



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

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May 2, 2005

Memorandum To: Willie Riddick, Deputy Secretary
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Len Sanderson, PE, State Highway Administrator
Steve Varnedoe, PE, Chief Engineer Operations
Deborah M. Barbour, PE, Director of PreConstruction
Bill Rosser, PE, Director of Field Operations
✓ Steven DeWitt, PE, Director of Construction
Branch Managers
Unit Heads

From: Dan DeVane, Chief Deputy Secretary 

Subject: Updated Policies and Procedures for Major Professional or
Specialized Services Contracts

Attached for your use and further distribution are the updated Policies and Procedures for Major Professional or Specialized Services Contracts. This document has been updated to reflect the delegation by the Board of Transportation to award contracts up to \$250,000 to the Director level in the Division of Highways, or comparable levels throughout the rest of the Department of Transportation.

Please ensure that these procedures are being followed in your areas of responsibility. Any questions or comments regarding this delegation of authority may be directed to Steven DeWitt, PE, Director of Construction.

Attachment

cc: Scott Blevins, PE
David Smith, PE
Kathryn Sawyer, ACEC

**POLICIES AND PROCEDURES FOR MAJOR
PROFESSIONAL OR SPECIALIZED
SERVICES CONTRACTS**

**NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION**



APPROVED *L. A. Sanderson* DATE 4-13-05
State Highway Administrator

APPROVED *J. F. Sullivan* DATE 4/13/05
Division Administrator - FHWA

APPROVED *J. Douglas Galyon* DATE 4/13/05
N.C. Board of Transportation

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1. INTRODUCTION AND PURPOSE

The North Carolina Department of Transportation attempts to maintain a staff capable of performing the majority of the normal workload for most of the functions required for the planning, design, construction and repair of our transportation systems. However, it is recognized that there are peak workloads, manpower shortages, and certain specific needs which can best be met by the use of qualified professionals outside the Department.

These policies and procedures are established as a guide for the preparation, execution and administration of contracts for professional or specialized services that exceed \$30,000. These policies and procedures are also established to ensure that a qualified firm is obtained through an equitable selection process and that the prescribed work is properly accomplished in a timely manner and at a reasonable cost.

Due to the diversity of contract types, some portions of these policies and procedures may not be fully applicable to all situations. The Director or Branch Manager shall be responsible for determining when deviations from these procedures are justified. The Director or Branch Manager shall also be responsible for documenting, in writing, any deviation from these policies and procedures and obtaining FHWA approval if needed.

These policies and procedures were developed in response to, and in accordance with, the following legal requirements.

- (a) General Statute Section 136-28.1(f),
- (b) General Statute Sections 143-64.31, 143-64.32 and 143-64.33,
- (c) 23 Code of Federal Regulations Part 172 entitled "Administration of Engineering and Design Related Service Contracts",
- (d) General Statute Chapter 55-B, and
- (e) General Statute Chapter 89-C.
- (f) T19A102E.0700.

These policies and procedures were specifically developed to provide detailed guidance for the implementation of Article T19A102E.0700, professional or specialized services, as found in the North Carolina Administrative Code.

All Department personnel involved with contracts for professional or specialized services shall comply with General Statute 133-32; the North Carolina Department of Transportation Personnel Manual, Section VI, entitled "Employee Relations"; and the Policy on Ethical

Conduct as adopted by the Board of Transportation on December 3, 1993 and modified on September 8, 2000.

2. DEFINITIONS

The following definitions are for the purpose of clarifying and describing words and terms used herein.

Contract Administrator - The individual(s) responsible for administering a contract for professional or specialized services.

Contract Amendment - A formal amendment which modifies the terms of the original contract, or any subsequent supplemental agreement(s).

Contract Initiator - The individual(s) responsible for requesting approval from the Director or Branch Manager to solicit proposals for professional or specialized services. The Contract Initiator will be a Unit Head or equivalent level of management.

Contract Negotiator - The individual(s) responsible for negotiating a contract for professional or specialized services.

Cost Per Unit of Work - A method of compensation based on an agreed cost per unit of work which may include labor, overhead, fixed fee and other non-salary direct costs. The fee is calculated per project assignment and is fixed.

Cost Plus Fixed Fee - A method of compensation based on the actual allowable and documented cost for labor, overhead, and other non-salary direct cost incurred by the firm performing the work plus a pre-established fixed fee.

Cost Proposal - A detailed submittal specifying the number of workdays required and the compensation requested for the performance of the specific scope of services as defined by the Department.

Firm - A private agency, corporation, organization, business or individual offering qualified professional or specialized services.

Fixed Fee - A dollar amount established for operating margin. The establishment of a fixed fee shall be project specific and shall take into account the size, complexity, duration and degree of risk involved in the work. If a fee higher than the standard fee is to be utilized, it must be justified by the firm and approved in writing by the Branch Manager prior to the cost proposal submittal.

Letter of Interest (L.O.I.) - An expression of interest by a firm for performing specific services as advertised by the Department.

Limited Services Agreements - An “as-needed basis” contract established for a maximum dollar amount for professional or specialized services to be performed during a specified contract period, generally not to exceed three years. As needed during the contract period, a scope of services, a schedule and total compensation are negotiated with the firm for the performance of an individual assignment of professional or specialized service, as defined by the Agreement. The scope of services, schedule and compensation for each individual assignment are documented in a Notice to Proceed. The Department may elect to utilize the maximum amount of the agreement during the contract period, or may elect not to negotiate with the firm for any services during the contract period.

Lump Sum - A fixed price including labor, overhead, non-salary direct costs and fixed fee for the performance of specific services.

Non-Salary Direct Costs - Charges, except for labor, which are customarily job or project related including, but not limited to, travel, document reproduction, telephone, etc. Computer usage costs are not allowed to be billed directly.

North Carolina Firm - A firm which maintains an office in North Carolina which is staffed with an adequate number of employees judged by the Department to be capable of performing the majority of the professional or specialized service required.

Overhead - A firm's indirect costs, stated as a percentage of direct labor, including general administrative expenses plus employee fringe benefits. Fringe benefits may include employer's portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the state, vacation, sick leave, holidays, workers' compensation and other such benefits.

Professional or Specialized Services - Services such as, but not limited to, project management, construction engineering and inspection, feasibility studies, planning and environmental studies, preliminary engineering, design engineering, design, redesign, engineering, surveying, mapping, geotechnical investigations, architectural related services, visualization, simulation studies, technical assistance and transportation services studies.

Scope of Services - All services, actions, and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.

Specific Rate(s) of Compensation - A method of compensation based on an agreed cost per hour of work including labor, overhead and fixed fee. Non-salary direct costs are charged and reimbursed separately.

Subgrantee - A local government, public authority, profit or non-profit legal entity which receives Federal-Aid funds through the North Carolina Department of Transportation.

Supportive Services - Those services provided in connection with approved on-the-job training (OJT) and disadvantaged business enterprise (DBE) programs for highway construction workers and highway contractors. These services are designed to increase the overall effectiveness of OJT and DBE programs through the performance of functions determined to be necessary in connection with such programs. Supportive services contracts are to follow these policy and procedures except advertisement is not required for proposals. Proposals shall be solicited from such qualified sources as will assure the competitive nature of the procurement with a conscientious effort to utilize the services of qualified minority or women's enterprises.

Termination Clause - A contract clause which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.

3. APPLICATION

These policies and procedures shall apply to all contracts for professional or specialized services which exceed \$30,000 and are obtained by the Department of Transportation pursuant to G.S. 136-28.1(f). Subgrantees shall also follow these policies and procedures when utilizing professional or specialized services.

When subgrantees administer Federal-aid funds (as with Bridge Replacement projects), the subgrantees shall obtain NCDOT approval, in writing, prior to contracting with a firm.

4. REGISTER OF FIRMS

Each Director or Branch Manager will be responsible for maintaining a "Register of Qualified Firms" which have expressed a desire to perform professional or specialized services in the area of responsibility of that work area.

A firm may be considered for the "Register of Firms" by furnishing the appropriate Director or Branch Manager with information describing the firm's area(s) of expertise, experience, present activities, and financial qualifications. This may be accomplished by furnishing a completed copy of the Private Engineering Firm Qualifications Package and Questionnaire (PEFQUAL 1), copies of the firm's latest brochure(s), examples of work/plans, proof of registration with the Secretary of State and the North Carolina Board of Registration for Professional Engineers and Land Surveyors, if applicable, and other similar information as requested. After reviewing the above information, the Branch Manager may enter the firm's name into the Register if, in his opinion, they have the required expertise, resources and staff to effectively perform the services for the Branch.

A firm which is not on the register may submit the required information prior to, or in conjunction with, their letter of interest for any advertised project.

In order for a firm to remain on the register, they will be required to provide an updated PEFQUAL 1 and other information as requested by the Director or Branch Manager on July 1 of each year.

Firms that do not provide this updated information annually, as requested, will be removed from the Register.

5. REQUEST FOR APPROVAL TO SOLICIT LETTERS OF INTEREST

The Contract Initiator is responsible for determining when professional or specialized services are needed. Upon determining that a need exists, the Contract Initiator shall request approval from the Director or Branch Manager to solicit Letters of Interest. The request shall be in writing and shall include the type of services and specific justification for the services to be performed by a professional or specialized firm such as (1) lack of manpower, (2) lack of expertise, or (3) other reasons. A copy of the request shall be maintained by the Director, Branch Manager or their designee.

6. SELECTION COMMITTEE

If the Director or Branch Manager agrees that justification exists, they will approve the use of a professional or specialized services firm and will appoint a Selection Committee. The Selection Committee will consist of the chairperson and at least two other members with experience in the type of services to be contracted. The Chairperson will be the Director, Branch Manager or their designee. While the chairperson is immutable, the other voting members will be chosen from a pool of designated members and shall not serve on consecutive Selection Committees unless no other designated members with expertise in types of services to be contracted are available. When Federal funds will be used as compensation for solicited services, a representative of the Federal Highway Administration shall be invited to sit with the committee as a “non-voting” member. A representative of the Fiscal Section (External Audit) and the DBE/Title VI Coordinator may also be invited to sit with the Selection Committee as “non-voting” members.

7. SOLICITATION OF LETTERS OF INTEREST

Letters of Interest (L.O.I.) will be solicited to determine the firms which are interested in and capable of performing professional or specialized services within the desired time period. Solicitation shall be by published advertisement in the North Carolina Purchase Directory. This is on the internet and is maintained by the Department of Administration. There is a line to the site on the NCDOT WebPages. Solicitation for interest may also be by direct mail to selected firms from the Register. When the Chairman elects to send the request for L.O.I. to firms selected from the Register in combination with published advertisement, the request will be mailed the day before the scheduled advertisement.

The Chairman of the Selection Committee, or their representative, shall be responsible for preparing the request for L.O.I. The request shall contain information describing the location of the project(s) (if applicable); the types and scopes of services that reflect a clear, accurate, and detailed description of the technical requirements for the services to be rendered; and shall specify the method(s) of payment. The evaluation criteria to be used in the selection process shall be specifically stated along with the respective weights of each evaluation factor.

The L.O.I. shall be submitted to the Director, Branch Manager, or their designee by the date designated in the advertisement, usually two weeks following the date of the advertisement. Any deviation as to number of pages or copies, place, date or time of delivery of these L.O.I. will result in automatic disqualification of the firm for the advertised work.

A copy of the advertisement and the L.O.I. submitted by the firm, which is ultimately selected, as well as first and second alternate, shall be maintained by the Director or Branch Manager or their designee.

8. SELECTION OF FIRM

The Selection Committee shall evaluate each firm responding to the request for L.O.I. The Selection Committee may select three (3) firms deemed most qualified from those indicating interest (except where fewer than three (3) are available).

These firms shall be listed in descending order of preference based on the Selection Committee's review and analysis of the L.O.I. The Committee may elect to interview all or some of these firms prior to establishing the order of preference. A copy of the evaluation of the firms shall be maintained by the Director, Branch Manager or their designee.

When several projects are under consideration at the same time, a firm shall be selected for each project and two (2) alternates may be selected for the entire group at the discretion of the Selection Committee.

When selecting firms for Limited Services Agreements, alternates need not be selected.

Evaluation of the qualified firms expressing interest will be based on the evaluation factors and their respective weights as specifically stated in the solicitation, and any other data pertinent to the contract under consideration such as past performance, applicable work experience, present workload, project team, staffing capabilities, Disadvantaged Business Enterprise use, etc.

Qualified in-state and out-of-state firms will be given consideration; however, qualified in-state firms shall be given priority consideration.

Disadvantaged Business Enterprise (DBE) firms shall be given consideration in the procurement of planning, engineering, design, and construction related service contracts. The

North Carolina Department of Transportation is committed to annual goals for DBE participation on federally funded projects and to annual goals for Minority Business Enterprise (MBE) and Woman's Business Enterprise (WBE) participation on State funded projects. Efforts will be made to reach these goals through the use of prime DBE firms; however, the selected firm, if not a DBE firm, may be requested to help the Department meet these goals through the use of qualified DBE subconsultants.

The results of the Selection Committee meeting shall be maintained by the Director, Branch Manager, or their designee.

After authorization to proceed with negotiations is given by the Director, Branch Manager, or their designee the Contract Negotiator shall notify the firm chosen by the Selection Committee and request a meeting to review the scope of services.

9. NEGOTIATION OF CONTRACT

(A) GENERAL

A meeting with the selected firm shall be scheduled to discuss the scope of the proposed services. The discussions will vary depending upon the firm's familiarity with the Department's methods, policies, standards, etc. For firms unfamiliar with the Department's requirements, the meeting should include review and discussion of the following:

- (a) Copies of examples of similar work;
- (b) Standards, specifications, manuals, etc. to be used;
- (c) Policies used by the Department for the type of work involved;
- (d) A contract in draft form;
- (e) Methods of payment;
- (f) Procedures for invoicing;
- (g) Standard forms to be used;
- (h) Fiscal requirements; and
- (i) Items and/or services to be provided by the Department.

A representative of the firm shall keep minutes of the scoping meeting and will submit a typewritten copy to the Contract Negotiator. The minutes shall be reviewed for completeness, accuracy, and confirmation of mutual understanding of the scope of services. The minutes shall

be approved by signature of the Contract Negotiator and an approved copy will be returned to the firm.

Once the details of the scope of services are resolved, the Contract Negotiator, or their representative, shall prepare an estimate of the cost of performing the work.

The in-house estimate will be used in evaluating the acceptability of the selected firm's cost proposal for performing the services. The in-house estimate must be completed prior to opening the cost proposal from the selected firm.

The format used for preparing the in-house estimate will vary from project to project, and work area to work area, depending on the type and scope of services required. Typically, the format will include an estimate of the workdays required, by classification, the direct labor cost, the overhead cost, the fixed fee (i.e. operating margin) and the necessary direct expenses.

The firm will prepare a cost proposal for performing the required services. The firm's cost proposal shall be supported by a breakdown of the workdays required to perform each of the services contained in the contract and the salary range for each of the classifications of personnel to be utilized. The firm's cost proposal must include supporting documentation for payroll additives, direct costs, indirect costs, fixed fee, and overhead.

Upon receipt of the firm's cost proposal, the Contract Negotiator or their designee shall review the submitted material, compare the in-house estimate with the cost proposal, and determine both the reasonableness of the proposal and the areas of substantial difference which may require further discussion and negotiation.

A prenegotiation audit shall be prepared by the External Audit Branch of the Fiscal Section to provide the necessary data to assure the firm has an acceptable accounting system, adequate and proper justification for the various rates charged to perform the work, and is aware of the Department's cost eligibility and documentation requirements. A prenegotiation audit and the resultant audit report are required for all contracts, including Limited Service Agreements, expected to exceed \$250,000 (\$30,000 if the procurement is by a subgrantee). For contracts less than \$250,000, a prenegotiation audit may be required where there is either insufficient knowledge of the firm's accounting system, previous unfavorable experience regarding the reliability of the firm's accounting system, procurement of new equipment or supplies for which cost experience is lacking, or as required by the Contract Negotiator. Subgrantees that do not have resources or expertise for performing a prenegotiation audit may contact the Department's Consultant Audit Unit of the External Audit Branch for assistance.

The use of an independent audit, an audit performed by another State/Federal agency, or an audit performed by another local governmental agency is acceptable.

Prenegotiation audits may be waived when sufficient data is available to permit reasonable comparisons with the cost proposal.

A firm's cost proposal will not be considered acceptable until the prenegotiation audit has been performed, if required, by the External Audit Branch of the Department's Fiscal Section. When the prenegotiation audit has been completed, negotiations with the consultant may begin. The negotiations shall satisfactorily conclude all points of difference and shall address and resolve any comments submitted by the External Audit Branch.

The Contract Negotiator shall use all resources available to conduct effective negotiations including, but not limited to the refined scope of services, the evaluation factors and their relative importance, the in-house cost estimate, and the prenegotiation audit and audit report.

Negotiations shall be conducted separately for mandays and for any of the dollar amounts for elements of cost, fixed fee, and overhead except for contracts involving cost per unit of work and specific rates of compensation.

When a joint venture of firms desires to enter into a contract with the Department, the joint venture will designate a representative to act as the sole authority for the purpose of negotiation.

If the firm's original cost proposal is greater than 50% above the in-house estimate and it is determined the firm understands the scope of work, the Contract Negotiator may choose to terminate the negotiations process with the selected firm. The selected firm will be provided written notice of the department's intent to cease the negotiations process. The Director or Branch Manager's approval will be obtained before negotiations are terminated. The Contract Negotiator will then begin procedures for scoping and negotiations with the firm chosen as first alternate.

The Contract Negotiator shall maintain records of negotiation to document negotiation activities and to set forth the resources considered. This record shall include the minutes of the scoping meeting, a record of the original in-house estimate and any revisions to the in-house estimate, the final in-house estimate, a record of the firm's original cost proposal and each subsequent submittal, the final cost proposal, the request for a prenegotiation audit, the audit report, and the response to the prenegotiation audit.

(B) LIMITED SERVICES AGREEMENTS

Limited Services Agreement contracts will generally be negotiated as described in paragraph 9 (A). The negotiations will primarily deal with allowable costs for the personnel to be utilized with supporting documentation for payroll additives, direct costs, indirect costs, fixed fee and overhead.

A maximum dollar amount, which may be expended by the firm during the contract period, will be determined by the Department for each selected firm.

Negotiations under Limited Service Agreements shall also be conducted for each individual assignment at the time the Unit Head determines that the use of the professional or specialized services of the contracting firm is needed.

The Contract Negotiator will notify the firm and schedule a meeting to discuss the scope of proposed services for the individual assignment. A representative of the firm shall keep minutes of the meeting which shall be submitted to the Contract Negotiator for approval by signature. A copy of the approved minutes will be returned to the firm.

The Contract Negotiator, or their representative shall prepare an in-house estimate of the cost of performing the services as described in Paragraph 9 (A). The estimate will be used in evaluating the acceptability of the firm's cost proposal. The in-house estimate must be completed prior to receiving the cost proposal from the firm.

The firm will prepare a cost proposal as described in Paragraph 9 (A) for performing the required services. Upon receipt of the firm's cost proposal, the Contract Negotiator, or their designee, shall review the submitted material, compare the in-house estimate with the cost proposal, and determine both the reasonableness of the proposal and the areas of substantial difference which may require further discussion or negotiation. The negotiations shall satisfactorily conclude all points of difference. The Contract Negotiator will review the audit report and respond in writing to the auditor. Any revisions resulting from the prenegotiation audit will be incorporated into the final cost and the firm will be given a written notice to proceed.

If the negotiations cannot be successfully concluded, negotiations will be terminated, the firm so notified in writing, and another firm under a Limited Services Agreement will be contacted.

The Contract Negotiator will maintain records of the negotiations as described in paragraph 9 (A). These records shall be kept on file for three years after completion of the contract. For design contracts, the records shall be kept for the previously mentioned period or until the project is completed, whichever occurs last.

10. EXECUTION OF CONTRACT

Upon completion of final negotiations, the firm shall execute a minimum of two (2) contract originals.

Prior to execution by the Department, the contracts shall be submitted to the Attorney General's office for review and certification as to form and execution.

The contracts shall then be placed on the agenda for the appropriate Board of Transportation meeting. The appropriate Director or Branch Manager will then present the contract to the Board of Transportation for official award.

The Board of Transportation has delegated approval authority to the appropriate Director level for contracts up to \$250,000. Details of any contracts approved through this delegated authority shall be presented to The Board of Transportation at the next available Board Meeting as “information only”.

For those contracts over the \$250,000 threshold noted above, Directors or Branch Managers have approval authority for any overruns up to 10% as with any other contract. For those contracts equal to or less than \$250,000 supplemental approval will be required by The Board of Transportation when the original contract amount overruns by 25% or more.

Upon approval by the Board of Transportation, the Director, Branch Manager, or their designee will execute the contract and return it to the Contract Negotiator. The Contract Negotiator will transmit one original contract to the firm with a written notice to proceed and shall retain one original contract in the project file. Copies of the contract will be provided to the Manager of the Program Development Branch, the Department's Fiscal Section, and to the Federal Highway Administration when National Highway System projects are involved.

11. SUBCONTRACTING

A Contracting Firm may subcontract portions of the work proposed in a contract only upon approval of the Contract Administrator.

The responsibility for procuring a subconsultant and assuring the acceptable performance of the work lies with the contracting firm. It shall be the responsibility of the Department to schedule any meeting or make requests for substantive contact with a subconsultant through the contracting firm. The contracting firm should be a part of any such meeting or contact. The contracting firm will be informed of any instruction, directive, or review of his subconsultant(s) work made by the Department. Also, the contracting firm will be responsible for submitting the proper supporting data to the Contract Administrator for all work that is proposed to be subcontracted.

12. TYPES OF CONTRACTS

The following is a description of most often used contracts:

Lump Sum - This type of contract is suitable when the amount and character of required services can be reasonably defined and clearly understood by both the Department and the contracting firm. This can be a single lump sum fee negotiated initially or a lump sum contract consisting of task orders as the scope evolves by task assignments.

Cost Plus Fixed Fee - This type of contract is suitable where the general magnitude of services is known but the scope of services or period of performance cannot be defined clearly

and the Department needs more flexibility in expediting the work without excessive amendments to the contract.

Cost Per Unit of Work - This type of contract is suitable where the magnitude of services is uncertain but the character of services is known and the cost per unit can be determined accurately.

Limited Services - This type of contract is suitable where a specialized service is needed on a substantial number of projects over a specified period of time. The character of the specialized service can be reasonably defined and understood by the Department and the contracting firm, but the number of individual projects make the selection of firms and the negotiation and execution of contracts for the service on each individual project time prohibitive.

Specific Rate(s) of Compensation - This type of contract is suitable where the magnitude of services is uncertain but the character of services is known and a cost per hour can be determined.

13. ADMINISTRATION OF CONTRACT

The administration of the contract shall be the responsibility of the Contract Administrator. These duties include the review of invoices and recommendation for audit and/or payment to Fiscal.

The Contract Administrator shall be responsible for assuring that the private firm performs such additional work as may be necessary to correct errors, omissions or negligence in the work required under the contract without undue delays and without additional cost to the Department in accordance with the contract.

14. CONTRACT AMENDMENTS

Each contract shall contain procedures for contract modifications and will define what changes are permitted by mutual agreement of the parties involved and the changes that can only be made by means of a contract amendment.

Contract amendments are required for any modification in the terms of the original contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the services; or significantly change the conditions under which the services are required to be performed.

The contract amendment shall clearly outline the changes made and determine a method of compensation. Overruns in the cost of work shall not warrant an increase in the fixed fee portion of a cost plus fixed fee contract. Significant changes to the scope of services may require adjustment of the fixed fee portion of a cost plus fixed fee contract or in the fixed fee portion of a lump sum contract.

The Contract Administrator may, without a contract amendment, authorize changes involving details of clarifications, changes in time schedules, and other changes of a minor nature which do not cause a significant change in the scope of services or a change in the amount of compensation.

No work is to be performed by the contracted firm on additional or disputed items of work until the contract amendment is executed and/or the dispute is resolved.

Contract amendments shall be processed using the same procedures as described under Items 9 and 10; however, those contract amendments which are cumulatively less than 10 percent of the original contract fee may be approved by the Director or Branch Manager and shall be presented to the Board of Transportation for informational purposes only. In addition, FHWA will not be required to formally approve contract amendments; however, they shall be provided a copy of the executed agreement when National Highway System funds are involved. Any controversial contractual or administrative issues should be coordinated with FHWA prior to settlement.

15. MONITORING AND EVALUATION OF WORK

The Contract Administrator's responsibilities shall include ensuring that the work being pursued is complete, accurate, and consistent with the terms of the contract; scheduling and attending progress meetings with the firm where necessary; being involved in decisions leading to contract modifications; being familiar with the qualifications and responsibilities of the firm's staff; visiting the project and/or firm's offices on a frequency that is commensurate with the magnitude, complexity and type of work; and assuring that costs billed are consistent with the acceptability and progress of the firm's work.

The Contract Administrator shall prepare written interim and/or final performance evaluation reports for all contracts except those awarded contracts of \$30,000 or less. This report should include, but not be limited to, an evaluation of such items as the quality of work, timely completion of the work, and conformance with established policy.

Copies of the interim and/or final performance evaluations shall be sent to the firm for its review and/or comments immediately following the appropriate milestone or completion of the contract. Any written comments submitted to the Contract Administrator by the firm shall be attached to the final evaluation report.

16. INVOICE PROCEDURES

The firm will be required to provide a written progress report with its invoice for each calendar month during which work is in progress. The progress report shall describe the work performed during the period covered by the invoice.

The Department has the right to retain a percentage of the contract fee for all partial payments earned until all work in the contract is completed. However, at the discretion of the Director, Branch Manager or their designee, the retainage may be eliminated, reduced or released on any work that has been completed and accepted by the State prior to final audit.

17. FINAL PAYMENT

When it is determined that the work is complete, the final invoice shall be approved by the Contract Administrator and forwarded to the Fiscal Section with a recommendation for payment. When a contract is terminated by the Department, the final payment shall be for that portion of work satisfactorily performed in accordance with the contract.

18. TERMINATION OF CONTRACTS

Termination of a contract may become necessary for various reasons. Some of these reasons could include unavailability of federal and/or state funding, major delays in completing the necessary environmental documentation, removal or adjustment of the project from the Transportation Improvement Program, change in the firm's project team, and poor or unacceptable performance of the firm.

All contracts shall include a provision for the termination of the contract by the Department with proper written notice to the contracted firm.

19. SPECIAL CIRCUMSTANCES

(A) EMERGENCY CONDITIONS

When an emergency occurs, these procedures, or portions thereof, may be waived by the Secretary of Transportation or the State Highway Administrator pursuant to G.S. 136-28.1(e). A professional/specialized firm may be selected, negotiations conducted, and a contract executed at the direction of the State Highway Administrator as required to address the emergency conditions.

When Federal-aid highway funds are used in the contract, the State Highway Administrator shall submit justification for emergency selection and receive approval from FHWA before proceeding.

(B) SOLE SOURCE

These procedures, or portions thereof, may be waived by the Director or Branch Manager for the sole source selection of a firm under either of the following two conditions.

1. Sole source selection may be used for work on subsequent phases of a project when the firm has satisfactorily performed work on an earlier phase.

2. Sole source selection may be used when no more than two firms known to the Department have the required expertise.

Sole source selection may only be used when it is in the public interest and economically advantageous to the Department. Selection of a sole source firm will be contingent upon satisfactory negotiation for the service.

When Federal-aid highway funds are involved, the Contract Administrator shall submit justification for sole source selection and receive approval from FHWA prior to proceeding.

20. QUARTERLY REPORT

A quarterly report on the use of private firms will be submitted to the Director and/or Branch Manager. This report shall be prepared by the appropriate unit in the appropriate format. Copies of the report shall be provided to the State Highway Administrator.