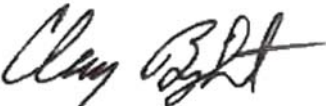
 <p style="text-align: center;">DEPARTMENTAL POLICY State of Tennessee Department of Transportation</p>	Policy Number: 301-01
	Effective Date: <p style="text-align: center;">July 15, 2020</p>
Approved By: 	Supersedes: <p style="text-align: center;">November 1, 2016</p>
SUBJECT: Standard Procurement, Management, and Administration of Engineering and Design Related Services	

RESPONSIBLE OFFICE: Chief Engineer

AUTHORITY: T.C.A. §§ 4-3-2303, 12-3-102, and 12-4-107. If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

RELATED POLICY: TDOT Policy No. 101-05, Personal and Organizational Conflicts of Interest in Procurements, Contract Administration, and Program Administration; TDOT Policy 290-01, Procurement Endorsements and Pre-Approvals.

PURPOSE: To prescribe the policy of the Tennessee Department of Transportation (“TDOT” or “Department”) applicable to the procurement, management and administration of consultant services for architectural, engineering, right-of-way and technical services for projects.

APPLICATION:

A. Engineering and Design Related Services

This policy is to include all engineering and design related services described in T.C.A. §12-4-107, 40 U.S.C. Chapter 11, 23 U.S.C. §112 (b)(2), 23 CFR Part 172, and 2 CFR 200.317.

B. Right-of-Way Acquisition Services

This policy also includes right-of-way acquisition services pursuant to T.C.A. §12-3-102. These services include contracts for appraisal, acquisition, or relocation services related to the acquisition of land entered into by the Department for the purpose of acquiring right-of-way and disposing of surplus right-of-way. Since compensation for these services is not paid pursuant to federal regulation, the terms of this policy regarding methodology of compensation are not applicable.

C. Technical Services

Technical services such as laboratory testing, core borings (does not include interpretation of the results), material sampling, etc., are also included in this policy.

DEFINITIONS:

- A. *Competitive Negotiation* means a qualifications-based selection procurement procedure complying with 40 U.S.C. §§1101–1104, commonly referred to as the Brooks Act.
- B. *Engineering and Design Related Services* means –
1. Program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or architectural related services with respect to a highway construction project or projects; and
 2. Professional services of an architectural or engineering nature, as defined by Tennessee law, including T.C.A. §12-4-107, which are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide architectural or engineering services.

Examples of services within the scope of this policy include, without limitation, project planning, environmental studies including corrective action work and abatement/remediation activities, context sensitive solution/design services, cultural resources studies, geotechnical studies, historic studies, archeological studies, socio-economic and environmental justice analyses, drainage studies, inspection services, intelligent transportation system design and development, traffic control systems design and development, roadway design services, including surveying and mapping, structural design services, materials inspection and testing, value engineering, utility relocation/coordination, and utility analysis/design services with respect to a highway construction project or projects.

- C. *Fixed fee* means a dollar amount established to cover the consultant’s profit and other business expenses not allowable or otherwise included as a direct or indirect cost.
- D. *Management support role* means acting on the Department’s behalf, subject to review and oversight by TDOT officials, to perform management services such as a program or project administration role typically performed by TDOT employees. Examples of 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 the Department or may involve managing or providing oversight of a project, series of projects, or the work of other consultants and contractors on behalf of the Department.

Use of consultants or sub-consultants in a management support role 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 Department staff is not a viable option. The use of consultants in management support roles shall comply with TDOT Policy 101-05 Personal and Organizational Conflicts of Interest in Procurements, Contract Administration and Program Administration.

- E. *One-year applicable accounting period* means the annual accounting period for which financial statements are regularly prepared by the consultant.
- F. *Scope of work* means all services, work activities, and actions required of the consultant by the obligations of the contract.
- G. *Technical Services* means specialized testing or other paraprofessional services that provide test results, data, or information in support of engineering services, including such services as laboratory testing, core borings, and material sampling.

PROCUREMENT METHODS:

- A. *Competitive Negotiation* - Competitive negotiation is the preferred method of procurement for engineering related services. These contracts use qualifications-based selection procedures in the manner of a contract for architectural and engineering services under the “Brooks Act” provisions contained in Title 40 U.S.C. Chapter 11. The proposal solicitation process is by public announcement and provides qualified in-state and out-of-state consultants a fair opportunity to be considered for award of the contract. Price is not used as a factor in the evaluation and selection phases.
- B. *Small Purchases* - Small purchase procedures are relatively simple and informal procurement methods where an adequate number of qualified sources are reviewed and the total contract costs do not exceed the simplified acquisition threshold as defined in 48 CFR §2.101 (currently \$250,000) . Competitive negotiation in the manner of a “Brooks Act” qualifications-based selection procedure is not required.
- C. *Noncompetitive Negotiation* – Noncompetitive negotiation is used to procure engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procedures. Circumstances which may justify a noncompetitive negotiation include when 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.
- D. *Technical Service Procurement Procedure* – A technical service procurement procedure is used for the procurement of services as described in this policy at “APPLICATION”, Item C, Technical Services. Price quotations are obtained from qualified firms for the specified work either by public announcement or by requests. Awards shall be made to the responsible firm whose proposal is most advantageous to the Department in consideration of price, evaluation criteria and other relevant factors identified in “POLICY”, Section IV. C.

TYPES OF CONTRACTS:

- A. *Project Specific Contract* – A project specific contract provides for all the work associated with a specific project or projects that is to be performed by the consultant firm and requires

a detailed scope of services. These contracts may provide for all work to be placed under contract at the same time depending on availability of funds. A project specific contract is the traditional type of consultant contract between the Department and a consultant for the performance of a fixed scope of work related to a specific project or projects.

- B. *Multiphase Contract* – A multiphase contract is similar to a project-specific contract except that the work is divided into phases such as survey, environmental or design. The consultant contract is based on a general scope of work with a maximum contract ceiling. Individual phases are negotiated and the work authorized while future phases may wait until later in the contract period before completing negotiation and authorization. Multiphase contracts are helpful for complex projects where the scope of a future phase is not well defined. Multiphase contracts may be terminated at the end of a phase. A multiphase contract incorporates the work order concept for a specific project.
- C. *On-Call Contract* – An on-call contract covers basic contractual requirements and a general scope of work that may be performed for a number of projects without defining the scope of work for a specific project. Generally, these contracts run for a period of two to five years. Work orders are generated on an as-needed basis to describe the scope of work required for specific projects. Examples of services that may be needed for a number of projects under an on-call contract include, without limitation, environmental services, transportation planning reports, surveying, mapping, right-of-way appraisal, acquisition and relocation services, utility relocation/coordination, utility analysis/design, signal design, roadway design, bridge inspection and repair, and construction engineering and inspection.
- D. *General Engineering Related Contract* – General engineering related contracts are for engineering and design related services related to transportation planning, design, or program management for use on multiple projects. Examples include the development of design standards and technical manuals, and the development of comprehensive transportation program management manuals. These services may be performed on a project specific or on-call basis.

POLICY:

I. DETERMINATION OF NEED FOR CONSULTANT

- A. The considerations used to determine a business need to employ consultant services are as follows:
 - 1. The magnitude of the work involved for the project as compared to available Department resources.
 - 2. The complexity of the work involved as compared to expertise available within TDOT.
 - 3. The timeframe in which the work must be accomplished and the ability of TDOT to do the work on schedule.

- B. Whenever a Division head determines consultant services are needed, the Division head must submit a written request to its Bureau Chief for approval to procure the consultant services. Upon obtaining approval from the applicable Bureau Chief, the process to select the consultant may be initiated.

II. CONSULTANT EVALUATION COMMITTEE

- A. Establishment of a Consultant Evaluation Committee: The Commissioner shall designate the members of the Consultant Evaluation Committee (CEC), which shall at a minimum be composed of the Chief Engineer, Chief of Environment and Planning, Assistant Chief Engineer of Design, Assistant Chief Engineer of Operations, and the Division Director requiring the service. The Commissioner must approve any change in membership of the CEC prior to advertisement and approve any substitutions. The CEC membership may vary depending on the type of service being procured.
- B. Role: The CEC shall have the responsibility of submitting to the Commissioner a recommended list of at least three of the most highly qualified firms if one firm is to be selected. If more than one firm is to be selected from a single solicitation, the CEC's recommended list of the most highly qualified firms shall include at least two more firms than the number of selections to be made.
- C. Record of Proceedings: The CEC shall designate either a member or staff person to create and maintain a record of proceedings before the CEC, which shall include information submitted to the CEC for consideration, summary minutes of meetings, findings and/or recommendations to the Commissioner.
- D. Advisory Members: The Director of the Civil Rights Office, the General Counsel, and other TDOT officials as the Commissioner may direct shall be notified of and invited to attend each meeting of the CEC. The function of such representatives shall be advisory only.

III. PREQUALIFICATION OF CONSULTANTS

- A. All firms, including any public or private universities, seeking work with the Department under this policy shall have a current prequalification status.
- B. The Department shall post on its internet website at least annually a solicitation advising that consultant services may be sought and requesting that firms interested in performing work to secure prequalification status with the Department. The prequalification procedure shall be available on the TDOT website. The completed prequalification form shall be submitted to the Director of the Design Division.
- C. Firms and their employees must comply with the applicable state licensing law requirements including but not limited to Tennessee Code Annotated Title 62, Chapter 2 (Architects, Engineers, and Landscape Architects), Title 62, Chapter 39 (Real Estate Appraisers), Title 62, Chapter 18 (Land Surveyors), and Title 62, Chapter 36 (Geologists).

- D. Principals and/or responsible professionals of the firm's staff seeking prequalification must be experienced in the disciplines for which prequalification status is sought.
- E. Firms seeking prequalification for engineering and design related services must be of a sound financial standing and have the financial ability to work in the disciplines for which prequalification is sought.
- F. Firms seeking prequalification for engineering and design related services may request either an "Unlimited" or "Limited" prequalification status with the Department as described below:
 - 1. Unlimited Prequalification: This level of prequalification allows consulting firms to compete for any projects for which they are professionally and financially pre-qualified with the Department. Continued prequalification at this level requires submittal of the prequalification form every three years. Additionally, the firm must submit the following:
 - a) A self-certified, indirect cost rate prepared in accordance with AASHTO guidelines, or a copy of the last cognizant agency audit performed. The indirect cost rate schedule should be submitted annually.
 - b) Most current balance sheet.

Prior to contracting, the firm seeking prequalification for engineering and design related services must have an indirect cost rate and a job costing system approved by the Department. TDOT may require the firm to provide an audited Schedule of Indirect Cost and Rate Calculation prepared by an independent Certified Public Accountant (CPA) which will then be reviewed by TDOT external auditors, or TDOT may choose to prepare the audited schedule. In either case, the firm must provide a full fiscal year of financial information.

- 2. Limited Prequalification: This level of prequalification allows firms seeking prequalification for engineering and design related services to:
 - a) Compete for projects with fees estimated to be less than the "Small Purchase Maximum Contract Value" per contract (see Section VI), or
 - b) Work as a sub-consultant or as contract labor with fees estimated to be less than the "Small Purchase Maximum Contract Value" per contract.

Firms seeking a limited prequalification shall submit a self-certified, indirect cost rate that has been prepared in accordance with AASHTO guidelines, or a copy of the last cognizant agency audit performed. The indirect cost rate schedule should be submitted annually.

In lieu of submitting an indirect cost rate prepared in accordance with American Association of State Highway and Transportation Officials (AASHTO) Guidelines,

firms with a limited prequalification may request approval for a limited indirect cost rate of 125% of the consultant's direct labor cost.

A significant change in scope for which the proposed costs would exceed the "Small Purchase Maximum Contract Value" will require a new contract or unlimited prequalification status. Continued prequalification at this level requires submittal of the prequalification form every three years.

- G. Professional prequalification for engineering and design related services will be based upon employees on the payroll of the consulting firm whether fulltime or part time. Since contract employees are not on the payroll of the firm, the firm cannot be considered pre-qualified for any discipline exclusively done by contract labor, just as a firm cannot be pre-qualified for a discipline based solely upon a sub-consultant's expertise. Any subsidiary of a company not included in the audited indirect cost schedule must be pre-qualified separately. Any employees borrowed from this subsidiary by the parent company or another subsidiary of the same parent company must be treated as a sub-consultant.
- H. The Department will offer assistance for firms needing guidance in record keeping requirements regarding Department contracts. Specific items will be covered to assist Disadvantaged Business Enterprises (DBEs) and other small businesses in planning to move out of the "limited" and into the "unlimited" prequalification status.
- I. The Department shall notify all applicants of the results of the review of their application for prequalification. Denied applicants may appeal to the Commissioner whose decision shall be final.
- J. A firm's prequalification shall begin on the date approved by the Department and shall have a term of three years, with a three-month grace period, at which time the firm must re-apply for prequalification. No notice of prequalification expiration will be given by TDOT.
- K. Expiration or termination of a consultant's prequalification status may be cause for TDOT to terminate any contract with a consultant.
- L. A name change, merger, buy out or other similar change in status shall cause a termination of the existing prequalification and necessitate the submittal of a new prequalification form.
- M. A firm's prequalification status shall be terminated if the firm is included on the Federal Excluded Parties List or if it has been suspended or debarred by TDOT or any other agency of the State of Tennessee.
- N. Firms may update their prequalification status at any time during their three year approval period. Annual updates are encouraged.

IV. COMPETITIVE NEGOTIATION PROCUREMENT PROCEDURE

A. Confidentiality of Data and Records Retention

1. To the extent allowed by applicable State law, all documents relating to the evaluation and selection of consultants, and negotiations with selected consultants, shall remain confidential until selection is complete and a contract is awarded.
2. Audit information shall not be provided to 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 TDOT or TDOT's grantees acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. § 112 and 23 CFR Part 172 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.
3. In accordance with 23 CFR 172.7 and the provisions of 2 CFR 200.333, financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following:
 - a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
 - b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
 - c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.
 - d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity

B. Solicitation

TDOT shall seek Letters of Interest from pre-qualified firms by public announcement through its internet website. Solicitations shall be reviewed and approved by the TDOT Legal Office before posting on the internet website. Any Solicitation submitted to the Legal Office for approval shall be copied to the Director of the Procurement and Contracts Division.

1. For **all** contract types, the solicitation shall address:
 - a) Contact information at TDOT for project specific questions;
 - b) The specific location where the Letters of Interest should be mailed or e-mailed;
 - c) The deadline for submittals of Letter of Interest (not less than 14 days from the date of the solicitation);
 - d) A statement that all firms must be pre-qualified or have a completed prequalification form filed with the Department by the deadline for the Letters of Interest; and
 - e) Disadvantaged Business Enterprise (DBE) and Small Business encouragements.

2. For **Project Specific or Multiphase Contracts**, the solicitation shall provide at a minimum, the following:
 - a) A detailed scope of work, including:
 - i. The purpose and description of the project;
 - ii. The services to be performed;
 - iii. The deliverables to be provided;
 - iv. The estimated schedule for performance of the work; and
 - b) The technical requirements of consultants required including the applicable standards, specifications, and policies;
 - c) The qualifications of consultants needed for the services to be rendered;
 - d) Any requirements for interviews or other types of discussions that may be conducted with the most highly qualified firms in Phase II of the selection of process;
 - e) The evaluation criteria to be used in Phases I and II of the selection process, including the relative weight of importance of the factors to be considered in evaluating the interested firms that submit proposals in Phase II of the selection process;
 - f) Any approved non-qualifications based evaluation criteria to be considered in Phase II of the evaluation process;
 - g) The contract type and method of payment; and
 - h) Any special provisions or contract requirements associated with the solicited services.

3. For **On-Call** Contracts, the solicitation and contract provisions shall address the following:
 - a) The maximum length of contract period, including the number and period of any allowable contract extensions, which shall not exceed five (5) years;
 - b) The maximum total contract dollar amount that may be awarded under a contract;
 - c) A statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services; and
 - d) If multiple consultants for engineering and design related contracts are to be selected and multiple on-call contracts are to be awarded through a single solicitation for specific services:
 - i. Identify the number of consultants that may be selected or contracts that may be awarded from the solicitation; and
 - ii. Specify the procedures the contracting agency will use in competing and awarding task or work orders among 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 contracts for services procured with competitive negotiation procedures. Each specific task or work order shall be awarded to the selected, qualified consultants:
 - a. Through an additional qualifications-based selection procedure, which may include, but does not require, a formal RFP; or
 - b. On a regional basis whereby, the State is divided into regions and consultants are selected to provide on-call services for an assigned region(s) identified within the solicitation.

C. Consultant Evaluation Criteria

1. The qualifications-based selection criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance.
 - a) For Phase I evaluation, the qualifications-based evaluation criteria may include, but are not limited to, the following:
 - i. Work experience in the required disciplines with TDOT and/or other clients;
 - ii. Specialized expertise;
 - iii. Professional licensure;

- iv. Staff capabilities of prime consultant
 - v. Size of project and limited or unlimited prequalification status; and,
- b) For firms submitting proposals during Phase II evaluation, the following additional evaluation criteria may also be included:
- i. Workload capacity; including amount of work under contract with TDOT, if applicable
 - ii. Past performance on TDOT Projects;
 - iii. Technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures);
 - iv. Other factors including interviews and demonstrations, as approved by the applicable Bureau Chief; and
 - v. Any approved non-qualifications based evaluation criteria, as provided in paragraph C.2. below.
2. If approved by the Bureau Chief, the following non-qualifications based criteria are permitted, provided the combined total of these factors does not exceed a nominal value of ten percent (10%) of the total evaluation criteria:
- a) For contracts with Federal-aid funding, participation of qualified and certified Disadvantaged Business Enterprise (DBE) subconsultants; and/or
 - b) For any contracts a local presence may be used as a nominal evaluation factor where appropriate; provided, that this factor shall not be based on political or jurisdictional boundaries, and provided further that this factor may be applied only on a project-by-project basis for contracts where:
 - i. A need has been established for a consultant to provide a local presence;
 - ii. A local presence will add value to the quality and efficiency of the project; and
 - iii. Application of this factor leaves an appropriate number of qualified consultants, given the nature and size of the project.
 - iv. 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. For contracts or projects with Federal-aid funding, the Commissioner may set DBE goals, in which case the selected consultant must either meet the goal or show good faith efforts to meet the goal, consistent with the DBE program regulations at 49 CFR Part 26, to be considered for selection.

D. Evaluation, Ranking and Selection

Ordinarily, the evaluation and selection process will be conducted in three phases as provided below. However, if the procurement of services is time sensitive or other special circumstances apply, the Division advertising for engineering related services may, with the Bureau Chief's approval, eliminate Phase I of the process and solicit proposals for evaluation as provided in Phase II.

1. Phase I Evaluation

- a) Using the evaluation criteria identified in the public solicitation, the Division advertising for engineering related services shall evaluate current statements of qualification and performance data from those firms submitting Letters of Interest.
- b) Unless specifically stated otherwise in the solicitation, the evaluation of a firm's qualification during Phase I evaluation shall be limited to the prime consulting firm only.
- c) The Division Director shall present the evaluations to the CEC for review. The CEC shall choose at least three of the most highly qualified consultants who would make viable candidates and who will be invited to submit a proposal.
- d) The Department shall issue a list of firms chosen to submit proposals and notify the firms that were not selected. The firms selected in Phase I shall be requested to submit a proposal for the work. Proposal format requirements, delivery address and deadlines shall be included in the notification sent to the selected firms. Electronic delivery and receipt of the proposal may be permitted.
 - i. Notwithstanding the forgoing provisions in this Item D.1.d), applicants for appraisal services will be required to submit a Letter of Interest; however, they will not be required to submit a proposal.

2. Phase II Evaluation

- a) Project Specific, Multiphase and General Engineering Related Services Contracts
 - i. The Division advertising for engineering related services shall evaluate the proposals of firms selected in Phase I using the Phase II evaluation criteria identified in the public solicitation. If Phase I has been eliminated, all firms submitting proposals in response to the solicitation shall be evaluated using the Phase II evaluation criteria.
 - ii. A consultant firm that has been short-listed for a project and asked to submit a proposal shall specifically identify any sub-consultant(s) required to complete the project team. Identified sub-consultants will be evaluated using the criteria identified in the public solicitation. All sub-consultants identified on the

submittal shall be pre-qualified by TDOT to perform the required tasks or have an application pending prior to submittal of the proposal. It shall be the responsibility of the prime consultant to include a signed statement from each sub-consultant on their own letterhead confirming that they have the staff available and agree to provide the necessary services for the specific item/project listed in the prime consultant's proposal (Form DT-0330 Part 2). Failure to meet these requirements will void the submittal.

- iii. Separate formal interviews, if approved as an evaluation criterion, shall be structured and conducted with a specified time limit. Competing consultants may be asked to bring additional information or examples of their work to the interviews if such information will contribute to the evaluation process. Specific questions may be asked of each consultant to clarify qualifications, written proposals, or oral presentations.
- iv. The Division Director shall present the Division's evaluation of proposals received from firms selected in Phase I to the CEC for review. The CEC shall rank the firms based on the established and published criteria. From that ranking of firms, the CEC shall submit to the Commissioner a list of the firms deemed most highly qualified to provide the services required. The list shall contain no fewer than three firms, presented in alphabetic order. In the event that more than one firm will be selected for a contract, the CEC shall submit a list that contains at least two more firms than the number of contracts to be awarded. In instances where only two qualified consultants respond with proposals, or where fewer than the required number of firms submit proposals in instances where multiple firms will be selected for a contract, the Department may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition.

b) On-call Contract Consultant Evaluation

- i. The evaluation process for on-call contracts is generally the same process described for project specific, multiphase and general engineering related services contracts. The CEC shall evaluate the firms selected in Phase I and presented by the Division Director using the evaluation criteria and shall recommend to the Commissioner a list of no fewer than three of the firms deemed most qualified to provide the services required. If more than one firm is to be selected for a contract, the CEC should recommend to the Commissioner at least two more firms than the number of firms to be selected, provided that a sufficient number of qualified firms are available. In instances where only two qualified consultants respond with proposals, or where fewer than the required number of firms submit proposals in instances where multiple firms will be selected for a contract, the Department may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition.

- ii. In the case of on-call contracts for appraisal services, the Right-of-Way Division will evaluate the individual appraisers based on their prequalification applications using the evaluation criteria identified in the public solicitation and submit its evaluations to the CEC for review. The CEC shall recommend to the Commissioner a list of no fewer than three appraisers deemed most qualified to provide the services required.

3. Phase III Evaluation, Ranking, Selection and Notification

- a) From the list of firms determined by the CEC to be the most highly qualified firms to perform the solicited services, the Commissioner shall rank the firms in order of preference.
- b) Notification must be provided to responding consultants of the final ranking of the three most highly qualified consultants.
- c) The Department will negotiate with the three consultant firm(s) deemed to be most highly qualified in rank order.

E. Negotiation of Contract

The following shall apply to all negotiations of scope and cost for contracts, work orders, and supplemental agreements.

- 1. Determination of Contract Amount: Prior to receipt or review of the consultant's cost proposal, the Division seeking the use of consultant services will prepare/refine an independent estimate of the work to be performed with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate, which shall serve as the basis for negotiation, will be based on the following:
 - a) Relative difficulty of the proposed assignment or project, size of project, details required, and the period of performance; and,
 - b) A comparison with the experience record for similar work performed both by TDOT personnel and previously negotiated consultant contracts.
- 2. Scope of Work Meeting with Selected Firm: The Director (or the Director's designee) of the TDOT functional area responsible for the services to be acquired will negotiate with the selected firm. Said Director may arrange a conference with the prospective consultant where the parties must come to a mutual understanding of the scope of work and all technical and administrative requirements of the proposed undertaking. In lieu of a conference, this may be done by phone or correspondence. Participants at these conferences may include representatives from the offices of External Audit, Civil Rights, and Consultant Contracts. A representative of the Chief of Administration shall be involved as deemed appropriate. The prospective consulting firm may be represented

as it wishes; however, a project manager and accounting representative are recommended.

3. Cost Proposal: The prospective consulting firm will be invited to submit a cost proposal for the project. This cost proposal is to be broken down by the various items of work as requested and supported by estimated labor requirements. Instructions shall be given regarding the method of compensation and the documentation needed to justify the proposed compensation.

In evaluating the consultant's cost proposal(s), the Director shall judge the reasonableness of the proposed compensation and anticipated labor and equipment requirements by the following and other appropriate considerations:

- a) The proposed compensation should be comparable to that of other projects of similar nature and complexity, including as applicable salaries and man-hours to accomplish the work, and allocation of labor within the man-hour estimates.
 - b) The Director, as deemed appropriate, will assess the fairness of the proposed fixed fee based on the scope, complexity, contract duration, amount of subcontracting, and professional nature of the services as well as the size and type of contract. The establishment of fixed fee shall be contract or task order specific. Fixed fee is calculated using the following formula: $\text{Fixed fee} = (\text{Direct salary} + \text{Overhead based on the most recently approved field and/or office indirect cost rate}) \times (\text{fixed fee rate as determined by Attachment D})$. Unless a higher fixed fee rate is expressly approved by the Commissioner, the maximum allowable fixed fee rate is 15% (See Attachment D for fixed fee rate determination).
 - c) The proposed compensation shall be studied for reasonableness and to assure sufficient compensation to cover the professional quality of the work items desired.
4. Contract Negotiations: If the consultant's first cost proposal is rejected by TDOT, the negotiating parties shall hold a second conference to discuss those points of the cost proposal which are considered unsatisfactory. The consultant shall submit a second cost proposal based upon this second conference. If the Department rejects the consultant's second cost proposal, negotiations shall be formally terminated and commence with the second most qualified firm. If like negotiations are unsuccessful with the second most qualified firm, TDOT will undertake negotiations with the third most qualified firm and any others on the selected list in sequential order. With the concurrence of the Commissioner, the Department may, at any time, in lieu of continuing negotiations, elect to redefine the scope of the project and resolicit proposals pursuant to "POLICY", Section IV, B, "Solicitation".
 5. The Director of each applicable Division shall maintain a record of the negotiations and all required approvals, and the Director shall retain these records for 36 months following final payment in accordance with Item A.3. of this section and as provided in 23 CFR § 172.7 and 2 CFR § 200.333.

F. Contract Development and Execution

1. In the event the parties reach agreement, the Director shall submit a written report to the appropriate Chief containing a recommendation regarding all cost related items and an explanation how (a) through (c) in Item E.3. have been satisfied, including specific information on comparable contracts. This report shall also be provided to the Chief of Administration.
2. The contract will include a clause requiring the consultant to perform such additional work as may be necessary to correct errors in the work required under the contract without undue delays and without additional cost to TDOT.
3. The contract shall contain a clause whereby the consultant must report at least quarterly all amounts paid to any DBE sub-consultants and to any Minority Business Enterprise (MBE) and/or Woman Owned Business Enterprise (WBE) sub-consultants. The Division Director shall likewise report DBE, MBE and/or WBE participation quarterly to the Office of Civil Rights.
4. Method of Payment: The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. The methods of payment shall be: Lump sum, cost plus fixed fee, cost per unit of work, or specific rates of compensation. A single contract may contain different payment methods as appropriate for compensation of different elements of work.
5. Pre-award review of contracts: All engineering and specialized consultant contracts over \$250,000 under this policy shall be reviewed by the External Audit Section of the Division of Finance. In addition to the proposed contract, the External Audit Section shall also receive the final cost proposal, including any items that have been negotiated. The proposed compensation shall be subject to a pre-award audit evaluation. (This requirement is not applicable to services described in "APPLICATION" Section, Item B, Right-of-Way Acquisition Services.)
6. Prior to contract execution, the appropriate Chief (either Engineering or Planning and Environment) must approve the negotiated items and the Chief of Administration must indicate whether the cost items are fair and reasonable.
7. Suspension and Debarment: Prior to contract execution, the Department shall verify suspension and debarment actions and eligibility status of consultants and sub-consultants in accordance with 2 CFR Part 1200 and 2 CFR Part 180.
8. Consultants Acting in a Management Support Role: If a consultant is to be used in a management support role to perform approval actions that TDOT has assumed from FHWA under the current Stewardship and Oversight Agreement, and federal-aid funds will participate in the contract, the Department shall receive approval from FHWA before executing the contract and utilizing the consultant to act in a management support role. Approvals for consultants to act in a management support roles for the Department will require satisfactory controls in place for the management of the federal-aid highway

program actions assumed by the Department as indicated by the current TDOT and FHWA Stewardship and Oversight Agreement.

9. Prior to approval of the contract, the Department must have on file a contract specific Certificate of Insurance for the consultant. It shall confirm that the firm has professional liability insurance for errors and omissions in the amount of \$1,000,000, as a minimum, and the policy shall be maintained for the life of the contract. Consultants responsible for the disbursement of TDOT funds shall be required to provide evidence of a Fidelity Bond in the amount of \$250,000 maintained for the life of the contract.

G. Contract Administration

1. Once a contract has been awarded, the consultant may negotiate directly with sub-consultants. A change in sub-consultants must be approved by TDOT. A written request must be submitted to the TDOT manager, of the functional area involved, to initiate the change. This request must include an explanation of the need to change sub-consultants and the impact on the project schedule and financial elements of the contract. The substitute sub-consultant must be pre-qualified at the appropriate level (unlimited or limited) by TDOT to perform the required tasks. After consideration of all factors of the request, TDOT will respond to the request in writing.
2. After the contract has been approved, a work order issued, and productive work on the consultant's assignment has begun, representatives of the Departmental division requiring the consultant's services shall periodically review and document the consultant's progress. Said monitoring reviews shall be directed toward assurance that the consultant's assignment is being performed as specified in the agreement, that an adequate staff has been assigned to the work, that project development is commensurate with project billings, and that work does not deviate from the contracted assignment.

Should conditions warrant, these reviews may consist only of an appropriate exchange of correspondence. These reviews shall determine, among other matters, if any changes or supplemental agreements are required for the completion of the consultant's work.

3. If multiple engineering and design related on-call contracts are awarded through a single solicitation for specific services, work orders shall not be competed and awarded among the selected consultants on the basis of costs for services procured. Each specific work order shall be awarded to the selected, qualified consultants:
 - a) Through an additional qualifications-based selection procedure, which may include, but does not require, a formal proposal; or
 - b) On a regional basis whereby, consultants are selected to provide on-call services for an assigned Region(s) identified within the solicitation.
4. A full-time employee of TDOT shall be responsible for each contract or project. Annually and/or at project close, the assigned employee will prepare a performance evaluation report covering such items as timely completion of work, conformance with

contract cost, quality of work, and whether the consultant performed the work efficiently. A copy of this report will be furnished to the firm for its review and comments.

H. Contract Modifications

1. A contract modification, in the form of an executed supplemental agreement or amendment, is required whenever there is a change in the terms of the existing contract, including a change in the cost of the contract; a significant change in the character, scope, complexity, or duration of the work; or a significant change in the conditions under which the work is required to be performed. Contract modifications shall be negotiated using the same procedures as the negotiation of the original contract. The executed supplemental agreement or amendment shall clearly define and document the changes made in the contract and establish the method of payment for any adjustment in contract costs.
2. No contract may be supplemented to add work outside the scope of the project or the general scope of services the consultant was initially evaluated to perform. For example, a roadway design contract may be supplemented to add work related to additional phases of project design (e.g. preliminary engineering with related technical services such as survey or geotechnical work, preparation of right-of-way plans, or preparation of final construction plans); however, a project specific or multiphase contract for roadway design shall not be supplemented to add a new project or to add a different type of service, such as construction engineering and inspection, beyond the type of services solicited in the original solicitation. Similarly, an on-call contract shall not be supplemented to add a different type of service, nor shall an on-call contract for a specific term be supplemented to extend the term or to increase the maximum contract amount identified in the original solicitation.
3. Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee or lump sum reimbursed contracts.

I. Contract Accounting Policies

1. Indirect Cost Rate – Basic Agreement or Contract
 - a) **Federally funded projects:** The indirect cost rate, effective for contracts advertised on or after December 1, 2005, shall be the actual rate as determined in compliance with Federal Acquisition Regulation Standards and approved by the cognizant agency as defined by 23 CFR § 172.3. The cognizant agency is the home state transportation department, a federal agency, or TDOT in the absence of any of the other. A Certified Public Accountant (CPA) may perform the audit, but the audit work papers may be reviewed by the governmental agency. Further;

- i. The indirect cost rate for firms with multiple offices shall be a combined rate for all offices.
 - ii. The approved rate shall be utilized for the purposes of contract estimation, negotiation, administration, reporting, and contract payment for a twelve month period beginning the seventh month after the firm's Fiscal Year End.
 - iii. If the indirect cost rate expires during the contract period an extension may be considered on a case-by-case basis in accordance with 23 CFR § 172.11(b)(1)(vi). In any event, no new contracts will be considered for any firm without an approved indirect cost rate.
- b) **State funded projects:** Pursuant to T.C.A. § 54-1-130, the indirect cost rate cannot exceed a maximum of 145%.
2. **Travel:** Travel and subsistence charges shall be in conformance with the State of Tennessee Comprehensive Travel regulations. Air travel shall be pre-approved by the functional area manager. Actual expenses, not to exceed the commercial rate, for the use of company owned airplanes are allowable as a direct charge.
3. **Fixed Fee Payment:**
 - a. For cost plus fixed fee contracts, payments of fixed fee shall be based on the actual labor costs not to exceed the total approved fixed fee.
 - b. The fixed fee for each progress billing shall be determined using the consultant's actual direct labor for the specific billing period plus the overhead based on the most recently approved field and/or office indirect cost rate multiplied by the approved fixed fee rate.
 - c. With the exception of Construction Engineering and Inspection Contracts, the firm may invoice for the balance of any unbilled fixed fee upon successful completion of the contract.
4. **Standard Invoice:** All invoices for contracts under this policy shall use a standard invoice (see Attachment A).
5. **Contract and Project Closing:** The functional area manager is responsible for keeping up with contract costs and knowing when a contract is complete. The functional area manager is also responsible for closing the contract in a timely manner. By letter to the consultant, the functional area manager shall affirm that the contract or work order has been satisfactorily completed. A copy of the completion notice shall be sent to the Division of Finance and the Consultant Contracts Office (see Attachment B for an example). In the event that additional services are required within the original scope of the project, the contract or work order may be re-opened. All terms and conditions of the contract shall remain the same.
6. **Retainage** shall not be required for new Engineering and Technical Services Contracts.

7. Audit Requirements:

- a) Pre-award audits consist of a review of a proposed indirect cost rate based upon historical data, review of the consultant's job cost accounting system, and review of project man-day or unit price proposals.
- b) Awarded contracts are subject to interim and final audits. The audits consist of determining the accuracy of invoice charges by reviewing time sheets, payroll registers, travel documents, etc. Charges that cannot be supported will be billed back to the consultant. Firms will be selected for contract compliance audits using a risk analysis utilizing primarily the firm's total contract exposure with the department and the time elapsed since the last compliance audit.
- c) Annual approval of the indirect cost rate for non-fixed indirect cost rate contracts will be required and adjustments to the invoiced billing rate may be necessary based on audit results. The determination of whether to perform a desk review or full field audit of the indirect cost schedule is made utilizing a risk analysis created in accordance with the guidelines proscribed in the AASHTO Uniform Audit & Accounting Guide.

8. Computer Aided Drafting and Design (CADD) Expenditures: All CADD equipment and software expenditures are to be treated as part of indirect cost. CADD expense will not be allowed as a direct expenditure based on an allocation rate.

9. Facilities Capital Cost of Money (FCCM) Rate: FCCM referenced in 48 CFR § 31.205-10 shall be allowed as part of indirect cost and applied to direct labor.

10. Direct Costs

- a) Include job related expenses that are required directly in the performance of project services such as travel, subsistence, long distance telephone, reproduction, printing, etc. These should be itemized as to quantities and unit costs in arriving at the total cost for the expense.
- b) The proposed direct cost shall not exceed the Department's maximum allowable rate when a rate for such cost is specified. All direct costs must show supporting documentation for auditing purposes. Documentation for proposed rates should show how they were developed including historical in-house cost data or names and phone numbers of vendors that supplied price quotes along with receipts, invoices, etc., if available.
- c) Electronic equipment, such as personal computers, cameras, and cellular phones, shall be included in the consultant's indirect cost.
- d) The cost of the use of the consultant's vehicle(s) to the Department's project shall be paid for according to Attachment C, Schedule of Vehicle Reimbursements.

11. Collection of Funds Due as Result of Contract Audit: Once an audit is completed and the consultant is found to owe the Department, the External Auditor will notify in writing the consultant, the appropriate Division, and the Finance Director. The Finance Director will contact the consultant in writing about the indebtedness and request payment within 30 days from the date of the letter. If after 30 days payment is not received, the consultant will then be notified by the Finance Director that any funds owed to the consultant under other agreements will be used to satisfy the indebtedness. If funds or payables to the consultant in the Department's possession are in excess of the indebtedness, anything owed the consultant will be remitted under normal payment procedures. If the funds in the Department's possession are not sufficient to satisfy the indebtedness, the Finance Director will discuss the matter with the Department's legal counsel and take appropriate action.

J. Geotechnical Contracts

Contracts for geotechnical services are considered separately because they may involve a mixture of two types of services, i.e., geotechnical studies (engineering services) and subsurface exploration/drilling and/or laboratory testing (technical services). Additionally, some firms offer one or the other of these services, others offer both, and others offer some combination as well as other services, e.g., design. Firms offering both services must, for accounting purposes, separate the two operations. Cost of equipment, supplies, etc., used in technical services may not be applied towards indirect cost computations for engineering services.

Geotechnical Studies and/or Subsurface Exploration/Drilling and/or Laboratory Testing services shall be procured as noted in "POLICY", Section IV, Competitive Negotiation Procurement Procedure. The technical services costs shall be negotiated by the Geotechnical Engineering Section Manager, Materials and Tests Division, based on usual industry standards.

K. Sub-consultants for Engineering Services

1. Geotechnical Studies and/or Subsurface Exploration/Drilling and/or Laboratory Testing within another Engineering Services Firm: These services may be procured as part of the larger contract, e.g., roadway design. Payment for subsurface exploration/drilling shall be invoiced as a direct cost. Geotechnical studies shall be invoiced as other engineering services.

2. Geotechnical Studies Firms as Sub-Consultants

a) Geotechnical Studies Only: The services of these firms may be procured by negotiation with the prime consultant as described previously herein.

b) Geotechnical Studies and/or Subsurface Exploration/Drilling and/or Laboratory Testing Firms as Sub-Consultants: The services of these firms shall be procured by negotiation with the prime consultant. However, costs associated with subsurface

exploration/drilling and/or laboratory testing shall be negotiated under the direction of the Geotechnical Engineering Section Manager, Materials and Tests Division.

L. Sub-consultants Not Covered Under Engineering Services

In the event a sub-consultant is required whose hiring process, as a prime, would be governed by “POLICY”, Section V, Noncompetitive Negotiation Procurement Procedure, or Section VII, Technical Service Procurement Procedure, or other state policy, that sub-consultant shall be retained by the same method as used if the sub-consultant were a prime consultant.

1. Example: Design consultants are occasionally asked to provide laboratory testing services under their design contract. These services procurement methods are described under “POLICY”, Section VII, Technical Service Procurement Procedure. The design consultant shall use, and document, the procedures described under “POLICY”, Section VII, Technical Service Procurement Procedure, when hiring the laboratory testing consultant.
2. The functional area manager responsible for the project should monitor the hiring and documentation of sub-consultants by the prime. Documentation should detail the method used and should be satisfactory for a final project audit.

V. NONCOMPETITIVE NEGOTIATION PROCUREMENT PROCEDURE

The following procedures shall be used by the Department in those circumstances where there exists only one viable source for the desired services, when competition among available sources is determined to be inadequate after solicitation of a number of sources, or in emergencies when adherence to normal competitive negotiation procedures will entail undue delays for projects requiring urgent completion.

Upon determination of a need for this type of procurement, TDOT shall request an estimate from the qualified firm for the accomplishment of the desired assignment. The request for an estimate shall define the full scope of the desired services, together with minimum performance specifications and standards, the date materials and services are to be provided by the consultant to the Department, and the required assignment completion schedule. Response to the request for an estimate shall be evaluated, giving due consideration to such matters as a firm’s professional integrity, compliance with public policies, records or past performances, financial and technical resources, and requested compensation for the assignment. For Federal-aid contracts, the Department shall submit justification and receive approval from the FHWA before using this form of contracting in accordance with 23 CFR § 172.7(a)(3)(ii).

VI. SMALL PURCHASE PROCUREMENT PROCEDURE

When the contract cost of the services does not exceed the simplified acquisition threshold as defined in 48 CFR § 2.101 of the Federal Acquisition Regulations (FAR), which is currently \$250,000, small purchase procedures may be used. The scope of work, project phases and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures. Further, a contract obtained under small purchase procedures shall not be modified to exceed the simplified acquisition threshold.

Proposals will be obtained from an adequate number of qualified sources with a minimum of three. In instances where only two qualified consultants respond to the solicitation, TDOT or the local contracting agency may proceed with evaluation, ranking and selection if it is determined that the solicitation did not contain conditions or requirements which arbitrarily limited competition. Awards will be made to the responsible firm whose proposal is most advantageous to the program.

VII. TECHNICAL SERVICE PROCUREMENT PROCEDURE

The following procedures shall be used by the Department for procurement of the services described in “APPLICATION”, Item C, Technical Services. Price quotations shall be obtained from qualified firms for the specified work either by public announcement or by requests. A minimum of three firms is required, if available. Awards will be made to the responsible firm whose proposal is most advantageous to the program with price and other relevant factors considered.

PROCEDURE: This policy includes several attachments that may, from time to time, need to be changed. The Chief Engineer (or Assistant Chief Engineer designee) may approve a change to an attachment as long as the change does not require a policy revision. An attachment change is effective when a signed and dated copy is distributed and posted on the Department’s policy web page.