MaineDOT

Maine Department of Transportation
Contract Procurement Office

Memo

To: Holders of Consultant and Professional Services Procurement Manual

From: Debbi Farrell - Contract Procurement Office

CC: Karen Doyle, Wayne Emington (FHWA)

Date: January 8, 2019

Re: Revision to Consultant and Professional Services Procurement Manual Amendment No. 4

MaineDOT's federal partners have made statutory changes to the Simplified Acquisition Threshold (as defined by 48 CFR 2.101) for the procurement of Engineering and Design Services using Small Purchase Procedures under 23 CFR 172.7 (a)(2). **This revision has increased the Simplified Acquisition threshold from $150,000 to $250,000.**

Effective immediately any references to these limits in the subject manual are considered revised as follows:

	Contract Values (Including Modifications)	
Consultant Selection Method	**Current Threshold**	**Revised Threshold**
Simplified Acquisition	$150,000.00 or less	$250,000 or less
Brooks Act	Greater than $150,000.00	Greater than $250,000.00

Please retain this memo for your records. If you have any questions, please contact the Contract Procurement office.

Maine Department of Transportation
Contract Procurement Office

Memo

To: Wayne Emington, FHWA Design & Projects Engineer

From: Debbi Farrell, Director Contract Procurement Office

CC: Karen Doyle, Gale Lizzotte

Date: June 20, 2016

Re: Amendment 3 – Revisions to MaineDOT Consultant & Professional Services Procurement Manual

---

In 2015 the Federal Highway Administration revised 23 CFR Parts 172.3, 172.5, 172.7, 172.9, and 172.11. In response to this MaineDOT has created an amendment to its Consultant & Professional Services Procurement Manual ("Manual") reflecting these revisions. Attached for your review and approval is Amendment No. 3; upon receipt of your approval that these modifications bring our Manual in line with the changes to 23 CFR we will distribute this Amendment to the holders of the Manual.

U.S. Department of Transportation
Federal Highway Administration

Maine Division

40 Western Ave, Rm 614
Augusta, ME 04330
207-622-8350

June 21, 2016

In Reply Refer To:
HDA-ME

Debbi Farrell
Director, Contract Procurement Office
Maine Department of Transportation
16 State House Station
Augusta, ME 04333-0016

Dear Debbi,

I would like to thank you and your staff for collaborating with our office to update MaineDOT's written policies and procedures to comply with the recently revised 23 CFR 172. The Federal Highway Administration concurs that MaineDOT updated written policies and procedures comply with the final rule on the Procurement, Management, and Administration of Engineering and Design Related Services based on:

- FHWA involvement in the review process over the last 12 months,
- MaineDOT's participation in the FHWA facilitated National Peer Exchange on 23 CFR 172, and
- Review of the MaineDOT Consultant & Professional Services Procurement Manual, the MaineDOT Consultant General Conditions, Amendment No. 3, and all associated cross reference materials developed and provided by MaineDOT.

FHWA approves the use of the MaineDOT Consultant & Professional Services Procurement Manual and the MaineDOT Consultant General Conditions supplemented by Amendment 3 in accordance with 23 CFR 172.

If you have any questions feel free to contact me at 207-512-4919, or via e:mail at wayne.emington@dot.gov.

Sincerely,

Wayne R. Emington, P.E.
Design & Projects Engineer

MAINE DEPARTMENT OF TRANSPORTATION

Contract Procurement Office

May, 2016

REVISIONS TO CONSULTANT AND PROFESSIONAL SERVICES PROCUREMENT MANUAL
IN COMPLIANCE WITH REVISIONS TO 23 CFR §172

Chapter	Page	Add/Delete	Revision
2	13	Section 2.1 replace paragraph 2 with revision.	GCAs are executed for a term of no more than five (5) years with ordering periods of four (4) to four and a half (4.5) years. The GCA will include the following information:
2	13	Section 2.1 paragraph 4, replace the third sentence.	The term of a GCA will not be extended beyond the original date unless approved by CPO. Extensions will be considered to allow for project completion.
3	18	Create a new section 3.3 and 3.4.	Insert page 4 of this Attachment "Request for Qualifications for GCA".
3	18	Renumber sections	3.3 General consultant Agreements (GCA) Consultant Selection to 3.4, and 3.4 GCA Execution to 3.5.
3	18	Revise language in the first two sentences of section 3.4.1 to read as follows:	1. **Shortlist -** the top ranked pool of pre-qualified Consultants that may be selected for interviews and considered for placement on the "shortlist". Both the successful and un successful firm(s) are to be notified of their status in writing. Unless there is a change in their qualifications a Consultant's ranking status, under a specific service can remain in effect for up to two (2) years, or until the next Department Wide RFQ for that service. During that two year period a "ranked" consultant can be considered for a GCA should the need arise.
3	17	Revise section 2.	Insert section 3.2 language with 3.2 language on page 5 of Attachment.
3	18	Add a Section to 3.2 on page 17.	Insert section 3.2.1 on page 5 of Attachment as 3.2.3.
4	23	Insert additional language as the new paragraph 2 in Step 4.	Insert section 3.2.1 on page 5 of Attachment.
4	25	Add to Step 5, paragraph 3	Once the contract is executed "Regret Letters" accompanied by the unopened cost proposal will be sent to all the unsuccessful proposers.
4	30	Add to Step 3, para 1, following the second sentence.	Insert section 3.2.1 on page 5 of Attachment.
4	32	Add to Step 5, paragraph 2	Once the contract is executed "Regret Letters" accompanied by the unopened cost proposal will be sent to all the unsuccessful proposers.
4	36	Revise Step 4, paragraph 2, 1.	Interviews/presentations may be included in the evaluation process.
4	36	Add as paragraph 1 in Step 4.	Insert section 3.2.1 on page 5 of Attachment..

4	37	Add to Step 5, paragraph 2	Once the contract is executed "Regret Letters" accompanied by the unopened cost proposal will be sent to all the unsuccessful proposers.
8	54	Replace Consultant in Management Roles.	Insert page 6 of the Attachment for "Consultant Services in Management Support Roles".
8	56	Consultant Performance Evaluations, revise date referenced in sentence 2.	Revise from February 1 to March 1.
8	56	Replace Fig. 8.2 Consultant Evaluation Process.	Insert page 7 of the Attachment.
8	58	Replace 8.3.	Insert page 8 & 9 of the Attachment.
8	60	Replace section 8.6 "Conflict of Interest" language with same from "Consultant General Conditions".	See page 10 & 11 of the Attachment.
8	63	Add a new section numbered 8.11	Insert pages 12, 13 and 14 of Attachment for Default, Termination or Suspension language from Consultant General Conditions.
Appendix D	98	Replace RFQ/RFP Checklist	See page 15 of Attachment.

REVISIONS TO CONSULTANT AND PROFESSIONAL SERVICES PROCUREMENT MANUAL

ATTACHMENT A

3.3 Request for Qualifications for GCA

A MaineDOT GCA and Multipin Contracts are considered "On-call or Indefinite Delivery/Indefinite Quantity" ("IDIQ") Contracts. These agreements/contracts are used for the performance of services for a number of projects, under task or work orders issued on an as-need or on call basis for an established contract period. The procurement of services to be performed under on-call or IDIQ contracts shall follow either competitive negotiation or small purchase procurement procedures, as specified in 23 CFR§172.7. The solicitation and contract provisions shall address the following requirements:

a. Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions, which shall not exceed 5 years without written approval from the Contract Procurement Office ("CPO"). Extensions will be considered to allow for project completion;
b. Specify a maximum total contract dollar amount that <u>may</u> be awarded under a contract;
c. Include a statement of work, requirements, specification or other description to define the general scope, complexity, and professional nature of the services; and
d. If multiple Consultants are to be selected and multiple on-call or IDIQ contracts awarded through a single solicitation for specific services;
    i. Identify the number of consultants that <u>may</u> be selected for contracts that may be awarded from the solicitation. When awarding GCAs under a service number, whenever possible a minimum of three (3) will be executed. In instances where only two (2) qualified Consultants respond to a solicitation, MaineDOT may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition.
    ii. Specify the procedures the contracting agency will use in competing and awarding task or work orders amount the selected, qualified consultants. Task or work orders shall not be competed and awarded among the selected, qualified Consultants on the basis of costs under on-call or IDIQ contracts for services procured with competitive negotiation procurement, each specific task or work order shall be awarded to the selected, qualified consultants:
        (1) Through an additional qualifications-based selection procedure, which may include, but does not require, a formal RFP in accordance with 23 CFR §172.5(a)(1)(ii); or
        (2) On a regional basis whereby the Maine is divided into regions and Consultants are selected to provide on-call or IDIQ services for an assigned region(s) identified within the solicitation.
e. Notification must be provided to responding Consultants of the final ranking of the three most highly qualified Consultants.

3.2 Competency and Capability Requirements:

These should be a mix of historical, performance, and knowledge based criteria that are weighted and calculated based on an overall scoring mechanism. Examples of scoring criteria include:

- Specialty knowledge, qualifications, licenses and certifications.
- Past performance:
    - Budgets
    - Schedule
    - DBE Goals (no more than 10 points can be assigned to this category)
    - Quality Control
    - Invoice Accuracy
    - Local presence (no more than 10 points can be assigned to this category). This criteria may be applied on a project-by-project basis where a need has been established for a consultant to provide a local presence. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

3.2.1 Qualification Evaluation Factors

Criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services must assess the demonstrated competence and qualification for the type of professional services solicited. These qualifications-based factors my include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternative, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance.

Although the contract will be the Consultant, proposal evaluations shall consider the qualifications of the Consultant and any subconsultants identified within the proposal with respect to the scope of work and established criteria.

Factors that cannot be used in the evaluation, ranking, and selection phase include:

1. Price
2. In-State or local preference.

8.1 Consultants Management Support Roles

a. When Federal Aid Highway Program ("FAHP") funds participate in a consultant services contract, MaineDOT shall receive approval from Federal Highway Administration ("FHWA"), or the recipient as appropriate, before utilizing a Consultant to act in a management support role for the contracting agency; unless an alternate approval procedure has been approved. Use of consultants in management support roles does not relieve MaineDOT of responsibilities associated with the use of FAHP funds, as specified in 23 U.S.C. 302 (a) and 23 U.S.C. 106(g) (4) and should be limited to large projects or circumstances where unusual cost or time constraints exist, unique technical or managerial expertise is required, and/or an increase in contracting agency staff is not a viable option.
b. Management support roles may include, but are not limited to, providing oversight of an element of a highway program, function, or service on behalf of MaineDOT or may involve managing or providing oversight of a project, series of projects, or the work of other Consultants or contractors on behalf of MaineDOT.
c. Use of Consultants or Subconsultants in management support roles requires appropriate conflicts of interest standards as specified in the "Conflict of Interest" section of this manual and adequate contracting agency staffing to administer and monitor the management consultant contract, as specified in 23 CFR §172.9(d). A consultant serving in a management support role may be precluded from providing additional services on projects, activities, or contracts under its oversight due to potential conflicts of interest.
d. FAHP funds shall not participate in the costs of a Consultant serving in a management support role where the Consultant was not procured in accordance with Federal and State requirements, as specified in 23 CFR 1.9(a).
e. Where benefiting more than a single Federal-Aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles applicable to MaineDOT, as specified in 2 CFR part 200, subpart E – Cost Principles.

Fig. 8.2 Consultant Evaluation Process

Completed Consultant Evaluations for Contracts (CT) that are closed or expired must be submitted to the Contract Procurement Office (CPO) no later than March 1st, of the following year.

↓

CPO will generate a monthly report of CT/CTM's that either closed or expired, and distribute it to the Contract Specialists (CS) to help assist and ensure evaluations are completed.

↓

Within 4 weeks of close-out of a contract, the CS completes the top portion of the Evaluation form and sends the form to the Project Manager(PM)/Contract Administrator(CA) to complete and sign.

↓

The PM/CA returns (within 2 weeks) the completed form to the CS.
*Send reminder to PM to complete evaluation after 1 wk.
*If no response 1 wk. after 1st reminder, send 2nd reminder and cc: Program Manager and Debbi Farrell to get resolved

↓

The CS will send the completed form to the Consultant for review and signature. The e-mail accompanying the form will state that if the form is not completed and returned within 2 weeks the Consultant will be considered to be in concurrence with the results.

↓

The CS scans the fully executed Evaluations in the TEDOCS contract file and then forwards them to Tina in CPO, to enter in the evaluation tracker located on the CPO's R: drive.

↓

The CPO CS will scan the Evaluation into the TEDOCS evaluation file, verify the document was properly scanned into the TEDOCS CT/CTM file, then dispose of the paper copy.

8.3 Contract Modifications

A document used to reflect changes to a Consultant contract is called a Contract Modification. Contract Modifications can cover any area but are usually required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

A Contract Modification shall:

- Clearly define and document the changes made to the contract; and
- Establish the method of payment for any adjustments in contract costs; and
- Be in compliance with the terms and conditions of the contract and original procurement.

MaineDOT:

- Shall negotiate Contract Modifications following the same procedures as the negotiation of the original contract; and
- May add to the contract only the type of services and work included within the type of services of the original solicitation from which a qualifications-based selection was made; and
- Shall for any additional engineering and design related services outside of the scope of work established in the original request for proposal:
    - Procure the services under a new solicitation;
    - Perform the work itself using a contracting agency staff; or
    - Use a different, existing contract under which the services would be within the scope of work.

Contract Modifications are to be signed by both the Consultant and MaineDOT **prior** to undertaking the work. Unless both parties to the contract have signed the modification, it is not a legally enforceable instrument. Consultants who proceed with work based on a verbal approval from the MaineDOT do so at their own risk. Any work that does not have a signed contract modification in place prior to performing the work is subject to non-participation by FHWA.

If the Consultant anticipates, during the course of the contract, that there is the potential for a change in scope that may require additional hours and/or expense, they will complete a 'Potential Change Notice (PCN)' form (see Appendix D),
The process is as follows:

1. Upon receipt of the PCN the Project Manager, shall develop a separate in-house estimate that will be used for negotiation.

2. Several approved and agreed upon PCN's can be grouped into a single contract modification at the Project Manager's discretion.

3. A completed Modification Approval Form signed by the appropriate authority level is required. The appropriate authority level will be determined by the value of the modification and its percentage of the original contract value (see Appendix C). This form will become a part of the contract document and will be scanned into TEDOCS and sent to CPO for filing with the rest of the modification documents.

4. Prior to executing the modification, the package will be sent to CPO for a pre-execution review.

5. A contract modification shall be executed once agreement has been reached on the revised scope, cost, and time.

6. The fully executed Contract Modification will be scanned into TEDOCS with the contract and sent to CPO.

8.6 Conflict of Interest

No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State.

A person or entity entering into a GCA and/or Project Contract may not have directly or indirectly any financial or other interest, other than the performance of the GCA and/or Project Contract, in the project or in its outcome. This prohibition includes, without limitation:

a. Any agreement with, or other interest involving, third parties who have an interest in the outcome of the project that is the subject of the GCA and/or Project Contract;
b. Any agreement providing incentives or guarantees of future work on the project or related matters;
c. Any interest in real property acquired for the project unless such real property interest is openly disclosed to MaineDOT before the person or entity entered into the Project Contract, and such officer, employee or person has not participated in such acquisition for and in behalf of the State.
    ii. This section prohibits all conflicts of interest both at the time the contracting party enters into a GCA and/or Project Contract and during the life of a GCA and/or Project Contract.
    iii. This section prohibits situations involving an actual conflict of interest and those creating an appearance of a conflict of interest. MaineDOT may waive this prohibition or impose curative modifications on the scope of any GCA or Project Contract between the person or entity and MaineDOT to eliminate the conflict or the appearance of a conflict.
    iv. A Consultant involved in the preparation of information that shall be used or considered in evaluations under the National Environmental Policy Act shall, by virtue of signing the GCA and/or Project Contract, attest that Consultant (a) has no financial or other interest in, or commitment for, any future contract related to the design or construction of the project or any of its alternatives, (b) has no financial or other interest in said project or its alternatives, or any part thereof, and (c) has no other interest which, under applicable law, would prohibit the selection of said Consultant to prepare an Environmental Assessment, Environmental Impact Statement, or other environmental documents for the project.

v. Pursuant to 5 MRSA § 18 or 17 MRSA § 3104, former state employees may face restrictions when they seek to work on matters that were directly within their responsibilities while they were still with MaineDOT. Consultants are advised to seek approval from MaineDOT prior to assigning a former State employee to any matters that were directly within the former employee's responsibility prior to their leaving MaineDOT.

vi. All determinations made under this section shall be left at the sole discretion of MaineDOT.

8.11 Default, Termination or Suspension

Grounds for Default

The Consultant is in default of the Project Contract if the Consultant:

a. Fails to promptly begin the work under the Project Contract after being authorized to proceed.
b. Fails to perform the work with sufficient labor, equipment, or materials to assure the timely completion of the work;
c. Fails to meet standards of performance as outlined in this document;
d. Discontinues the performance of the work without Departmental approval;
e. Continues to perform work outside the contract period or after receipt of instructions from MaineDOT directing that work be stopped;
f. Fails to resume work that has been suspended as required by the Project Contract;
g. Becomes insolvent or is declared bankrupt or files for bankruptcy;
h. Allows any final judgment to stand against the Consultant unsatisfied for a period of ten (10) days;
i. Makes an assignment for the benefit of creditors without authorization by MaineDOT; or
j. In any manner, fails to perform the work in Substantial Conformity with any material provision of the GCA and/or Project Contract.
k. Fails to comply with these Consultant General Conditions and related Appendices.
l. Performs work or administers a contract in a manner that jeopardizes Federal participation. (Unless authorized by MaineDOT)
m. Sharing Project information without MaineDOT's expressed written consent.

Notice of Default / Cure

Except as otherwise provided in these Consultant General Conditions, upon the occurrence of a default, MaineDOT will give a written Notice of Default to the Consultant and elect its remedies as set forth below. Any delay by MaineDOT in providing a written Notice of Default shall in no way constitute a waiver by MaineDOT of any provision of the GCA and/or Project Contract. If MaineDOT determines the default is not curable, the Notice of Default shall also include the date of termination.

Termination

MaineDOT may, by written order to the Consultant, terminate the GCA and/or Project Contract as provided in this section. Termination of the GCA and/or Project Contract or portion thereof shall not relieve the Consultant of its contractual responsibilities for the work completed prior to termination.

For Cause
MaineDOT may terminate the GCA and/or the Project Contract for cause due to the occurrence of one or more of the events of default set out in this section if the Consultant fails to effect a timely cure of all defaults identified in the Notice of Default within the fourteen (14) days from the date of the Notice (the "Cure Period"). MaineDOT, in its sole discretion, may extend the Cure Period if the Consultant has initiated good faith efforts to cure said default(s) and requires a reasonable amount of additional time to complete the cure. If the Consultant fails to cure the default(s) specified in the Notice of Default within

the Cure period or any extensions thereof, MaineDOT may immediately terminate the GCA and/or Project Contract for cause by written Notice of Termination for Cause. In this event, any or all Consultant products are the sole property of MaineDOT, and MaineDOT may enter into an agreement with another entity for the completion of the work, or use such other methods as in the opinion of MaineDOT are required for the completion of the intent of the Project Contract in an acceptable and timely manner.

MaineDOT shall pay for all accepted items of work performed prior to the date of termination at the prices determined by MaineDOT. The Consultant shall make all project records available to MaineDOT upon request regarding payment under this section. All costs and charges incurred by MaineDOT, together with the cost of completing the work specified in the Project Contract, shall be deducted from amounts otherwise due the Consultant. If such expenses exceed the sum that would have been payable under the GCA and/or Project Contract, then the Consultant is liable and shall pay MaineDOT the amount of such excess within 30 days of the delivery of a statement setting forth such expenses to the Consultant, as applicable.

If the Consultant files for bankruptcy at any time before expiration of the GCA and/or Project Contract, then the Consultant agrees, if requested by MaineDOT and within 30 days of such request, to take all actions necessary or convenient to reject or accept the GCA and/or Project Contract under the executory contract provisions of the federal bankruptcy code. Upon termination for cause, MaineDOT may, at its discretion, terminate the GCA and/or Project Contract.

For Convenience

MaineDOT may terminate the GCA and/or Project Contract for convenience or for any reason that is in the best interest of MaineDOT. Terminations for reasons beyond the control of the Consultant are terminations for convenience. MaineDOT shall notify the Consultant of such terminations by sending a Notice of Termination for Convenience.

In case of a termination for Convenience, MaineDOT shall pay the agreed upon prices for all accepted items of work as of the date of termination. In the event that a Project Contract is terminated for reason other than indicated above, without completion of the services as specified in the Project Contract, the total cost of the work satisfactorily completed plus, when applicable, a percentage of the Fixed Fee proportional to the amount of work completed shall constitute payment in full for the Project Contract. The Consultant shall make all projects records available to MaineDOT upon request regarding payment under this section. Acceptable materials, obtained by the Consultant for the work but which have not been incorporated therein, may at the option of MaineDOT be purchased from the Consultant at actual cost and shall be delivered by the Consultant to a prescribed location or otherwise disposed of as mutually agreed.

After receipt of Notice of Termination for Convenience from MaineDOT, the Consultant may also submit a claim for additional damages or costs not covered above or elsewhere in the Project Contract to the Project Manager within 60 sixty days of the effective termination date. Such claim may include such cost items as project investigative costs, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, Sub-consultant(s) costs not otherwise paid for, idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the Project Contract, and any other cost or damage item for which the Consultant reasonable believes reimbursement should be made. In no event, however, shall loss of anticipated profits be considered as part of any claim.

MaineDOT shall respond in writing to such claim within 60 days of receipt.

Right to Suspend Work

MaineDOT has the right to suspend any or all work at any time for any reason as it deems necessary. Consultant may receive payment for the portion of services completed through the date of suspension.

MAINE DEPARTMENT OF TRANSPORTATION
Contract Procurement Office
DOT Purview Request for Proposal (RFP) Checklist

Contract Administrator:
Contract Specialist:
Summary of Services:

The CS must check to ensure that the following is included in the RFP.

- ☐ Summary of Services
- ☐ Detailed Scope of Work
- ☐ Government Estimate
- ☐ RFP Schedule
  - ☐ Pre-Bid Meeting *(If yes, obtain the minutes from the meeting.)*
  - ☐ Yes ☐ No
- ☐ MaineDOT Contact
- ☐ Questions/Clarifications Due Date
- ☐ Location and Date of posted answers
- ☐ Proposal Due Date
- ☐ Rating Criteria and Relative Weights
- ☐ Contract Type, Term & Payment Method which will be utilized in resultant contract
- ☐ Physically Incorporate the Consultant General Conditions into the RFP and Resultant Contract
- ☐ Language that must be included in the RFP
  - ☐ **IT WILL BE THE PROPOSER'S RESPONSIBILITY TO CHECK THE REFERENCED WEBSITE FOR CLARIFICATIONS AND ANY NEW AMENDMENTS TO THE RFP.** (Note: The Proposer must include reference to all amendments on their response to this RFP.)
  - ☐ **MaineDOT reserves the right to make one or multiple awards as a result of this RFP process.**
  - ☐ **MaineDOT reserves the right to modify the initial contract term and award additional phases of the Project to the Successful Proposer when it is in the best interest of the State.**
  - ☐ **Hard copies must include enough copies of the Technical Proposals for everyone on the Scoring Committee, including one extra hard copy for the CS, as well as a Price Proposal in a Separate Sealed Envelope. In addition, an electronic version of the Technical Proposal and Separate Sealed Price Proposal must also be included, i.e. jump drive, cd, etc.**
- ☐ When returning Price Proposals to the Unsuccessful Proposers, Certified Mail, Return Receipt Requested must be utilized. This notification must include the final ranking of the three most qualified Consultants.

MaineDOT

Maine Department of Transportation
Contract Procurement Office

Memo

To: Holders of Consultant and Professional Services Procurement Manual

From: Debbi Farrell – Contract Procurement Office

CC: Karen Doyle, Wayne Emington (FHWA)

Date: October 7, 2015

Re: Revision to Consultant and Professional Services Procurement Manual
Amendment No. 2

Chapter 2: Types of Contracts and Agreements, Section 2.1 General Consultant Agreement (GCA), paragraph 4 is replaced with the following:

A consultant may have multiple GCAs. CPO will oversee the execution of a GCA and any requests for modification. A GCA's monetary value, end date and/or ordering period shall not be extended beyond the original dates unless approved by CPO. GCA extensions beyond five (5) years (23 CFR §172.9 (3)) will be reviewed and approved on a case by case basis.

Please retain this memo for your records. If you have any questions, please contact the Contract Procurement office at 624-3262.

MaineDOT

Maine Department of Transportation
Contract Procurement Office

Memo

To: Holders of Consultant and Professional Services Procurement Manual

From: Debbi Farrell – Contract Procurement Office

CC: Karen Doyle, Jeff McEwen (FHWA)

Date: May 3, 2011

Re: Consultant and Professional Services Procurement Manual
Amendment No. 1

To account for inflation, the federal guidelines contained in 48 CFR 2.101 have been revised, this revision has increased the Simplified Acquisition threshold to $150,000.

Effective immediately any references to these limits in the subject manual are considered revised as follows:

	Contract Values (including modifications)	
Consultant Selection Method	Current Threshold	Revised Threshold
Simplified Acquisition	$100,000 or less	$150,000 or less
Brooks Act	Greater than $100,000	Greater than $150,000

Please retain this memo for your records. If you have any questions, please contact the Contract Procurement office at 624-3039.

MAINE DEPARTMENT OF TRANSPORTATION
Consultant and Professional Services Procurement Manual

October 2009

MaineDOT: _____
David Cole, Commissioner

FHWA: _____
Jonathan McDade, Division Administration

Table of Contents

BACKGROUND 5
Chapter 1: Determination of Appropriate Contractual Requirements 7
1.1 Contractual Authority 7
1.1.1 MaineDOT Purview 7
1.1.2 Division of Purchases Purview 7
Sole Source Criteria: 8
Forms 8
Personal Services Contract 9
Cooperative Agreement 11
Commodities 11
1.2 Funding Source 11
1.3 Contract Amount 12
Chapter 2: Types of Contracts and Agreements 13
2.1 General Consultant Agreement (GCA) 13
2.2 Project Contract 14
2.3 Multi-PIN Contract 14
2.4 Cooperative Agreements 14
Chapter 3: Department Wide Request for Qualifications 16
3.1 Program RFQ Committee 16
3.2 Consultant Prequalification Requirements 17
3.3 General Consultant Agreements (GCA) Consultant Selection 18
3.4 GCA Execution 18
Chapter 4: Procurement Process 20
4.1 Simplified Acquisition Procurement (SAP) 20
Step 1: Procurement Planning 21
Scope of Work 21
Independent Government Estimate 22
Step 2: Obtain Authorization to Hire a Consultant 22
Step 3: Consultant Selection 23
Step 4: Evaluate Technical and Cost Proposals and Revise the Government Estimate 23
Step 5: Detailed Negotiations 24
Step 6: Approve and Execute the Contract 25
Step 7: Notice to Proceed 25
4.2 Brooks Act Procurement (BAP) 27
Section 4.2.a – Two Step Process for Contracts greater than $100,000 but less than $500,000 using the MaineDOT GCA 29
Step 1: Procurement Planning 29
Scope of Work 29
Independent Government Estimate 29

Step 2: Obtain Authorization to Hire a Consultant 30
Step 3: Develop a shortlist of consultants with GCAs; Evaluate the Qualifications and Rank Accordingly 30
Step 4: Request Proposal from the Highest Ranked Consultant 31
Step 5: Detailed Negotiations 31
Step 6: Approve and Execute the Contract.....32
Step 7: Notice to Proceed.....32
Section 4.2.b - Single Step Process for Contracts > $500,000.....34
Step 1: Procurement Planning.....34
Scope of Work 34
Independent Government Estimate 34
Step 2: Obtain Authorization to Hire a Consultant 35
Step 3: Advertise Request for Proposal.....35
Step 4: Evaluate and Rank the Technical Proposal.....36
Step 5: Detailed Negotiations 36
Step 6: Approve and Execute the Contract.....37
Step 7: Notice to Proceed.....37
4.3 Non-Competitive (Sole Source) Procurement..... 39
Step 1: Decision to utilize this Procurement Method.....39
Step 2: Request for Sole Source Procurement Form.....39
Step 3: Procurement Method.....39
4.4 Best Value Procurement..... 41
Chapter 5: RFQ/RFP Advertising & Award..... 42
5.1 Electronic Posting 42
5.2 Newspaper Advertising..... 43
Chapter 6: Financial Requirements 45
6.1 Total Cost (Fee) Determination..... 45
A. Audited Overhead Reports.....45
B. Determination of Profit.....46
C. Direct Expenses.....47
6.2 MaineDOT Policy on Reimbursement..... 47
6.3 Payments and Invoicing..... 48
Chapter 7: Payment Methods 49
7.1 Lump Sum..... 50
7.2 Cost per Unit of Work..... 50
7.3 Specific Rates of Compensation..... 51
7.4 Cost Plus Fixed Fee..... 52
Chapter 8: Administration 54
8.1 General Requirements..... 54
8.2 Monitoring Consultant's Progress..... 55
8.3 Contract Modifications 58
8.4 Disadvantaged Business Enterprise..... 58
8.5 Disputes, Protests, and Claims..... 59
8.6 Conflicts of Interest 60
8.7 Transportation Agreements and Contracts System (TRACS) 61
8.8 Errors and Omissions 61

8.9 Insurance 62
8.10 Pre-Execution Review 62
Chapter 9: Roles and Responsibilities 64
9.1 Contract Specialist Duties 64
9.2 Project Manager/Contract Administrator Duties..... 66
APPENDICES 67
Appendix A: Definitions and Terminology 68
Appendix B: MaineDOT's Contractual Authority 77
Appendix C: MaineDOT Approval Levels 82
Appendix D: Sample Forms 86
Appendix E: FHWA Form 1273..... 108
Appendix F: Frequently Asked Questions..... 119
.....

BACKGROUND

The purpose of this document is to establish, within the Maine Department of Transportation (MaineDOT), clear, simple, fair and consistent policies and procedures to be used in the procurement of non-construction services and the administration of consultant contracts on state and federally funded projects.

As the person responsible for the procurement and administration of contracts within the MaineDOT, you must be aware that compliance with Federal requirements is a condition of receipt of Federal funds. Failure to comply with these provisions may, in accordance with applicable Federal or State regulations, result in the loss of Federal Aid funds. The MaineDOT *Consultant and Professional Services Procurement Manual* encompasses the federally approved procedures that are to be utilized in the procurement and administration of Consultant services, as well as other types of contracts and agreements to which MaineDOT is a party. **Failure to utilize these procedures without prior approval from the Contract Procurement Office (CPO) and the Federal Highway Administration (FHWA) could result in non-participation of Federal-Aid funds.** Listed below are activities that could make all or a portion of the contract costs ineligible for Federal funds;

1. Failure to comply with the Brooks Act for Engineering and Architectural services greater than $100,000, and Federal Acquisition Regulations (see Appendix A for definitions).
2. Proceeding with work prior to authorization. This includes the absence of a project contract, authorization of a PIN, or money obligated for a particular phase of a project.
3. Proceeding with extra work, due to a change in scope without an approved contract modification.
4. Performing work past the original contract expiration date without an approved contract modification.
5. Exceeding the maximum amount of a contract without generating an approved contract modification.
6. When gross inefficiency results on a project that is managed by a Consultant.
7. Salary (including overhead and fringes) for key personnel that is not approved by MaineDOT.
8. Unauthorized departure from department policy and practice resulting in rework or damages.
9. Insufficient records documenting the procurement history. This documentation will include, but are not limited to: government estimate, rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
10. When error(s), omission(s), or negligence results in :
    a. Personal injury or harm to the public.

b. “Significant”[1] safety or environmental issues.
c. “Significant” extra cost(s) or burden(s) upon the public.
d. A defect in character of work and the result does not meet performance expectations.

FHWA and CPO will be consulted when these issues develop in order for them to be adequately addressed.

[1] Significance is based on the context and intensity of the results from a consultant’s course of action.

Chapter 1: Determination of Appropriate Contractual Requirements

The MaineDOT provides services related to the development, operation, enhancement and maintenance of transportation infrastructure, programs, and systems. Many of these services are provided by MaineDOT personnel; however, it is not cost effective for the Department to be staffed to provide all of these services; resulting in the need to hire private sector service providers.

The goal of this manual is to outline the appropriate requirements and processes needed to procure professional services. These processes are based on the nature of the services, contractual authority, funding source, and the dollar value of the contract.

1.1 Contractual Authority

1.1.1 MaineDOT Purview

One factor in determining what is required is whether the service falls under MaineDOT's contractual authority (or purview). By default, all services (and commodities) that are procured by State agencies are required to follow the State Division of Purchases' procedures. MaineDOT by law has statutory authority for procurement under:

- 23 M.R.S.A. §52 General Powers and Duties
- 23 M.R.S.A. §4241 Definitions; §4242 Contracts for Transportation-related Services, and §4243 Contracts for Construction and Maintenance

For Contracts that fall under these provisions, the Department is allowed to develop its own procedures in accordance with Federal requirements. Appendix B provides a list of common services that the Department contracts for and a breakdown of whose contractual authority they fall under (MaineDOT's or State Division of Purchases). For services not on the list please coordinate with CPO to assist in determining the appropriate contractual purview.

1.1.2 Division of Purchases Purview

All MaineDOT contracts that fall under Division of Purchases purview will also be coordinated through the CPO.

All contracts for services that do not qualify as sole source that are:

1. Between $5,000 and $10,000 – departments are required to get quotes, and the award should be made to the low bidder.

2. Greater than $10,000 - must be competitively bid using a Request for Proposal. The RFP must be submitted to Purchases prior to release for approval.

Sole Source Criteria:

1. The cost of the service is $5,000 or less.
2. Service is available from only a sole source.
3. Service is of such a narrow scope or constraint that the need can be met satisfactorily only by a single source.
4. Service is of such compelling urgency that government operations would be seriously impaired by delay inherent in following competitive procedures. (Comment: To meet this criteria the urgent situation must not be self created by lack of planning or foresight).
5. Service is otherwise the most economical, effective and appropriate means of fulfilling a demonstrated need. (Comment: The operative words are economical, effective, and appropriate. An argument could be offered for an economical sole source that doesn't meet appropriate procurement considerations.)

New contracts for sole source services will be scrutinized carefully to determine it fits the above criteria.

Contract Review and Approval:

All contracts must be sent to the Division of Purchases for approval. Contracts under their purview must be accompanied by the following documents;

Contracts less than $5,000.00
BP 18 or BP54 EO
BP37R

Contracts greater than or equal to $5,000.00
BP37R
BP54EO
Rider G

Contract Amendments
BP37R
DPFY04-1 (see the next page for definition)
Supporting documentation outlining the changes.

Forms

BP18R - Agreement for Special Services, can be used for new service contracts $5,000.00 and under.

BP37R - Contract/Grant Designation and Requisition for Contract/Grant Authorization can be used for new or amendments to service contracts greater than $5,000.00. This form requires the following:

1. Substantiation of a need: A specific statement to demonstrate the emergency or essential nature of the service and impact if delayed, postponed or rejected.
2. Justification for Sole Source Procurement.
3. Evidence of a prior or Scheduled RFP.

Please note: Prior to sending to the contract to Purchases it must be entered into AdvantageME and the CT number written on the front page of the contract. All contracts and amendments must be accompanied by a completed BP37R Requisition for Contract/Grant Authorization form. If the contract and/or amendment are incomplete the package will be returned with a request for the missing information.

BP54 EO – Agreement to Purchase Services. This document adds the necessary language from the Executive Order Compliance Form for Contract/Grant/Purchase Approval. This form must be utilized for new contracts valued at greater than $5,000.00.

DPFY04-1 – This is an executive order compliance form for Contract/Grant/Purchase Approval. This form is not needed if the following language is included in the amendment; "WITNESSETH, that this contract is consistent with Executive Order 01 FY 08/09 or a superseding Executive Order, and complies with its requirements.

Rider "G" – documents the country in which the Contracted work will be performed.

Service Contracts

Personal Services Contract - *NOTE: When utilizing Maine Division of Purchases forms, there may be times when the MaineDOT Consultant General Conditions/Provisions must be incorporated by reference, CPO will assist you with this determination.*

Personal Service Contracts, (i.e. Public Information Umbrella Agreements, Training, Facilitation, etc.), shall comply with the requirements of 5 MRSA § 1816-A, as well as the Federal requirements for all federal funded contracts. Care shall be taken with Personal Service Contracts to ensure compliance with State and Federal law. Great care shall also be taken to distinguish independent contractors/Consultants from being perceived as employees to prevent Personal

Service Contractors from becoming vested as employees of MaineDOT. Personal Service Contracts must be reviewed by the Division of Purchases Review Committee for approval.

In general, a Personal Services Contract (except for contracts requiring specific legislative approval) must meet the following conditions:

1. Services contracted are not currently available within a state agency.
2. Services are incidental to a contract for the purchase or lease of real or personal property.
3. Protect against a conflict of interest or to ensure independent and unbiased findings when there is a clear need for a different outside perspective.
4. State agency needs private counsel because of a conflict of interest on the part of MaineDOT or the Attorney General.
5. Contractor provides equipment, materials, facilities or support services that the State cannot feasibly provide in the location where the services are to be performed.
6. Contractor conducts training courses for which appropriately qualified civil service instructors are not and cannot be made available.
7. Services are of such an urgent, temporary or occasional nature that the delay incumbent in implementation under civil service would frustrate the purpose.
8. Contracting agency demonstrates a quantifiable improvement in services that cannot be reasonably duplicated within existing resources.
9. Contracting agency clearly demonstrates that the proposed contract would result in actual overall cost savings to the State

NOTE: Personal Services contracts should not be used for services that are directly or indirectly linked to a MaineDOT construction project, or that are easily defined as falling within the jurisdiction of MaineDOT's Commissioner as described in 23 M.R.S.A. §4206. They are primarily used in those instances where the utilization of a Consultant's services resembles that of an employer/employee relationship.

The MaineDOT Purview Contract cover sheet can be used with contracts either directly or indirectly related to a MaineDOT construction project.
These contracts will utilize the same process as above with the following exceptions:

1. $5,000 and under – Three verbal quotes are required.
2. $5,001 to $9,999 – Three written quotes are required.
3. $10,000 and up – All temporary service providers must have an opportunity to bid. A job description must be faxed or e-mailed to all temporary service providers.
4. $25,000 and up – **Must** be done through an RFP process.

Office of Information Technology (OIT)
Agreements that are primarily technology based or have technology components must be approved by the Division of Purchases and the Chief Information Officer's (CIO) office. Your assigned OIT representative can assist with agreement development. OIT Agreements are routed through the Division of Purchases for approval. Once they are initially approved by Purchases they are re routed to the CIO's office for technical approval and returned to the Division of Purchases for finalization in AdvantageME.

Cooperative Agreement
The Division of Purchases established a Cooperative Agreement between the State and the University of Maine. The purpose of the agreement is to facilitate contracting for projects where joint participation, on any activity of interest to the parties will improve services to the people of the State and enhance the ability of the University to further its teaching, research and public service missions. (See page 14 for additional information regarding Cooperative Agreements.)

Commodities
All commodities (products) purchases over $5,000 must be done via an RQS in AdvantageME and will be put out to bid by the Division of Purchases. In the case of an emergency consideration, will be given to essential items, which must be purchased to maintain basic operations in a cost effective manner. An emergency is defined as an immediate need to protect the health or safety of the public.

Confirmation Requisitions - must be pre-approved by the Division of Purchases staff and limited to items meeting the emergency definition above.

Commodity purchases under $5,000.00 (open market limit) can be done by the departments. These purchases can be paid for with the State of Maine Procurement card or processed as an invoice through Free2000 in accordance with the State of Maine Purchasing policies and procedures. Existing master agreements and/or contracts for commodities must be utilized when purchasing items.

1.2 Funding Source

The Project Manager (PM) must decide whether or not the contract is eligible for federal funding. Many of our partner Federal agencies like FHWA, FAA, FTA FRA, etc. have unique contracting requirements that are specific to that funding source, but some requirements are universal regardless of which Federal Agency is involved. If the procurement or administration of a contract does not follow the

appropriate Federal requirements, the Department could lose Federal funding. However, the Department is still required to pay for those contracted services by diverting state funds to offset the loss of Federal funds. PM's must always verify that PINS for federal projects have been released and authorized.

1.3 Contract Amount

Regardless of whose authority the contract is under or who is contributing to the funding, there are different methods of procurement based on the dollar value of the contract. Specifically for engineering and architectural related services that lead to a construction project, there are two methods of procurement that satisfy federal regulations for the purchase of architectural and engineering. For contracts less than or equal to $100,000, MaineDOT utilizes Simplified Acquisition; contracts greater than $100,000 the Brooks Act qualifications based procedure.

Chapter 2: Types of Contracts and Agreements

The purpose of this chapter is to establish the types of contracts utilized by the Department as well as to define specific terminology. Before any selection process begins, the desired type of contract should be identified. MaineDOT uses many types of contracts for the wide array of services it needs. Many times the type and availability of Consultant services as well as the dollar value of the contract will dictate which procurement process will be used.

2.1 General Consultant Agreement (GCA) - The GCA is an agreement that places the Consultant "on call" for a specific service, for a specified ordering period, up to a maximum dollar amount. The GCA does not obligate MaineDOT to acquire services from a selected firm, nor does it specify overhead rates, unit prices or amounts, these are specific to the individual Project Contract negotiated under the GCA.

GCA's typically have ordering periods of four (4) to four and a half years with an additional six months to a year to complete the work. The GCA includes the following information:

1. Maximum dollar amount that can be expended under the agreement.
2. Consultant selection process.
3. Maximum ordering period for services under the agreement.
4. Process for modifying the agreement.
5. A list of the services the Consultant is authorized to perform.
6. Disadvantaged Business Enterprises (DBE) requirements.
7. FHWA's 1273.

The terms of the GCA require a consultant to submit the following on an annual basis, for the term of the agreement:

1. An annual audited Overhead Report.
2. A current certificate of insurance.

A consultant could have multiple GCAs. CPO will oversee the execution of a GCA and any requests for modification. A GCA's ordering period shall not be extended beyond the original date unless approved by CPO and FHWA. In addition, **a GCA shall not be extended monetarily beyond its original value. Once a GCA has been exhausted in terms of monetary value it will be closed, and the consultant will be given the opportunity to compete for a new GCA during the next Department Wide Request for Qualifications (RFQ).**

Additional information regarding the selection of consultants for a GCA through the Department Wide Request for Qualifications process is detailed in Chapter 3.

2.2 Project Contract - Project Contracts are written for a specific scope of work, cost, and schedule. Project contracts must incorporate by reference the latest version of the MaineDOT Consultant General Conditions and any supplemental Consultant General Conditions, and any related umbrella agreements.

Prior to executing a Project Contract, you must obtain from the Consultant, a current audited overhead report (see definition in Appendix A), a copy of their most recent payroll records, and insurance certificates. Upon receipt, please forward the report and insurance certificates to the Contract Procurement Office.

Electronic copies of the MaineDOT General Consultant Agreement and Project Contract templates are available electronically at R:\CPO\CPO Public\Contract Procurement Office, and the Consultant General Conditions is available on MaineDOT's Contract Procurement Office's webpage at http://www.maine.gov/mdot/aco/acohome.php.

2.3 Multi-PIN Contract – This contract, establishes rates, and terms and conditions, that put the Consultant "on-call" for a specific service over a specified ordering period. As with any federal aid contract; an authorized PIN is needed prior to assigning the work.

Consultants are given "Notice to Proceed" through the use of an Assignment Letter; this document is also used to determine the anticipated cost of the work (independent estimate). Multi-PIN Contracts are typically utilized for services such as Construction Support, Utility Coordination/Sub-surface Underground Engineering, Surveying, Title Abstracting, Legal, etc.

2.4 Cooperative Agreements – In general, a Cooperative Agreement is an agreement between MaineDOT and a public or quasi-public entity, including municipalities, other state agencies, federal agencies, planning commissions, etc. and falls within the following types:

1. A non-monetary agreement that memorializes an understanding between parties that may later lead to a separate contract or agreement for a particular project, e.g. this may be an agreement that will later lead to a Local Project Agreement for the administration of a MaineDOT project by a municipality.
2. A monetary umbrella agreement that requires a separate related contract for a specific project, (e.g. a FAA Project Level Contract or an FTA Standard Contract).
3. A stand alone agreement that is essentially the agreement and the contract in one, (e.g. this may consist of a low cost project where another state agency performs work for the Department utilizing its own forces).

Note: *Cooperative Agreements replace Memorandums of Understanding and Memorandums of Agreement.*

Consultant Procurement Process Overview using Simplified Acquisition or the Brook's Act

Department Wide Request for Qualifications (RFQ) (See chapter 3)

The Goal of the Department Wide RFQ is to:

- **Establish a pool of highly qualified consultants with General Consultant Agreements.**
- **Establish a "pre-qualified" pool of consultants that meet MaineDOT's minimum qualifications for a specific service, but do not have GCAs.**

Use Simplified Acquisition Selection for Contracts Valued at <u>Less than or equal to $100k</u> (See Chapter 4 for details)

Multi PIN Contract
An agreement used to hire a consultant who will perform the same "basic" service (surveying, appraisers, construction inspection, etc.) on various projects over a multi-year period. (See 2.3) PIN values cannot exceed $100,000.

Project Contract
An agreement written for a specific scope of work, cost, and schedule.

Use Brook's Act Acquisition Selection for Contracts Valued at <u>Greater than $100k</u> (See Chapter 4 for details.)

But less than or equal to $500k

The Project Manager will select and rank, from the list of consultants with GCAs, a minimum of three consultants, based on the scope of work. See Chapter 4.2(a)

But greater than $500k

Advertise and solicit an RFP for contracts with an estimated value of $500k**.** See Chapter 4.2 (b). Examples include:

- Major environmental studies such as Environmental Impact Studies or Assessments.
- Unique design or engineering contracts for "major" projects or those of unique nature. (Example: Cable stay bridge, major highway reconstruction project, etc.)

Stand Alone or Project Contract

Special Note: Each individual <u>PIN Contract</u> is limited to $100,000

Chapter 3: Department Wide Request for Qualifications

The Department Wide Request for Qualifications (RFQ) is used to establish a pre-qualified pool of consulting firms that we anticipate hiring for projects outlined in the Two Year Work Plan.

MaineDOT maintains a list of pre-qualified Consultants to:

1. Reduce the administrative effort needed to procure and develop consulting contracts by standardizing the work effort, and establishing:
    a. A pool of pre-qualified Consultants to be used in the Simplified Acquisition procurement process.
    b. A short list of Consultants for the Brooks Act procurement process.
    c. General Consultant Agreements (GCA) for specific services that will be needed by the Department.
2. Track corporate relationships.

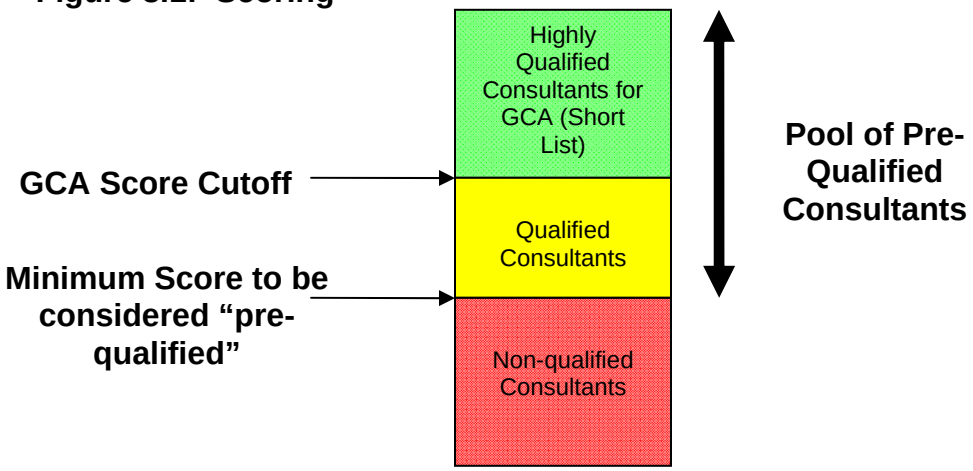
The Department maintains an open pre-qualification process that allows new firms, or firms with new capabilities to enter the pre-qualified pool. The Consultant Pre-qualification Form with instructions can be found on the MaineDOT's Consultant website. In order for a firm to be added to the pre-qualification list, an evaluation committee would review their qualifications based on the original scoring criteria for this service and based on the relative capabilities of the other qualified firms.

3.1 Program RFQ Committee

This committee (with an elected chair) should be established to lead the process of selecting the service requirements and pre-qualifying the Consultants. This committee should be made up of three (3) to five (5) people who have an understanding of the upcoming projects and the impact on the MaineDOT. Listed below are their roles and responsibilities:

1. To determine, based on upcoming projects, which Consultant services will be needed.
2. To determine, the number of GCAs needed per service. (Preferably a minimum of three to be utilized in the event of the Brooks Act Process.)
3. To generate a list of relevant, service specific questions and set up interviews.
4. Establish the qualification scoring criteria for the discipline by utilizing the Consultant Pre-Qualified Scoring Sheet (see Appendix D).
5. Establish the minimum qualification (or passing) score a firm needs to achieve to be pre-qualified as well as the minimum score needed for a GCA (see Fig. 3.1 below).

Figure 3.1: Scoring



Individual committee members that are evaluating the Consultants must sign off on the form for their scores.

3.2 Consultant Prequalification Requirements

The purpose is to establish the qualifications that will best meet the overall contracting needs of the Department. There are two categories: Minimum Administrative Requirements, and Competency & Capability requirements.

1. ***Minimum Administrative Requirements***; if a consulting firm does not meet any of these criteria; they are eliminated from any further evaluation and considered non-responsive and/or non-responsible.

   - Proof of incorporation (if applicable by law).
   - Not registered and in "Good Standing" with Maine Secretary of State as required by law.
   - Unable to provide adequate insurance coverages.
   - Debarred from receiving state and/or federal funds.

2. ***Competency and Capability requirements***; these should be a mix of historical, performance, and knowledge based criteria that are weighted and calculated based on an overall scoring mechanism. Examples of scoring criteria are**:**

   - Specialty knowledge, qualifications, licenses and certifications
   - Past performance:
     - Budgets
     - Schedule

- DBE goals
- Quality Control
- Invoice accuracy
- Geographic location (cannot give preferential scoring to companies from Maine)

.

3.3 General Consultant Agreements (GCA) Consultant Selection

Once a pool of pre-qualified Consultants, for a specific service, has been established the committee will determine if there is a need for GCAs, and how many. If possible, there should be a minimum of three consultants selected for each GCA service.

1. **Shortlist –** the top ranked, in the pool of pre-qualified Consultants, will be selected for interviews and considered placed on the "shortlist". Following the interviews and selection of the successful firms, both the successful and unsuccessful firm(s) are to be notified in writing.
   - Standard templates for use in producing letters to notify the unsuccessful firms etc. are available on MaineDOT's shared drive at R:\CPO\CPO_Public\Contract Procurement Office.
   - All supporting documentation related to this process must be scanned into Transportation Electronic Document Organization and Control System TEDOCS.

2. **Debriefing Of Non-Selected Firms -** Unsuccessful firms may request a meeting with the chair of the Selection Committee to inquire how the firm could strengthen its presentation for future selection. Individual scores are not to be discussed during these debriefings; these meetings should focus on a general discussion about how the Consultant could have strengthened their presentation.

3.4 GCA Execution

Once the successful candidates have been selected, the GCAs will be initiated in accordance with the Contract Specialist's (CS) checklist; the Consultant may be asked to provide the most current audited Overhead Report. Upon receipt of CPO's approval, the CS can initiate the process of executing the GCA (as described below).

GCA Execution, Getting Signatures - To minimize document turnaround time, a copy of the GCA may be e-mailed or faxed to the successful firm(s) for signature along with a request for a minimum of two signed copies. MaineDOT must sign the agreement last, and that date becomes the effective date of the GCA and the beginning of the ordering period.

GCA entry into the Department information systems:

1. **AdvantageME (AMS) –** The CS must obtain a Contract Number through AMS. This number is used by the State Bureau of Purchases to track expenditures.
   Note: This GCA AdvantageME number shall be cited on all individual Project Contracts executed under the umbrella of the GCA. Consultants are to reference this number on all correspondence and invoices.

2. **Transportation Agreements and Contracts System (TRACS), Scanning, And Electronic Filing –** Following the receipt of approval in AMS the GCA must be entered into TRACS**.** The GCA and supporting documentation must be scanned into MaineDOT's TEDOCS electronic filing system.

   Note: The GCA is a Multi-Year Agreement it does not guarantee that work will be requested through project contracts.

Chapter 4: Procurement Process

Procurement is the act of obtaining or acquiring services through a standardized process. In relation to Consultants, services, or commodities, the procurement method is dependent upon the complexity of the work and nature of the deliverables. As previously described, the appropriate procurement method is derived from a matrix of requirements related to contractual authority, funding source, and overall contract amounts. Although procurement can be accomplished through different means, ***the goal is to ensure that the service provider's professional qualifications are aligned with the needs of the project***, ***and that the cost is fair and reasonable.***

MaineDOT utilizes four procurement methods, they include:

1. Simplified Acquisition (Section 4.1)
    a. Consultants are pre-qualified for individual contracts with a maximum value of $100,000.
2. Brooks Act Acquisition
    a. Contracts with an estimated value of greater than $100,000 to a maximum of $500,000 Consultants utilizing the GCA (see Section 4.2(a)).
    b. Contracts with an estimated value greater than $500,000 (see Section 4.2(b)).
3. Non-Competitive (Sole Source) Acquisition (see Section 4.3).
4. Best Value Procurement.

4.1 Simplified Acquisition Procurement (SAP)

Engineering and architectural contracts with a preliminary estimate of less than or equal to $100,000 (a Federal statutory limitation) can be procured utilizing SAP in combination with the pre-qualified list of Consultants. In utilizing SAP, the Project Manager (PM) should also be aware that a contract cannot be broken down into smaller components to merely permit its use. (See 23 CFR 172.5 a2.) If the combined value of multiple phases (example: Phase I preliminary engineering/NEPA and Phase II final design) exceeds $100,000, and the PM would like to use the same Consultant for multiple phases, the Brooks Act Selection Process must be followed.

Qualifications should be taken in consideration when selecting a Consultant from the pre-qualification list examples include but are not limited to:

1. Key personnel.
2. Quality assurance/quality control of work.
3. Design/bid document coordination methods.
4. Ability to start and complete work (including time for MaineDOT's review) within the proposed schedule.
5. Distance from project.
6. Cost control methods.
7. Current and projected work load (includes all contracts from other State agencies as well as all current projects with MaineDOT).
8. Past experience on MaineDOT projects.

Simplified Acquisition should be used to procure services for a well defined scope of work. Programs should consider using the Brooks Act Process for contracts valued at $90,000 or greater to avoid federal non-participation should the final contract cost exceed $100,000. Federal statutes will not allow participation for any expenditure over $100,000 when a Simplified Acquisition consultant selection method is used. Detailed steps for figure 4.3 are outlined below:

Step 1: Procurement Planning

Scope of Work

A clear understanding of the Scope of Work (SOW) is essential in determining what services are needed. The PM or their designee shall prepare a SOW and government estimate prior to moving to Step 2. At a minimum, the detailed scope of work must include the following:

1. Description of the type of work.
2. The location and duration of work (including any milestones as applicable).
3. Identify the potential number of phases of work to be undertaken. The scope must also state whether there is a potential for the successful Consultant to be awarded future phases of the project.
4. A list of the desired deliverables, (which may include plans & specifications, reports, studies, etc.); for the appropriate project level, using MaineDOT's policies, standard specifications, details, and related design manuals.
5. Preliminary engineering issues (constructability, environmental, feasibility, right-of-way, etc.), that includes alternatives with pros & cons (if applicable).
6. An estimated number of MaineDOT team and public meetings to be facilitated, etc.
7. A list of the services needed along with the pre-qualification criteria related to the contract. This information will be the basis for evaluating the personnel that the Consultant plans on utilizing during the contract period.

Independent Government Estimate

The Independent Government Estimate is an estimate of the work to be performed by the consultant to be hired, and is intended to be used to determine that the Consultant's price is fair and reasonable for the work to be performed. It is also intended to be used as a negotiating tool, so it is important that the Project Manager feel confident with the estimate, as it will be used to support their position when negotiating with the Consultant. The dollar value of the Government estimate is also used to determine whether the procurement method will follow the Simplified Acquisition or Brooks Act process (see figures 4.1, 4.2.a, and 4.2.b).

The Government Estimate is developed once the scope of work has been clearly defined. The Government Estimate will normally be generated by MaineDOT's Project Manager, Contract Administrator, or designee. Consultants who are potential candidates for the work must not be asked to develop or assist in the development of the government estimate. The estimate should be based on historical data and shall reflect the probable cost, including an estimate of the number of work hours, and resources that would be required if MaineDOT were to do the work. A methodical approach should be used to determine and document a reasonable cost for the anticipated work. The estimate can also be used in negotiating contracts with municipalities.

The process used for developing the independent government estimate is determined by the nature and complexity of the work. Estimates of this kind can be developed using actual breakdowns of direct labor by professional staff, overhead, direct expenses and profit. Appendix D includes an example of a Government Estimate Consultant Cost Summary. Less frequently used methods, include cost per plan, cost per unit, a percentage of total project cost, or number of hours based on a range of commercial rates established by type of work. An estimate is valid as long as the methodology uses relevant data and terms that can easily express what the effort will cost.

Note: Upon request MaineDOT will assist municipalities and airports involved in a Locally Administered Project (LAP) with the development of a government estimate.

Step 2: Obtain Authorization to Hire a Consultant

The Chief Counsel, Project Managers, Contract Administrators, Bureau Heads (Project Development, Maintenance and Operations, and Finance & Administration) and Office Directors (Offices of Executive, Environmental, Human Resources, Bureau of Transportation Systems Planning, and the Office of Freight and Business Services) are empowered by Departmental Policy to authorize the outsourcing of Professional and Engineering Consultant Services.

The purpose of this step is to obtain written authorization from the appropriate program, in accordance with APM10, using the Consultant Contract Authorization

form (see Appendix D), to procure a professional service. **This fully executed document must be submitted to MaineDOT's CPO before initiating the procurement process.**

Required attachments to the Authorization include:
1. The scope of work.
2. The independent government estimate
3. An approved request for Sole Source Procurement Form (if applicable).

Step 3: Consultant Selection

The Project Manager can either select a Consultant from a Pre-qualified List or by Advertising for an RFQ/RFP.

1. The PM will select a potential Consultant from a list of pre-qualified candidates, based on project specific criteria. (The pre-qualified list can be the result of either an individual RFP, RFQ or Department Wide RFQ)

   The PM forwards the SOW, in writing, to the selected Consultant and solicits a technical and cost proposal. The request should be accompanied by the Consultant Terms and Conditions, if applicable. If the Consultant rejects the request then the PM may select another Consultant using the criteria above.

2. If the PM decides to initiate an RFQ/RFP to select a Consultant, it will be done in accordance with Chapter 5. The advertisement posting shall include the SOW and specify the deadline for the response to the request.

Step 4: Evaluate Technical and Cost Proposals and Revise the Government Estimate

The purpose of this step is to ensure that the Consultant's technical proposal is consistent with the SOW and of "reasonable" cost. It also establishes the Department's position for detailed negotiations in Step 5. Additionally, it ensures that the Consultant(s) understands the SOW that is being requested. It is incumbent upon the PM to closely review and evaluate the proposal(s) in this step to enhance MaineDOT's bargaining position.

The PM should review the Consultant's technical proposal for accuracy in relation to the SOW and original government estimate. The review should include:
1. Ensuring the proposal addresses all the requirements of the scope of work, as well as the Consultant's responsibilities.
2. Verifying that the proposal is consistent with MaineDOT's proposed target dates and milestones to ensure that the work is completed in a timely manner.

3. Ensure that the proposed Consultant cost breakdown is “reasonable” in relation to the specific items of work. (e.g. Number of team meetings, estimated person hours to complete a task, etc.).
4. The proposed DBE utilization, as applicable, is completed and submitted as part of the proposal. This should be coordinated with MaineDOT’s Office of Civil Rights.
5. If the proposal does not meet the needs of the Department, the Project Manager shall contact the Consultant and inform them of same. It shall be determined by the PM where the discrepancies are;(e.g. with the Consultant’s methods/detailed plan for addressing MaineDOT’s scope of work, the cost estimate, the work-hour estimate or the schedule or any combination of those items.) After discussing and clarifying any discrepancies, the Consultant can revise and resubmit their proposal. In some cases, MaineDOT’s government estimate may need to be revised especially if an item of work was not realized in the original SOW. Actual negotiated cost will be determined in Step 5 and based upon the revised proposal and/or government cost estimate.

The PM can proceed to detailed negotiations in Step 5 only if:
1. The PM is satisfied with the technical proposal.
2. The Consultant’s proposed schedule is consistent with MaineDOT’s.
3. If the proposed DBE utilization (if applicable) meets MaineDOT’s goal or is deemed to be a “good faith effort”.

Step 5: Detailed Negotiations

The purpose of this step is to finalize the cost of the project relative to the anticipated work effort outlined in the proposal. The negotiation process offers the opportunity for both parties to refine and clarify the scope and services to be provided and the compensation for these services. There are four basic steps to negotiating:

1. Establish the MaineDOT/Municipal position. (e.g. the government estimate is independent of the Consultant’s proposal and done first).
2. Anticipate the Consultant’s position and consider a strategy for the negotiations.
3. Explore and consider alternatives in the event of disagreement.
4. Reach final agreement.

Detailed negotiations will be conducted between the Consultant and the PM in order to reach a mutually acceptable agreement. When the Department and the Consultant reach an agreement the PM shall document the agreed upon cost and proposal in a memorandum.

If it becomes apparent to the PM that negotiations are unlikely to produce a “fair and reasonable” agreement then a request for the Consultant’s best and final offer (BAFO) will be made in writing. If the BAFO is unacceptable then a letter

formalizing the cessations of negotiations is sent to the unsuccessful firm. The PM should then proceed to Step 3 to reinitiate the process.

For contracts valued at less than or equal to $100,000, a cost proposal is deemed acceptable if the Consultant's cost and the work-hour estimate vary no more than 15% (10% for FAA contracts) from MaineDOT's government estimate. MaineDOT will accept a greater variance in dollar amount and/or work-hours if the vendor's proposal is less than MaineDOT's.

Step 6: Approve and Execute the Contract

Records: All MaineDOT Consultant comparisons and other selection documentation shall be a matter of official record and shall be kept in the project file and scanned into TEDOCS, along with memos of record for all negotiating sessions, whether by telephone or in face-to-face interviews. Freedom of Information Act requests received will be forwarded to CPO and Legal Services.

Checklist: The Contract Specialists will review the documentation to ensure that all required documentation is appropriately completed. The checklist for the Consultant contract documentation (see Appendix D) will be filed in TEDOCS as well as the CPO file.

Pre-Execution Review: A complete contract package that conforms to the Contract Specialist Checklist will be sent to CPO for this review. A contract cannot be sent to the Consultant for execution until this is satisfactorily completed.

Contract Execution: The contract will be signed by the Consultant, and then by the MaineDOT in accordance with Department approval levels (see Appendix C) to fully execute the contract. Once fully executed it must be entered into AMS for Division of Purchases review and/or approval.[2]

Step 7: Notice to Proceed

Send the Consultant a fully executed contract and a written notice to proceed.

[2] Exceptions. Project Contracts under a GCA, accounts receivable agreements, and agreements with other state agencies are not entered into AMS nor are they sent to the Division of Purchases for approval.

Maine Department of Transportation
Figure 4.1: Simplified Acquisition Process
PINs & Contracts less than or equal to $100,000

Step 1: Procurement Planning, the development of a scope of work and government estimate.

↓

Step 2: Obtain authorization to contract with a consultant.

↓

Step 3: Select a consultant from the pre-qualified list followed by a request for technical and separate cost proposals.

↓

Step 4: Review the technical and cost proposals, and revise the government estimate (if necessary).

↓

Step 5: Detailed Negotiations, when applicable.

↓

Step 6: Approve and Execute the Contract.

↓

Step 7: Send the consultant a fully executed contract and a written notice to proceed.

4.2 Brooks Act Procurement (BAP)

Engineering and Architectural design contracts with a preliminary estimate of greater than $100,000 must use the Brooks Act qualifications selection procedure in order to maintain Federal-aid eligibility. The basic requirements of the Brooks Act are the following**:**

1. Public announcement of all requirements for architectural and engineering services.
2. Shall encourage new firms to submit Statements of Qualifications on a regular basis.
3. Requires selection of firms to be based on demonstrated competence and qualifications.
4. Requires discussion with and a ranking of at least three firms; if there are fewer than three qualified candidates that respond, MaineDOT must document the process demonstrating due diligence and compliance with the Brooks Act.
5. Requires negotiation with the highest qualified firm.
6. If you cannot reach a satisfactory agreement with firm number one, you must negotiate with firm number two, etc. until a contract can be satisfactorily negotiated.
7. Requires negotiation of contracts for fair and reasonable prices based on the Government Estimate.

For contracts greater than $100,000, the Department addresses these requirements through either a Single Step or Two Step method.

Two Step Procedure: A Request for Qualifications (RFQ) will be advertised (see Chapter 5 for advertising process) for a particular type of service from the consultant community. Generally, this process has been accomplished, for a specific discipline, through the Department Wide RFQ. Short lists of no less than three Consultants, with GCAs for that discipline, are needed for evaluation and scoring. The Department will request a written proposal from the most highly qualified firm.

A two step method is also used in Design-Build projects where the RFQ is advertised and evaluated, followed by an RFP that is sent to the qualifying candidates.

***Single Step Procedure*:** The Request for Proposals (RFP) will be advertised (see Chapter 5 for advertising process) for a specific project. The Consultant's proposal would include the qualifications and experience they have that are well suited to the specific needs of the project. This method requires a large amount of 'up front' work by the Consultants and later by the Department in evaluating all the proposals. The process would then follow as above in ranking and selecting the firm or individual.

This type of procurement procedure is typically used for a large-scale, project or for a complex feasibility study (environmental impact statement or assessment). This promotes competition to the maximum extent feasible within the consultant community for innovative ideas for complex, high cost projects.

Section 4.2.a – Two Step Process for Contracts greater than $100,000 but less than $500,000 using the MaineDOT GCA

Step 1: Procurement Planning

Scope of Work

A clear understanding of the Scope of Work (SOW) is essential in determining what services are needed. The PM or their designee shall prepare a SOW and estimate prior to moving to Step 2. When applicable, the detailed scope of work must include the following:

1. A description of the type of work.
2. Identify the location and duration of work (including any milestones as applicable).
3. Identify the potential number of phases of work to be undertaken. The scope must also state whether there is a potential for the successful Consultant to be awarded future phases of the project.
4. Attach a list of the desired deliverables, which may include plans and specifications, reports, studies, etc.; for the appropriate project level, using MaineDOT's policies, standard specifications, details, and related design manuals.
5. A list of preliminary engineering issues (i.e. constructability, environmental, feasibility, right-of-way, etc.), that includes viable alternatives with pros and cons (if applicable).
6. An estimated number of MaineDOT and public meetings to be facilitated.
7. A list of the services, along with the qualification criteria needed for the project. This information will be the basis for evaluating the personnel that the Consultant plans to assign to the project.
8. Begin the development of the consultant ranking criteria.

Independent Government Estimate

The Independent Government Estimate is an estimate of the work to be performed by the consultant to be hired, and is intended to be used to determine that the Consultant's price is fair and reasonable for the work to be performed. It is also intended to be used as a negotiating tool, so it is important that the Project Manager feel confident with the estimate, as it will be used to support their position when negotiating with the Consultant. The dollar value of the Government Estimate is also used to determine whether the procurement method will follow the Simplified Acquisition or Brooks Act process (see figures 4.1, 4.2.a, and 4.2.b).

The Government Estimate is developed once the scope of work has been clearly defined. The Government Estimate will normally be generated by MaineDOT's Project Manager, Contract Administrator, or designee. Consultants who are potential candidates for the work must not be asked to develop or assist in the development of the government estimate. The estimate should be based on historical data and shall reflect the probable cost, including an estimate of the number of work hours, and resources that would be required if MaineDOT were to do the work. A methodical approach should be used to determine and

document a reasonable cost for the anticipated work. The estimate can also be used in negotiating contracts with municipalities.

The process used for developing the Independent Government Estimate is determined by the nature and complexity of the work. Estimates of this kind can be developed using actual breakdowns of direct labor by professional staff, overhead, direct expenses and profit. Appendix D includes an example of a Government Estimate Consultant Cost Summary. Less frequently used methods, include cost per plan, cost per unit, a percentage of total project cost, or number of hours based on a range of commercial rates established by type of work. An estimate is valid as long as the methodology uses relevant data and terms that can easily express what the effort will cost.

Note: Upon request MaineDOT will assist municipalities involved in a Locally Administered Project (LAP) in the development of a government estimate.

Step 2: Obtain Authorization to Hire a Consultant

The Chief Counsel, Project Managers, Contract Administrators, Bureau Heads (Project Development, Maintenance and Operations, and Finance & Administration) and Office Directors (Offices of Executive, Environmental, Human Resources, Bureau of Transportation Systems Planning, and the Office of Freight and Business Services) are empowered by departmental policy to authorize the outsourcing of Professional and Engineering Consultant Services.

The purpose of this step is to obtain written authorization from the appropriate program, in accordance with APM10, using the Consultant Contract Authorization form (see Appendix D), to procure a professional service **This fully executed document must be submitted to MaineDOT's CPO before initiating the procurement process.**

Required attachments to the Authorization include:
1. The scope of work.
2. The independent government estimate.
3. Identified shortlist of consultants with GCAs for consideration.

Step 3: Develop a shortlist of consultants with GCAs; Evaluate the Qualifications and Rank Accordingly

From the GCA list, the Project Manager will identify a minimum of three highly qualified candidates for the service that is needed. (A shortlist with a minimum of three consultants is needed for evaluation under the Brook's Act). The PM will then review and rank each consultant based on:

1. Qualifications of project personnel provided by the consultant, including:
    - Consultant's project manager experience and qualifications in relation to the type of work needed for the project; a current resume would suffice.
    - Experience and technical expertise of support staff provided by the consultant for the project.

- Ability to meet the schedule
- Ability to control cost

2. Current and past performance of contracts. Evaluations are kept on file in the CPO.
3. Current workload of the consultant with MaineDOT.

The PM is responsible for documenting the process, reviewing the qualifications, and ranking each consultant. Documentation of the above **shall** be retained and scanned into TEDOCS.

Step 4: Request Proposal from the Highest Ranked Consultant

The PM will forward the scope of work and request a detailed proposal (technical and cost) from the highest ranked consultant. The proposal should address the following:

1. Address all the requirements of the scope of work, including the Consultant's responsibilities.
2. Proposed target dates and milestones to ensure that the work will be completed in a timely manner.
3. Include all the required personnel names, positions, and resumes needed for the specific services.
4. Proposed DBE utilization goal to ensure a "good faith effort"
5. Breakdown of cost by deliverable including; associated staff hours, wage rates, and number of meetings

The PM is responsible for reviewing the proposal based on the criteria established within the original scope of work.

Step 5: Detailed Negotiations

The purpose of this step is to negotiate the cost of the project relative to the anticipated work effort outlined in the proposal. The negotiation process offers the opportunity for both parties to refine and clarify the scope and services to be provided and the compensation for these services. There are four basic steps in the negotiating process:

1. Establish the MaineDOT/Municipal position. (e.g. this is done through the development of an independent government estimate.)
2. Anticipate the Consultant's position and consider a strategy for the negotiations.
3. Explore and consider alternatives in the event of disagreement.
4. Reach final agreement.

Detailed negotiations will be conducted between the Consultant and the PM in order to reach a mutually acceptable agreement. If both the Department and the Consultant reach an agreement, then the PM shall document the agreed upon cost and proposal in a memorandum for the project file.

If it becomes apparent to the Project Manager that negotiations are unlikely to produce a "fair and reasonable" agreement regarding cost, then a request for the Consultant's Best and Final Offer (BAFO) will be made. If the BAFO is unacceptable, then a letter formalizing the cessations of negotiations will be sent to the unsuccessful firm, and the PM will repeat Step 5 with the number two ranked Consultant. *(**Note:** You cannot go back to a Consultant once they're considered unsuccessful. FHWA will not participate in any contract where "bid shopping" has occurred for a Brooks Act procurement.)*

A cost proposal is deemed acceptable if the Consultant's cost and/or work hour estimate varies no more than 10% from MaineDOT's government estimate. MaineDOT will accept a greater variance in dollar amount and/or work-hours if the vendor's proposal is less than MaineDOT's.

Step 6: Approve and Execute the Contract

1. Records: All MaineDOT Consultant comparisons and other selection documentation shall be a matter of official record and shall be kept in the project file and scanned into TEDOCS, along with memos of record for all negotiating sessions, whether by telephone or in face-to-face interviews. Freedom of Information Act requests received will be forwarded to CPO and Legal Services.

2. Checklist: The Contract Specialist will review the documentation to ensure that all required documentation is appropriately completed. The checklist for the Consultant contract documentation (see Appendix D) will be filed in TEDOCS as well as the project file.

3. Pre-Execution Review: A complete contract package that conforms to the items on the Contract Specialist Checklist will be sent to CPO for this review. A contract cannot be sent to the Consultant for execution until this is satisfactorily completed.

4. Contract Execution: The contract will be signed by the Consultant, followed by MaineDOT, in accordance with Department approval levels (see Appendix C), and entered into AMS for Division of Purchases approval, following receipt of approval it is entered into TRACS.[3]

Step 7: Notice to Proceed

Send the Consultant a fully executed contract and a written notice to proceed.

[3] Exceptions. Project Contracts under a GCA, accounts receivable agreements, and agreements with other state agencies are not entered into AMS nor are they sent to the Division of Purchases for approval.

Maine Department of Transportation

Figure 4.2.a: Brooks Act Process

Contracts Greater than $100,000 but less than or equal to $500,000

Step 1: Procurement Planning, PM develops the scope of work and government estimate.

↓

Step 2: Obtain authorization to hire a consultant.

↓

Step 3: Develop a shortlist of consultants with GCAs (minimum of 3), evaluate the qualifications and rank accordingly

↓

Step 4: Request Proposal from the Highest Ranked Consultant

↓

Step 5: Detailed Negotiations with the highest ranked consultant. If a fair and reasonable cost cannot be agreed to by the parties then the Department will request a proposal from and begin negotiations with the next highest ranked consultant and so on.

↓

Step 6: Approve and execute the contract.

↓

Step 7: Send the consultant a fully executed contract and a written notice to proceed.

Section 4.2.b - Single Step Process for Contracts > $500,000

Step 1: Procurement Planning

Scope of Work

A clear understanding of the Scope of Work (SOW) is essential in determining what services are needed. The PM or their designee shall prepare a SOW and estimate prior to moving to Step 2. When applicable the detailed scope of work must include the following:

1. A description of the type of work.
2. Identify the location and duration of work (including any applicable milestones).
3. Identify the potential number of phases of work to be undertaken. The scope must also state whether there is a potential for the successful Consultant to be awarded future phases of the project.
4. Attach a list of the desired deliverables, which may include plans and specifications, reports, studies, etc.; for the appropriate project level, using MaineDOT's policies, standard specifications, details, and related design manuals.
5. A list of preliminary engineering issues (i.e. constructability, environmental, feasibility, right-of-way, etc.), that includes viable alternatives with pros and cons (if applicable).
6. An estimated number of MaineDOT, and public meetings to be facilitated.
7. A list of the services, along with the qualification criteria needed for the project. This information will be the basis for evaluating the personnel that the Consultant plans to assign to the project.
8. Begin the development of the consultant ranking criteria.

Independent Government Estimate

The Independent Government Estimate is an estimate of the work to be performed by the consultant to be hired, and is intended to be used to determine that the Consultant's price is fair and reasonable for the work to be performed. It is also intended to be used as a negotiating tool, so it is important that the Project Manager feel confident with the estimate, as it will be used to support their position when negotiating with the Consultant. The dollar value of the Government Estimate is also used to determine whether the procurement method will follow the Simplified Acquisition or Brooks Act process (see figures 4.1, 4.2.a, and 4.2.b).

The Government Estimate is developed once the scope of work has been clearly defined. The Government Estimate will normally be generated by MaineDOT's Project Manager, Contract Administrator, or designee. Consultants who are potential candidates for the work must not be asked to develop or assist in the development of the government estimate. The estimate should be based on historical data and shall reflect the probable cost, including an estimate of the number of work hours, and resources that would be required if MaineDOT were to do the work. A methodical approach should be used to determine and

document a reasonable cost for the anticipated work. The estimate can also be used in negotiating contracts with municipalities.

The process used for developing the Independent Government Estimate is determined by the nature and complexity of the work. Estimates of this kind can be developed using actual breakdowns of direct labor by professional staff, overhead, direct expenses and profit. Appendix D includes an example of a Government Estimate Consultant Cost Summary. Less frequently used methods, include cost per plan, cost per unit, a percentage of total project cost, or number of hours based on a range of commercial rates established by type of work. An estimate is valid as long as the methodology uses relevant data and terms that can easily express what the effort will cost.

Note: Upon request MaineDOT will assist municipalities involved in a Locally Administered Project (LAP), and Airports in the development of a government estimate.

Step 2: Obtain Authorization to Hire a Consultant

The Chief Counsel, Project Managers, Contract Administrators, Bureau Heads (Project Development, Maintenance and Operations, and Finance & Administration) and Office Directors (Offices of Executive, Environmental, Human Resources, Bureau of Transportation Systems Planning, and the Office of Freight and Business Services) are empowered by Departmental Policy to authorize the outsourcing of Professional and Engineering Consultant Services.

The purpose of this step is to obtain written authorization from the appropriate program, in accordance with APM10, using the Consultant Contract Authorization form (see Appendix D), to procure a professional service. **This fully executed document must be submitted to MaineDOT's CPO before initiating the procurement process.**

Required attachments to the Authorization include:
1. The scope of work.
2. The Independent Government Estimate.
3. Evaluation criteria.

Step 3: Advertise Request for Proposal

The Brooks Act requires a minimum of three (3) qualified consultants for evaluation and ranking. In order to ensure adequate competition in terms of highly qualified consultants; the Department will advertise (using the one step or two step method) for an RFQ/RFP as described in Chapter 5 and directly solicit a technical proposal from consultant(s) who are pre-qualified to perform the service. This promotes competition to the maximum extent feasible within the consultant community for innovative ideas for complex, high cost projects.

The RFP must include:
1. Contact Information
2. Due date of Proposal
3. Pre-bid Meeting Information (when applicable)
4. Statement of Work
5. Evaluation criteria

Step 4: Evaluate and Rank the Technical Proposal

The PM should review each of the technical proposals for accuracy in relation to the SOW and original government estimate. The review should assure that the proposals:

1. Address all the requirements of the scope of work, including the Consultant's responsibilities.
2. Are consistent with MaineDOT's proposed target dates and milestones to ensure that the work will be completed in a timely manner.
3. Include all the required personnel names, positions, and resumes needed for the specific services.
4. DBE utilization meets MaineDOT's goal or is deemed to be a "good faith effort".

The PM is responsible for reviewing all RFQ/RFP's responses based on the criteria established within the original Request for Proposal document. The PM shall document the scoring, substantive information that supports the scoring, and make the award decision in accordance with the guidance provided in this manual. Technical Proposals are evaluated and ranked based on project specific criteria using the Consultant Qualification Evaluation Form (see Appendix D).

1. Interviews/Presentations will be included in the evaluation process.
2. Documentation: Written records must be kept by each person reviewing or ranking proposals. These records **shall** be retained in the contract files.

The government estimate should be revised based on any new information received through this process.

Step 5: Detailed Negotiations

The purpose of this step is to negotiate the cost of the project relative to the anticipated work effort outlined in the proposal. The negotiation process offers the opportunity for both parties to refine and clarify the scope and services to be provided and the compensation for these services. There are four basic steps in the negotiating process:
1. Establish the MaineDOT/Municipal position. (e.g. this is done through the development of an Independent Government Estimate).
2. Anticipate the Consultant's position and consider a strategy for the negotiations.
3. Explore and consider alternatives in the event of disagreement.
4. Reach final agreement.

Detailed negotiations will be conducted between the Consultant and the PM in order to reach a mutually acceptable agreement. If both the Department and the Consultant reach agreement then the PM shall document the agreed upon cost and proposal in a memorandum for the project file.

If it becomes apparent to the Project Manager that negotiations are unlikely to produce a "fair and reasonable" agreement regarding cost then a request for the Consultant's Best and Final Offer (BAFO) will be made. If the BAFO is unacceptable then a letter formalizing the cessations of negotiations will be sent to the unsuccessful firm, and the PM will repeat Step 5 with the number two ranked Consultant. *(**Note:** You cannot go back to a Consultant once they're considered unsuccessful. FHWA will not participate in any contract where "bid shopping" has occurred for a Brooks Act procurement.)*

A cost proposal is deemed acceptable if the Consultant's cost and/or work hour estimate varies no more than 10% from MaineDOT's government estimate. MaineDOT will accept a greater variance in work-hours if the vendor's proposal is less than MaineDOT's.

Step 6: Approve and Execute the Contract

1. Records: All MaineDOT Consultant comparisons and other selection documentation shall be a matter of official record and shall be kept in the project file and scanned into TEDOCS, along with memos of record for all negotiating sessions, whether by telephone or in face-to-face interviews. Freedom of Information Act requests received will be forwarded to CPO and Legal Services.

2. Checklist: The Contract Specialist will review the documentation to ensure that all required documentation is appropriately completed. The checklist for the Consultant contract documentation (see Appendix D) will be filed in TEDOCS as well as the project file.

3. Pre-Execution Review: A complete contract package that conforms to the items on the Contract Specialist Checklist will be sent to CPO for this review. A contract cannot be sent to the Consultant for execution until this is satisfactorily completed.

4. Contract Execution: The contract will be signed by the Consultant, followed by MaineDOT, in accordance with Department approval levels (see Appendix C), entered into AMS for Division of Purchases approval, following receipt of approval it is entered into TRACS [4]

Step 7: Notice to Proceed

Send the Consultant a fully executed contract and a written notice to proceed.

[4] Exceptions. Project Contracts under a GCA, accounts receivable agreements, and agreements with other state agencies are not entered into AMS nor are they sent to the Division of Purchases for approval.

Maine Department of Transportation
Figure 4.2.b: Brooks Act Process
Contracts Greater than $500,000

Step 1: Procurement Planning develops the scope of work and government estimate.

↓

Step 2: Obtain authorization to hire a consultant.

↓

Step 3: Advertise Request for Proposals (see Chapter 5)

↓

Step 4: Evaluate and rank technical proposals, and revise government estimate based on any new information.

↓

Step 5: Detailed Negotiations with the highest ranked consultant. If a fair and reasonable cost cannot be agreed to by the parties then the Department will begin negotiations with the next highest ranked consultant and so on.

↓

Step 6: Approve and execute the contract.

↓

Step 7: Send the consultant a fully executed contract and a written notice to proceed.

4.3 Non-Competitive (Sole Source) Procurement

This method may be used to procure architectural or engineering Consultant services (see Brooks Act definition) when it is not feasible to award the contract using the Brooks Act or Simplified Acquisition procurement methods. These projects are limited in duration and can only be done with the approval of CPO and/or the appropriate federal agency. The Request for Sole Source Procurement form (see Appendix D**)** must be completed and include detailed documentation outlining how this Consultant's qualifications will benefit the public interest.

Step 1: Decision to utilize this Procurement Method

Conditions under which a contract may be awarded by this method are:

- The service is only available from a single source. The qualifications needed are very unique, specialized in nature, or have limited availability.
- There is an emergency and there is no time to procure services through a competitive procurement process.
- After soliciting a number of sources, competition is determined to be inadequate.

Step 2: Request for Sole Source Procurement Form

Complete the Request for Sole Source Procurement form and forward to CPO for approval. If the value of the contract is **greater than $100,000**, CPO will seek a Public Interest Finding (PIF) from FHWA. A contract cannot be executed until all approvals are received. Non-competitive (Sole Source) Acquisitions are generally executed as a Project Contract.

Step 3: Procurement Method

Unless an emergency situation exists, follow Steps 4 through 7 of the Simplified Acquisition procurement process (see Section 4.1) to complete the contracting procedure.

If an emergency situation exists, proceed with the necessary work. Complete the Sole Source Procurement Form, document the need and the hiring process, and contact CPO and FHWA as quickly as possible. A written contract must be initiated as soon as possible.

Maine Department of Transportation
Fig. 4.3: Non-Competitive (Sole Source) Acquisition Process

Step 1: Program makes the decision to hire a contractor through the Non-Competitive (Sole Source) Acquisition Process.

↓

Step 2: Complete the “Contract Authorization Form”, and the appropriate Sole Source Acquisition form.

↓

Step 3: Follow the applicable procurement method.

4.4 Best Value Procurement

Best Value Procurement can be used for all non engineering and non-design contracts or to complement the Simplified Acquisition process in the selection of architectural and engineering consultants.

Best Value Procurement can be based on criteria that include cost, qualifications, and ability to meet the specific needs of the project. Since cost is one of the evaluation criteria this process can be used to establish a lump sum payment method that assures a fair and reasonable price.

Best Value Procurement may also be utilized for Design-Build contracts; however this manual is not to be used in the procurement of these contracts with Federal funds since it is covered under a different regulation (see 23 CFR 636).

CPO can assist in the procurement for these types of services if requested.

Chapter 5: RFQ/RFP Advertising & Award

The purpose of this chapter is to outline the process for advertising for project specific Request for Qualifications (RFQs) and Request for Proposals (RFPs) when there are no pre-qualified Consultants, or when the pre-qualified list of Consultants is not adequate for the desired scope of work, or when the contract value is greater than $500,000.

5.1 Electronic Posting

A. MaineDOT posts the RFQ/RFPs on the Department website. If the service falls under the Division of Purchases purview, a notice of the RFQ/RFP must also be advertised in the newspaper in accordance with the process outlined in 5.2. It is important that the RFQ/RFPs be posted on the web the same day as the release of the newspaper ad.

B. The program will follow the procedure outlined in the Non-Construction RFQ/RFP Checklist. (See Appendix D.)

C. MaineDOT Web Posting Procedure:

   i. CPO will coordinate the posting of any non-construction RFQ/RFP documents onto its website.

   ii. The Project Manager and Contract Specialist must read and edit the document thoroughly prior to submittal to CPO.

   iii. The Contract Specialist must make sure the document includes all the necessary commercial language and that it is properly formatted. Any watermarks must be removed.

D. Using Microsoft Word format the document heading with a title block that clearly identifies the following:

   i. MAINE DEPARTMENT OF TRANSPORTATION.

   ii. The subject of the RFQ/RFP.

E. Any attachments to be posted such as plans, drawings, charts, regulatory documents, etc., must be sent to CPO in PDF format.

F. CPO will review content, add the appropriate logos, and make any minor format changes needed, including conversions into PDF format. Following CPO's review of the RFQ/RFPs that fall within Division of Purchases purview, the RFQ/RFP must be emailed to Purchases for final review and approval prior to posting.

G. Any documents that vendors must complete electronically as part of their response must be formatted in Microsoft Word, or Excel (2000 to 2003) and sent to CPO as separate documents.

H. Arrangements for newspaper advertising (required for RFQ/RFPs within 'Purchases' purview) must be made after the document is ready for posting onto the web. When a project is within MaineDOT's purview, newspaper advertising is not a requirement, but always an option.

5.2 Newspaper Advertising

(This is required if the contract falls under the Division of Purchases purview. Otherwise this is optional)

A. RFQ/RFPs must be advertised for a minimum of three (3) consecutive days in the Kennebec Journal of Augusta, allowing a minimum of fifteen (15) calendar days from the final day of advertising to the proposal opening date. This section does not limit advertising in any other publication, trade publication or other media.

   i. Advertisements must include a brief description of the service requirements; along with the name, Maine Department of Transportation, and functional unit issuing the RFQ/RFP; the name of the contact person and address where copies of the RFQ/RFP can be obtained, the opening date, the opening time and the opening location.

B. Pre-Bidders conferences are allowed, but not required. These conferences are used to assure that all bidders have an equal understanding of MaineDOT's requirements.

   i. Pre-Bidders conferences must be advertised as part of the RFQ/RFP advertisement, including location, day and time. Conference must be scheduled a minimum of seven (7) calendar days from the final day of advertising and minimum of two weeks prior to proposal opening date. The CPO or Director of the Division of Purchases (based on purview) may authorize a pre-bidders conference on shorter notice than has been advertised in the RFP. The contracting agency shall notify all prospective bidders who requested the RFP of the date and time of the conference under these circumstances.

   ii. Conferences must be open to the public, questions raised must be documented in writing and responses must be written, posted on the website and, if advertised in newspaper forwarded to each prospective bidder who received an RFQ/RFP, whether in attendance or not.

   iii. No alterations or changes to any requirement or specification within the original RFQ/RFP can be made without notifying all bidders in writing a minimum of seven (7) calendar days before opening date.

C. Proposals shall be opened publicly and open to public attendance. The name of the respondent will be read aloud. No other information will be made available prior to evaluation and award notification. All proposals shall be sequestered from this time until notification of award by the contracting agency after which time they become public record.[5]

D. **Proposals received later than the date and time specified will not be accepted and will be returned unopened or held to be picked up by the respondent. Late proposals not picked up within seven (7) calendar days will be destroyed.**

[5] Exception: Non construction contracts, in MaineDOT's purview, do not require a public opening.

E. All opened proposals received by the Division of Purchases shall be turned over to the MaineDOT's representative after the opening. A written record of the vendor names, date and time received, cost/price and agency representative shall be kept at the Division of Purchases.

Chapter 6: Financial Requirements

The purpose of this chapter is to outline financial requirements in accordance with departmental policy or Federal regulations.

6.1 Total Cost (Fee) Determination

There are four basic components to total cost (sometimes called a total fee) in relation to a contract. The components of the total cost are: the direct labor (DL), the indirect cost (IC), and the profit (PT), and the direct expense (DE). This *cost structure* is best expressed as:

Total Cost (Fee) = (DL) + (IC) + (PT) + (DE)

This amount can be expressed in several different methods of payments such as cost plus fixed fee, lump sum, or specific rate of compensation. (See chapter 7 for details.) Regardless of the payment method, the intent and purpose as stated in law is to arrive at a "fair and reasonable cost". **Fair and reasonable cost is determined, in accordance with the Federal Acquisition Regulations (FAR) cost principles, through negotiation and consideration of what a prudent person, in the conduct of business, would expect to pay for similar work.**

A. Audited Overhead Reports

The Indirect Cost Rate (ICR) is established in accordance with the Federal Acquisition Regulations (FAR) (see 48 CFR Part 31) for a one - year applicable accounting period. A new ICR must be established annually based on the Consultants previous year's indirect cost expenditures. An audited Overhead Report establishes the ICR and is expressed as a percentage of the total direct labor incurred within the applicable accounting period. Exceptions to this requirement include:

- When a fixed rate for the contract period is mutually agreed upon (per 23. CFR 172.7(b).
- FHWA does not require an audited Overhead Report when the contract value is less than $100,000; however, MaineDOT may require one annually based on the payment method agreed upon in the contract.

An ICR can only be established by a cognizant agency audit. As defined by Federal regulations, a cognizant agency is any of the following; (1) a Federal Agency; (2) The State where the firm's accounting and financial records are located (Home State); or (3) A Non-Home State to which the Home State has transferred cognizance in writing for a particular indirect cost audit of a firm.

Federal law does not recognize local governmental agencies as a cognizant agency.

The audit can be completed by any one of the following methods:

1 A cognizant agency performs or directs the work of a CPA who performs the indirect cost audit.
2 A Non-Home State auditor or CPA working under the State's direction issues an audit report and the home State issues a letter of concurrence. If the Home State does not accept the audit of another State, the Home State will have 180 days from receipt to issue a cognizant audit; otherwise, the Non-Home State audit report will be cognizant for the one (1) year applicable accounting period.
3 An indirect cost audit preformed by a CPA hired by the firm will become a cognizant audit, if one of the following conditions is met:
   (a) The Home State reviews the CPA's working papers and the Home State issues a letter of concurrence with the audit report.
   (b) A Non-Home State reviews the CPA's working papers and issues a letter of concurrence with the CPA's report, which is then accepted by the Home State. If the Home State does not accept the Non-Home State review, the Home State will have 180 days from receipt to complete a review of the CPA audit report and either concur with it, modify it, or reject it due to a material error requiring re-submittal; otherwise the CPA audit report with which the Non-Home State has concurred will be cognizant for the one (1) year applicable accounting period.

The MaineDOT cannot request or start negotiations for a lower ICR. However, in accordance with the Brooks Act Declaration of Policy, a contracting agency can turn to the next qualified candidate, if the MaineDOT determines the total contract (cost) would not be at a fair and reasonable price. A Consultant can initiate, as part of the negotiation, a lower ICR and the contracting agency may accept it as part of the original cost proposal.

B. Determination of Profit

Current FHWA policy allows for a profit between 6% and 15%; however profit should be determined and established as a dollar amount after considering the following:

- degree of risk
- nature of work
- extent of Consultant’s investment of resources
- subcontracting of work
- assistance by MaineDOT
- size of job
- relative difficulty of work

There may be times when a profit greater than 15% is warranted; such a profit would require written approval from FHWA, prior to executing the contract.

Instructions for Estimating a Reasonable Profit Worksheet can be found in Appendix D. An electronic profit determination matrix that calculates profit is available at MaineDOTs shared drive, R:\CPO\CPO_Public\Contract Procurement Office\PROFIT SPREADSHEET.

Consultants are only allowed to add profit on direct labor and indirect costs.

C. Direct Expenses

Expenses such as telephone, tolls, reproduction costs, lodging, meals, per diem (requires overnight stay) and other approved Consultant/sub consultant(s) costs billed at actual cost. Direct expenses are defined in 48 CFR Part 31. It is MaineDOT's policy that reimbursable costs for per diem (lodging and meals), and mileage shall not exceed those allowed by the State of Maine and the GSA, they can be found at http://www.state.me.us/mdot/aco/acohome. Reproduction of plans for submittal to MaineDOT shall be charged at actual costs. Any reproduction costs incurred for the Consultant's internal use is considered overhead expenses and not chargeable as a direct expense. **MaineDOT does not allow any mark-up on direct expenses and sub consultant(s) costs.**

6.2 MaineDOT Policy on Reimbursement

Effective with contracts executed on or after November 1, 1997, it is the policy of MaineDOT to establish the following maximum reimbursement levels for salary and overhead costs of Consultant and sub consultant(s) firms engaged to perform services for MaineDOT. However, as of Nov 30th, 2005 Federal legislation effectively removed the administrative caps on all indirect costs. The following is MaineDOT's policy on reimbursement for cost(s) associated with Consultant contracts.

A. Salaries

There is a $50 per hour wage cap for individuals, up to an annual rate of $104,000.00 for salaries paid to employees and charged as a direct project cost. It is understood that, on an individual contract basis, there may be need to waive this rate. The procedure to request a wage rate waiver is as follows:

1. The **Wage Rate Waiver;** (see Appendix D) must be completed and signed by the Contract Administrator and the corresponding Bureau Director.
2. Forward the signed waiver along with the corresponding payroll documentation to the Director of Contract Procurement who will obtain the final approval/denial signature of the Chief Engineer.
3. A fully executed waiver form will be returned to the Contract Specialist, who will retain a copy as part of the proposal/contract documentation.

4. File the original with the contract in the Contract Procurement Office.

B. Provisional Indirect Cost Rate

For Cost Plus Fixed Fee Contracts and Adjustable Burdened Rate Contracts, a provisional overhead rate shall be established and agreed upon at the time of contract execution. The provisional rate shall be stated in the contract and is based on a MaineDOT Office of Audit review of the Consultant's Compiled Overhead Report and/or Audited Overhead Report. The actual overhead rate reimbursed under the Contract must be supportable by the Consultant and shall be determined by an approved Federal or State cognizant agency after the contract expires, and the difference shall be paid to either the Consultant or MaineDOT.

If the Consultant wishes to make a change to the provisional indirect cost rate, they must first send the Project Manager a written request, accompanied by a new audited overhead report. Upon receipt of approval, the Consultant may begin invoicing at the new rate.

C. Supporting Documentation

The Consultant shall, upon request, provide supporting documentation for its direct and indirect expenses. Failure to provide this documentation could result in reimbursement to MaineDOT for any payment made for any un-supported charges.

6.3 Payments and Invoicing

Consultants are to use the electronic invoice template, located on the CPO website. It can be completed either manually or electronically.

MaineDOT payment terms are net thirty (30) days from the receipt of an acceptable invoice. The procedure for processing invoices is as follows:

1. The recipient of the invoice will date stamp it upon receipt.

2. Approvers will review, approve, and code acceptable invoices within twelve (12) days of receipt. Review will include the verification of tasks, hours, and rates.

3. Invoices will be returned to the Contract Specialist or designee, who will verify there are adequate funds to cover the cost of the invoice, and enter them into the system. This process will be completed within six (6) days. The invoice will be forwarded for payment.

Chapter 7: Payment Methods

There are two basic payment categories for Consultant services: Negotiated Price and Cost Reimbursement. The primary difference between these two categories is that with the use of a negotiated price agreement, the Consultant is assuming the cost risk of performance, whereas with the Cost Reimbursement category, the Department assumes the risk. Negotiated Price contracts are most appropriate when the scope of service is well defined. On the other hand, Cost Reimbursement contracts should be used when such definitive requirements do not exist and the cost uncertainties of performance are high. All contracts are eligible for pre-execution and post contract review to assure accounting systems are in compliance, and pricing is supportable.

Upfront payments for services are discouraged and must be approved by CPO before it is agreed to during "Payment Method" negotiations.

Within the categories above, the most frequently used payment methods are:
1. Lump Sum – negotiated price.
2. Cost per Unit of Work – cost reimbursement.
3. Specific Rates of Compensation – cost reimbursement or negotiated price.
4. Cost plus Fixed Fee – cost reimbursement.

Payment Method	Direct Expense	Payroll	Profit/ Fee	Overhead Rate	Term	Audit Overhead Rate
Lump Sum	Inc F	F	F	F	Contract Period	R
Adjustable Cost per Unit of Work	N/I A	A	F	A	Contract Period	R
Fixed Cost per unit of Work	N/I A	F	F	F	Contract Period	N/R
Adjustable Payroll, Fixed Overhead, & Profit Rate	N/I A	A	F	F	Maximum of 4 yrs	R
Adjustable Burdened Hourly Rate	N/I A	A	F	A	Contract Period	R
Fixed Burdened Hourly Rate	N/I A	F	F	F	Contract Period	R
Fixed Commercial Rate	A or F	F	F	F	2 yrs	N/R
Cost Plus Fixed Fee	Inc A	A	F	A	Contract Period	R

Table 7.1 Payment method cost structure
(**N/I** = Not Included in hourly rate or unit of work, **F** = Fixed, **A** = Adjustable or actual rate based on supportability, **Inc** = Included, **R** = Required, **N** = Not Required)

7.1 Lump Sum

Lump Sum is a negotiated payment method. It provides for a price; which includes all salaries, overhead, profit, and other expenses established in the project contract, that is not subject to any adjustments because of cost changes the Consultant might encounter in the performance of the work. Depending on the vendor selection method, this payment method may require an initial audited overhead report.

Because the Consultant assumes full responsibility, in the form of profits or losses, for all the costs under or over the firm negotiated price, it has the maximum profit incentive for effective cost control in contract performance.

This method is used when the Scope of Work is clear and well defined, and the total cost can be estimated accurately. This method of payment is not recommended for contracts with an estimated value greater than $50,000. Lump Sum contracts in excess of $50,000 must have written approval from the Bureau Director assuring the price is fair and reasonable.

Once both parties have agreed to the work effort in an executed contract, a change in the lump sum amount can only be made if the scope of work changes materially. The Project Manager must carefully scrutinize any requests from the Consultant to increase the dollar value of these contracts.

7.2 Cost per Unit of Work

This is a Cost Reimbursement payment method that allows payment to the Consultant that includes allowable costs incurred in the performance of the contract; to the extent prescribed in the contract. This method of payment is suitable for use when the effort per unit of work is well defined but the number of units (hours) is uncertain. It is essential that the Consultant maintain a record of the actual work completed.

- Adjustable Cost Per Unit (Hour) of Work Rate**:**
  A rate that includes supportable; direct salary (that is within MaineDOT salary cap), and overhead, that can be adjusted at the time a post contract review is performed by MaineDOT or an approved federal or state cognizant government agency. Direct expenses would be in addition to the hourly rate. Under this payment method the Consultant is required to submit to CPO current payroll records and an annual audited Overhead Report.

- Fixed Cost Per Unit (Hour) of Work Rate:
  A rate that includes; direct salary (that is within MaineDOT salary cap), overhead, and profit that cannot be adjusted at the time a post contract review is performed by MaineDOT. Direct expenses would be in addition to the hourly rate. This rate shall remain the same for the duration of the contract or for the timeframe stated in the contract. An Audited Overhead

Report may be required if this rate cannot be deemed fair and reasonable through a market comparison.

7.3 Specific Rates of Compensation

This Cost Reimbursement payment method provides for the acquisition of services based on direct labor hours at specified hourly rates. Rates include direct salary (that is within MaineDOT salary cap), overhead, and profit. Direct expenses are in addition to the hourly rate.

This payment method should be used only when it is not possible at the time of contracting to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of accuracy. This type of contract does not encourage effective cost control and requires almost constant monitoring. It is commonly used in the acquisition of engineering and design services and work to be performed for On-Call contracts and in emergency situations. A specific rate of compensation is established for each labor class or employee.

- Adjustable Payroll / Fixed Overhead & Profit Rate:
  An hourly rate that includes direct salary (that is within MaineDOT salary cap), overhead and profit. The purpose of this rate is to allow the Department to contract with a firm allowing them to request an annual adjustment to their payroll rate. Direct expenses would be in addition to the hourly rate.
  Criteria include:
  - Method can only be used for contracts/agreements that have no more than a 4-year term.
  - Method will require an initial audited overhead report.
  - A firm with no history with the Department will be required to submit audited Overhead Reports, from three (3) prior consecutive years, from a cognizant agency, to set the rate. This will eliminate the risk of paying an abnormally high rate. The Department will only allow a fixed overhead rate when the consulting firm's overhead rates do not fluctuate any more than 8% over the three (3) years.

  Payroll rate adjustments – A Consultant should make one annual request, per employee, for an adjustment to the rate by submitting a written request to the Project Manager that includes a copy of a recent payroll record. The written request must include both the old and proposed rates. Upon receipt of written department approval, the Consultant may begin invoicing at the new rate.

- Adjustable Burdened Hourly Rate:
  An hourly rate that includes supportable; direct salary (that is within MaineDOT salary cap), overhead, and profit. The direct salary and overhead rate can be adjusted at the time a post contract audit is performed by MaineDOT or an approved federal or state cognizant government agency. Direct expenses would be in addition to the hourly rate. Under this payment

method the Consultant is required to submit a payroll record and an Audited Overhead report to support the proposed hourly rate.

Payroll rate adjustments – A Consultant should make one annual request, per employee, for an adjustment to the rate by submitting a written request to the Project Manager that includes a copy of a recent payroll record. The written request must include both the old and proposed rates. Upon receipt of written department approval, the Consultant may begin invoicing at the new rate.

Overhead rate adjustments – A Consultant should make one annual request for an adjustment to this rate by submitting a written request to the Project Manager. The written request must include both the old and proposed rate and the most recent audited Overhead Report. This information would then be sent to CPO for review and approval by the Office of Audit. Upon receipt of written department approval, the Consultant may begin invoicing at the new rate.

- Fixed Burdened Hourly Rate:
  An hourly rate that includes direct salary (that is within MaineDOT salary cap), overhead, and profit that cannot be adjusted at the time a post contract review is performed by MaineDOT. Direct expenses would be in addition to the hourly rate. Under this payment method the Consultant is required to submit a payroll record and an audited Overhead Report to support the proposed hourly rate.

- Fixed Commercial Rate (Hourly or Task):
  A fair and reasonable, hourly or task rate that includes direct salary (that is within MaineDOT salary cap), overhead and profit, for a specific service, for a specific period. This rate cannot be adjusted through a contract modification or the MaineDOT post contract review. Direct expenses (meals, tolls, copying) would be in addition to the hourly rate. This rate shall remain the same for the duration of the contract. MaineDOT does not require an audited overhead report for this payment method. FHWA does require an audited overhead report for this payment method if contracting for engineering and architectural services is in excess of $100,000.

  One method of establishing the Fixed Commercial Rate is by using a market rate comparison. An audited Overhead Report may be required if this rate cannot be deemed fair and reasonable through a market comparison.
  No matter what method is used, the supporting documentation must be included in the package sent to CPO for the pre-execution review.

7.4 Cost Plus Fixed Fee

Cost Plus Fixed Fee is a Cost Reimbursement payment method. The Consultant is reimbursed for the actual, supportable, cost incurred including salaries (that are within MaineDOT salary cap), overhead, and direct expenses. In addition,

the Consultant is paid an agreed-upon amount for a fixed fee (profit), based on the actual scope of work, including degree of risk, relative difficulty, size of job, period of performance, Consultant's investment, assistance by MaineDOT, subcontracting, etc. Once negotiated, the fixed fee does not vary, even though the actual cost may. However, the Fixed Fee may be adjusted through negotiations, if there are significant changes in the work, services, or duration to be performed. Because the fixed fee does not vary in relation to the Consultant's ability to control costs, the cost plus fixed fee contract provides low risk to the Consultant and provides only a minimal incentive for effective cost management.

This type of payment method is suitable when the scope of work is fairly well defined, but the effort required to complete the work cannot be estimated precisely. Examples of these types of projects include environmental and preliminary engineering contracts that are of a large and complex nature (i.e. contracts that are greater than $100,000, environmental assessments and impact statements).These contracts will be eligible for post contract audits to verify rates, contract compliance and profit level. Under this payment method the Consultant is required to submit to CPO an annual audited overhead report.

Chapter 8: Administration

8.1 General Requirements

MaineDOT Consultant General Conditions
The latest version of the MaineDOT Consultant General Conditions (CGC) shall be incorporated by reference in every Consultant contract whether the contract is Stand-Alone or under a General Consultant Agreement (GCA).

Consultants in Management Roles
When there is federal participation, MaineDOT will request approval from FHWA prior to executing a contract where the Consultant will act in a management role. A Consultant is considered to be acting in a management role for MaineDOT when:

1. The Consultant selects, directs, or manages other Consultants or contractors on behalf of the MaineDOT as part of the scope of services. (This does not include sub consultant(s).)
2. The Consultant approves change orders/contract modifications that affect budget or schedule on behalf of MaineDOT.
3. The Consultant acts in the capacity of MaineDOT in policy or discretionary action issues. (Example: approval of design exceptions)

Disclosure of Financial Information
In the rare case where there is a request under the Freedom of Information Act for indirect cost audit information, the Project Manager shall coordinate the response with the Department's Legal Counsel, CPO, Office of Audit and FHWA. Audit information shall not be provided to an individual, other Consultants, or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the State or sub-recipient's acceptance of a Consultant's overhead rates pursuant to 23 U.S.C. 112 and this part without the written permission of the affected Consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance; however, should a release be required by law or court order, such release shall make note of the confidential nature of the data.

Incorporation of Federal Contract Provisions

To maintain eligibility, any contract involving Federal funds must include certain provisions from FHWA form 1273. These provisions are located in the Appendix as a stand alone document that is to be physically incorporated into all GCAs. These provisions cannot be altered in terms of verbiage.

8.2 Monitoring Consultant's Progress

Monthly Contract Progress Reports

An important aspect of monitoring Consultant's work is the measurement of progress to assure that MaineDOT receives the work specified in an acceptable, timely manner, and that the costs billed are consistent with the work completed and negotiated terms of the contract. To help facilitate these objectives a system for measuring progress and payment using monthly progress reports and identifiable services should be utilized. It *will* be incumbent upon the Project Manager to personally evaluate the actual progress being made, the scope and quality of the work being performed and its conformity to MaineDOT's requirements on a monthly basis. The monthly contract progress reports will become part of the permanent project file for documentation.

In order to facilitate this reporting, a submittal schedule shall be outlined in the contract that will include any major milestones such as intermediate reports, final plans, etc. The Consultant shall have a progress reporting system capable of tracking the project status based on the completion of critical activities. These reports shall be in a format that is acceptable to MaineDOT and, at a minimum, include the following information:

1. A written statement describing the work accomplished during the period and to date.
2. An estimate of the percentage of work completed within the specified services.
3. An estimate of the effort needed to complete the specified services.
4. The percentage of contract time elapsed and the percentage of contract amount expended (including contract modifications).
5. Contract Modifications to date and anticipated contract modifications.
6. Any information needed from MaineDOT to complete the project and avoid delays.
7. An explanation, if the percent completion does not agree with the agreement time elapsed.
8. The Consultant's action plan to remedy and address any non-conforming or unacceptable work submitted to MaineDOT.

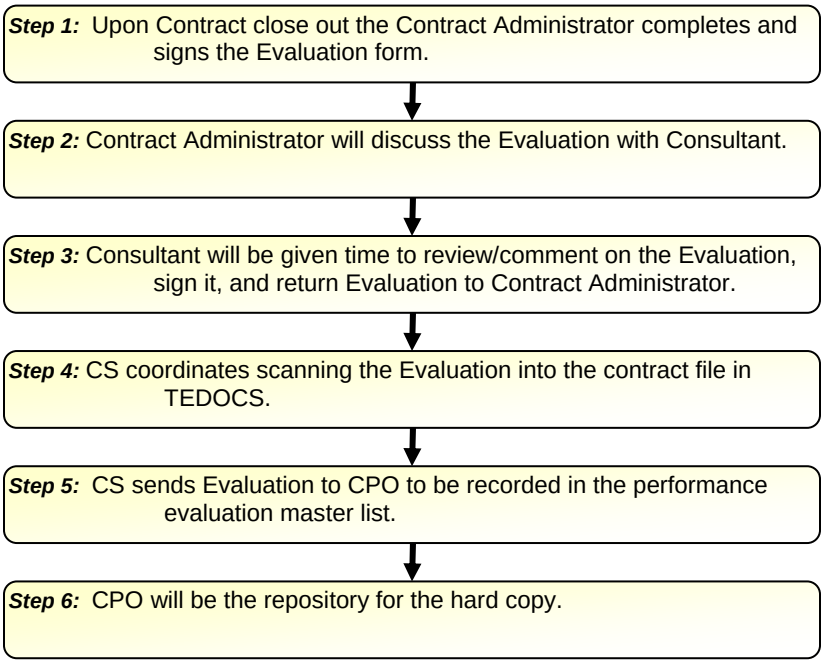
These progress reports shall be submitted to MaineDOT on a **monthly basis,** regardless of whether or not payments are due. If work is temporarily delayed, the Consultant may suspend submittal of the monthly progress reports with written approval from MaineDOT. The Consultant shall be responsible for addressing any action that may be required to keep the project on schedule.

MaineDOT shall have a period of fifteen (15) business days after receipt of the submissions to complete the review and make any necessary comments. The Consultant shall make such revisions and corrections as directed by MaineDOT after its review.

Consultant Performance Evaluations

Upon completion of the contract, the Project Manager or designee shall prepare an evaluation of the Consultant's performance. Completed evaluations for all contracts completed during the prior calendar year, will be due to CPO by **February 1**. An example of the Evaluation form can be found in Appendix D. A copy of the completed evaluation will be provided to the Consultant. Written comments by the Consultant shall be attached to the evaluation and filed with CPO. A meeting between relevant personnel may then take place in order to discuss any questions or comments. All information shall be given consideration when ranking Consultants contracts and multi-year agreements.

Fig. 8.2 Consultant Evaluation Process



A. Evaluation Criteria Include:

1. Project cost and scope, deliverables and quality of products including modifications.
    a. Was the project/contract completed in accordance with the scope of work, within anticipated cost, and was every effort made to provide a quality product?
    b. Did the consultant utilize the "Potential Change Notice" to communicate any anticipated changes in scope?
    c. Did the materials used on the project/contract meet MaineDOT's specifications?
    d. Was the project/contract completed on schedule?

2. Competency.
    a. Did the Consultant's staff have adequate knowledge and experience to satisfactorily complete the contracts?

   b. Did the Consultant's staff attempt to anticipate, evaluate, and identify solutions to problems to avoid delays?
   c. Did the consultant's performance result in the loss of federal funds?

3. Team Approach, Efficiency and Work Organization.
   a. Did the Consultant's staff work as a team in their approach to the project/contract?
   b. Was the number of personnel assigned to the project/contract sufficient to satisfactorily and efficiently complete the project/contract?
   c. Did the Consultant make suggestions that improved efficiency and resulted in cost savings?
   d. Did the consultant complete the work in a well thought out and organized manner?

4. Constructability.
   a. Were the plans and specifications developed to minimize Change Orders and misinterpretation in the field?

5. Progress Reports.
   a. Were progress reports submitted on a monthly basis?
   b. Was the information provided in accordance with the MaineDOT Consultant Procurement Manual?

6. Coordination, Communication and Cooperation.
   a. Was the Consultant's staff cooperative and responsive to MaineDOT staff, the public, and other agencies in accomplishing all required tasks associated with the projects?

7. Invoices.
   a. Did the Consultant utilize the Standard Consultant Invoice?
   b. Were invoices accurate, timely, and include supporting documents?
   c. Did the costs billed to the Department correspond to the work accomplished as described in the progress reports and the Consultant's proposal?

8. DBE Requirements.
   a. Did the consultant submit the "Certification of Final DBE Consultant Payment form" for projects/contracts that have been finaled?

9. Hearings and Meetings.
   a. Did the consultant participate in meetings when requested?
   b. Did the Consultant's representatives conduct themselves in a professional manner?
   c. Were the presentations, handouts, and/or overheads well organized and effective?

8.3 Contract Modifications

A document used to reflect changes to a Consultant contract is called a Contract Modification. Contract Modifications can cover any area but are usually required for changes in scope of work (including changes in key personnel), time, or contract amount. Contract Modifications are to be signed by both the Consultant and MaineDOT **prior** to undertaking the work. Unless both parties to the contract have signed the modification, it is not a legally enforceable instrument. Consultants who proceed with work based on a verbal approval from the MaineDOT do so at their own risk. Any work that does not have a signed contract modification in place prior to performing the work is subject to non-participation by FHWA.

If the Consultant anticipates, during the course of the contract, that there is the potential for a change in scope that may require additional hours and/or expense, they will complete a 'Potential Change Notice (PCN)' form (see Appendix D), The process is as follows:

1. Upon receipt of the PCN the Project Manager, shall develop a separate in-house estimate that will be used for negotiation.

2. Several approved and agreed upon PCN's can be grouped into a single contract modification at the Project Manager's discretion.

3. A memo of approval of the modification from the appropriate authority level is required. The appropriate authority level will be determined by the value of the modification and its percentage of the original contract value (see Appendix C). This memo will become a part of the contract document and will be scanned into TEDOCS and sent to CPO for filing with the rest of the modification documents.

4. Prior to executing the agreement, the package will be sent to CPO for a pre-execution review.

5. A contract modification shall be executed once agreement has been reached on the revised scope, cost, and time.

6. The fully executed Contract Modification will be scanned into TEDOCS and sent to CPO.

8.4 Disadvantaged Business Enterprise

MaineDOT's Director of Civil Rights may, at their option, participate in selection committee meetings to advise and monitor Title VI of the Civil Rights Act and Disadvantaged Business Enterprise (DBE) concerns.

It is the policy of MaineDOT to encourage the utilization of Disadvantaged Business Enterprises (DBEs). MaineDOT issues annual goals, and require evidence of good faith effort by the prime Consultants in the use of sub consultant(s) who are DBEs. Additionally, MaineDOT seeks to proactively encourage DBE's to participate in our Department/Wide RFQ GCA and Prequalification process, and we make every reasonable effort to include DBE firms in our shortlists.

The Disadvantaged Business Enterprise (DBE) Proposed Utilization Plan is the reporting document that Consultants must furnish MaineDOT each time the firm submits a successful proposal. The completed form reflects the firm's efforts to mainstream DBE firms in their project team, and must be approved by Civil Rights prior to award of a contract. An example of the Consultant DBE Utilization Form is included in (Appendix D).

8.5 Disputes, Protests, and Claims

To preserve any claim arising out of the GCA and/or the Project Contract, the parties shall comply with and exhaust all provisions of this section. Unless otherwise agreed in writing, the Consultant shall continue to perform its services during any dispute resolution process. If the Consultant continues to perform, the Department shall continue to make payments in accordance with the GCA and/or Project Contract of amounts not in dispute.

Negotiation with Project Manager
The Consultant shall promptly notify the Project Manager, or his/her designee, of disputes that could significantly affect scope, schedule or compensation. After such notice, the Consultant and the Project Manager shall promptly negotiate in good faith to resolve the dispute. The Project Manager will promptly issue a decision.

Review by Director
If the Consultant desires a review of the Project Manager's decision, then the Consultant shall promptly request in writing that the Department's Director of the applicable Bureau or Office review the Project Manager's decision. The Director or the Director's designee shall promptly notify the Consultant in writing of the result of the review.

Dispute Resolution
If the dispute remains unresolved after negotiation and review as set forth above, the parties shall proceed to mediation by selecting a mediator acceptable to both. If the parties are unable to agree upon a mediator, they will follow the process set out in the current Construction Industry Mediation Rules of the American Arbitration Association.

If the parties are unable to resolve the dispute through mediation, the parties may agree to binding arbitration using the current Construction Industry

Arbitration Rules of the American Arbitration Association or seek judicial review through a civil action commenced in the Superior Court of Maine, Kennebec County.

8.6 Conflicts of Interest

A person or entity entering into a GCA and/or Project Contract may not have any financial or other interest, other than the performance of the GCA and/or Project Contract, in the project or in its outcome. This prohibition includes, without limitation, (a) any agreement with, or other interest involving, third parties who have an interest in the outcome of the project that is the subject of the GCA and/or Project Contract; (b) any agreement providing incentives or guarantees of future work on the project or related matters; and (c) any interest in real property acquired for the project unless such real property interest is openly disclosed to the Department before the person or entity entered into the Project Contract.

1. This prohibits all conflicts of interest both at the time the contracting party enters into a GCA and/or Project Contract and during the life of a GCA and/or Project Contract.

2. This prohibits situations involving an actual conflict of interest and those creating an appearance of a conflict of interest. The Department may waive this prohibition or impose curative modifications on the scope of any GCA or Project Contract between the person or entity and MaineDOT to eliminate the conflict or the appearance of a conflict.

3. A Consultant involved in the preparation of information that shall be used or considered in evaluations under the National Environmental Policy Act (NEPA) shall, by virtue of signing the GCA and/or Project Contract, attest that Consultant (a) has no financial or other interest in, or commitment for, any future contract related to the design or construction of the project or any of its alternatives, (b) has no financial or other interest in said project or its alternatives, or any part thereof, and (c) has no other interest which, under applicable law, would prohibit the selection of said Consultant to prepare an Environmental Assessment, Environmental Impact Statement, or other environmental documents for the project.

4. All determinations made under this section shall be left at the sole discretion of the Legal Department.

5. FHWA guidance can be found in 23 CFR Sections 1.33, 636.116, and 636.117.

Example: A Consultant is hired by a contractor to perform quality control and inspection services, while providing the same services for MaineDOT on the same project. This example of an obvious conflict of interest and is prohibited by FHWA regulations. A Consultant, confirms, when signing a MaineDOT contract

that no conflict of interest exists for the assigned scope of work within the contract.

Consultants shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Consultant shall not engage on a full time, part-time or other basis during the contract period any personnel who are or have been at any time during the contract period in the employ of any State Department or Agency, except regularly retired employees, without written consent of MaineDOT. Consultants are required to insert this provision in any subcontractor agreement.

8.7 Transportation Agreements and Contracts System (TRACS)

The use of TRACS, located on the internal "Free 2000" webpage, allows the Contract Administrator or Contract Specialist to quickly review specific information related to a particular contract. The system allows one to:

1. Track invoice payments against the maximum contract amount.
2. Review previous invoices.
3. Access contract and contract modifications in the TEDOCS electronic filing system.
4. View basic information on all contracts (active and inactive) for a specific Consultant.
5. Link contracts to funding PINs.
6. View the Maine Division of Purchases Contract numbers for each contract.
7. View Municipal/State Agreements and Locally Administered Project information as well as develop management reports concerning Consultant contracts, and all agreements to which MaineDOT is party.

8.8 Errors and Omissions

The Project Manager will be responsible for determining and addressing errors and omissions resulting from the work of a Consultant. Errors and omissions are classified into two categories: "minor" and "gross". Minor errors and omissions are ones that are routine in nature where the Consultant has exercised due diligence (standard of care) based on accepted industry practices for the given type of work. The nature of these errors and omissions are insignificant in terms of cost or impacts to the public safety and welfare. For minor errors and omissions, the Consultant shall be given the opportunity to address and correct the issue **at no additional cost**.

A gross error and omission is one that results in significant safety issues, environmental impacts, or additional cost. (For more information see bullet #10 under Background.) MaineDOT will contact and work with FHWA in addressing these types of errors and omissions. In addition, FHWA may choose, at its discretion, not to participate in the cost associated with a contract if it is

determined to be the result of negligence or incompetence. MaineDOT may at its discretion, choose to compensate the Consultant with State funds.

All contracts shall include reference to MaineDOT Consultant General Conditions, which includes a clause regarding errors and omissions. These terms and conditions have been reviewed and approved by MaineDOT Legal Services, Contract Procurement Office, MaineDOT Audit Section and FHWA.

8.9 Insurance

The Consultant shall adhere to the minimum insurance requirements, as outlined in the General Consultant Conditions. It is understood that, on an individual basis, there may be need to waive certain requirements. The procedure to request an insurance waiver, reduction, or an increase in the deductible is as follows:

1. Prior to submission of proposal package for a pre-execution review, complete the **Insurance Waiver Form** (see Appendix D). These forms can be found in the CPO "R" Drive.
2. The Consultant must complete the Insurance Waiver Request form. The Contract Specialist will forward the form to the Contract Procurement Office for approval.
3. A fully executed waiver form will be returned to the Contract Specialist.
4. Retain a copy of the fully executed waiver form as part of the proposal/contract documentation. The original will be filed with the original contract in the Contract Procurement Office.

8.10 Pre-Execution Review

The purpose of this contract review is to ensure the integrity of and verifying that non-construction contracts and agreements comply with State, Federal and Department requirements and standards.

A typical review includes verification of the following:

1. That the Consultant's overhead rate is supportable based upon the most current audited overhead report that has been approved by the MaineDOT Office of Audit.
2. The Consultant must provide evidence they've registered with and are in "Good Standing" with the Secretary of State's office to do business in Maine. http://www.maine.gov/sos/cec/corp/tradenam.htm.
3. Consultant must not be debarred from receiving federal funds.
4. That all required insurances are in place along with any applicable waivers.
5. That direct salaries are supportable and within the MaineDOT's Policy on Reimbursement of Direct Salary. A Wage Waiver form is required whenever a proposed hourly rate exceeds $50.00.
6. Direct Expenses rates must be supportable.

7. On federally funded contracts, the contract package must include documentation stating that FHWA has released and authorized the PIN.
8. A review of sub consultant(s)' proposal(s) and rate supportability when their share of the contract or modification is greater than or equal to 25%.

All contracts are eligible for a Pre-Execution Review by CPO or Contract Specialist except:
1. Cooperative Agreements.
2. Non-Monetary Agreements.
3. Agreements with other state agencies.
4. Municipal-State.
5. Contracts with railroads and utilities.

These contracts must be sent to CPO for a commercial review of the contract language.

For more information on Pre-Execution and Post Contract reviews see MaineDOT Administrative Policy Memorandum (APM) No. 181. This document can be found on the MaineDOT website at http://mdotweb/apm/apmindex.htm.

Chapter 9: Roles and Responsibilities

9.1 Contract Specialist Duties

The Contract Specialists (CSs) will work with the Contract Procurement Office (CPO) to identify the multitude of non-construction and maintenance contracting and agreement needs of their respective Bureau/Office. The following is a listing of Contract Specialists duties related to specific areas.

Contract Procurement
Contract Specialists will:

- Serve as the first line resource for their Bureau/Office in determining appropriate procurement methods and contract types for the non-construction needs identified. CPO will provide continual assistance and direction to the Contract Specialists in areas of uncertainty.
- Maintain a working knowledge of the different procurement methods, their applicability in certain instances, and the requirements (State, Federal, and MaineDOT) behind them.
- Attend Contract Specialist meetings; develop a workable understanding of other Contract Specialist roles in the Department.
- Coordinate appropriately with CPO throughout the procurement process.
- Insure that all required steps are completed and documented (Independent Government Estimates, insurance, negotiations, pre-audit, PIN release and authorization, etc.) using the appropriate process checklists. This will all be done prior to any contract being executed.
- Assist in training sponsoring units in appropriate contract procurement and administration procedures.
- Ensure all relevant data is entered into Transportation Agreements & Contracts (TRACS), AdvantageME (AMS), and TEDOCS.

Contract Management and Administration
Contract Specialists will:

- Be responsible for their own portfolio of contracts and agreements.
- Assist with contract development.
- Assist in the development of RFQ's, RFP's, and the Department Wide RFQ.
- Monitor dates, funding, and upset amounts regarding contracts and agreements and modify proactively, if needed.
- Process all modifications in a timely manner while coordinating with CPO's Support and Compliance Sections.
- When applicable process all invoices and enter receipts within a prescribed amount of time.
- Ensure all relevant data is entered into TRACS.

- Ensure that all required steps are completed and documented (performance evaluations, project closeout, etc.) using the appropriate process checklists.
- Coordination of audited overhead reports.

Agreements

Contract Specialists will:

- Work with sponsoring unit to proactively get agreements, including but not limited to, Municipal/State Agreements, Cooperative Agreements (replacing MOUs, and MOAs), Utility & Railroad Agreements, and Service & Maintenance Agreements in place at the applicable time.
- Assist with the development of the agreements.
- Work with F&A to set up accounts receivables and with contract administrator to monitor payments pursuant to payment schedule outlined in the agreement.
- Monitor agreements to proactively modify and extend as needed.
- Ensure all relevant data is entered into TRACS, AMS and TEDOCS.

Locally Administered Projects

Contract Specialists will:

- Assist with the Agreement coordination and development.
- Be first line resource for sponsoring units regarding questions on Locally Administered Projects (LAPs).
- Monitor agreements to proactively modify and extend.
- Ensure all relevant data is entered into TRACS.

Transportation Agreements & Contracts System (TRACS) and AdvantageME (AMS)

Contract Specialists will:

- Be responsible for maintaining data integrity pertaining to contracts and agreements. The CSs will be responsible for ensuring this is done completely and consistently across the board.

General Consultant Agreements (GCA) and Pre-qualification

Contract Specialists will:

- Serve as their Bureau/Office's Unit Representative in soliciting and compiling the needs to be included in RFQs for GCAs.
- Coordinate meetings to educate their Bureau/Office on the process.
- Coordinate the evaluation process and ranking process.
- Coordinate any secondary service requirements with the other Contract Specialists.
- Coordinate Consultant interview sessions, making sure to include other Bureau/Offices as needed.
- Take the lead on properly executing the General Consultant Agreements.
- Relay ongoing pre-qualification submittals to their Bureau/Office for review and evaluation.

9.2 Project Manager/Contract Administrator Duties

- Develop the Scope of Work of the project.
- Develop the Independent Government Estimate.
- Develop the "Authorization to Hire a Consultant".
- Insure FHWA release and authorize PINs.
- Consultant Selection.
- Request Technical and Price Proposal from Consultant.
- Prepare and Perform Final Review of RFQ/RFPs prior to electronic posting.
- Participate in the Department Wide RFQ process.
- Negotiate contract with Consultant (scope, schedule & price)
- Determine DBE Requirements.
- Verify and insure that DBE requirements are fulfilled.
- Provide Contract Specialists with appropriate contract coding, contract begin and end dates, and other contract specifics.
- Issue "Notice to Proceed", and copy the Contract Specialist.
- Review, code and approve consultant invoices within the timeframe outlined in Section 6.3.
- Review all monthly progress reports in a timely manner.
- Track contract expirations in TRACS.
- Request contract modifications.
- Determine completion of services (deliverables).
- Evaluate Consultant performance following the completion of the contract.
- Provide information and documentation for audits.
- Complete the audit resolution in accordance with the established audit resolution process outlined in APM 182 which can be found at; http://mdotweb/apm/apm182.htm.
- Assure that when a project includes the following services that the proper MaineDOT program areas are consulted and given an opportunity to participate in the selection of a qualified consultant.
    - Traffic – if services related to traffic signals and lighting are needed;
        - Traffic must review the plans.
        - Consultants with GCA's in these disciplines should be the only ones contracted with to perform the work.
    - Property Office – must be consulted if services related to surveying, aerial photography, appraisals or property acquisition are needed.
    - Communications – must be consulted if services related to media outreach are needed.

APPENDICES

Appendix A: Definitions and Terminology

Appendix B: MaineDOT's Contractual Authority

Appendix C: MaineDOT Approval Levels

Appendix D: Sample Forms

Appendix E: FHWA form 1273

Appendix F: Frequently Asked Questions

Appendix A: Definitions and Terminology

DEFINITIONS AND TERMINOLGY

23 CFR Part 172: Title 23 Code of Federal Regulations, Part 172, outlines the administration of Professional Architectural and Engineering related service contracts.

5 M.R.S.A. § 1742: The Maine Statute that mirrors the Qualifications-Based Selection (QBS) criteria established by the Brooks Act. This statute does not apply to MaineDOT, but is included here to clarify that QBS applies to all Consultant contracts by all State of Maine agencies and for federally funded projects.

23 M.R.S.A § 4206: The Maine Statute that outlines MaineDOT Commissioner's duties and grants MaineDOT the legal authority to administer its own contracts.

Acquisition: The acquiring by contract with appropriated funds, supplies or services by and for the use of the State or Federal Government through purchase or lease.

Agreement: the result of mutual assent between two or more parties to do business under negotiated terms and conditions. <u>It is not a guarantee of work, nor does it assign work</u>.

Agreement to Purchase Services: The agreement/contract form used by the State of Maine Division of Purchases to order services. The contractor shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 M.R.S.A. § 18 or 17 M.R.S.A. §3104. Contractors and subcontractors with contracts in excess of $50,000 shall also pursue in good faith affirmative action programs.

This form does not provide the necessary protections to the department in accordance with departmental policy and federal law, and is not normally used to acquire Consultant services. It is the policy of the MaineDOT to use the federally approved Consultant General Conditions, Professional Liability Insurance and forms contained in this manual when acquiring Consultant services.

Biennial Capital Work Plan: A document prepared by MaineDOT setting forth the Capitol Improvement Program for a two-year period. This program matches new work to funding that is expected to first be available in the two-year period. Schedules associated with new Work Plan projects first materialize when the Statewide Transportation Improvement Program (STIP) (see definition below) is developed for Federal approval. A particular Work Plan will be acted on and executed over a period exceeding two years, before all its projects are delivered. The projects in the Work Plan reflect the goals, objectives, and strategies articulated in MaineDOT's *20--Year Transportation Plan* and the project priorities of the STIP. **For additional information on MaineDOT Programs, link to the following webpage: <u>http://www.maine.gov/mdot</u>.**

Brooks Act: Public Law 92-582 was passed in 1972. The law establishes the federally mandated procedures for the Qualifications Based Selection (QBS) of Consultant services, and outlines requirements and procedures for awarding Professional Architect & Engineering contracts for all projects with FHWA funding. The Brooks Act:

- requires public announcement of all requirements for architectural and engineering services;

- encourage firms to submit statements of qualifications annually;
- requires selection of firms based on demonstrated competence and qualifications;
- requires discussion with and a ranking of at least three (3) firms in order of preference;
- requires negotiation with the highest qualified firm;
- provides that if you cannot reach a satisfactory agreement with firm number one, negotiate with firm number two, etc.; and
- requires negotiation of contracts for fair and reasonable prices.

In order for a firm or individual to be permitted by law to practice the profession of architecture or engineering, it must be:

- licensed by the state in which it is practicing;
- a registered professional in the state in which it is practicing; or
- practicing in a state that recognizes the professional registration of another state.

Professional Architect & Engineering services are defined as:

- professional services of an architectural or engineering nature – as defined by state law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide those services as described in this contract;
- professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- those other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services.

Bureau/Program/Office: Sub-divisions of MaineDOT charged with the execution and support of capital improvement project development

Consent to Assignment: - The required document necessary to transfer the rights and responsibilities of one private firm to another, when it involves agreements or contracts with the MaineDOT, including the necessary modification which will cover all departmental contracts involving a firm which has been granted a transfer in ownership.

Consultant: An individual or firm under contract with MaineDOT (or its agent, the municipality in the case of LAP projects) that is bound by the contract to perform services related to construction projects with respect to roads, bridges and other transportation facilities within the State of Maine.

Consultant Prequalification: A process of reviewing Consultant qualifications to establish a pool of pre-qualified consulting firms that we may utilize on projects outlined in the Two Year Work Plan. The Consultant Prequalification Forms are located at http://www.maine.gov/mdot.

Contract: A contract is the result of two transactions, an offer and acceptance. This creates a performance obligation between two parties; by assigning work, its duration and location which results in a written binding document between the Department (or a municipality in the

case of an LAP) and the Consultant that sets forth the obligations of the parties for the performance of the prescribed work. This contract includes elements incorporated by reference. This document must be signed by both parties prior to commencement of work.

Contract Administrator: A MaineDOT employee assigned the responsibility for managing project scope, budget and schedule.

Contract Completion Date: The required completion date of all deliverables pursuant to the contract, except warranty work.

Contract Modification: A written change to a contract. Types of contract modifications can include: unilateral orders by the government to the Consultant under the contract and a bilateral, mutually agreed upon written changes to the contract or multi-year agreement. A modification is required in order to change the expiration date, increase the maximum amount, and/or revise scope of a contract. This document must be signed by both parties prior to commencement of work on the change.

Contract Procurement Office (CPO): The unit within MaineDOT responsible for implementation and oversight of the administration of Consultant contracts, service contracts, Cooperative Agreements, and Municipal/State Agreements.

Contract Specialist (CS): An employee of the MaineDOT who assists the Project Manager/Contract Administrator with the Administrative Contract Process. The CS is the liaison between the Contract Administrator and the Contract Procurement Office which forms a structural matrix organization regarding reporting. This position receives functional direction from the Program it is employed by as well as from the Director of the Contract Procurement Office.

Cooperative Agreement: An agreement between MaineDOT and a public or quasi-public entity, including municipalities, universities, other state agencies, federal agencies, planning commissions, etc. Cooperative Agreements can be either accounts receivable or accounts payable. (See Section 2.4 of this manual.)

Current Audited Overhead Report: Most overhead audits are conducted within 6 months from the Consultant's fiscal year end. As such, there is a six (6) month time lag for the submission of the Consultant's preceding fiscal year audited overhead report. Thus, the most current audited overhead report will be determined upon when a contract or agreement is being negotiated. For contracts/agreements being negotiated within the first half of the year, the Consultant's overhead report would represent financial activity prior to the preceding year. (e.g. For contracts /agreements negotiations within the first six (6) months of 2009, the Consultant's most current audited overhead report should be for their fiscal year end 2007.) For contracts/agreements being negotiated within the second half of the year, the consultant's overhead report would represent financial activity of the preceding year. (e.g. For contracts /agreements negotiated in the second half of 2009, the Consultant's most current audited overhead report should be for their fiscal year 2008.) For assistance please contact the Department's Office of Audit.

Disadvantaged Business Enterprise (DBE): A small business concern that is owned and controlled by one or more socially or economically disadvantaged individuals that has been certified under the Federal Small Business Administration 8(a) program or by MaineDOT. The DBE firm must be certified by MaineDOT in order to receive credit towards MaineDOT's

DBE goal. DBE's include Disadvantaged Business Enterprises (DBE's), Women Owned Business Enterprises (WBE's) and Minority Women Owned Business Enterprises (M/WBE's).

Direct Expenses: Expenses such as telephone, tolls, reproduction costs, lodging, meals, per diem (requires overnight stay) and other approved Consultant/sub consultant(s) costs billed at actual cost for a specific project. Those direct expenses are defined in 48 CFR Chapter One Part 31. It is MaineDOT's policy that reimbursable costs for per diem (lodging and meals) shall not exceed that allowed by MaineDOT's Administrative Policy Memorandum No. 191 located at http://mdotweb/apm.htm. Mileage shall be paid at the current amount allowed by the State of Maine, Title 5, M.R.S.A. §1541. The current allowable per diem and mileage rates are located at the following website: http://www.maine.gov/osc/travel/travelfaqs.htm. Reproduction of plans for submittal to MaineDOT shall be charged at actual costs. Any reproduction costs incurred for the Consultant's internal use is considered overhead expenses and not chargeable as a direct expense. MaineDOT does not allow any mark-up on direct expenses and sub consultant(s) costs.

Direct Labor Cost: All project hours multiplied by labor rates and summarized for all employees within the applicable allocation unit. Labor rates are based on actual employee wages paid or represent wages effectively paid.

Director: An individual designated as the head of a bureau or office or a division within a Bureau.

Disadvantaged Business Enterprise (DBE) Proposed Utilization Plan: The reporting form Consultants must furnish MaineDOT each time the firm is requested to submit a proposal for a particular project. The completed form reflects the firm's proposed efforts to mainstream DBE firms in their project team, and must be approved by the Civil Rights Office prior to award of a contract.

Disputes: Disagreements, claims, counterclaims, matters in question, and differences of opinion between MaineDOT and the Consultant and those working for or through the Consultant regarding matters related to the work that arises after contract execution. These include, but are not limited to, interpretation of the contract, compensation and costs, time for performance, and quality.

Extra Effort: Work that is within the scope of the original contract and that MaineDOT determines is necessary.

Extra Work: Additional work that is outside the scope of the original contract and that MaineDOT determines is necessary.

FAA: Federal Aviation Administration.

Federal Acquisition Regulations (FAR): 48 CFR Part 31, establishes Federal definitions, and conditions for acquiring Contractors and Consultants.

FHWA: Federal Highway Administration**.**

Final Acceptance: Acceptance by MaineDOT for all work and taking responsibility for the project from the Consultant, except for any warranty obligations.

FRA: Federal Railroad Administration.

FTA: Federal Transportation Administration.

General Consultant Agreement (GCA): A Multi-Year Agreement between MaineDOT and the Consultant setting forth a specific "ordering period" or period of time, typically covering a period of years, under which future project contracts may be negotiated without repeating the selection process. *GCA's do not obligate money*, but do require: agreement duration, type of services to be provided, and the maximum amount that can be spent. GCA's require an AdvantageME transaction number from the State of Maine Division of Purchases for fund tracking purposes. A GCA may or may not include all the terms and conditions for all subsequent project contracts negotiated under the Multi-Year GCA; however the latest version of the Consultant General Conditions, with related Supplements, will be specified in the Project Contract.

Independent Government Estimate: A written itemized estimate prepared by the agency (MaineDOT or its agents) prior to receipt of the Consultant's price proposal. This will have an appropriate breakdown of specific types of labor required, work hours, indirect costs, an estimate of the fixed fee/profit, and estimated direct expenses. This estimate establishes the fair and reasonable price range for the type of work performed. It will be used as a basis for contract negotiations.

Indirect Expense: An expense that is incurred for an entire business enterprise as a unit that cannot be traced directly to a contract.

Intermodal Surface Transportation Efficiency Act (ISTEA) Section 1060, Private Sector Involvement Program: Requires the establishment of a Federal private sector involvement program to encourage states to increase their use of Consultants for engineering and design services on Federal-aid highway projects.

Laws and Regulations; Laws or Regulations: Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

Local Administered Project (LAP): An LAP is any MaineDOT project in which a municipality administers the design, development, and/or construction of the project. Municipalities administering LAPs must be certified through the MaineDOT LAP Certification Program. The LAP program is a reimbursement program. Each LAP necessitates the execution of a Local Project Agreement detailing the project development requirements expected of the municipality and MaineDOT.

MaineDOT: Maine Department of Transportation.

MaineDOT Purview: MaineDOT has full power to purchase all supplies, materials and equipment that are incidental to, or necessary for project-specific construction, improvement or maintenance of transportation infrastructure.

Maximum Amount: The maximum compensation the Consultant may be entitled to upon satisfactory completion of the work described in the contract. The maximum amount does not constitute an obligation by MaineDOT to pay a Consultant this amount in its entirety under the

contract; however, it does constitute the maximum amount that can be paid under this contract.

Most Current Audited Overhead Report: Most overhead audits are conducted within six (6) months from the fiscal year end date of the Consultant. As such, there is a six (6) month time lag for the submission of the Consultant's preceding fiscal year audited overhead report. Thus, the most current audited overhead report will be determined upon when a contract or agreement is being negotiated. For contracts/agreements being negotiated within the first 6 months of a year, the Consultant's overhead report would represent financial activity prior to the preceding year (e.g. contract/agreement negotiations within the first 6 months of 2008, Consultant's most current audited overhead report may be their fiscal year end 2006). For contracts/agreements being negotiated within the second 6 months of the year, the Consultant's overhead report would represent financial activity of the preceding year (e.g. contract/agreement negotiations within the second 6 months of 2008, Consultant's most current audited overhead report may be their fiscal year end 2007). For assistance in determining the Consultant's appropriate "most current audited overhead report" date, please contact the Office of Audit.

Multi-PIN Contract: This is used for Consultants who will be performing the same "basic" service (surveying, appraisers, construction inspection, etc.) performed on various projects over a multi-year period. The Department issues an assignment letter each time they want to hire the Consultant to perform the service. Such Assignment Letters serve the dual purpose of Independent Government Estimate and Notice to Proceed.

Non Competitive (Sole Source) Negotiation: A contract without a formal selection procedure that meets special criteria and is approved by CPO and/or FHWA. *Sole source* is a *non-competitive* purchase or procurement process accomplished through solicitation or acceptance of a proposal from *one single provider.* The criterion includes:

- The service is available only from a single source.
- There is an emergency which will not permit the time necessary to conduct competitive negotiations; or
- After solicitation of a number of sources, competition is determined to be inadequate.

Typically these projects are sole source contracts with limited duration. (See Section 4.3 of this manual for details).

Non-responsive: A proposal whereby mandatory information or documentation has been neglected to be provided for evaluation during the RFP.

Non-responsibility: A non-responsible provider, although supplying all necessary information, would, for example, not be able to fully satisfy requirements defined in the RFP or would be financially unstable or unable to complete the project in a timely manner. Other considerations for non-responsibility include:

- Not having a satisfactory performance record, a prospective Consultant shall not be determined responsible or non-responsible solely on the basis of a lack of relevant performance history.
- Having an unsatisfactory record of integrity and business ethics.
- Not having the necessary organization, experience, accounting and operational capacity.

- Not having the necessary production, construction, technical equipment and facilities, or the ability to obtain them.
- Be otherwise unqualified and ineligible to receive an award under applicable laws and regulations.

Overhead Costs: (or Indirect Expenses) Are costs that are associated with two or more business activities, but are not specifically allocated to a specific project. Some examples of overhead costs are rent, depreciation, employee recruitment and training, and general or professional insurance policy costs.

PIN: Project Identification Number, used to track expenditures. This number must be released and authorized before an agreement with federal funds can be executed.

Procurement: See Acquisition

Project: Any unit of work or study for which a Consultant selection is made and a contract entered into.

Project Contract: A written and binding contract between MaineDOT and the Consultant relating to a specific task or project with a defined scope of work and compensation negotiated pursuant to the conditions of the contract. Project Contracts can be Stand-Alone or negotiated under the Umbrella of a Multi-Year General Consultant Agreement (GCA).

Project Manager (PM): An employee of MaineDOT designated to oversee the performance of a project, including associated Consultant work. Individual assigned the responsibility for managing project scope, budget, and schedule.

Proposal: An offer made by a Consultant to MaineDOT in response to a Request For Proposal (RFP) which forms the technical and price basis when entering into a mutually binding contract.

Provisional Overhead Rate: For Cost Plus Fixed Fee Contracts and Adjustable Burdened Rate Contracts, a provisional overhead rate shall be established and agreed upon at the time of contract execution. The provisional rate shall be stated in the contract and is based on a MaineDOT Office of Audit review of the Consultant's Compiled Overhead Report and/or Audited Overhead Report. The actual overhead rate reimbursed under the Contract must be supportable by the Consultant and shall be determined by an approved Federal or State cognizant agency after the contract expires, and the difference shall be paid to either the Consultant or MaineDOT.

Purchases Purview: Supplies, materials and equipment that are purchased for inventory and not considered necessary for project-specific construction, improvement or maintenance of transportation infrastructure.

QBS: Qualifications-Based Selection.

Ranking: Used in the Brooks Act to select a "most" highly qualified Consultant from a group that has been pre-qualified, through the Department Wide RFQ to perform a specific service. Ranking is done numerically based on the specific needs of the project.

Request For Proposal (RFP): MaineDOT's request to a Consultant or group of Consultants for a cost and technical proposal to complete a specific scope of work.

Request for Qualifications (RFQ): MaineDOT's request to the Consultant community for an outline of the firm's ability to provide Consultant and professional services in a particular area of need, discipline or disciplines based on specific criteria as described in said RFQ. More than one Consultant may be selected from a process involving only one RFQ. MaineDOT shall use RFQ responses to develop a slate or shortlist of Consultants for interview.

Scope of Services or Scope of Work (SOW): *(a)* Preliminary: A general description of the work to be performed, including the location of the project. *(b)* Detailed: A clear, accurate, and detailed description of the technical requirements for the services to be rendered.

The detailed scope of work describes for the Consultant what work will be required, the conditions under which the work must be conducted, how achievements will be assessed, and what obligations of both the Consultant and the agency (MaineDOT) will be. It enables the Consultant to assess its capabilities in light of the contract requirements.

Scoring – Is a numerical value, used in the Department Wide RFQ, to establish the level of a Consultant's competency in the prequalification process.

Shortlist: - The list of Consultant firms who have been selected as finalists from all the respondents to a particular Request for Qualifications (RFQ) or Request for Proposals (RFP). Typically, an RFQ is sent, Statements of Qualifications received from Consultants and a shortlist developed. Short listed firms are normally interviewed before a "most or best qualified" firm is selected. The selected firm is sent an RFP and subsequent negotiations are undertaken regarding the resulting proposal. In some cases MaineDOT skips the RFQ and solicits with an RFP which requests both Consultant firm qualifications and technical proposals. A shortlist is then developed from the responses to the RFP, and the selection proceeds as above. (For related information, see Section 10.)

Statewide Transportation Improvement Program (STIP): Is prepared every two years as directed by the FHWA and the Federal Transit Administration (FTA). As an example, a document that became active beginning October 1, 2003, spans Federal Fiscal Years 2004-2005-2006. It includes funding schedules developed for all projects that have remaining Federal financial commitments and lists as well, additional Federal Aid Projects remaining to be completed, but for which all needed Federal funds have already been committed.

Sub consultant(s): Individuals or entities having a contract with the prime Consultant to furnish services with respect to a MaineDOT project as the Consultant's independent professional associates, Consultants, sub-contractors, or vendors, whose services are part of the cost of the contract between MaineDOT and the prime Consultant. The maximum amount of work allowed by a subcontractor must be within the minority portion of the overall project.

Turn-key Project: A project in which a Consultant takes full responsibility for all aspects of the project and delivers a finished product.

Work: All labor, services, personnel, materials, equipment, tools, supplies, and incidentals required or indicated by the contract in conformity with the same. For related information, see the scope of work within the contract.

Appendix B: MaineDOT's Contractual Authority

Appendix B: MaineDOT's Contractual Authority

§52. General powers and duties, The Department of Transportation, referred to in this chapter as "the department," may from time to time make and shall enforce rules and regulations relating to the planning, design, engineering, construction, improvement, maintenance and use of transportation infrastructure. The department may from time to time make and shall enforce rules relating to the manner of conducting all investigations and hearings and the administration of its office, powers and duties. The department shall direct the expenditure of all money for the planning, design, engineering, construction, improvement, demolition, maintenance and use of all transportation infrastructures for which state funds are provided by law. The department may conduct traffic survey interviews and other statistical studies on the state highway system as considered necessary for the use in planning and development of the statewide highway system. The department may obtain leases for such land and office space as the department considers necessary for the performance of its duties. As used in this section, "transportation infrastructure" means infrastructure related to all modes of transportation, including highways, bridges, railroads, ferries, mass transit, airports and bicycle and pedestrian facilities, as well as all buildings, utilities, facilities and other appurtenances related to such modes. **[2007, c. 306, §1 (AMD).]**
The department has full power to purchase all supplies, materials and equipment that are incidental to, or necessary for, project-specific construction, improvement or maintenance of transportation infrastructure. The purchase of supplies, materials and equipment for non-project-specific purposes must be made through the State Purchasing Agent as provided by law. For the purposes of this section, unless the context otherwise indicates, "project-specific" means relating to a specific location for a limited duration, as opposed to perennial, nonlocation-specific activities. The department may be consulted by and shall, without charge, advise municipal officers and road commissioners on the subject of construction, improvement and maintenance of public highways, bridges and other structures. The department shall whenever practicable give preference in employment to the inhabitants of the town in which such highways are located. [2005, c. 313, §2 (RPR).]
The department may adopt its own guidelines for determining the reasonableness and permissibility of various cost factors, including, but not limited to, salary limits, benefits and expense reimbursement. Notwithstanding any other federal or state law to the contrary, the department's guidelines must be used in lieu of federally mandated provisions. [2005, c. 313, §2 (RPR).]

Pursuant to 23 M.R.S.A. §4206 Duties of Commissioner, it is the duty of the Commissioner of MaineDOT to accept and receive and be the sole administrator of all federal or other moneys for and on behalf of this State or any political subdivision thereof, now or hereafter, available for purposes of transportation or which would further the intent and specific purposes of this chapter.

23 M.R.S.A. §4241 Definitions, Transportation Infrastructure is defined to mean ”infrastructure related to all modes of transportation, including highways, bridges, railroads, ferries, mass transit, airports and bicycle and pedestrian facilities, as well as all buildings, utilities, facilities and other appurtenances related to those modes.”

Further, Transportation-related Services is defined to mean “all services necessary or convenient to discharge the powers, duties and responsibilities of the department and the commissioner as provided by law including those provided in Section 4206. These services include all services necessary or convenient to plan, design, engineer, construct, improve, demolish, maintain or use transportation infrastructure. These services may include, but are not limited to, planning and feasibility studies, engineering, surveying, mapping, environmental services, architectural-related services, appraisal, title services, right-of-way services, project and program management, construction support services, equal opportunity and civil rights services.”

§4242. Contracts for transportation-related services The department has full power in the procurement and letting of all contracts for transportation-related services. The department may award contracts for these services pursuant to procedures permitted by federal law. The department may solicit statements of qualifications and proposals, and award contracts for services based upon the criteria contained in the solicitations, only if the solicitations are posted electronically on the department's publicly accessible site on the Internet for at least 2 weeks or advertised in newspapers. If advertisements are published in newspapers, they must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed work is to be done, if any such newspaper is circulated in that county. [2005, c. 313, §6 (NEW).]
The department has the full power to maintain qualifications and performance data on firms and individuals that seek to provide transportation-related services. The commissioner may designate projects requiring additional project-specific prequalification standards and procedures for interested firms and individuals. [2005, c. 313, §6 (NEW).]

§4243. Contracts for construction and maintenance, The department has full power in the procurement and letting of all contracts to construct, demolish or maintain transportation infrastructure. The department shall make, or cause to be made, all surveys, plans, estimates, specifications and contracts for all proposed work. If the work is to be contracted, the department shall, except as otherwise provided in this Title, advertise for bids for the proposed work electronically through the department's publicly accessible site on the Internet or through advertisements in newspapers. If advertisements are published in newspapers, advertisements must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed work is to be done if any such newspaper is circulated in that county. The advertisement must state the place where the bidders may purchase or examine the plans and specifications and the time and place where the bids for the work will be received by the department. Each bidder must accompany its bid with a bid guaranty in accordance with the department's specifications. All bids submitted must be publicly opened and read at the time

and place stated in the advertisement. The department has the right to reject any bids and to advertise for new bids if, in the department's opinion, doing so is in the best interest of the department; otherwise, the department shall award the contract to the responsible bidder submitting the lowest bid. A town may submit bids for construction, demolition or maintenance of transportation infrastructure within that town's limits and is subject to all requirements prescribed for other contractors, except that a bond is not required of the town. The department may construct, demolish or maintain transportation infrastructure by day labor without advertising for bids and may, with the approval of the Governor, award contracts for the construction, demolition or maintenance of transportation infrastructure without advertising for bids if doing so is in the best interest of the State. **[2005, c. 313, §6 (NEW).]**
The department has the full power to pre-qualify bidders for construction, demolition and maintenance projects based on factors contained in the department's written prequalification procedures. The commissioner may designate projects requiring project-specific prequalification standards and procedures for bidders. [2005, c. 313, §6 (NEW).]
The department may adopt its own standard contract specifications. The department's standard specifications must be used in lieu of federally mandated contract clauses. [2005, c. 313, §6 (NEW).]

Purviews: As of the date of this writing the services listed below fall within the purview of the entity named in the heading of table, contact CPO if you have any questions.

MaineDOT	Division of Purchases
Appraisal services	Facilitation
Architectural services	Fleet parts and supplies
Civil rights services	Fuel
Construction support services	General supplies
Demolition services	Information services (non-engineering)
Design services	Janitorial
Engineering services	Laundry services
Environmental services	Public relations
Equal opportunity services	Road salt
Guardrail installation	Rubbish
Infrastructure maintenance services[6]	Small capital equipment
Landscaping services	Stockpiled non-project specific items
Legal services	Temporary services (personal services)
Mapping services	Training
Planning and feasibility studies	Uniform rental
Portable Toilets	Vehicles and heavy equipment
Private equipment rental w/ operator	
Private equipment rental w/o operator	
Project and program management	
Project specific materials and services	
Right-of-Way services	
Snowplowing & ice control services	
Surveying services	
Title services	
Utility services	

[6] Maintenance projects as defined in 23 M.R.S.A. §4241 Definitions, relate to all modes of transportation including *facilities and other appurtenances* related to those modes. Services for such maintenance projects include, but are not limited to, *carpentry, electrical installation or maintenance, flaggers, guardrail installation, guardrail purchased for a specific project, HVAC System for Facilities, Interstate mowers through regular bid process, ITS w/engineering (Project Related), Management Systems, Multi-modes of transportation related services, portable toilets, private equipment rental with operator, private equipment rental w/o operator for specific projects, sand for sand piles/gravel, single pipes for specific projects, small quantity contracts for (1) paving, (2) shimming, (3) drilling & blasting, etc., snow plowing (municipalities & regular bid process), special waste floor drains, spraying (herbicides, etc.), striping, tree removal, etc.*

Appendix C: MaineDOT Approval Levels

MaineDOT's Approval Authority

Administrative Policy Memorandum No.10
Revised November 29, 2000

TO: Bureau/Office Directors, Division Heads, and Division Engineers

SUBJECT: Delegation of Approval Authority

I. Scope:

This memorandum prescribes the policies and procedures to delegate approval responsibilities relating to the Bureau of Project Development. This delegation of responsibilities is consistent with MRSA Title 23 §4206 I (1&7).

II. Operational Policy:

A. Bureau Director

The following documents that obligate the Department of Transportation to external entities require approval by the Director, Bureau of Project Development or designee.

1. Consultant Agreements

2. Individual work orders to construction contracts or amendments to Consultant agreements that result in increased project cost greater than $150,000.

3. Expenditures pertaining to property acquisition and utility agreements greater than $150,000.

4. Developer Agreements

5. Railroad Capital Improvement Agreement

6. Local Bridge Agreements and Local Public Agency Agreements.

Any of the above approval actions require submission of a Commissioner's Record Item.

B. Program Managers and Office Directors

The following documents that obligate the Department of Transportation to external entities require approval by the appropriate Program Managers, Office Directors or designee.

1. Individual work orders to construction contracts, or amendments to Consultant agreements that result in an increased project cost more than $50,000 and less than, or equal to $150,000.

2. Expenditures pertaining to property acquisition and utility agreements more than $50,000 and less than or equal to $150,000

C. Project Managers

The following documents that obligate the Department of Transportation to external entities require approval by the appropriate Project Manager or designee:

1. Consultant payment vouchers.

2. Construction contract progress payment vouchers.

3. Individual work orders to construction contracts, or amendment to Consultant agreements that result in an increased project cost less than, or equal to $50,000.

4. Expenditures pertaining to property acquisition and utility agreements less than, or equal to $50,000.

D. Approval to increase project cost at any level will be based upon an analysis of available funds within the parameter of financial resource management as specified by APM #161.

Maine Department of Transportation

Approval Authority
of
Contract Modifications

If a contract is modified, a memo of approval from the appropriate authority (see APM 10) level is required. The appropriate authority level will be determined by the original contract value plus all the modifications. All memos of approval will be signed by the Director of the Contract Procurement Office. If the value of the modifications increase the contract by 100% or more it must also be approved by the Department's Chief Engineer or designee. This memo will become a part of the contract document and will be scanned into TECOCS and sent to CPO for filing with the rest of the modification documents.

Appendix D: Sample Forms

(See CPO “R” Drive for the most recent versions)

MAINE DEPARTMENT OF TRANSPORTATION
Independent Government Estimate

MaineDOT

Orig. Date:

Revised Date:

Project Title/Location:

MaineDOT PIN:

Consultant Firm Name (If Known):

Prepared By:

Service Area or Phase of Work:

	Consultant Positions =>	PRINCIPAL IN-CHARGE	?	?	?	?	?	?	?	ADMIN SUPPORT	TOTAL
#	**Task Descriptions**	*Hours*	*Hours*	*Hours*	*Hours*	*Hours*	*Hours*	*Hours*	*Hours*	*Hours*	*Hours*
1											0.00
2											0.00
3											0.00
5											0.00
7											0.00
	TOTAL HOURS	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**
	HOURLY RATE										
	DIRECT LABOR TOTAL	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**

Overhead %		$0.00
Profit/Fee %		$0.00
Subtotal =		**$0.00**
Total Direct Expenses =		**$0.00**

DIRECT EXPENSES	$
Travel	
Printing	
Telephone	
?	
?	
Miscellaneous	
TOTAL DIRECT EXPENSES =	**$0.00**

TOTAL ESTIMATED COST = **$0.00**

Rev. 7/24/08

MAINE DEPARTMENT OF TRANSPORTATION

Instruction for Estimating a Reasonable Profit Worksheet

1. Profit should be established as a dollar amount based on:
   - b Degree of risk
   - b Nature of the project to be performed
   - b Joint venture responsibilities
   - b Extent of the Consultant's investment
   - b Sub-contracting of work
   - b Other criteria

The "Weighted Guidelines Method" of computing profits specifically provides contract mangers with:

- a A technique that takes into consideration the value of the project, in relation to the appropriate profit margin.
- b A method of documenting the calculation of a fair and reasonable profit that can be used in negotiations.

2. In preparing in-house estimates and/or where profit is negotiated as an element of price, a reasonable profit should be negotiated or determined for each procurement action by using the following procedure as a guide:

WEIGHTING GUIDELINES

Factor	Weight	Profit Factor	Value
Degree of Risk	25		
Relative difficulty of project	20		
Size of job	15		
Period of Performance	20		
Consultant's investment	5		
Assistance by MaineDOT	5		
Sub-contracting	10		
		Total Profit Value	_____

3. Based on the Project complexity, each of the above factors will be assigned a profit factor from 0.06 to 0.15. The value shall be obtained by multiplying the weight by the profit factor. The value column, when totaled, indicates the fair and reasonable profit percentage under the circumstances of the particular procurement.

4. Factors

   - a **Degree of Risk.** Where the Project has a small degree of risk, the profit factor should be 0.06; as the degree of risk increases, the profit factor should be increased up to a maximum of 0.15. Contracts with options will have, generally, a higher profit factor than contracts without options for which quantities are provided. Other considerations include: the portion of the project to be done by sub-contractors, the nature of Project, amount and type of labor included in costs.
     - ° Cost Plus Fixed Fee contracts carry the lowest possible degree of risk as the Department absorbs any cost overrun that may occur.

- Lump Sum contracts carry a higher degree of risk as the Consultant absorbs any cost overrun.
- Cost per Unit of Work contracts carry a moderate degree of risk in that the Consultant absorbs any cost overruns resulting from an incorrect estimate of the amount of effort required to produce one unit of Work, but the Department absorbs any cost overrun resulting from an incorrect government estimate of the number of units required.
- Specific Rates of Compensation contracts carry risk only if the Consultant's actual salaries, overhead, fringe benefits, and direct costs are higher than those initially estimated.

b **Relative Difficulty of Project.** If the Project is very difficult and complex, the weighing should be 0.15 and should be proportionately reduced to 0.06 on the simplest of jobs. To some extent this factor is tied to the Degree of Risk. Consider: the level of risk, the nature of the project, and by whom it is to be done, i.e. sub Consultant, Consultant principal, what is the time schedule.

c **Size of Job**. Projects with an estimated cost of:
- Up to $50,000, use a profit factor of 0.15.
- $50,000 up to $500,000, use a profit factor proportionately from 0.15 to 0.09.
- $500,000 or greater, use a profit factor between 0.08 to 0.06. (Note: the higher the value of the contract the more incentive there is for the Consultant to control the direct costs)

d **Period of Performance.** Projects with actual design times:
- Up to 60 days, use a profit factor of 0.06.
- 60 to 180 days, should have a profit factor that is proportional from 0.06 to 0.15.
- Greater than 180 days, use a profit factor of 0.15.

A higher profit factor is allowed on projects that extend over a long period to account for the higher risk of lower profit margins. Fast-tracked projects done over a shortened period of time would entail greater weighting.

e **Consultant's Investment.** For Turnkey projects where the Consultant is expected to provide all labor and materials use a factor of 0.15. If the Department is furnishing some of the project materials and services, use a profit factor that is proportional from 0.06 to 0.15 based on the amount being provided. A ranking of average, average to above average can be used to determine the appropriate factor. Consider: the amount of sub-consulting, the degree of government furnished items, surveys, soil tests and engineering site explorations, and complexity of foundation considerations.

f **Assistance by the MaineDOT.** The greater the degree of technical and administrative assistance by MaineDOT personnel, and reliance on MaineDOT documents, the lower the profit factor.

g **Subcontracting.** The profit factor used should be in inverse proportion to the amount of subcontracting.
- If the entire project is to be performed with the Consultant's own forces, use a factor of 0.15.
- If 10% to 30% of the project is to be sub contracted use a profit factor of 0.12.
- If 30% to 80% of the project is to be subcontracted, use a profit factor of 0.09.
- If 80% or more of the project is to be subcontracted, use a profit factor of 0.06.

MAINE DEPARTMENT OF TRANSPORTATION
Estimating a Reasonable Profit

Project: **Date:**
PIN: **Route:**
Description:

Weighing Guidelines

The value in the Weight column shall be a minimum of **"6"** and a maximum of **"15"** based on "Estimating a Reasonable Profit" sheet.

Factor	Rate	Weight	Value
Degree of Risk	25		-16.6667
Relative difficulty of work	20		-13.3333
Size of Job	15		-10.0000
Period of Performance	20		-13.3333
Contractor's investment	5		-3.3333
Assistance by government	5		-3.3333
Subcontracting	10		-6.6667
	100		-66.6667

Value	to	Profit	
0	=	6%	minimum
100	=	15%	maximum

The reasonable profit on this project should be = **0.00%**

MAINE DEPARTMENT OF TRANSPORTATION
Consultant Contract Authorization Form

Date:	
Project Number:	**FHWA Authorized PIN #**
Estimated Dollar Value:	
Consultant Name: (if known)	
Estimated Start Date:	**Estimated End Date:**
Location:	
Project Manager:	**Program:**
Proposed Payment Method:	

Provide a brief Project Description:

Attachments to include the following:

- Scope of work
- Government Estimate
- Projex documentation that FHWA has activated and authorized the PIN.
- FHWA Approval Form (only applicable for Non-Competitive (Sole Source) acquisition).

Approval Signatures (in accordance with APM 10)	Date
Project Manager:	
Director:	
Bureau Director:	

Forward the fully executed original the Contract Procurement Office.

Maine Department of Transportation

Request for Sole Source Procurement

MaineDOT's Contractual Purview for State Funded Only Project

Dated:

From:

To: Gale Lizzotte, Procurement Support Manager, Contract Procurement Office

Subject: **Justification for Sole Source:** ***(Please indicate Project name, PIN, Consultant Firm Name, etc.)***

****

Please Check All That Apply:

____ **Familiarity with the work requirements:** Majority of work leading to this contract has already been successfully performed by the Consultant we wish to execute a sole source contract with. Successful completion of this particular project depends on close coordination with many parties. The risk and potentially increased cost of hiring a Consultant with no history in the on-going work in this area and with no guarantee of ability to coordinate high profile projects, has convinced the Project Manager that it is in the government's best interest to go sole source.

____ **Project Breakage:** Sole Source Award will allow us to avoid the cost of project breakage, with stopping one contract, going through a period of non-productivity and the process of starting another contract. It is highly likely we will end up choosing the same Consultant should we select on a Quality Based Selection or Best Value Basis.

____ **Learning Curve Costs:** A different firm, even if equally qualified and capable, will have to go through a learning curve costing time and resources. We pay for that learning curve. Since many of the requirements of this project have been done by the recommended sole source firm, and coordination, time and security are issues of concern, we are in a position to avoid the cost of the learning curve, if the firm is providing satisfactory service and it is in the government interest.

____ **Cost of Advertising and Selection:** The cost in time, resources and bureaucracy would be a burden to this project, which would not pay for itself in the long term. In this particular case, the government's interest is best served by going sole source with a proven firm.

____ **Time Constraint Costs:** This project is time constrained because of site access issues, security and the mobilization costs of a separate Consultant would all cost more while not providing better quality and potentially delivering lesser quality.

Please include any additional project-specific information justifying where a benefit would be achieved by utilizing sole source procurement.

_____

_____

_____

Sole Source Justification Approval:_____

Dated:_____

Gale Lizzotte, Procurement Support Manager, CPO

Maine Department of Transportation
Request for Sole Source Procurement / Public Interest Finding
(Federally Funded Project)

Dated:

From:

To: Gale Lizzotte, Procurement Support Manager, Contract Procurement Office

Subject: **Justification for Sole Source:** ***(Please indicate Project name, PIN, Consultant Firm Name, etc.)***

****

Sole source contracts or extensions of the procurement period beyond 5 years for an existing GCA or contract are noncompetitive contracts for Architectural and Engineering services where it is not feasible to utilize competitive means, such as small purchase procurement or qualifications based selection, to award a contract. For contracts utilizing Federal-aid funds, a public interest finding must be made in order to utilize this method of procurement.

Please Indicate Type of Request:

____ **Request for Sole Source Procurement Approval for a New Contract up to $100,000** (Federally Funded Project)
____ **Request for FHWA Public Interest Finding Approval for a New Contract or Contract Modification above $100,000 or for Approval beyond the 5 Year Procurement Period** (Federally Funded Project – GCA, Contract or Contract Modification)

Please Check Applicable Circumstance:

____ **Single Source:** The service is available only from a single source. The Consultant possesses unique capabilities for the type of work involved or has prior experience/knowledge in relation to the specific project. The risk and potentially increased cost of hiring a Consultant with no history in the on-going work in this area and with no guarantee of ability to coordinate high profile projects, has convinced the Project Manager that it is in the government's best interest to go sole source. It is highly likely we will end up choosing the same Consultant should we select on a Quality Based Selection or Best Value Basis.

____ **Limited Competition:** After solicitation of a number of sources, competition is determined to be inadequate**.**

____ **Emergency:** There is an emergency which will not permit the time necessary for competition and that requires immediate action by MaineDOT to avert loss to life or property.

For **ANY** of the above, **please include additional project-specific information justifying where a benefit would be achieved by utilizing sole source procurement.** This includes circumstances behind the sole source action as well as expected benefits in terms of time and cost, description of work, and rational basis for utilizing a sole source contract.

Sole Source Requested by (signature): _____

Sole Source Justification Approved:_____

Dated:_____ Gale Lizzotte, Procurement Support Manager, CPO

Public Interest Finding Approved:_____

Dated:_____ Federal Highway Administration

MAINE DEPARTMENT OF TRANSPORTATION

Contract Procurement Office

Consultant Scoring Sheet

Date:			
Service/Discipline:		PIN:	

Consultant Name					
Project					
Evaluation Factors	**Value**	**Score**	**Score**	**Score**	**Score**
Current & Past Performance	25				
Past DBE Performance	5				
% GCA Utilization	10				
Ability to Control Cost	10				
Project Specific Factors:					
Project Manager Experience & Qualifications	10				
Project Personnel Experience & Qualifications	10				
Adequate Staffing	10				
Ability to Meet Schedule	10				
Technical Capabilities	10				
Total Score					
% of total					
Ranking					

Committee Member	Title	Program	Date

MAINE DEPARTMENT OF TRANSPORTATION

Request for Insurance Waiver / Reduction / Increase of Insurance Deductible

This request is for a waiver of the Department's insurance requirements. I believe that based upon the nature of the work; there is very minimal risk to MaineDOT. *{Please describe below the nature of the work you will perform for MaineDOT, or provide an attachment explaining the nature of the work in order for MaineDOT to assess the risk associated.}*

Contract No.:_____ PIN No.:_____

NATURE OF WORK:_____
_____
_____
_____

1. **PROFESSIONAL LIABILITY - Minimum requirement: $1,000,000 per claim and annual aggregate.**

   ☐ Waiver ☐ Reduction to _____.

2. **COMMERCIAL GENERAL LIABILITY – Minimum requirement: $1,000,000 per occurrence, $2,000,000 aggregate.**

   ☐ Waiver[1] ☐ Reduction to _____.

   [1]*Please be aware that a waiver does not constitute an exemption of liability should a third party claim arise.*

3. **AUTOMOBILE LIABILITY – Requirement: $1,000,000 per occurrence.**

   ☐ Reduction to minimum state requirements for personal auto insurance.

   ☐ Other Limit: _____

4. **WORKERS' COMPENSATION INSURANCE – Requirement: Workers' Compensation insurance is required when required by state law.**

   ☐ Waiver – reason: _____

5. **INSURANCE DEDUCTIBLE – Requirement: A deductible of $10,000 or less.**

   ☐ Increase to _____ based on the attached supporting documentation.

Date of Request: _____ By:_____

_____
(Printed name & title /date)

Firm Name: _____

(MaineDOT Use Only)

Nature of Work reviewed by: _____
(Project Manager/date)

Comments: _____

____ Approved By:_____
____ Denied
(Contract Procurement Office/date)

MAINE DEPARTMENT OF TRANSPORTATION
Contract Procurement Office
Wage Rate Waiver Request Form

Contract No.:_____, **PIN No.:** _____

Consultant Firm:_____

This request is for a waiver of the Department's $50.00 wage rate cap under the Policy on Reimbursement of Consultant Salary. Please complete this form prior to submitting your proposal package for the pre-execution compliance review. Please describe (below or on an attached document) the unique circumstances surrounding this project that would justify such a waiver. Please attach payroll records as supporting documentation for this request.

_____

_____

_____

_____

Employee Name / Classification	Proposed Unburdened Hourly Labor Rate

The Wage Rate Waiver must be completed and signed by the Contract Administrator and the corresponding Bureau Director. Forward the signed waiver along with the corresponding payroll documentation to the Director of Contract Procurement who will obtain the final approval/denial signature of the Chief Engineer. A fully executed waiver form will be returned to the Contract Administrator. Retain a copy of the fully executed waiver form as part of the proposal/contract documentation. The original will be filed with the contract in the Contract Procurement Office.

Submitted by: _____
(Name) (Date)

Bureau Director: _____
(Name) (Date)

This request is hereby ____ approved ____ denied

MaineDOT Chief Engineer: _____
(Name) (Date)

MAINE DEPARTMENT OF TRANSPORTATION

POTENTIAL CHANGE NOTICE

This form will be used when there is potential for change in work, scope or project amount. This is a notice; the Consultant shall not proceed with the work until a formal contract modification is executed.

Date: PIN Number:

Contract No.: Consultant:

Project Location:

Projected Total Additional Hours:

Projected Additional Cost:

Reason for Potential Change (include an attachment if adequate space is not provided):

Consultant
Name: Date:

Signature:

MaineDOT Project Manager
Name: Date:

Signature:

MAINE DEPARTMENT OF TRANSPORTATION

NON-CONSTRUCTION RFQ/RFP CHECKLIST

1. Send a notice to CPO stating that an RFQ/RFP is forthcoming.

2. RFQ/RFP to include the following:
- Summary of services required
- MaineDOT contact
- Detailed scope of work / services
- Project Deliverables
- Schedule / milestones
- Rating criteria and relative weight
- Submission deadline for proposals
- Submission deadline for questions
- Location and date of posted answers
- Format requirements and page limits with page numbers and footers
- EEO requirements and DBE goals ***(federally funded projects only)***
- Copy of Consultant General Conditions and appropriate contract
- Method of payment & salary cap

3. MaineDOT Web Posting Procedure:

- CPO will coordinate the posting of any non-construction RFQ/RFP documents onto the MaineDOT web site.
- The Project Manager must read and edit the document thoroughly prior to submittal.
- The Contract Specialist must make sure the document includes all the necessary commercial language and that it is properly formatted. Any watermarks must be removed.
- Using Microsoft Word format the document heading with a title block that clearly identifies the following:
    1. MAINE DEPARTMENT OF TRANSPORTATION
    2. The subject of the RFQ/RFP.
- Any attachments to be posted such as plans, drawings, charts, regulatory documents, etc., must be sent to CPO in PDF format.
- CPO will review content (allow 3 business days), add the appropriate logos, and make any minor format changes needed, including conversions into PDF format. Following CPO review RFQ/RFPs that fall within Division of Purchases purview, must be emailed to them for final review and approval.
- Any documents that vendors must complete electronically as part of their response must be formatted in Microsoft Word, or Excel, and sent to CPO as separate documents.
- Arrangements for newspaper advertising (required for RFQ/RFPs within 'Purchases' purview) must be made after the document is ready for posting onto the web. Newspaper advertising is always an option even when the project is not within Division of Purchases purview.

MAINE DEPARTMENT OF TRANSPORTATION
CONSULTANT PERFORMANCE EVALUATION FORM

Consultant: _____ **Evaluation Period**: _____

Address: _____ **City**: _____ **State**: _____

Project Location: _____

CT No.: _____ **CSN**: _____ **PIN**: _____

Original Contract Amt.: _____ **Actual Amount Expended**: _____

Project Description: _____

Evaluate the Consultant's performance in each of the following areas. <u>IF YOU ARE CHECKING OFF NO, EXCELLENT OR UNSATISFACTORY, A COMMENT IS MANDATORY</u>. IF ADDITIONAL SPACE IS NEEDED, PLEASE ATTACH SEPARATESHEET(S)

1. PROJECT COST & SCOPE, DELIVERABLES AND QUALITY OF PRODUCTS INCLUDING MODIFICATIONS (This section includes timeliness and schedules):

a) Was the project/contract completed in accordance with the scope of work, within anticipated cost, and was every effort made to provide a quality product? Yes☐ No☐ N/A☐

b) Did the consultant utilize the "Potential Change Notice" to communicate anticipated changes in scope? Yes☐ No☐ N/A☐

c) Did the materials used on the project/contract meet MaineDOT's specifications? Yes☐ No☐ N/A☐

d) Was the project/contract completed on schedule? Yes☐ No☐ N/A☐

Comments:

_____

_____

_____

_____

_____

Rating: Excellent☐ Satisfactory☐ Unsatisfactory☐ N/A☐

2. COMPETENCY:

a) Did the Consultant's staff have adequate knowledge and experience to satisfactorily complete the project/contract? Yes☐ No☐ N/A☐

b) Did the Consultant's staff attempt to anticipate, evaluate, and identify solutions to problems before they caused delays? Yes☐ No☐ N/A☐

c) Did the consultant's performance result in the loss of federal funds? Yes☐ No☐ N/A☐

Comments:

_____

_____

_____

_____

_____

Rating: Excellent☐ Satisfactory☐ Unsatisfactory☐ N/A☐

3. TEAM APPROACH, EFFICIENCY AND WORK ORGANIZATION:

a) Did the Consultant's staff work as a team in their approach to the project/contract? Yes☐ No☐ N/A☐

b) Was the number of personnel assigned to the project/contract sufficient to satisfactorily and efficiently complete the project/contract? Yes☐ No☐ N/A☐

c) Did the Consultant make suggestions that improved efficiency and resulted in cost savings? Yes☐ No☐ N/A ☐

d) Did the consultant complete the work in a well thought out and organized manner? Yes☐ No☐ N/A☐

Comments:

_____

_____

_____

_____

_____

Rating: Excellent☐ Satisfactory☐ Unsatisfactory☐ N/A☐

4. CONSTRUCTABILITY:

a) Were the plans and specifications developed to minimize Change Orders and misinterpretation in the field? Yes☐ No☐ N/A☐

Comments:

_____

_____

_____

_____

Rating: Excellent☐ Satisfactory☐ Unsatisfactory☐ N/A☐

5. PROGRESS REPORTS:

a) Were progress reports submitted on a monthly basis? Yes☐ No☐ N/A☐

b) Was the information provided in accordance with the Consultant General Conditions? Yes☐ No☐ N/A☐

Comments:

_____

_____

_____

_____

_____

Rating: Excellent☐ Satisfactory☐ Unsatisfactory☐ N/A☐

6. COORDINATION, COMMUNICATION AND COOPERATION:

a) Was the Consultant's staff effectively communicative, cooperative and responsive to MaineDOT staff, the public, and other agencies in accomplishing all required tasks associated with the project/contract? Yes☐ No☐ N/A☐

Comments:

_____

_____

_____

_____

_____

Rating: Excellent☐ Satisfactory☐ Unsatisfactory☐ N/A☐

7. INVOICES:

a) Did the Consultant utilize the Standard Consultant Invoice? Yes☐ No☐ N/A☐

b) Were invoices accurate, timely, and include supporting documents? Yes☐ No☐ N/A☐

c) Did the costs billed to the Department correspond to the work accomplished as described in the progress reports and the Consultant's proposal? Yes☐ No☐ N/A☐

Comments:

_____

_____

_____

_____

_____

Rating: Excellent☐ Satisfactory☐ Unsatisfactory☐ N/A☐

8. DBE REQUIREMENTS:

a) Did the consultant submit the "Certification of Final DBE Consultant Payment form" for projects/contracts that have been finaled? Yes☐ No☐ N/A☐

Comments:

_____

_____

_____

Rating: Excellent☐ Satisfactory☐ Unsatisfactory☐ N/A☐

9. HEARINGS & MEETINGS:

a) Did the Consultant participate in meetings when requested? Yes☐ No☐ N/A☐

b) When participating in meetings, did they come prepared and did they conduct themselves in a professional manner? Yes☐ No☐ N/A☐

c) Were the presentations, handouts, and/or overheads well organized and effective? Yes☐ No☐ N/A☐

*Comments*_____

_____

_____

_____

Rating: Excellent☐ Satisfactory☐ Unsatisfactory☐ N/A☐

10. ADDITIONAL COMMENTS & RECOMMENDATIONS:

Comments:

Overall Rating: Excellent☐ Satisfactory☐ Unsatisfactory☐ N/A☐

Signature of Rater (CA): _____ Date: _____

11. CONSULTANT COMMENTS: Agree☐ Disagree☐

Comments:

Signature of Consultant: _____ Date: _____

cc: Consultant Firm
Contract Administrator
Project File

ASSIGNMENT LETTER #____

CT #: _____

Consultant Contact
Consultant Firm Name
Address

Date: _____
Vendor Customer # _____
*Contract CSN#*_____
*TEDOCS#*_____

Subject: Assignment of Work

In accordance with the terms of Multi-PIN Project Contract Number _____ dated _____, you are hereby authorized to perform _____services for:
(specific type of services)

Project PIN & Specific Location: _____

Work Classification & Rate: _____

Work Ordered: ____ hrs

Estimated Amount of this Assignment: $_____

If the actual amount of the assignment is anticipated to exceed the estimated amount, the Consultant should contact the Contract Administrator to communicate the reason for the anticipated excess.

Completion Required By: _____

Assignment Deliverable: _____

This Assignment can be invoiced in conjunction with other invoices, but charges must be identified for each PIN. A copy of all applicable time and expense charges shall be attached to each invoice. Invoices are to be sent to _____, Maine Department of Transportation, 16 State House Station, Augusta, Maine 04333-0016. Any questions regarding the invoicing should be directed to _____ at 624-_____.

By:_____ _____
Printed: Name / Title: _____

By signing this Assignment Letter, I hereby certify that the PIN has been activated and authorized and that the money has been obligated for the services listed in this Letter.
***Please initial* _____.**
cc (original): Contract Procurement Office (CPO)

Revision # _____

MaineDOT CONSULTANT'S DBE/SUBCONSULTANT PROPOSED UTILIZATION FORM

Must be provided as an attachment to each New or Revised Technical Proposal

Consultant: _____ Telephone: _____ Ext _

Prepared by:_____ Fax: _____

TOTAL CONTRACT/MODIFICATION AMOUNT: $_____ DATE OF EXECUTION: _____/____/_____
(For Department Use Only)

FEDERAL PROJECT PIN # _____ PROJECT LOCATION: _____

TOTAL DBE _____ % PARTICIPATION FOR THIS SUBMISSION

WBE •	DBE •	Non DBE	Firm Name	Description of Work & Item Number	Actual $ Value
				Total ›	

Consultants must make a good faith effort to include Certified DBE firms in all aspects of the project. If no DBE firms are to be part of this project team, a detailed explanation is required.

_____

_____

_____

Equal Opportunity Use:

Form received: ___/___/___ Verified by: _____

____ Accepted ____ Rejected _____

cc: ☐ Contracts ☐ Other _____

- **WBEs are non-minority women owned firms certified by MaineDOT**
- **DBEs are male and minority owned firms certified by MaineDOT**

For a complete list of certified firms go to http://www.maine.gov/mdot

Rev. 6/06

CERTIFICATION OF FINAL DBE CONSULTANT PAYMENT

Consultant submits to: Project Manager with final Project documentation.

Complete one form for each DBE Participant

Project Number and Location: _____

Total DBE Participation $ _____ % _____

In connection with the above referenced contract we the undersigned, jointly certify and attest the following information to be true.

1. DBE Firm's Name: _____

2. Describe work performed by DBE on this project: _____

   _____

3. Total amount paid to DBE to date: $ _____

4. Total amount remaining to be paid to DBE $ _____

5. Is amount paid to DBE expected to increase when final invoice is submitted: Yes __ No ___

6. If yes, approximately how much? $ _____

Attest:

CONSULTANT	**DBE**
_____	_____
(Firm's Name)	(Firm's Name)
_____	_____
(Signature)	(Signature)
_____	_____
(Title)	(Title)
_____	_____
(Date Signed)	(Date Signed)

SAMPLE NOTICE TO PROCEED

Vendor name
Contact Name.
Mailing Address

RE: CT#, PIN #, Project Name

Dear XXXXXX,

In accordance with the terms and conditions of a Project Contract, dated December 31, 1997, pending a Contract Number from the Division of Purchases, you are hereby authorized to proceed with the Preliminary Design (Phase I) Services as outlined in your proposal, dated January 11, 2001, attached hereto.

Compensation for this Phase of the work is **$XX,XXX.XX** which is the maximum amount payable for this work and will not be exceeded without the written authorization of the Department. All work on this phase of the project will be completed on or before **Month XX, 20XX.**

All correspondence, questions and invoices pertaining to this work should be sent to the attention of MaineDOT Contact, Highway Design Team Member, Maine Department of Transportation, 16 State House Station, Augusta, ME 04333-0016, phone (207) XXX-XXXX, Fax (207) XXX-XXXX.

Sincerely;
Maine Department of Transportation
XXXXXXXXXXXXXXX
Highway Design Team Member

MaineDOT Contract Specialists Checklist

☐ Department-wide RFQ GCA Process Current Date: _____ or Previous Date: _____
(Please check to ensure that the discipline utilized in the Project Contract is included as a discipline under the GCA.)
☐ Specific RFQ Dated _____ (just for specific project)
☐ RFQ Terms (example: 1 year with 2 year renewals)
☐ Specific RFP Dated _____
☐ RFP Terms (example: 1 year with 2 year renewals)
☐ Simplified Acquisition approved by CPO under $100,000
☐ Sole Source Justification (up to $100,000) – Justification or Public Interest Finding (PIF) approved by CPO (**Note:** For contracts in excess of $100,000, or once contract exceeds $100,000, FHWA must approve contract via written concurrence for Public Interest Finding). **This must be coordinated through CPO.**

Please check off the applicable funding for this contract:

☐ Federal Funds (FHWA) ☐ Federal Funds (FTA)
☐ Federal Funds (FAA) ☐ Federal Funds (FRA)
☐ State Funds Only ☐ Other (please specify) _____

Please check off the applicable items included in this package:

☐ If project contract has federal participation, then written documentation from PM stating that all applicable PIN(s) have received federal authorization
☐ Independent Government Estimate from PM (includes PM's name and date estimate was written)
☐ If Independent Government Estimate **is not** in compliance with Consultant Manual (page 29), then written justification is required as to why the Department is commencing forward with the Consultant in execution of a contract (variance between cost proposal and Independent Government Estimate <$100,000 should not be >15% or variance between cost proposal and Independent Government Estimate >$100,000 should not be >10%)
☐ Completed draft contract template selected from CPO R:\CPO\CPO_Public\Contract Procurement Office
Appendix – Correct Method of Payment and applicable overhead rate language
☐ DBE form **approved** by Civil Rights Unit where applicable (required when federal funds are involved)
☐ If a contract is being modified, memo of approval from appropriate authority based on percentage of original contract (Modifications up to 25% may be approved by a Project Manager; up to 50% by a Program Manager; up to 100% by the Bureau Director; and any modification that exceeds 100% must be approved by the Department's Chief Engineer)
☐ Consultant's contact name, telephone number, and email address is included
☐ Checked to ensure the type of service included as part of the GCA disciplines, if applicable

Consultant's cost proposal should display the following detail:

☐ Direct Labor – Classifications with employee names; estimated hours, wage rates
☐ Direct Labor Hourly Wage Rates are within Department's Salary Cap of $50.00/hr
☐ Overhead (current audited/reviewed/compiled overhead rate)
☐ Profit or fixed fee (depends on method of payment that was negotiated)
☐ Estimated direct expenses – detail breakdown proposed costs (ex. Mileage, lodging, meals, printing, postage, etc.)
☐ **OR** If Commercial Rate is used, written justification from the Program Manager is required to document that the rate is reasonable based on local, schedule, and risk
☐ **OR** If Lump Sum or Fixed Burdened Hourly Rate payment methods are used, full pre-execution review needed.

Check CPO excel file to ensure the Department has the following documentation which is located in CPO R:\CPO\CPO_Private\CS Exl OH Payroll Ins (review of these documents are currently voluntary):

☐ Current Payroll Reports
☐ Current Overhead Reports

Current Insurance Certificates or applicable waivers (review of the documents are currently voluntary):

☐ Commercial General Liability $1,000,000 per occurrence, $2,000,000 in the aggregate
☐ MaineDOT listed as additional insured on Commercial General Liability Policy
☐ Professional Liability $500,000 per claim and annual aggregate
☐ Automobile Liability $1,000,000 per occurrence
☐ Worker's Compensation (where applicable)
☐ **OR** Waiver requested – includes written justification requesting waiver

Date Contract Specialist's Signature

Appendix E: FHWA Form 1273

FHWA-1273 Electronic version -- March 10, 1994

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

Page

I. General……..……..……..1
II. Nondiscrimination……..……..…1
III. Nonsegrated Facilities……..……...3
IV. Payment of Predetermined Minimum Wage….…..3
V. Statements and Payrolls…….……...6
VI. Record of Materials, Supplies, and Labor…..……6
VII. GeneralSubletting or Assigning the Contract……...7
VIII. Safety: Accident Prevention……7
IX. False Statements Concerning Highway Projects. ..7
X. Implementation of Clean Air Act and Federal Water Pollution Control Act…….……8
XI. Certification Regarding Debarment, Suspension…... Ineligibility, and Voluntary Exclusion……..……8
XII. Certification Regarding Use of Contract Funds for… Lobbying……9

ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

> "It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not

less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex,

national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the - job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. **General:**

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed,

without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. **Classification:**

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. **Payment of Fringe Benefits:**

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. **Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the

Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. **Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. **Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. **Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. **Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. **Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. **Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. **Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing

the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 21, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more that $10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. **Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

I. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

2. **Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

I. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

Appendix F: Frequently Asked Questions