## **3.2 Non-Participating**

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

If the LPA thinks they may possibly want to use the same consultant for the CE phase of the project, they will need to follow the above QBS procedures, including that information in their advertising, and be able to document to BLP that they followed all QBS steps in their selection process.

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

## **3.3 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 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 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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