Preface

PROCUREMENT, MANAGEMENT, AND ADMINISTRATION OF CONTRACTS FOR PROFESSIONAL SERVICES

Program Management and Oversight

Section 5526.02 of the Ohio Revised Code provides authority for the Director of Transportation to “enter into contracts with any qualified firm for professional services in accordance with this chapter.” This authority and the remaining sections of ORC 5526 provide the legal foundation for the Department’s use of professional services, and define the extent of the duties of the Office of Consultant Services. The Department’s use of firms that provide professional services is further governed by Federal Highway Administration rules enumerated in 23 CFR 172, the Ohio Administrative Code and additional sections of the Ohio Revised Code.

23 CFR 172.5 requires that State Departments of Transportation prepare and maintain written policies and procedures for the procurement, management, and administration of engineering and design related consultant services. The documents listed below govern the Department’s use of contracts for professional services, including procurement, negotiation, administration and close-out.

Governing ODOT Documents

- Manual for Administration of Contracts for Professional Services
  - Volume 1: Consultant Contract Administration
  - Volume 2: Invoice and Project Schedule (IPS)
  - Volume 3: Scope and Fee System (SAFe)
  - Volume 4: Consultant Fee Estimation Guidance.
  - Volume 5: Consultant Evaluation System
- Specifications for Consulting Services
- Consultant Prequalification Requirements and Procedures
- Manual of Procedures for Locally Administered Transportation Projects
- AASHTO Uniform Audit & Accounting Guide (AASHTO Guide)

ODOT’s Governance Structure

To provide efficient administration and governance of contracts for professional services, the Director appoints members of various committees that have defined roles in assignment of DBE or EDGE Goals, consultant selection, approval of fees, dispute resolution, potential conflicts of interest, review of Good Faith Efforts and other activities. Committees created by the Director for this purpose are listed below, along with a table that sets out the authority of each committee.

- Consultants Committee
- District Consultants Committees
- Director’s Consultant Resolution Board
- Conflict of Interest Waiver Review Committee
- Goals Committee
- Good Faith Efforts Committee

Details about these committees are shown in Table A.
# Table A: Authority of the Department's Consultant Committees

<table>
<thead>
<tr>
<th>Activity</th>
<th>Action</th>
<th>Consultants Committee</th>
<th>District Consultants Committees</th>
<th>Director’s Consultant Resolution Board</th>
<th>Conflict of Interest Waiver Review Committee</th>
<th>Goals Committee</th>
<th>Good Faith Efforts Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultant Selection</td>
<td>Rate Letters of Interest/Proposals, shortlist firms, and recommend one firm for selection</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consultant Selection – All Selection Procedures</td>
<td>Final selection of one firm</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval of Fees</td>
<td>New Agreements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Modification of agreements – Refer to Section 4.3.E.2.b. for authority to approve and execute modifications</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Individual tasks for on-call agreements (IDIQ)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>Terminate negotiations with a selected firm and enter into negotiation with the firm ranked next most qualified in accordance with ORC 5526.05(C)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Consultant Conflict of Interest</td>
<td>Resolve disputes including fair and reasonable compensation errors and omissions, sanctions, prequalification and other issues.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>In instances of potential consultant conflict of interest, review and approve or deny requests for waivers of the Department’s rules, and rule on related issues</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>
### Approval Authority

<table>
<thead>
<tr>
<th>Activity</th>
<th>Action</th>
<th>Consultants Committee</th>
<th>District Consultants Committees</th>
<th>Director’s Consultant Resolution Board</th>
<th>Conflict of Interest Waiver Review Committee</th>
<th>Goals Committee</th>
<th>Good Faith Efforts Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Termination of Agreements</td>
<td>Terminate a consultant agreement in accordance with Section 2.41 of the Specifications for Consulting Services</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DBE and EDGE Goals</td>
<td>Assign DBE or EDGE Goals to consultant agreements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Review Good Faith Efforts required to meet DBE or EDGE Goals</td>
<td>In the event that a Consultant is unable to meet a DBE or EDGE Goal, determine whether the Consultant has made a good faith effort to meet the goal in accordance with 49 CFR 26.53 and Appendix A to Part 26.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>
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Chapter 1—Organization, Purpose, Objectives, and Laws and Regulations

1.1—Procurement, Management, and Administration of Contracts for Professional Services

Consultant Contract Administration is Volume 1 of a series of volumes that make up the Department’s Manual for Administration of Contracts for Professional Services. Refer to the Preface of this document for a complete listing of documents that govern the Department’s procurement, management, and administration of contracts for professional services.

1.2—Organization of this Manual

This Volume 1 of the Consultant Contract Administration Manual is organized by chapters. Chapters are subdivided into sections, subsections, and paragraphs. For sake of brevity, internal references to this manual most commonly follow the “short reference” format as illustrated in the following example—

<table>
<thead>
<tr>
<th>Short Reference</th>
<th>Full Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 2.4</td>
<td>Chapter 2, section 4</td>
</tr>
<tr>
<td>Section 3.2.D</td>
<td>Chapter 3, section 2, subsection D</td>
</tr>
<tr>
<td>Section 5.6.A.2</td>
<td>Chapter 5, section 6, subsection A, paragraph 2</td>
</tr>
<tr>
<td>Section 5.6.A.2.a</td>
<td>Chapter 5, section 6, subsection A, paragraph 2, clause a</td>
</tr>
</tbody>
</table>

Note: In the context of this Manual, the terms “Contract” and “Agreement” have the same meaning.

Procedures for consultant contract administration may be revised or updated periodically. This document is formatted such that updates and revisions can be easily made without rewriting entire chapters. ODOT’s Office of Consultant Services will provide updates and revisions as needed on a timely basis, allowing the user access to the most current procedures.

1.3—Purpose and Objectives

A. Purpose

The purpose of this Manual for Administration of Contracts for Professional Services and other standard ODOT documents is to provide uniform guidelines for ODOT employees in administering contractual agreements between ODOT and consultants. These services include, but are not limited to, environmental studies, design and plan preparation, construction inspection and administration, bridge inspection and right of way acquisition. It is intended that this Manual be a single source of reference for ODOT’s
internal procedures regarding consultant contract administration and the consultant selection process. Any and all ODOT employees having any role in the administration of a consultant contract must either possess or have ready access to a copy of this manual.

- A few of the important points that are emphasized throughout this Manual include:
- Uniform application of consultant administration procedures throughout the Department.
- The identification of an ODOT Project Manager as the single point of contact for each consultant contract.
- The importance of good documentation and filing practices required for effective contract administration, internal and external audits, the State’s fiscal control agencies, the Legislature, and public records requests.
- What to do when contractual obligations are not met.

B. Objectives
The objectives of active administration of consultant contracts include:

- Ensuring that a quality product is delivered on schedule.
- Providing early identification of technical and/or contractual issues and procedures for resolution.
- Ensuring that ODOT upholds all contractual terms including the scope of services, schedule and prompt payment.
- Providing an accurate historical record for use in documentation of the project development process and contractual disputes.

C. Laws and Regulations
This Chapter also includes a summary of primary State laws, Federal laws and FHWA regulations that govern ODOT’s procedures. The listings provided below do not attempt to address all laws or regulations that may apply, and the laws and regulations listed reference numerous other citations. These foundation documents provide insight into the development of the Department’s policies and procedures and also serve as a reference in situations not clearly addressed in the Manual. The Department’s policies and procedures are based on these external requirements and ensure compliance when followed.

The procedures and requirements included the Department’s Manual for Administration of Contracts for Professional Services are written to comply with the more restrictive requirement of either State procurement laws, regulations, policies, or applicable Federal laws and regulations, which ensures eligibility for Federal-aid reimbursement of the associated costs of the services incurred following FHWA authorization.

### 1.4—RELEVANT SECTIONS OF THE OHIO REVISED CODE

**A. ORC Section 9.24**
Prohibits selection of firms against whom a finding for recovery has been issued by the auditor of state if the finding for recovery is unresolved.

**B. ORC Section 123.152**
Establishes the Encouraging Diversity, Growth, and Equity (EDGE) program under the Department of Administrative Services.

**C. ORC Section 123.152**
Establishes the Encouraging Diversity, Growth, and Equity (EDGE) program under the Department of Administrative Services.

**D. ORC Section 126.07**
Requires appropriation and encumbrance of funds prior to authorization of an agreement.
E. ORC Section 126.30
Establishes rules concerning late payments for goods and services.

F. ORC Section 127
Enumerates the duties and powers of the Controlling Board.

G. ORC Section 149.33
Provides authority for the Department of Administrative Services to issue records retention schedules.

H. ORC Sections 153.65 through 153.71
Establishes rules local governments and public agencies (ODOT is governed by ORC 5526) in the
procurement and administration of agreements for professional design services.

I. ORC Section 3517.13
Addresses limits on political contributions by consultants.

J. ORC Section 5526
Provides authority for the Director to enter into contracts for professional services, and establishes
procedures for selection of consultants and administration of contracts. Section 5526 is specific to the
Department of Transportation.

1.5—RELEVANT SECTIONS OF THE OHIO ADMINISTRATIVE CODE

A. OAC Section 4733-35-05
Sets out conflict of interest rules for engineers and surveyors.

B. OAC Section 126-1-02
Rates and requirements for reimbursement of travel expenses of state agents, including engineering
consultants.

1.6—FEDERAL HIGHWAY ADMINISTRATION DOCUMENTS

A. Title 23 Code of Federal Regulations, Part 172 (23 CFR 172) – Administration of
Engineering and Design Related Design Related Service Contracts
FHWA policies that govern ODOT’s consultant procurement policies are included in this document. 23
CFR 172 invokes numerous additional Federal citations.

B. United States Code, Title 23, Section 106(h) – Project Approval and Oversight
Requires additional FHWA oversight and approvals for projects with an estimated total cost of
$500,000,000 or more, and other projects as may be identified by the FHWA.

C. United States Code, Title 23, Section 112 – Letting of Contracts
Section 112(b) requires ODOT to follow the Brooks law (Title 40 United States Code, Subtitle I, Chapter
11, Sections 1101-1104), or an equivalent State qualifications based requirement.
Section 112(b) also prohibits limits on indirect cost rates (overhead) and requires ODOT to accept
overhead rates established by a cognizant Federal or State government agency.

D. 23 CFR 630.106 – Authorization to Proceed
The Department must obtain an authorization to proceed from the FHWA before beginning work on any
Federal-aid project.

E. 23 CFR 636.116 – Organizational Conflict of Interest Requirements for Design-Build
Projects
Section 636.116(a)(1) specifically addresses limitations on the participation of consultants or
subconsultants that provided services used in the preparation of an RFP document for a design build contract.

**F. Title 40 United States Code, Subtitle I, Chapter 11, Sections 1101-1104**

This statute, commonly known as the Brooks Act, requires qualifications-based-selection (QBS) of consultants.

**G. 48 CFR Part 31 – Federal Acquisition Regulation, Part 31**

Chapter 31 of the Federal Acquisition Regulation is invoked by United States Code, Title 23, Section 112 "Letting of Contracts", and is further adopted by ODOT in Chapter 3 of the *Specifications for Consulting Services*. Chapter 31 addresses contract cost principles and procedures.

**H. 49 CFR Part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs**

Governs the Department’s DBE program. Subpart C provides specific guidance concerning Goals and Good Faith Efforts.
Chapter 2—Project Managers and Consultant Managers

2.1—Generally

This Chapter addresses the roles and responsibilities of District Consultant Managers and Project Managers and the general responsibilities of each. Although Offices/Divisions within Central Office do not formally name Consultant Managers, each CO Office that utilized the services of consultants should appoint a staff member to fill this role. The Department’s Project Manager is responsible for all Department communications and decisions relevant to the agreement, either through direct communication with the consultant or an approval of communications by other staff members.

A Project Manager must be assigned to each consultant contract executed by the Department. The assigned Project Manager is responsible for ensuring that the work product meets contract requirements, the work product is delivered on schedule and the consultant is paid according to the terms of the agreement.

District Consultant Managers are responsible for managing and supporting the District’s consultant program, including acting as the staff expert in consultant rules and procedures, managing the consultant selection process, and supporting Project Managers through implementation of District-wide processes. The District Consultant manager acts as the point of contact with the Office of Consultant Services. The role and day-to-day duties of the of the District Consultant Manager may vary in individual Districts but the core functions and responsibilities remain as stated.

Other Chapters in Consultant Contract Administration do not assign specific duties to either the Project Manager or Consultant Contract Manager. Each District must develop procedures and staff assignments that clearly delineate duties and ensure that the procurement, management, and administration of contracts for professional services meet the Department’s written requirements.

NOTE: Successful administration of consultant agreements requires cooperation and communication between Project Managers and the District Consultant Manager.

2.2—Roles and Duties of the Project Manager

The duties of the Project Manager officially begin when the consultant contract is executed. However, it is best practice that the Project Manager participate in development of the scope of services, consultant selection and negotiation of the agreement, which are addressed in Chapter 3 of Consultant Contract Administration. Administration of contracts is addressed primarily in Chapter 4, with related cost accounting information addressed in Chapter 5.
2.3—ROLES AND DUTIES OF THE DISTRICT CONSULTANT MANAGER

The duties of the District Consultant Manager include all aspects of supporting the District’s consultant program. The Consultant manager must act as a “subject matter expert” and resource for all District personnel. Although implementation may vary between Districts, the duties of the District Consultant Manager include:

A. Acting as the staff expert in consultant rules and procedures including assuring that all staff that participate in any aspect of the consultant program are adequately trained for their duties.
B. Act as the point of contact with the Office of Consultant Services.
C. Manage the consultant selection and contracting process through execution of an agreement.
D. Establish consistent District-wide procedures for filing, invoice review and processing and other elements of contract administration.
E. Provide technical support to Project Managers in administration of agreements, including processing of modifications, breach of contracts issues, stop work orders and other aspects of contract administration.
F. Monitor the status of consultant evaluations and ensure that evaluations are completed within the deadlines.
G. Monitor the status of agreements and close agreements timely.
Chapter 3—Procurement Methods and Procedures

3.1—Authority to Select Consultants and Approve Fees

A. Generally
The Preface to the Procurement, Management, and Administration of Contracts for Professional Services sets out the duties and authority of the Director of Transportation in Program Management and Oversight, including the appointment of members of various committees that have defined roles in consultant selection, approval of fees, dispute resolution, potential conflicts of interest and other activities. Refer to the Preface for a list of the various committees and their authority. The names of those committees are referenced throughout this Chapter.

B. Limitations
1. ORC 5526.01(C) does not provide the Department with authority to hire Architects. However, architectural services related to bridges and landscape architecture are permitted.
2. 23 CFR 172.7 - Consultant services in management support roles - When FAHP funds participate in a consultant services contract, the Department must receive approval from FHWA before utilizing a consultant to act in a management support role.
3. Other services that do not meet the definition of professional services included in ORC 5526 may need specific approval of purchasing authority. Refer to Chapter 1.

3.2—Determination of Need
Prior to initiating the selection process, the need for the services of a consultant must be clearly established and the preliminary scope of services must be developed.

Acceptable reasons for the use of a consultant are:

- Insufficient staff to perform the work within the desired period of time.
- Lack of special expertise needed for the work.
- Need for study by a recognized expert.

Note: Prior to proceeding with any subsequent steps, a definitive need for the services of a Consultant shall be established by the District or other ODOT office.

3.3—Identification of Consultant Agreements In Ellis – Consultant Request

A. Why Agreements Must be Identified in Ellis
Consultant agreements must be identified in Ellis to:
1. Budget for the cost of a consultant’s services,
2. Provide Future Program Reports for the use of the Department and consultants, and
3. Provide information for establishing DBE and EDGE goals.

B. Ellis Procedures

The following procedures are required to create consultant requests in Ellis:

1. A project PID must be established in Ellis. Consultant Requests are created under established project PIDs.
2. A Consultant Request must be created in Ellis for each proposed consultant agreement, including an advertisement date, Consultant Request Description and linked Ellis funding events. Provide notification to the funds manager, either Central Office or District, prior to completing the request.

a. Consultant Request Description Instructions:
   - Provide in narrative form a general overview of the specific services to be provided by the consultant. Include a brief description of work to be performed by the Department, if any. There is no need to duplicate the information in the Ellis project description as this information will be available for inclusion in reports.
   - For PDP projects, include a brief description of the work included in each subphase, Detailed Design and Environmental-Preliminary Development.
   - For bridge inspection agreements include the number of annual inspections, and any specific requirements such as load rating.
   - For project specific real estate services, include the approximate number of parcels if available, and the range of acquisition activities included.
   - For Indefinite Delivery/Indefinite Quantity (IDIQ or task order) type agreements, include a description of the type of services being requested, the maximum
   - For construction administration/inspection type agreements, include the type of services being requested, such as administration, general inspection, bridge painting etc. For IDIQ general on-call administration/inspection agreements include the maximum compensation and the completion time in months.

b. Schedule for Completion of Consultant Requests

In order to provide timely identification of consultant agreements in Ellis, each District/Office must be complete Consultant Requests at the following levels of completeness with respect to the advertisement/posting date.

<table>
<thead>
<tr>
<th>Number of Weeks Prior to Advertisement</th>
<th>Percent Accuracy</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 Weeks</td>
<td>50%</td>
</tr>
<tr>
<td>10 Weeks</td>
<td>80%</td>
</tr>
<tr>
<td>6 Weeks</td>
<td>95%</td>
</tr>
<tr>
<td>3 Weeks</td>
<td>100%</td>
</tr>
</tbody>
</table>
3.4—DBE / EDGE Goal Procedure

A. DBE and EDGE Goals

It is the policy of the Ohio Department of Transportation that Disadvantaged Business Enterprises (DBEs) and firms certified as EDGE (Encouraging Diversity, Growth and Equity) by the Director of Administrative Services shall have equal opportunity to compete for and perform subcontracts which the Consultant enters into pursuant to agreements included in the request for Letters of Interest. For projects noted as having DBE or EDGE goals, the Consultant must use good faith efforts to include DBE or EDGE subconsultants. Consequently, the requirements of Title 49 CFR Part 26 will apply to agreements noted as having DBE goals, and Ohio Revised Code Section 123.152 will apply to agreements noted as having EDGE goals. For projects with DBE goals, the Consultant must ensure that the DBE subconsultant(s) is performing a "commercially useful function" as defined in 49 CFR 26.55. Contracts may include either:

1. DBE or EDGE Contract Participation Goals that establish a percent of the contract amount to be subcontracted to DBE/EDGE firms; or
2. DBE or EDGE Contract Development Goals that are intended to help DBE and EDGE firms improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency. Contract Development Goals do not include a percentage of the fee or amount that must be subcontracted to DBE/EDGE firms.

Contracts that include DBE or EDGE Contract Development Goals will use qualifications-based selection in accordance with 23 CFR 172.7(b)(2). For projects noted as having DBE or EDGE Contract Development Goals, an additional five (5) points will be allocated in the selection rating based on evaluation of the expected outcomes described in the letter of interest.

3. The use of quotas or exclusive set-asides for DBE consultants is prohibited, as specified in 49 CFR 26.43.

B. Goals Committee

The Director appoints a Goals Committee that is responsible for setting DBE and EDGE Goals on both construction contracts and contracts for professional services. The committee typically meets every two weeks to establish goals on upcoming construction projects, and as needed to establish goals on consultant agreements. Information regarding the projects is distributed in advance of the scheduled meetings to allow a review of key project attributes and types of services required. The governing objective of the Goals Committee is to ensure that the DBE and EDGE goals are established in accordance with Federal and State laws as well as applicable policies, rules, and directives.

C. Consultant Selection Procedures

Consultant selection procedures and rules for agreements that include either Development or Contract Participation Goals are further addressed in this Chapter.

D. Development Goal Fees

For agreements that include Development Goals, the Department will provide limited reimbursement to the consultant team for the direct and indirect costs incurred by the prime consultant and subconsultant for specific training and assistance to the DBE/EDGE firm through the life of the agreement. An initial not to exceed amount will be established for the contract, and separate cost accounting and invoicing (in accordance with FARS Part 31) will be required for the life of the contract.

Allow maximum fees for agreements that include Development Goals, on an actual cost basis (labor and overhead only), are as shown in Table 3-2:
**Table 3.2: Training Reimbursement Levels**

<table>
<thead>
<tr>
<th>Total Estimated Fee for Agreement</th>
<th>Contractual Fee (†) for Training and Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $150,000</td>
<td>$7,500</td>
</tr>
<tr>
<td>$150,000 - $300,000</td>
<td>5% of Total Estimated Fee</td>
</tr>
<tr>
<td>Greater than $300,000</td>
<td>$15,000</td>
</tr>
</tbody>
</table>

(†) Note: Fees are eligible for FAHP funding and will be paid at project cost.

### 3.5—Scope of Services and Contract Development—Objectives

**A. General**

The following paragraph describes the development of scope of services requirements and information needed for the consultant selection process for an agreement that requires development of a specific project under the Department’s Project Development Process (PDP). The same basic information is required for other types of services including bridge inspection, right of way acquisition, construction inspection/administration, or other services. IDIQ type agreements use a simplified scope of services document and do not require PDP type information, but otherwise the same information will be needed to initiate the consultant selection process.

The scope of services process will extend from the initial determination that the services of a consultant are needed, to completion of construction. The Department’s Project Development Process (PDP) includes multiple phases of development, which often dictates a step by step contracting approach with contract modifications that add additional PDP phases to the scope of services as the project develops. However, the initial development of the scope of services must define the entire extent of services to be provided throughout the project development process, and information needed for the selection process and contract development as follows:

1. The PDP phases included in the overall scope of services, along with a description of services to be provided by the Department or others.
2. A Project Initiation Package as required by the PDP.
3. A description of the specific services to be provided initially if the work will be contracted in phases.
4. The prequalification categories required to provide all required services.
5. Selection subfactors are defined as important aspects of a project that will play a large role in the consultant selection process. Subfactors are provided in RFP documents in order to inform consultants of important aspects of a project that will be considered in the selection process. Examples of subfactors would be an unusual bridge type, a complex geotechnical or foundation situation, or a very complex interchange configuration.
6. Specify the contract type and method(s) of compensation anticipated to contract for the solicited services. Refer to Chapter 4 for an explanation of contract types, and a more detailed explanation and appropriate uses for various payment methods.
7. Determine the selection process to be utilized (refer to section 3.6 for descriptions of selection processes and guidance for use).
8. Estimated Total Fee for all services to be provided.
9. For IDIQ (task order) type agreements, a list and description of the type of services being requested, the maximum compensation and the completion time in months.
10. For IDIQ construction administration/inspection type agreements, the type of services being requested, such as administration, general inspection, bridge painting etc. For IDIQ general on-call administration/inspection agreements, the maximum compensation and the completion time in months.

B. Multi-Disciplinary Development Process
Scope of services documents should be developed using a multi-disciplinary approach that seeks input from a wide range of disciplines and Offices including environmental staff, surveying/mapping, geotechnical, structures, hydraulics, traffic, geometrics, real estate, utilities and construction. Central Office personnel should be included in the development of scopes for complex projects when appropriate.

C. Standard Scope of Services Documents
The Office of Consultant Services maintains standard scope of services documents for a variety of project types. These documents are updated from time to time. The most current documents should be used for all agreements.

**Note:** The following standard scope of services documents are available by reference in Appendix A:
- 1. PDP scope of services documents are provided electronically through the SAFe System – refer to Volume 3: Scope and Fee System (SAFe).
- 2. Bridge Inspection
- 3. Project Specific Construction Inspection/Administration
- 4. IDIQ District-wide Construction Inspection/Administration
- 5. IDIQ scope of services for various services

### 3.6—Consultant Selection Process

#### A. Summary of Federal Rules and State Laws

1. **Federal rules**
The laws and regulations that govern the procurement of design-related services with Federal-aid highway funds are:
   c. Title 49 Code of Federal Regulations, Part 18 (49 CFR 18) “Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments”, or what is commonly called the “Common Rule”,
   d. Title 40 United States Code, Subtitle I, Chapter 11, Sections 1101-1104, commonly called the “Brooks Act.”

2. **State Law**
a. Ohio Revised Code Section (ORC) 5526, Contracts for professional services, is specific to ODOT and requires qualifications based selection, as follows:
   Per ORC 5526.01(D), “Qualifications” means all of the following:
   (1) The competence of a firm to perform required professional services as indicated by the technical training, education, and experience of the firm's personnel, in particular the technical training, education, and experience of the firm's personnel assigned to perform professional services for the department;
   (2) The ability of a firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform the required professional services competently and expeditiously;
(3) The past performance of a firm as indicated by evaluations of previous clients of the firm with respect to such factors as control of costs, quality of work, and meeting of deadlines;

(4) Any other relevant factors as determined by the director.

b. Ohio Revised Code Section 153.65 (Professional design services definitions) through 153.71 (Administrative rules).

**Note:** When selecting consultants and contracting for services, local governments must comply with these sections of the code.

**Chapter 3/Procurement Methods and Procedures**

**B. Department Policies in Selection of Consultants**

**1. Restrictions Concerning District Preferences**

Districts or other offices shall not offer direction to consultants concerning preferences (or informal sanctions) for certain subconsultants or team arrangements. These arrangements are business decisions that must be made by consultants without direction from the Department. The Department must make selection decisions on the basis of proposed teams without advance “steering” of teams. The Department provides feedback to consultants concerning their performance through CES ratings. Firms that wish to evaluate the performance of potential team members should request that firm to provide copies of their ratings.

**2. Consultant Evaluation System (CES)**

To ensure that the most current consultant performance information is available for use in making selection decisions, the District Deputy Director shall:

a. Ensure that all substantially completed consultant agreements have been rated in CES and a conference held with the consultant in accordance with completion deadlines.

b. For design agreements, ensure that timely feedback is provided from the right of way acquisition and construction processes, with prompt consideration of that information as to whether the rating should be revised.

c. Ensure that the Current Consultant Performance Issues Screen in CES is updated in accordance with CES requirements. Timely and objective rating of consultant performance, along with the required conference with the consultant, are key elements in the Department’s selection decisions. Refer to Chapter 4 of Consultant Contract Administration and Volume 5 for evaluation deadlines.

**3. Communications Restrictions**

Please note the following policy concerning communication between Consultants and the Department during the programmatic announcement and selection process:

During the time period between advertisement and the announcement of final consultant selections for the Programmatic Selection Process, communication with consultants (or their agents) shall be limited as follows:

a. Communications which are strictly prohibited:

Communication with Districts or other Offices: Any discussion of specific projects included in the current programmatic group if the consultant has submitted or plans to submit a letter of interest or is included as a subconsultant for a project within the District (or projects to be managed by a specific Office).

b. Allowable communications include:

1) Project administration activities for authorized agreements, scope and negotiation activities for projects selected but not under contract, training or related activities, and technical or scope of services questions specific to projects posted with a programmatic group.

2) Marketing meetings with Districts or Offices except as limited by the restrictions noted under Communications not permitted above.
3) Marketing meetings with Central Office personnel that will not be included on the initial “short list” selection evaluation team.

c. For specific agreements, the Request for Letters of Interest may limit communication to questions submitted in writing, with answers posted to the Department’s website.

d. When completed, selections are announced through the Department’s Website at the following location:


4. Disclosure of Selection Information

All selection information including consultant letters of interest are available for public disclosure upon notification of the selection by the Consultants Committee. These decisions are posted on Consultant Services website.

Information that is not subject to public disclosure at any time includes financial statements and other confidential financial information submitted by a consultant as part of a pre-award audit. This type of information should be forwarded to the Office of External Audits and should not be included in the project selection file.

5. Supporting Documentation

Documentation supporting the solicitation, proposal, evaluation, and selection of the consultant shall be retained.

6. Prohibited Selection Factors

a. Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

b. In-State or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement for the minimum qualifications and competence of a consultant to perform the solicited services.

Note: Refer to Section 3.6.E.1.m. for additional guidance concerning the use of local presence as a nominal evaluation factor where appropriate.

C. Initiation of Selection Process

In addition to the identification of consultant agreements in Ellis, a Consultant Request must be entered in CSS as the initial step in the Department’s electronic letter of interest system. The Request requires basic information concerning the proposed agreement, including project identification, District, selection process, selection subfactors, number of pages allowed in response, whether resumes are required, and prequalification requirements. The due date for submitting this Request is included in a published selection schedule that is updated from time to time.

Note: For additional details, refer to the Appendix A.

D. Consultant Selection Processes

The Department utilizes five consultant selection processes, the use of which depends on the complexity of the project, estimated total fee, the number of available qualified consultants and whether an emergency exists. The Programmatic and Technical Proposal selection processes are competitive qualifications based selection processes governed by 23 CFR 172.7(a)(1). These selection processes require solicitation, evaluation, ranking, selection, and negotiation in accordance with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40 U.S.C. 1101-1104, commonly referred to as the Brooks Act.

The Small Purchase selection process is a non-competitive selection process governed by 23 CFR 172.7(a)(2) and ORC 5526.06(A)(1). Agreements with total fees less than $50,000 are eligible for this
selection process.

The Emergency and Special Expertise selection processes are non-competitive selection processes governed by 23 CFR 172.7(a)(3).

1. Programmatic Selection Process

The Programmatic Selection Process is a one-step selection process intended to shorten the selection/authorization process for non-complex projects while reducing paperwork and administrative costs for both consultants and the State. In this process consultants are selected based on standard letter of interest content submitted electronically, and a standard Selection Rating Form. Consultants must submit a single electronic Letter of Interest (LoI) for a group of projects and list no more than eight (8) projects for which the consultant is expressing interest.

The Department posts groups of consultant contracts for selection three times per year on an established schedule, with posting dates generally in January, May, and September. Additional project postings may be scheduled as needed but most projects are included within the scheduled posting groups. The “Programmatic” selection process is used for most projects that do not meet the criteria for the more elaborate Technical Proposal Selection Process. Contracts that use the Technical Proposal Selection Process may be included in these groups of projects.

2. Technical Proposal Selection Process

The technical proposal selection process is a two-step process intended for use on larger, more complex projects for which a more informed selection decision can be made based on additional information received through the submittal of a (more elaborate) Technical Proposal, and/or presentations/interviews. The Technical Proposal Selection Process is appropriate to use under the following circumstances:

a. Complex projects involving multiple PDP steps and multiple disciplines including planning, environmental and design services.

b. Projects that include complex project management challenges in which the role of the consultant project manager will be crucial to project success, and may require extensive public involvement activities.

c. Specialized services for which the Department has limited experience and performance records for past projects.

d. Generally, any project for which the standard templates and resumes used in the Programmatic Selection Process do not provide sufficient information to make a well informed selection decision.

e. The technical proposal selection process includes the initial submittal of a letter of interest similar to the Programmatic Selection Process, and then “shortlisting” to at least three of the most highly qualified firms. The standard letter of interest content may be revised to include increased page limits and project specific content. The shortlisted firms are then required to submit additional written information (technical proposal) and/or participate in additional discussions or presentation/interview. The content of the technical proposal and the format of interviews can be tailored to fit the requirements of specific projects.

f. Discussions, if required by the RFP, may be written, by telephone, video conference, or by oral presentation/interview and shall be with at least three of the most highly qualified consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFP.

g. The process for shortlisting at least three consultants is identical to that of the Programmatic Selection Process. The final selection of a single consultant also follows the same process but considers the written technical proposal and/or presentation/interview along with the initial letter of interest.

3. Emergency Selection Process

The Department may directly select a consultant for a project determined by the Director to be an emergency which will not permit the time necessary to conduct a competitive selection process. Contract costs shall be negotiated in accordance with Section 3.9.
4. Small Purchase Selection Process
The Department may directly select consultants without solicitation for projects with an estimated total fee of less than $50,000. The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of fee exempt procedures. The following requirements apply:

a. The qualifications of a minimum of three consultants must be reviewed prior to selection. The consultants considered for selection and the reasons for selecting the most qualified consultant shall be documented. In instances where two or fewer consultants are considered qualified, the Department may proceed with evaluation and selection if it is determined that the project requirements did not contain conditions or requirements that arbitrarily limited competition. The reasons for proceeding with the selection shall be documented.

b. The full amount of any contract modification that would cause the total contract amount to exceed $50,000 is ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if Federal funds are used in modifying an agreement above the $50,000 simplified acquisition threshold.

c. Contract costs shall be negotiated in accordance with Section 3.9.

5. Special Expertise Selection Process
The Department may directly select consultants for projects for which the service is available only from a single source. Contract costs shall be negotiated in accordance with Section 3.9.

E. Selection Procedures – Programmatic Selection Process
1. Request for Letter of Interest (LoI) Content
Requests for Letters of Interest (LoIs) shall include the following:

a. Project name from Ellis (County-Route-Section);
b. A description of the project including the location.
c. A description of the selection process to be used, including the number of steps (direct selection based on the information provided, or a two-step process with a short list and technical proposal and/or interviews, etc.), and the selection rating criteria to be used. The Department’s standard selection rating form should be used for most projects.
d. Any restrictions on communicating with government officials during the selection process. For agreements that use the Technical Proposal Selection Process and other agreements as appropriate, include language that limits communication to questions submitted in writing and answers posted to the Department’s website.
e. Any restrictions concerning suspended or debarred firms.
f. Date that the letter of interest is due. The minimum response time shall be two weeks from the initial posting date.
g. The approximate construction cost if available.
h. Any special provisions or contract requirements associated with the services.
i. The following notification:
The Ohio Department of Transportation in accordance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, all bidders including disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability, low-income status, or limited English proficiency in consideration for an award.
j. The DBE or EDGE Goal requirements and related selection procedures.
k. Major work elements involved.
l. A detailed scope of services for the agreement.
m. The ODOT prequalification(s) required to provide the services;
   n. Subfactors - Any important aspects of a project, if any, that will play a large role in the consultant selection process.
   
   In-State or local preference shall not be used as a selection factor or subfactor, however a local presence may be used as a nominal evaluation factor where appropriate. This criteria shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. 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.
   
   o. The contract type and payment method(s) anticipated to contract for the solicited services. Refer to Chapter 4 for detailed explanations of contract types and payment methods.
   p. Estimated date of authorization.
   q. Time period in which the work must be completed.
   r. Instructions for submitting a letter of interest including content and required format. The information requested should be consistent with the rating criteria.
   
   s. Required content of the letter of interest (RFP) including:
      1) Evidence of compliance with Section 3517.13 of the Ohio Revised Code.
      2) Evidence of compliance with Section 9.24 of the Ohio Revised Code.
      3) The firm’s general qualifications.
      4) Proposed key staff including key subconsultant staff and project approach.
      5) A listing of subconsultants including project responsibility.
      6) Whether resumes of key staff members must be submitted.
      7) Other information needed to make an informed selection decision.
      8) For IDIQ agreements:
         (a) The maximum length of contract period.
         (b) The maximum total contract dollar amount.
         (c) Whether multiple consultants are to be selected and multiple on-call or IDIQ contracts awarded.

2. Evaluation Process

District or other Offices (the term “District” shall mean District or other Office)

   a. Central Office/Consultant Services will initially evaluate all firms for compliance with the following requirements, advise Districts of the firms that must be eliminated from further consideration and the reason for elimination:
      1) Compliance with general LoI requirements, current negligence issues, and ongoing performance issues identified through CES, overall low CES rating, insufficient staff, excessive workload, or any other significant issues relative to a firm’s performance.
      2) Statement concerning compliance with Section 3517.13 of the Ohio Revised Code concerning political contributions.
      3) Statement concerning compliance with Section 9.24 of the Ohio Revised Code concerning any "unresolved" finding for recovery.
      4) Inclusion on the list of firms suspended or debarred by the Federal Government, or sanctioned by the Department.
      5) For projects noted as having DBE or EDGE Contract Participation Goals, the Office of Consultant Services, in cooperation with the Office of Small & Disadvantaged Business Enterprise in the
Division of Opportunity, Diversity and Inclusion, will determine whether the consultant made a good faith effort to meet the goal in accordance with 49 CFR 26.53 and Appendix A to Part 26. The letter of interest must show that the consultant has made good faith efforts to meet the goal. Good faith efforts may include: (1) Documentation that the consultant has obtained enough DBE or EDGE participation to meet the goal; or (2) Documentation that it made adequate good faith efforts, as defined in 49 CFR 26.53, to meet the goal, even though it did not succeed in obtaining enough DBE/EDGE participation to do so. Consultants that do not show good faith efforts to meet the Goal will not be eligible for selection.

b. Compliance with prequalification requirements is confirmed by the electronic Letter of Interest System during the submittal process.

c. Initial District evaluations will reduce the number of firms to 3-6 for each project through a process of elimination, based on the selection rating factors included in the Consultant Selection Rating Form. Firms may be eliminated due to fatal flaws, overall weakness of team relative to other firms, weak project approach, etc. Firms with low CES scores, overall staff weakness or general lack of experience with ODOT standards may be eliminated from all projects within the District for these reasons (rather than project specific evaluations). The District shall provide written documentation concerning the reasons for eliminating a firm from consideration.

| Note: In instances where two or fewer consultants respond to the RFP, or two or fewer consultants are considered qualified to be shortlisted, 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. The reasons for proceeding with the selection shall be documented. |

| Note: After rating the remaining firms in more detail, any firm with a total score (not including workload) that is more than ten points less than the highest rated firm shall be eliminated from further consideration by returning to the Short List Selection Screen eliminating the firm from the shortlist. The specific reasons for eliminating the firm including specific areas of weakness shall be documented. |

| For the firms remaining within the ten-point margin, the numerical ratings must be supplemented with written comments that explain the differential scoring. Please note, numerical ratings are only required for the remaining short listed firms within the ten point margin. Firms that remain on the shortlist after the initial numerical scoring will be considered fully qualified to provide the services. Refer to the discussion below concerning rating of the short listed firms and specific selection rating factors. |

d. For each project, the District will rate each shortlisted firm using the selection rating form except do not include ratings for the firm’s current workload. Each rating shall consider only the firm’s qualifications for the specific project without regard to that firm’s rating on other projects, or current workload. A firm could be rated highest on several projects.

| Note: For additional details regarding the Department’s Selection Documentation Guidelines, see Appendix A. |

e. On or before the due date, complete the electronic selection rating forms along with required supplemental written comments, and written comments concerning firms eliminated prior to numerical scoring.

| Note: For additional details regarding the Department’s Selection Documentation Guidelines, see Appendix A. |

f. A statewide meeting will be held to make the final consultant selections. Current workload and availability of personnel will be considered at that time. The Central Office Consultants Committee will preside over the meeting and approve all selections.

### 3. Selection Rating Procedures

a. The Department’s standard consultant selection rating form is shown below. For complex or unusual projects, a modified selection rating form that meets the requirements of 23 CFR 172 and ORC 5526 may be used if approved by the Consultants Committee.
b. Selection evaluations should be based on collaborative discussions of the selection committee members concerning the overall strengths and weaknesses of the teams, including the relative importance of the various selection rating factors relative to the specific requirements of the project. Numerical weights are a guide as to what is important but the selection should not be a mathematical exercise consisting of the addition of scores determined by individual team members. The selection team members should work to reach consensus in determining a single selection rating including written comments that document the reasons for the numerical scores.

c. For each selection rating factor, each short listed firm shall be ranked, with the highest ranked firm receiving the maximum number of points, and lower ranked firms receiving commensurately lower scores. If firms are considered to be equally qualified, the firms may receive the same score for that selection rating factor. The rankings and scores should be based on each firm’s specific proposal and project approach, including the named project manager, staff and subconsultants. Experience on similar projects, past performance for the Department and past performance for other agencies should be considered. The selection committee may contact other Districts and outside agencies if necessary. Any subfactors identified in the RFP should be weighed heavily in the differential scoring.

Note: Differential scoring should consider the relative importance of a selection factor in the success of a given project. The project manager’s role in a simple project may be less important than for a complex project, and differential scoring should reflect this, with higher differential scores assigned to projects that require a larger role for the project manager. Similar consideration should be given to all selection factors.

4. ODOT’s Consultant Selection Rating Form and Selection Rating Notes

Table 3-3 provides details regarding Consultant rating factors.

<table>
<thead>
<tr>
<th>Category</th>
<th>Total Value</th>
<th>Scoring Criteria</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management &amp; Team</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Manager</td>
<td>10</td>
<td>See a, below.</td>
<td></td>
</tr>
<tr>
<td>Strength/Experience of Assigned Staff, including Subconsultants</td>
<td>25</td>
<td>See b, below.</td>
<td></td>
</tr>
<tr>
<td>Firm’s Current Workload/Availability of Personnel</td>
<td>10</td>
<td>See c, below.</td>
<td></td>
</tr>
<tr>
<td>Consultant’s Past Performance</td>
<td>30</td>
<td>See d, below.</td>
<td></td>
</tr>
<tr>
<td>Project Approach</td>
<td>25</td>
<td>See e, below.</td>
<td></td>
</tr>
<tr>
<td>DBE/EDGE Contract Development Goal Outcomes and Plan</td>
<td>5</td>
<td>See f, below.</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>105</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: The following discussion addresses each selection rating factor including scoring methodology, appropriate sources of information and factors that may not be considered.

a. Project Manager
The proposed project manager for each consultant shall be ranked, with the highest ranked project manager receiving the greatest number of points, and lower ranked project managers receiving commensurately lower scores. The rankings and scores should be based on each project manager’s experience on similar projects and past performance for the Department. The selection committee
may contact other Districts and outside agencies if necessary. Any subfactors identified should be weighed heavily in the differential scoring.

Differential scoring should consider the relative importance of the project manager’s role in the success of a given project. The project manager’s role in a simple project may be less important than for a complex project, and differential scoring should reflect this, with higher differentials assigned to projects that require a larger role for the project manager.

b. **Strength/Experience of Assigned Staff, including Subconsultants**
   
The experience and strength of the assigned staff, including subconsultant staff, should be ranked and scored as noted for Number 1 above, with higher differential scores assigned on more difficult projects. Any subfactors identified in the project notification should be weighed heavily in the differential scoring.

   As above, other Districts and other agencies may be contacted.

c. **Firm's Current Workload/ Availability of Personnel (Considered at statewide meeting)**
   
In instances when a consultant is simultaneously being considered for selection on multiple projects, or a consultant’s current workload may impact their ability to complete the work as proposed, the firm’s current workload and availability of qualified personnel shall be considered. In the selection rating form, the full value of the “Firm’s Current Workload/Availability of Personnel” rating category (ten points) shall be allocated to the selected firm to indicate the Department’s quantifiable concerns regarding the ability of a firm (or firms) rated higher in other categories to complete the work with staff members named in the letter of interest.

d. **Consultant’s Past Performance**
   
The consultants’ past performance on similar projects, including subconsultant performance, shall be ranked and scored on a relative, differential scoring type basis, with the highest ranked consultant receiving a commensurately greater number of points. The selection team should consider CES performance ratings if available, and consult other Districts, ODOT Central Offices, and other agencies as appropriate. The use of CES ratings shall place emphasis on the specific type of services requested.

   **Note:** The differential scoring should consider the complexity of the project and any subfactors identified in the project notification.

e. **Project Approach**
   
Evaluation of the firm’s project approach shall consider:

1. Whether the firm has visited the site (If applicable).
2. The firm’s technical approach and understanding of the project.
3. The firm’s qualifications for the project including knowledge and experience concerning relevant ODOT standards, procedures and guidance documents.
4. Any innovative ideas.

   When considering this factor in rating firms, the type of project and the relevance of this factor to the project must be considered. For task order and construction inspection projects, and small uncomplicated design projects, the possibility for innovation may be very limited. Larger more complex projects will generally offer more opportunities for innovation. Consultants that identify truly innovative ideas should receive credit in the selection rating, but this factor can be disregarded when projects offer little opportunity for innovation.

5. The firm’s project specific plan for ensuring increased quality, reduced project delivery time and reduced project costs.

   **Note:** These factors will be relatively more important and relevant to a complex PDP project, and much less important for a construction inspection or task order contract. Please remember that Federal rules...
f. **DBE / EDGE Contract Development Goals**

For projects noted as having DBE or EDGE Contract Development goals, a maximum of 5 points shall be allocated as a measure of the expected outcomes and efforts of the Consultant and DBE/EDGE subconsultant to assist the DBE/EDGE firm in:

1. Improving their long-term development;
2. Increasing their abilities to participate in a variety of kinds of work, including prequalification in new categories, and handle increasingly significant projects;
3. Developing their capability to utilize emerging technology and conduct business through electronic media;

**5 Points** The expected outcomes and plan for achieving them will provide an opportunity for the DBE/EDGE firm to significantly improve in all four objectives listed above, including measurable improvement in one or more categories such as experience that would lead to requalification in a new category or the ability to handle increasingly significant projects.

**4 Points** The expected outcomes and plan for achieving them will provide an opportunity for the DBE/EDGE firm to significantly improve in at least three of the objectives listed above, including measurable improvement in one or more categories such as experience that would lead to prequalification in a new category or the ability to handle increasingly significant projects.

**3 Points** The expected outcomes and plan for achieving them will provide an opportunity for the DBE/EDGE firm to significantly improve in at least two of the objectives listed above.

**2 Points** The expected outcomes and plan for achieving them will provide workload for the DBE/EDGE firm, but opportunities to improve in more than one of the objectives listed above are lacking.

**1 Point** The expected outcomes and plan for achieving them will provide workload for the DBE/EDGE firm, but provide only limited or no opportunities for the firm to improve their skills and capabilities in the objectives listed above.

---

**5. Statewide Selection Meeting**

After Districts and other Offices have completed their initial evaluation and ratings, a statewide meeting will be held to complete the selection recommendations. The Director has final selection authority. The meeting will include all District Deputy Directors, and Central Office Deputy Directors that have projects included in the group, and other Central Office representatives appointed by the Director.

------------------------------ Statewide Selection Meeting Format and Procedures -----------------------------

1. All projects under consideration will first be categorized according to the following work types: project development projects and services, bridge inspection, construction inspection and right of way acquisition. Projects within each category will then be listed in rank order based on estimated fee.
2. In order to ensure that firms selected are not included on the Federal list of debarred firms, the Office of Consultant Services will review the list of shortlisted firms prior to final selection, and eliminate any firms currently debarred by the Federal government.
3. Beginning with the largest project relative to estimated fee within the list for each work type, select firms with consideration of current workload and availability of qualified personnel. Compare the firm rated highest by the District to other short listed firms (for that project) relative to current workload. Determine if workload issues are sufficiently important to select a different firm.
Note: In evaluating current workload and availability of qualified personnel, the Committee shall consider the factors listed in Section E.4.c. Any change in selection from the highest rated consultant must be based on quantifiable concerns regarding the firm’s ability to complete the work with staff members named in the letter of interest. Lower ranked firms must be considered in rank order and be subjected to the same evaluation concerning their ability to complete the work with staff members named in the letter of interest.

If the Committee selects a lower ranked firm based on workload considerations, the reasons for the selection shall be clearly documented concerning the factors considered in determining that the lower ranked firm was more qualified to provide the services. In the selection rating form, the full value of the “Firm’s Current Workload/Availability of Personnel” rating category (ten points) shall be allocated to the selected firm to indicate the Department’s quantifiable concerns regarding the ability of a firm (or firms) rated higher in other categories to complete the work with staff members named in the letter of interest.

4. After identification of the highest rated firm, other Districts may request consideration to select that firm based on a need for the unique qualifications of that firm for a particular project. In this instance, the additional workload and staff commitments required by the additional project (or projects) shall be considered. The firm may be selected for additional projects if workload issues will not impact performance, or the number of selections may be limited as noted in 5. below. If the number of selections is limited, the Department may select the firm for the project that best fits the firm’s qualifications and the needs of the Department.

5. Upon final selection, the additional workload and staff commitments required by the selection shall be considered in any further consideration of that firm for additional selections.

### 3.7—Independent Estimate

Prior to receiving the consultant’s cost proposal(s) for project specific agreements, the Office of Consultant Services, in consultation with other ODOT offices as appropriate, shall prepare an independent estimate for the current phase of work. This estimate shall be prepared to a level of accuracy suitable for use in evaluating whether the consultant’s proposal is fair and reasonable. For multiphase agreements, an independent estimate is required for each phase of work.

The independent estimate may be based on either of the following, or a combination of the two methods:

- A person hour estimate based on ODOT’s Consultant Fee Estimation Guidance, appropriate overhead rate and net fee, ODOT’s statewide wage survey, and an estimate of non-salary direct costs; or
- Historic cost history from similar projects.

The independent estimate shall serve as the basis for negotiation. After receipt of the consultant’s price proposal and analysis of the proposed fee, the independent estimate may be revised if the analysis shows that the initial estimate was not fair and reasonable.

IDIQ and other on-call type agreements do not require an independent estimate prior to execution of the agreement. Specific tasks initiated under an IDIQ agreement require an independent estimate as described above.

### 3.8—Price Proposal and Schedule

#### A. Generally

1. **Format**

The Department uses a standard format for price proposals based on the requirements of 23 CFR 172.11 and 48 CFR Part 31. Both the Department’s automated Scope and Fee System (SAFe) and standard spreadsheets follow these same requirements. Elements of cost and accounting rules are addressed in Chapter 5.
2. Subconsultants
Subconsultant proposals are required in the same format required of the prime consultant. Proposals should be reviewed to ensure that all subconsultants were named in the letter of interest. Any change in the named subconsultants, and addition of subconsultants, must be approved in writing by the Department.

3. DBE or EDGE Goals
For agreements that include either DBE or EDGE goals, the consultant must submit a written plan to achieve the goal. Agreements that include Contract Development Goals require a written plan to achieve the specific accomplishments set out in the letter of interest.

B. Scope and Fee System (SAFe)
SAFe is an on-line application used to develop the scope of services for a project and to prepare a fee proposal. Detailed requirements and procedures for the use of SAFe are included in Volume 3, Scope and Fee System (SAFe).

C. Price Proposal Spreadsheet
For agreements that are not suited to the use of SAFe, the Department maintains spreadsheets (Microsoft Excel) that include the standard proposal format.

Note: The spreadsheets referred to in Section 3.8.C are available in Appendix A.

D. Consultant Fee Estimation Guidance
The Consultant Fee Estimation Guideline is included as Volume 4 of Administration of Contracts for Professional Services. This document was developed as cooperative effort with the American Council of Engineering Companies of Ohio (ACEC) to assist the Department and Consultant personnel in the estimation and negotiation of fair and reasonable fees for professional services. This guide will serve as a reference tool for the Project Managers and other staff, both from ODOT and Consultant, involved in estimation and negotiation of staff hours to effect a uniform and consistent process in all Districts Statewide.

The individual tasks included for the various project activities (Environmental, Roadway, Drainage, etc.) have been established to be as consistent as possible with the tasks identified in the standard PDP Scope of Services. Also, each project activity section will include a description of the overall logic utilized in establishing the types of projects relating to the range of staff hours identified for each task.

The staff hour ranges (Low, Medium and High) represent the work effort that may be expected for each specific task. These hourly ranges vary from simple project (Low) to the complicated project (High) based on the specific variable for each individual activity. The ranges represent neither the minimum or maximum hours that may be negotiated for a particular task on a project. Hours below or above these ranges may be applicable based upon constraints and requirement that are specific to the project. The project type (Widening, Reconstruction, etc.) does not dictate the level of complexity of each activity or task. Each individual activity/task may have a different level of complexity based upon project specific requirements and conditions. Using the limits of the staff hour ranges presented in the guide as absolute limits may not achieve a mutually satisfactory estimate between ODOT and the Consultant but should be used to help thru negotiation.

It is recognized that projects are unique and may need to vary from the work requirements shown in this guide. Where such variations occur, all changes to the standard Scope and guidance should be identified in the project narrative within the scoping document (SAFe).
E. Schedule
For PDP projects the consultant must submit a detailed Master Schedule Gantt Chart (from initial authorization of the agreement thru completion (sale) utilizing Microsoft Project with the price proposal. The Schedule must include beginning and ending dates as well as key milestones on the critical path (Ellis milestones) for the project. For multiphase agreements, the schedule shall also include appropriate time frames for scoping, negotiation and authorization for the additional phases. If applicable to the project, the schedule will also include, at a minimum, all milestones as per the Department’s approved Enhanced Tracking Milestone Listings in Ellis. The overall schedule past those phases contracted for may be general in nature meeting the dates as established within this scope.

3.9—Negotiation

A. General
1. The Department’s negotiation of the terms of consultant contract is governed by the following documents:
   a. ORC Section 5526.05
   b. 23 CFR 172.11, including referenced sections of the CFR.
2. The following contractual elements may be negotiated to reach an agreement that is acceptable to ODOT and the consultant:
   a. Scope of services
   b. Price
   c. Time of delivery
   d. Payment methods

B. Fair and Reasonable Compensation
1. 23 CFR 172.11 states that indirect cost rates shall not be limited by administrative or de facto ceilings of any kind.
2. 23 CFR 172.11 also states that the Department shall use and apply the consultant’s actual direct salary or wage rates for estimation, negotiation, administration, and payment of contracts and contract modifications.
3. However, 23 CFR 172.11 permits an assessment of reasonableness in accordance with the Federal cost principles. ODOT’s wage survey should be utilized in determining the reasonableness of proposed direct labor costs - not as a limit on wage rates. The composite wage rates are typically applicable to median difficulty design work - for complex or unusual projects the wage surveys should be used with judgment or not at all.
4. Auction techniques or other artificial or arbitrary ceilings cannot be used, based on the “fair and reasonable” requirements of 23 CFR 172 and 48 CRF 15.8. Examples of arbitrary ceilings would be PE/CO ratios (prohibited as a form of agreement by 23 CRF 172.9), planning level budget estimates, or even the Department’s independent estimate if it could be demonstrated that the estimate was not fair and reasonable.

C. Negotiation Team
The Department’s initial negotiation of consultant contacts are conducted by the Office of Consultant Services, the District or Office that initiated the agreement, and other subject matter experts. The negotiation strategy should incorporate a multi-disciplinary approach that seeks input from a wide range of disciplines as appropriate for specific project requirements. Central Office personnel should be included for complex projects when appropriate. The negotiation team must reach internal agreement concerning the Department’s independent estimate and overall project objectives prior to negotiation to ensure an effective team approach to the negotiation.

Negotiation of tasks under IDIQ agreements are conducted by the District or Office that manages the agreement. Negotiations should follow a similar multi-discipline team approach based on specific task requirements.
D. Conducting Negotiations

Negotiations should be conducted in accordance with the following objectives and procedures:

1. The Department’s objective is to reach agreement on all aspects of negotiation including a fair and reasonable fee, scope of services, schedule and payment methods, in order to reach an agreement that is acceptable to the Department and the consultant. Upon conclusion, all aspects of the completed negotiation shall be documented to the satisfaction of the Department and consultant.

2. The Department’s estimate of the fee and consultant’s proposal should be compared to identify specific tasks or areas of cost that are significantly different. Discussions may include understanding of the scope of services, reasonableness of proposed wage rates and personnel assignments, appropriate level of difficulty in the Department’s Consultant Fee Estimation Guidance, and other sources of information.

3. The Department’s Consultant Fee Estimation Guidance should be used as the basis of negotiation in all cases where Guidance definitions match the project requirements. In other cases, the Department may rely on comparison to similar projects, in-house production data or subject matter experts.

4. The Department’s objective is to reach agreement on the total fee and should not seek to limit the fee for specific tasks or areas of cost if the overall fee is acceptable relative to the Department’s estimate of a fair and reasonable fee.

5. The payment method should be discussed and the most appropriate method selected. Lump sum fees require the lowest administrative burden and should be selected when the Department has established that the extent, scope, complexity, character, and duration of the work are such that fair and reasonable compensation, including a fixed fee, can be determined at the time of negotiation.

6. A sufficiently detailed delivery schedule that meets the Department’s requirements should be negotiated as part of the agreement.

E. Failure to Negotiate a Contract

If the Department’s negotiation team fails to negotiate an agreement with the highest ranked consultant, either the Consultant or the Department may request to resolve the impasse by scheduling a hearing in front of the Director’s Consultant Resolution Board. If the Consultant does not agree to the hearing, the Board may terminate negotiations in accordance with 5526.05(C).

Upon completion of a hearing and consideration by the Board, the Board may resolve the dispute or terminate negotiations in accordance with 5526.05(C). Refer to Chapter 4 for complete details of the Director’s Consultant Resolution Board procedures.

If the Board elects to terminate negotiations, the Director shall notify the firm in writing of the termination of negotiations and shall enter into negotiations with the firm that is ranked next most qualified. If negotiations fail with that firm, the director shall negotiate with each subsequently ranked firm in order of ranking until a contract is negotiated and entered into or until the director selects and ranks additional firms under ORC 5526(D).
Chapter 4—CONTRACTS AND ADMINISTRATION

4.1—Agreement Documents

The Department’s standard agreement documents, including the Specifications for Consulting Services, are approved by the Department’s Chief Legal Counsel and must be used for all agreements. Any changes to approved documents must be approved by the Office of Chief Legal Counsel.

The Department’s Specifications for Consulting Services provide the “terms and conditions” for agreements and must be incorporated by reference in all agreements unless a different form is approved by the Office of Chief Legal Counsel.

Note: Refer to Chapter 1 for additional information concerning laws and regulations.

4.2—Funding, Execution of Agreements and Authorization to Proceed

A. Funds Manager Approval

Prior to proceeding with an agreement or modification of an agreement, approval of the appropriate Funds Manager is required.

B. Controlling Board

1. Generally

The Controlling Board is a mechanism for handling necessary adjustments to the state budget. Section 127.12 of the Ohio Revised Code establishes the Controlling Board as a body consisting of seven members: the Director of the Office of Budget and Management or an employee of the Office of Budget and Management designated by the Director, the Chair or Vice Chair of the Senate and House Finance Committees, a majority member appointed from both the Senate and the House, a minority member appointed from both the Senate and the House, and the President of the Controlling Board.

ORC 5526.05 and Controlling Board rules require the Department to seek approval of the Controlling Board for selection of consultants and approval of the expenditure of funds in most cases. Exceptions to these rules are addressed below in Section 4.2.B.2 (When is Controlling Board Approval Needed?). Refer to Chapter 1 for additional information concerning the Department’s purchasing authority and Controlling Board rules and procedures.

1 As stated previously, in the context of this Manual, the terms “Contract” and “Agreement” have the same meaning.
2. When is Controlling Board Approval Needed?
Agreements for professional services procured under ORC 5526 require approval of the Controlling Board with the following exceptions:

a. Agreements with State agencies including State universities.

b. New agreements or modifications of agreements in amounts less than $50,000 that meet the criteria of ORC 127.16(B)(1), which limits the $50,000 threshold as follows:
   The threshold is the limit at which a purchase from a particular consultant would amount to $50,000 or more when combined with the amount of all disbursements to the consultant during the fiscal year for purchases made by the agency from the supplier and the amount of all outstanding encumbrances for purchases made by the Department from the consultant unless the purchase is made by competitive selection or with the approval of the Controlling Board. The available exclusion amount for any given vendor can be determined through Appropriation Accounting (AA).

c. In cases of emergency declared by the Governor, or the Director in accordance with ORC 5526.08.

3. Personal Liability
Section 127.16 of the Ohio Revised Code provides that any person who authorizes a purchase in violation of the Controlling Board rules shall be personally liable to the State for any funds spent under the contract.

4. Controlling Board Requests
The Division of Legislative Affairs is responsible for representing the Department in front of the Controlling Board. The Office of Consultant Services is responsible for preparing Controlling Board requests for professional services contracts and coordination with the Division of Legislative Affairs. The format and content of Controlling Board requests is set out in the Controlling Board Manual.

5. Controlling Board Carry-Over Process
Controlling Board approval is specific to the fiscal year of the Request. Funds may be encumbered during the fiscal year of approval but that approval expires for any unencumbered balance of the originally approved amount at the close of that fiscal year without a further request from the Department and approval of the Controlling Board. In order to address this issue, at the close of each fiscal year the Office of Consultant Services prepares a “carry over” Controlling Board request that includes the unencumbered balance of previous Controlling Board approvals for all active consultant agreements. This process begins in mid-June each year when the accounting system closes and accurate data is available, and ends when a “carry over” request has been prepared, submitted to the Controlling Board, and approved. Approval dates vary based on Controlling Board meeting schedules but typically occur in late July or early August.

During the “shutdown” time period from mid-June until Controlling Board approval, funds cannot be encumbered. Districts must plan accordingly and if needed, plan for encumbrances prior to the shutdown. The Office of Consultant Services will advise Districts and other Offices at the onset of this process and upon approval of the Controlling Board.

C. Federal Approvals – Major Projects
In compliance with 23 CFR 172.9 and 23 USC 106(h) regarding Major Project Guidance, FHWA must approve both the selection process and agreements/modifications prior to authorization of an agreement. The Office of Consultant Services will request FHWA approval for each step as it occurs.

D. Federal Authorizations
In compliance with 23 CFR 630.106, the Department must obtain an authorization to proceed from the FHWA before beginning work on any Federal-aid project. FHWA will issue the authorization to proceed through a formal agreement with the State. The agreement can be executed only after applicable prerequisite requirements of Federal laws and implementing regulations and directives are satisfied. Authorizations may be specific to sub phases within project development, an example would be that Environmental Clearance must be obtained before Federal authorization to proceed will be given for
detail design.

The State’s request that Federal funds be obligated shall be supported by a documented cost estimate that is based on the State’s best estimate of costs. If project costs need to be adjusted, through modification, the Office of Federal Accounting should be notified to confirm if additional Federal Authorization is needed based on Cost.

District Offices are responsible for ensuring that all required FHWA approvals are coordinated with the Division of Finance and obtained timely.

E. Encumbrance Procedures

Section 126.07 of the Ohio Revised Code requires that:

No contract, agreement, or obligation involving the expenditure of money chargeable to an appropriation, shall be valid and enforceable unless the Director of Budget and Management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations. Any written contract or agreement entered into by the State shall contain a clause stating that the obligations of the State are subject to this Section.

This language requires that the Department encumber sufficient funds to meet contractual obligation to compensate consultants prior to authorizing consultants to proceed with services. Agreements may be executed that include phases of work that are not authorized at the time of execution of the agreement, and these future phases of work require encumbrance of funds prior to authorization of that phase of work. In these instances, the District or Office responsible for administering the agreement must ensure that services are not authorized prior to encumbrance of funds.

Responsibility for preparing encumbrance requests and forwarding to the Division of Finance for further processing is as shown below in Table 4-1:

<table>
<thead>
<tr>
<th>Agreement Type</th>
<th>Responsibility for Encumbrance Request</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-IDIQ</td>
<td>Office of Consultant Services, Initial agreement and modifications</td>
</tr>
<tr>
<td>IDIQ Options 1 &amp; 4</td>
<td>Office of Consultant Services, Initial agreement and modifications</td>
</tr>
<tr>
<td>Specific tasks under IDIQ Option 2</td>
<td>District or Office</td>
</tr>
</tbody>
</table>

Encumbrance requests are forwarded to the Office of Capital and Project Accounting in a standard Inter-Office Communication (IOC) format. Approval of the appropriate Funds Manager is required prior to processing. The request is processed through Ellis and forwarded to the State Office of Budget and Management (OBM). Upon approval by OBM the encumbrance will be posted to Ellis. The appropriate Office will be notified of the approval.

Refer to Section 4.3.F for additional procedures and requirements for managing Indefinite Delivery/Indefinite Quantity (IDIQ) Agreements (Task Order Agreements).

*Note: See the Appendix A for a standard IOC.*
F. Execution of Agreements and Authorization to Proceed
Agreements and modifications are executed when signed by the consultant and the Director, and sent to the consultant with a dated transmittal letter. Actual authorization to proceed with all or a portion of the work may be included in the execution letter (initial authorization) or may be provided at a later date. Authority to execute agreements and modifications, authorize work initially, and authorize services noted as “If Authorized” is shown in Table 4-2.

**Note:** Work can be authorized only when the funds have been encumbered. Federal authorization is provided as needed, and authorization of services must be in writing.

**TABLE 4-2: AUTHORITY TO EXECUTE AGREEMENTS AND AUTHORIZE SERVICES**

<table>
<thead>
<tr>
<th>Agreement Type</th>
<th>Execution of Agreement</th>
<th>Authorization to Proceed</th>
</tr>
</thead>
<tbody>
<tr>
<td>PDP</td>
<td>Consultant Services</td>
<td><strong>Initial:</strong> Consultant Services</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>If Authorized Parts:</strong> District</td>
</tr>
<tr>
<td>Bridge Inspection</td>
<td>Consultant Services</td>
<td><strong>Initial:</strong> Consultant Services will authorize the consultant to contact the District Office.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Authorization to proceed with inspection of specific bridges and If Authorized Parts:</strong> District</td>
</tr>
<tr>
<td>Construction Inspection/Construction Administration</td>
<td>Consultant Services</td>
<td><strong>Initial:</strong> Consultant Services will authorize the consultant to contact the District Office.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Assignment of consultant personnel to specific projects and authorization to proceed:</strong> District</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Additional Fiscal Year Encumbrances:</strong> District/Central Office. District Offices shall notify Consultant Services to encumber additional funds.</td>
</tr>
<tr>
<td>IDIQ</td>
<td>Consultant Services</td>
<td><strong>Initial:</strong> Consultant Services will authorize the consultant to contact the District Office.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Authorization to proceed with specific assigned tasks:</strong> District</td>
</tr>
<tr>
<td>Real Estate, Project Specific</td>
<td>Consultant Services</td>
<td><strong>Initial:</strong> Consultant Services</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>If Authorized Parts:</strong> District</td>
</tr>
<tr>
<td>Other</td>
<td>Consultant Services</td>
<td><strong>Initial:</strong> Consultant Services</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>If Authorized Parts:</strong> District</td>
</tr>
</tbody>
</table>

**Note:** See Appendix A for a sample authorization letter.
4.3—Contract Strategies

A. Contract Types

1. Project Specific

A contract between ODOT and a consultant for the performance of services and defined scope of work related to a specific project or projects.

This type of contract defines all required services at solicitation and does not require additional scope development for subsequent phases and authorizations.

2. Multiphase

A project-specific contract where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

This type of contract is appropriate when the state of project development does not allow the initial preparation of a clear and well defined scope of services to complete all project requirements.

3. On-call or indefinite delivery/indefinite quantity (IDIQ)

A contract for the performance of services for a number of projects of a general scope, complexity, and professional nature, under task or work orders issued on an as-needed or on-call basis, for an established contract period, with a period of allowable contract time and maximum total contract dollar amount.

Note: Refer to Section 4.3.F for additional procedures and requirements for managing Indefinite Delivery/Indefinite Quantity (IDIQ) Agreements.

4. Personal Services Agreements

Personal Services agreements are approved and processed by the Office of Chief Legal Counsel. Personal Services agreements are generally limited to amounts less than $50,000.

Note: In most cases, Personal Services agreements should not be used for services that meet the definitions of Professional Services in ORC 5526.01(C). The Small Purchase selection process described in Chapter 3 should be used for these services, which ensures compliance with ORC 5526 and 23 CFR 172.

Personal Services agreements do not include the Specifications for Consulting Services as a contract document and therefore do not include the contractual protections included in standard agreements for professional services.

B. Payment Methods

A single agreement may contain a variety of payment methods as appropriate for compensation of different elements of work. The agreement shall specify a maximum amount payable which shall not be exceeded unless adjusted by a contract modification. Payment methods used are described below.

1. Actual Cost Plus a Fixed Fee

A form of reimbursement that is a combination of two factors: the Consultant’s actual allowable costs; and fixed fee as set forth in the agreement. This payment method is appropriate if the extent of the work cannot be well defined and other payment methods are not appropriate. The actual cost plus a fixed fee compensation method is preferred for projects in the preliminary development phase and other projects where the work is indeterminate in nature.

Note: A maximum compensation amount (upset value) is required to be included in the agreement.
2. Lump Sum
Provides for remuneration of a specific total amount payable for the performance of services. The lump sum payment method shall be used when the extent, scope, complexity, character, and duration of the work to be required can be determined to a degree that fair and reasonable compensation, including a fixed fee, can be determined at the time of negotiation.

3. Rate of Pay
A type of remuneration that establishes a specific rate of pay in the agreement applicable for each classification of employee, including Principals, for the time the Consultant directly utilizes each such individual in the performance of the Agreement. Rates of Pay include direct labor costs, indirect costs, and fixed fee, but do not include non-salary direct costs such as travel. This payment method shall only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. This specific rates of compensation payment method should be limited to contracts or components of contracts for specialized or support type services where the consultant is not in direct control of the number of hours worked, such as construction engineering and inspection. Travel and subsistence, and other direct costs, as actually incurred, are additionally eligible. A maximum compensation amount (upset value) is required to be included in the agreement.

4. Unit of Work
Unit of Work Compensation is remuneration that establishes a specific unit amount payable for each unit of Services performed. Unit of work compensation is applicable when the unit cost can be determined in advance with reasonable accuracy but the number of units is indefinite. The unit of work fee includes all costs of accomplishment such as per each for soils or other laboratory tests, utility location test holes, etc. Maximum compensation amount (upset value) is required.

5. Prohibited Payment Methods.
The Cost Plus a Percentage of Cost and Percentage of Construction Cost methods of payment shall not be used, as the fees/profits under these contracts increase as the consultant’s costs rise.

Note: Under these types of contracts, the consultant would have the incentive to drive up costs as high as possible, thereby increasing profits. These contract types are prohibited by Federal law.

All agreements include various provisions, either by reference or by physical incorporation, as applicable. The following documents and provisions must be included in all agreements unless approved otherwise by the Office of Chief Legal Counsel:

1. Specifications for Consulting Services. The Specifications include the “terms and conditions” for all agreements for professional services.
2. Scope of Services
3. Agreed fees including payment methods.
4. Invoice and Progress Schedule
5. The most current Office of Budget and Management Travel Policy
6. DBE or EDGE goal requirements if applicable.
7. Declaration that signatories are authorized to execute the agreement.
8. Provision that expenditure of funds must be certified by the Director of Budget and Management (ORC126.07)
D. On-Going Services During Construction

The Department’s standard scopes of services documents for design agreements include a provision for “on-going services during construction” which allows the design consultant to be consulted on an as-needed basis during construction. Many issues come up during the regular course of constructing a project. Issues range from simple quantity calculations and plan note interpretations, evaluation of contractor requested changes, evaluation of change orders or claims, attendance at meetings, post-construction documentation, onsite geotechnical support and potential errors and omissions.

**Note:** All significant changes to the plans or other construction contract requirements shall be reviewed by the consultant prior to implementation. Failure to involve design consultants in plan changes and other significant project changes may result in poor decisions and could limit the consultant’s responsibility for errors or omissions.

**Important Factors Regarding Implementation:**

1) The involvement of design consultants during the construction phase is encouraged.
2) The District Project Manager for the design phase should remain in the communication loop as the administrator of the consultant agreement. This program is not construction inspection, the purpose is better coordination between the design and construction phases. Department construction personnel remain responsible for inspection and administration of the construction contract.
3) Close coordination between District Planning and Engineering and Construction staffs will be required.
4) Funds will be encumbered as construction phase services and an award date must be in place in order to encumber funds. The design contract will be modified to add the on-going services just prior to construction, utilizing construction phase funds. The use of unbilled PE Phase funds is not permitted.
5) A procedure to identify projects that will be sold during each construction year must be developed to ensure that the services are initiated in advance of construction. Districts will be responsible for this process along with notification of the Program Manager and Consultant Services so that modifications can be processed timely.
6) Consultants will be compensated on a “rate of pay” basis and must submit rates using the “Hourly Rate Calculations” spreadsheet provided on the Consultant Services web page. A maximum fee will be provided in the agreement for these services.
7) For significant projects the consultant should attend the Pre-Construction meeting.
8) For projects that include complex geotechnical issues, the firm responsible for geotechnical engineering (consultant or subconsultant) should provide on-site geotechnical support.
9) Schedule for all Major New Program, Major Rehabilitation Program, and Major Bridge Program funding participation (shown below in Table 4-3):

<table>
<thead>
<tr>
<th>TABLE 4-3: FUNDING PARTICIPATION SCHEDULE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Cost</td>
</tr>
<tr>
<td>Projects less than $5M</td>
</tr>
<tr>
<td>Projects $5M to $30M</td>
</tr>
<tr>
<td>Projects $30M to $75M</td>
</tr>
<tr>
<td>Projects greater than $75M</td>
</tr>
</tbody>
</table>
E. Modification of Agreements

1. Definition, Early Identification, Limitations, and Related Issues

   a. Definition - A modification is a legal adjustment to an agreement made necessary as a result of a change in scope which may require an adjustment of prime compensation, or additionally required services to be performed that may require the adjustment of prime compensation.

   Note: Contract modifications are required for any changes to the terms of an existing agreement that change the cost of the agreement; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

   b. Early identification and processing of modifications is very important in maintaining project schedules. In addition to standard procedures and approval authority, advanced authorization procedures are included that allow the work to proceed almost immediately, but only when certain conditions are met.

   c. Under no circumstances should work be authorized either verbally or in writing when a legal contract does not exist. Only the Director is empowered to sign agreements, and Section 127.16 of the Ohio Revised Code provides that any person who authorizes a purchase in violation of the Controlling Board rules shall be personally liable to the State for any funds spent under the contract.

   d. Modifications are not permitted for any additional services outside of the scope of work established in the original request for letters of interest. In such cases the Department may:

      - Procure the services under a new solicitation;
      - Perform the work itself using Department staff; or
      - Use a different, existing contract under which the services would be within the scope of work.

   e. 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 agreement. Agreed 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.

   f. Modifications shall clearly define and document the changes made to the agreement, establish the method of payment for any adjustments in fee, and be in compliance with the terms and conditions of the agreement and original procurement.

   g. Execution of a modification and authorization to proceed with the services requires the same steps needed for a new agreement as described in Section 4.2, including:

      (1) Approval of the appropriate Funds Manager.

      (2) Approval of the appropriate Consultants Committee.

      (3) Required Federal approvals and authorizations.

      (4) Controlling Board approval – in most cases the initial Controlling Board approval will include sufficient spending authority.

      (5) Encumbrance of funds.

2. Procedures for Modification of Agreements

   a. Initiation of Modifications to Agreements

      1) A District or other ODOT Office may request a proposal for a modification when circumstances change the cost of the agreement; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed. The request to the consultant must be in writing and clearly state the scope of the
additional services. The District may schedule meetings or additional communications with the consultant to clarify the scope of the additional services as needed.

2) A consultant may request a modification when the firm believes that significant changes in the character, scope, complexity, or duration of the work; or significant changes in the conditions under which the work is required to be performed have impacted the cost of performing the services. After evaluation, the District may process the request as received, partially accept the request and negotiate an acceptable change in fee scope and fee, or return the proposal to the consultant with an explanation of the reasons for denial of the modification.

**Note:** If the request is initially denied by the District office, the consultant may request a review by the Office of Consultant Services. If the Office of Consultant Services’ review does not resolve the dispute, the consultant may request a hearing in front of the Director’s Consultant Resolution Board.

### b. Authority to Approve and Execute Modifications

**Table 4-4: Authority to Approve and Execute Modifications**

<table>
<thead>
<tr>
<th>Modification Type</th>
<th>Recommend Modification</th>
<th>Approve Fee</th>
<th>Prepare and Execute Modification</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>FHWA Major Project Designation</td>
<td>District</td>
<td>Office of Consultant Services/Consultants Committee</td>
<td>Consultant Services</td>
<td>Consultant Services will seek approval from FHWA prior to execution.</td>
</tr>
<tr>
<td>PDP or Bridge Inspection less than $150,000</td>
<td>District</td>
<td>District Consultants Committee</td>
<td>Consultant Services</td>
<td></td>
</tr>
<tr>
<td>PDP or Bridge Inspection greater than $150,000</td>
<td>District</td>
<td>Office of Consultant Services/Consultants Committee</td>
<td>Consultant Services</td>
<td></td>
</tr>
<tr>
<td>Project Specific Construction Inspection/Administration</td>
<td>District</td>
<td>Office of Consultant Services/Consultants Committee</td>
<td>Consultant Services</td>
<td>Increases in the maximum fee</td>
</tr>
<tr>
<td>IDIQ</td>
<td>District</td>
<td>Office of Consultant Services/Consultants Committee</td>
<td>Consultant Services</td>
<td>Increases in the maximum fee. Includes on-call construction inspection/admin.</td>
</tr>
<tr>
<td>IDIQ, Tasks (not a formal modification)</td>
<td>District</td>
<td>District Consultants Committee</td>
<td>N/A – not a formal modification of the agreement</td>
<td>For specific tasks, approval of the fee and authorization to proceed</td>
</tr>
<tr>
<td>Real Estate, Project Specific</td>
<td>District</td>
<td>Office of Consultant Services/Consultants Committee</td>
<td>Consultant Services</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>District Office</td>
<td>Office of Consultant Services/Consultants Committee</td>
<td>Consultant Services</td>
<td></td>
</tr>
</tbody>
</table>
c. Procedures for Processing Modifications

Certain types of agreements including IDIQ and project specific construction inspection, in which the existing agreement terms are sufficient, can be modified at the request of the District Office and may not require a proposal from the consultant. In these cases, the steps below that address proposals and fee negotiation are not required.

1) Notify the appropriate Funds Manager and obtain funding approval.
2) Evaluate the status of required Federal approvals and authorizations and obtain Federal authorization if needed.
3) Evaluate the proposal for adherence to the Department’s requirements for preparation of proposals. Proposals that do not meet these requirements shall be returned to the consultant for correction.
4) Based on the approval authority listed in the table above, involve the Office of Consultant Services in analysis and negotiation of the fee as required.
5) Analyze the proposed fee or other proposed change in the agreement relative to the change in scope of services in accordance with Section 3.9 of Chapter 3.
6) If required, negotiate the fee and or other terms of the agreement in accordance with Section 3.9 of Chapter 3.
7) Identify funds within current agreement parts that will not be used for the original purposes and are available for re-allocation. The re-allocation of currently encumbered funds provides the most efficient use of resources and allows earlier authorization by potentially avoiding additional Controlling Board approval and encumbrance of funds.
8) Allocate the approved fee to existing contractual parts and note any corresponding reductions or elimination of current contractual fees as described above. Fee type (lump sum, cost plus net fee, etc.) shall be noted.
9) Forward the approved modification to the Office of Consultant Services for preparation of a modification, Controlling Board approval (if required), encumbrance of funds (if required) and execution of the modification. Include the following information as needed in the transmittal:

A. Status of required Federal approvals and authorizations.
B. Approval of the appropriate Funds Manager.
C. Reference to an Ellis funding event if needed.
D. Direction concerning re-allocation of currently encumbered funds.

Note: Refer to Appendix A for a standard transmittal form.

3. Changes in Project Schedule

Delivery schedules are negotiated and incorporated in the terms of most agreements. Changes in the agreed schedule may be requested by either the Department or the consultant. Changes in project schedule shall be processed as follows:

a. Consultant requested changes in the schedule should be evaluated as described above and either accepted, negotiated or denied. Accepted changes in the schedule that do not impact the fee shall be approved in writing by the District but do not require formal modification of the agreement. Approved changes shall be include the same level of detail as the original agreement.

b. Department requested changes in the schedule must be approved by the consultant. The consultant may request an increase in fee if the schedule is accelerated. Any increase in fee requires formal modification of the agreement. Accepted changes in the schedule that do not impact the fee shall be approved in writing by the District but do not require formal modification of the agreement.

c. On-call or indefinite delivery/indefinite quantity (IDIQ) agreements are limited to the contract period included in the agreement. Refer to the “Use and Management of Indefinite Delivery/Indefinite Quantity (IDIQ) Agreements” included in this Chapter.
4. Advanced Authorization to Proceed
   
a. Definition and Limitations
Under certain circumstances, a consultant may be authorized to proceed with the work of a modification prior to execution of a formal modification through management of the scope of services and remaining fee. This procedure can be best utilized in the early stages of an agreement when significant funds remain unspent and can be used temporarily for other purposes (the modification).

IMPORTANT: Advanced authorization should not be utilized if the need for the work is not clearly established, and advanced authorization shall not be utilized for substantial changes in the project such as:

1) Adding through lanes to the project.
2) Substantially increasing the project length.
3) Substantially changing the project location.

b. Advanced Authorization Procedures
Advanced authorizations require that the following steps be completed prior to authorizing an Advanced Authorization including:

1) Required Federal approvals and authorizations.
2) Approval of the appropriate Funds Manager.
3) Approval of the appropriate Consultants Committee.
4) In compliance with 23 CFR 172.9 and 23 USC 106(h) regarding Major Project Guidance, FHWA must approve any advanced authorization. The Office of Consultant Services will request FHWA approval.
5) The scope of the contract modification must be clearly stated in writing, either within a proposal prepared by the consultant or as prepared in writing by the District.
6) A dollar limitation must be established for the work included in the advance authorization. The limitation should be less than the expected amount of the modification in order to avoid an authorization that is later revised downward upon final negotiation of the fee. Authorizing expenditure of approximately 75% of a proposed or estimated fee will be appropriate in most cases.

   Note: The Consultant must be advised to maintain separate cost accounting records for the work of the advanced authorization until a formal modification is authorized.

7) Work of equivalent or greater value must be identified and temporarily suspended from the agreement within previously encumbered funds. Such work may consist of “if authorized” parts of the agreement that have not been authorized or work beyond a certain submittal milestone (i.e., do not proceed past a Stage 2 submittal).
8) The advance authorization must be provided in writing and clearly state the work to be done.
9) A formal modification must be processed expeditiously. Upon execution of the modification, the temporarily deleted work will be reinstated into the agreement.

c. Authorization to Proceed
Subject to all steps listed above being completed, the District may proceed with the advanced authorization. Provide a copy of the advanced authorization letter to the Office of Consultant Services.

   Note: See Appendix A for a sample advance authorization letter.
F. Use and Management of Indefinite Delivery/Indefinite Quantity (IDIQ) Agreements (Task Orders)

1. Federal Requirements for the Use of IDIQ Agreements

23 CFR 172.9(a)(3) sets out FHWA rules for the use of Indefinite Delivery/Indefinite Quantity (IDIQ) Agreements, commonly called task order agreements. These rules are shown here to provide the basis for the Department’s policies and guidance for use of IDIQ agreements, which are provided in the following sections. The FHWA rules include the following, as excerpted from 23 CFR 172.9(a):

(3) On-call or indefinite delivery/indefinite quantity (IDIQ). A contract for the performance of services for a number of projects, under task or work orders issued on an as-needed or on-call basis, for an established contract period. The procurement of services to be performed under on-call or IDIQ contracts shall follow either competitive negotiation or small purchase procurement procedures, as specified in §172.7. The solicitation and contract provisions shall address the following requirements:

(i) Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions, which shall not exceed 5 years;

(ii) Specify a maximum total contract dollar amount that may be awarded under a contract;

(iii) Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services; and

(iv) If multiple consultants are to be selected and multiple on-call or IDIQ contracts awarded through a single solicitation for specific services:

(A) Identify the number of consultants that may be selected or contracts that may be awarded from the solicitation; and

(B) 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 or IDIQ contracts for services procured with competitive negotiation procedures. Under competitive negotiation procurement, each specific task or work order shall be awarded to the selected, qualified consultants:

(1) Through an additional qualifications-based selection procedure, which may include, but does not require, a formal RFP in accordance with §172.5(a)(1)(ii); or

(2) On a regional basis whereby the State is divided into regions and consultants are selected to provide on-call or IDIQ services for an assigned region(s) identified within the solicitation.

The Department’s procedures as included herein are designed to comply with FHWA rules and to provide a framework for the use of IDIQ agreements, the Department has established rules for the use of such agreements and procedures for funding and management. ODOT systems impacted include Ellis, Appropriations Accounting, and CSS/CES. The following sections establish the Department’s rules and procedures.
2. Rules and Limitations for Use of IDIQ Agreements

   a. Generally
   The IDIQ contract period is limited to 24 months and contractual authority to the maximum fee amount advertised in the request for letters of interest, in accordance with 23 CFR 172. Time extensions or increases in the maximum fee or maximum dollar value of active agreements will be considered only in exceptional circumstances, and require approval by the Assistant Director for Transportation Policy and Chief Engineer.

   b. Construction Inspection/Administration
   Project specific agreements are encouraged where feasible. District-wide or State-wide construction inspection/administration agreements are limited to a maximum agreement amount of $1,000,000. The number of agreements is not limited however the maximum dollar value of active agreements shall not exceed $3,000,000. Sharing resources between Districts is strongly encouraged.

   c. Safe Routes to School Program
   Agreements are limited to a maximum agreement amount of $1,000,000. The number of agreements is not limited however the maximum dollar value of active agreements shall not exceed $2,000,000.

   d. Subsurface Utility Engineering Services
   IDIQ agreements for Subsurface Utility Engineering services are limited to one $500,000 agreement per two year period for each urban District. Rural Districts are restricted to the use of statewide agreements. State-wide Subsurface Utility Engineering agreements are limited to a maximum agreement amount of $1,000,000. The number of agreements is not limited however the maximum dollar value of active agreements shall not exceed $2,000,000.

   e. Real Estate
   Projects with an estimated fee of $150,000 or greater require a project specific programmatic posting. Real Estate task order agreements are limited to state wide agreements only, with a maximum agreement amount of $1,000,000.

   f. Safety Program
   Statewide IDIQ design agreements for the Safety Program are not permitted. Projects identified and funded as a result of a Safety Study shall be posted by the appropriate District Office as stand-alone agreements through the Programmatic selection process.

   IDIQ agreements for Safety Studies are limited to a maximum agreement amount of $1,000,000. The number of agreements is not limited however the maximum dollar value of active agreements shall not exceed $2,000,000.
g. General Engineering Services (including Surveying, Environmental Services and Geotechnical Services)

1) Small bridge and culvert projects (potentially from multiple districts) should be packaged into specific design agreements and scheduled for posting in the Programmatic selection process.

2) Utilization of IDIQ Agreements is critical to the delivery of the ODOT program. However, agreements of this type should not be used to deliver specific projects in their entirety. Rather they should be used to supplement District and Central Office staff by performing specific activities to assist with the delivery of the program. Therefore, partner Districts will be required to share agreements on a two-year cycle of the types mentioned below, subject limitations shown below in Table 4-5.

**Table 4-5: Limits per IDIQ Agreement**

<table>
<thead>
<tr>
<th>Type of Agreement</th>
<th>Maximum Fee (Per District Pairing†)</th>
<th>Maximum Task Amount (Central Office)</th>
<th>Maximum Task Amount (District)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Engineering Services</td>
<td>$1,500,000</td>
<td>$125,000</td>
<td>$75,000</td>
</tr>
<tr>
<td>Surveying Services</td>
<td>$1,500,000</td>
<td>$125,000</td>
<td>$75,000</td>
</tr>
<tr>
<td>Environmental Services</td>
<td>$1,500,000</td>
<td>$125,000</td>
<td>$75,000</td>
</tr>
<tr>
<td>Geotechnical Services</td>
<td>$1,500,000</td>
<td>$125,000</td>
<td>$75,000</td>
</tr>
</tbody>
</table>

(† District Pairings previously have been identified as 1-2, 3-12, 4-11, 5-10, 6-9, and 7-8.)

Exceptions to the maximum fee per task shall be approved in writing by the Deputy Director of the Division of Engineering. Requests may take the form of an e-mail to the Deputy Director of the Division of Engineering, and should include the following information at a minimum:

- IDIQ Agreement Number, PID and Remaining Contractual Authority
- Project PID
- Anticipated Fee
- Brief Project Description/Justification

**Note:** District and Division offices should plan appropriately to ensure they have adequate task-order resources available to meet their needs.

h. Emergency Provisions

In the event of an emergency, declared by the Governor or Director, the first option will be to utilize existing task orders held by the affected district(s) or district pairings. Tasks authorized as a result of a declared emergency will not be subject to the limits above. If these agreements are insufficient to meet the need, agreements held by other districts or central office should be evaluated for available capacity.

If such resources are insufficient, the District may request a special posting to select additional consultants for the emergency services.
3. IDIQ Options, Funding Rules and Management
   a. Standard Requirements for all IDIQ Agreements

Several standard options are available for funding and administering IDIQ (task order) type agreements. All options share common requirements as follows:

1) Each agreement must be established under an IDIQ “placeholder” PID. A State Job Number shall not be assigned to this PID. Funds can be encumbered against this PID (see Options below) but costs shall not be charged or invoiced against a placeholder PID. All costs must be charged to projects or other cost objectives as described under the various options below.

2) For miscellaneous costs that cannot be allocated to a specific project PID, a “Miscellaneous Costs PID” must be established and funded for these costs. A State Job Number is required. Such costs cannot be charged or invoiced against a placeholder PID, or redirected to another PID at a later date.

3) Authorization of tasks and encumbrance of funds is limited to the agreement amount.

4) Assigned tasks shall be limited to the work types included in the advertised scope of services.

5) Payment methods for assigned tasks shall be limited to those methods listed in the agreement.

b. Options for Administering IDIQ Agreements

1) **OPTION 1 – FUNDS ENCUMBERED INITIALLY – ALL OR IN PART**

a) The full amount of the agreement may be encumbered initially, or encumbered by fiscal year or other schedule based on funds availability. Funds are encumbered against the IDIQ “placeholder” PID. The Office of Consultant Services will process all encumbrance requests, both initial and additions.

b) Authorization of specific tasks under the agreement must include a Task Number, scope of services, payment method, payment terms (fixed fee for actual cost, rates of pay, unit of work amounts), maximum fee, completion schedule, invoicing information and authorization date, as outlined in 5. Invoicing below.

   **Note:** An Ellis event must be created and funded under the specific project PID, using “TSKS” (State funding) or TSKF (Federal funding) as the SAC.

c) Costs of services provided to specific projects are allocated to project PIDs through the invoice process. For each assigned task the District or Office administering the agreement must provide specific invoicing information to the consultant. Refer to Invoicing Procedures below.

d) Authorization to proceed with specific tasks is subject to appropriate Federal Authorization for the specific project.

2) **OPTION 2 – FUNDS ENCUMBERED ON A PROJECT BY PROJECT BASIS**

a) No funds are encumbered initially. Funds shall not be encumbered against the IDIQ “placeholder” PID.

b) Authorization of specific tasks under the agreement must include a Task Number, scope of services, payment method, payment terms (fixed fee for actual cost, rates of pay, unit of work amounts), maximum fee, completion schedule, invoicing information (see 5. Invoicing below), encumbrance number, and authorization date. A project specific encumbrance must be approved prior to authorization.

c) Upon authorization of the overall agreement, the Office of Consultant Services will provide an Encumbrance Request form that includes the consultant name, OAKS number and Controlling Board number for encumbrance of funds by the District or Office.

d) Costs of services provided to specific projects must be invoiced to authorized tasks/encumbrances. For each assigned task the District or Office administering the
agreement must provide specific invoicing information to the consultant. Refer to Invoicing Procedures below.

e) Authorization to proceed with specific tasks is subject to appropriate Federal Authorization for the specific project.

3) **OPTION 3 – COMBINATION OF OPTIONS 1 AND 2**

These types of agreements combine both Option 1 and Option 2 rules.

4) **OPTION 4 – DISTRICT-WIDE CONSTRUCTION INSPECTION/ADMINISTRATION**

a) District-wide Construction Inspection/Administration agreements provide consultant inspectors and engineers to supplement ODOT staff in the inspection and administration of construction contracts. Consultant staff are assigned to projects as needed. Needs and assignments may change on a daily basis.

b) The full amount of the agreement may be encumbered initially, or encumbered by fiscal year or other schedule based on funds availability. Funds are encumbered against the IDIQ “placeholder” PID. The Office of Consultant Services will process all encumbrance requests, both initial and additions.

c) Compensation to consultants is generally provided on a rate of pay basis plus non-salary direct costs, with contractual rates of pay included in the agreement.

d) Costs of services provided are allocated to specific projects through the invoice process. For each assigned task the District or Office administering the agreement must provide specific invoicing information to the consultant. Refer to Invoicing Procedures below.

c. **Management of IDIQ Agreements**

1) Each agreement shall have a contractual contract period not to exceed five years. Two years is the standard contract period for most agreements. Contract periods in excess of two years require approval of the Assistant Director for Transportation Policy and Chief Engineer.

2) Tasks authorized prior to the completion date may be completed after the agreement completion date, including authorization of new phases of the original task. New tasks may not be authorized after the agreement completion date.

3) Agreement completion dates can be extended only under emergency or similar circumstances and only with approval of the Assistant Director for Transportation Policy and Chief Engineer.

4) The agreement maximum fee shall not exceed the amount advertised in the request for letters of interest, except in cases of emergency or similar circumstances and only with approval of the Assistant Director for Transportation Policy and Chief Engineer.

5) For agreements included for selection within the same Programmatic Group in which multiple consultants are selected for IDIQ contracts that provide the same services within the same District or Office, each specific task or work order estimated to exceed $150,000 in total fee shall be awarded through an additional qualifications-based selection procedure.

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Note: In such cases, each consultant shall be provided with the scope of services and schedule, and required to provide proposed staff assignments and an assurance that the completion schedule can be met. Cost information shall not be requested or considered. The most qualified consultant shall be selected to complete the task. The reasons for selection shall be documented to the file.
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6) IDIQ agreements shall be managed in a manner that tracks tasks authorized, maximum fees per task, invoiced amounts, DBE/EDGE goal attainment if applicable, and balance of the unauthorized maximum agreement total fee.

4. **Funds Management for Option 1 and Option 4 IDIQ Agreements**

Most District Offices use Option 4 – District-wide Construction Inspection/Administration IDIQ, which provides flexibility in assigning consultant personnel to multiple projects due to changing needs. Historically, these agreements have been set up in Ellis and encumbered against a single task order PID with a 100% state pro-rata. Once encumbered, the task order PIDs were used to finance work that
consultants provided on various construction projects throughout a District. However, consultants are required to invoice against the specific project PIDs to which they were assigned. While the work was performed under the agreement and associated “place-holder” PID/encumbrance (which was encumbered as 100% state), it was paid at the pro-rata of the specific projects where work was being incurred (typically 80% federal/ 20% state, 90% federal/ 10% state, or 100% state), creating the following problems:

a. Mismatches between federal/state encumbrance amounts and federally billed amounts.

b. Inflated outstanding budget estimates for use of state funds. This is because the agreements had outstanding encumbrances at 100% state pro-ratias, but were federally billed at a rate that typically amounted to between 50-70% federal (depending on the jobs that needed to use the task order PID).

Note: For complete guidance concerning management of these issues, which may also impact Option 1 IDIQ agreements, please refer the memorandum dated January 4, 2016 issued jointly by the Division of Finance, Division of Planning and Division of Engineering, included in Appendix A.

5. Invoicing
The following information is required to be supplied by the District to Consultants as they are assigned new projects. Without this information the Consultant will not be able to invoice ODOT correctly which could cause significant delays in payment to the consultants on a project. Please use the table format shown below in Table 4-6 to ensure consistency throughout the State.

Note: A Microsoft Word version of the table is available in Appendix A.

<table>
<thead>
<tr>
<th>Description</th>
<th>Data to be Entered</th>
<th>Where to Enter in IPS</th>
<th>Options</th>
</tr>
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<td>Task x Description</td>
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<td>Other/Local Funding Percentage</td>
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</tr>
</tbody>
</table>
4.4—Basic Duties in Administering a Contract

A. Objectives and Basic Procedures

1. Basic Objectives
The basic objectives of administering a consultant agreement are as follows:

a. Ensure the work product meets contract requirements including the requirements of technical and guidance manuals incorporated by reference.

b. Ensure that the work product is delivered on schedule, including both interim and final delivery dates.

c. Ensure that the consultant is paid according to the terms of the agreement.

2. Basic Procedures
The basic procedures of administering a consultant contract are to:

a. Maintain thorough documentation and files as described herein. Communication in writing is recommended.

b. Ensure early identification and resolution of issues as they occur.

c. Ensure that all Department communications and decisions relevant to the agreement are initiated by or approved by the Department’s Project Manager.

B. Schedule Compliance

1. Monitor the schedule requirements of the contract, including:

a. Commitment or milestone dates for various submissions or deliverables.

b. Internal and external reviews or activities to make sure that ODOT meets its contractual time lines for responses to the Consultant.

2. If the consultant fails to meet the schedule requirements, notify the consultant in writing and request a response. Review the consultant’s response and:

a. Accept schedule changes if appropriate; or

b. Negotiate an acceptable recovery schedule; or

c. Direct the consultant to return to the original schedule and to submit an acceptable recovery schedule.

Note: Refer to Section 4.3.E.3. – Changes in Project Schedule and Section 4.5.A. Breach of Contract for additional procedures.

C. Documentation requirements

1. Files and Record Keeping
Record keeping is one of the most important aspects of contract administration and is vital to the success of contract administration. The Department must be able to respond quickly and accurately to disputes with consultants, internal and external audits, the State’s fiscal control agencies, the Legislature and the public, including public records requests. Only by maintaining accurate and complete contract records can the Department provide honest, fair, and efficient administration and ensure compliance with all applicable laws, regulations, policies and procedures.

A complete and properly organized filing system is also vital to the success of the Department’s administration of agreements. Filing procedures that produce this result should be regarded as a means of reducing the overall effort of administering an agreement. The time required to maintain good records will ease the burden on all those involved in contract administration. Most consultant contract administration activities required by this document depend to some extent on knowledge of past activities. Accurate, organized and readily accessible records will help to ensure fact based decision making and keep important items from “falling through the cracks”.
2. Agreement Files/Selection Files

Administration of consultant agreements officially starts upon authorization of an agreement, but selection, scope, price proposal and negotiation activities have preceded authorization. All these activities are relevant to administration as they provide the basis to form a contract. Responsibility for carrying out these activities (selection/scope/negotiation) are also divided between the District or other responsible Office, and the Office of Consultant Services. However, there is a clear dividing line at the point of authorization that separates the objectives in maintaining records. Prior to authorization, the Department has a legal responsibility to document all selection activities including responses from firms that were not selected. Based on the centralized nature of this obligation (many questions and reports are based on Statewide activities and not restricted to a single District), complete files (the Selection File) that document selection activities through authorization are maintained by the Office of Consultant Services. The Agreement File, which begins upon authorization of an agreement, is the responsibility of the District.

Certain documents from the selection phase will necessarily be retained in the Agreement File (there will be some duplication with the Selection File), but only those documents relevant to the agreement. Upon authorization, disposition of selection phase documents in the District or other receiving Office shall be as follows:

Retain for Agreement File (Electronic records in SAFE are acceptable):

a. Selected consultant’s Letter of Interest (LoI).
b. Selected consultant’s Technical Proposal if applicable.
c. Final Scope of Services document
d. Selected consultant’s Price Proposal.
e. Negotiation records.
f. A copy of the Agreement, Modifications, authorization letters, and IPS (The Office of Consultant Services will provide copies to the District upon authorization).

Discard

a. Pre-scope of Services documents etc. that have been superseded.
b. Letters of Interest from firms not selected.
c. Technical Proposals from firms not selected if applicable.
d. Selection rating forms and associated selection documents (all selection documentation is maintained electronically in CSS as part of the Selection File)
e. Any other documents not relevant to the agreement.

3. The Agreement File

In addition to the selection phase documents listed above, all documents directly relevant to the agreement shall be included in the file.

The following documents shall be included in the Agreement File:

a. All correspondence to or from the consultant.
b. Records of all substantive conversations with the consultant, including Department and consultant personnel involved in the discussion, date, subject, conclusions, etc. This requirement applies to all Department personnel that may have interaction with or provide direction to the consultant, including District or Central office review staff.
c. Meeting minutes. All meetings with the consultant must be documented, including an attendance list, subjects discussed and conclusions reached.
d. Review comments including written comments and marked plan sets or other marked documents. Include follow-up communications that document the disposition of each comment.
e. Paper printouts of all e-mail messages unless a contract specific electronic filing system is maintained on a District-wide basis.

f. Copies of invoices and the transmittal IOC to the Office of Accounting.

g. All other relevant documents.

4. Physical Filing Systems and Procedures

The objective of maintaining a systematic and orderly physical filing system is to ensure reliable and efficient document retrieval when needed. The following best practice filing guidelines and procedures are offered as a suggested method to accomplish this objective.

a. For consistency and ease of access to information and documents that are referenced most often, maintain separate files for specific types of documents, filed chronologically. The recommended organization of the Agreement is as follows:

1) **File Number 1** shall include all selection phase documents retained as noted above, including the agreement, modifications, authorization letters etc.

2) **File Number 2** shall include all consultant invoices, IOCs to Accounting, and directly related correspondence.

3) **File Number 3** shall include all other post authorization documents as described herein, filed in chronological order.

b. For On-call or indefinite delivery indefinite quantity (IDIQ) agreements, maintain separate files for each assigned task. Refer to Section 4.3.F for additional requirements specific to IDIQ agreements.

D. Meetings and Reviews

Effective contact administration requires ongoing communication with the consultant team throughout the course of the agreement. The following meetings and reviews, along with associated procedures, are recommended to establish and maintain effective communication. Individual tasks under an IDIQ agreement should be managed using these same procedures and communication rules, as appropriate for the assigned task.

1. Kickoff Meeting

Establishing effective communication between the consultant and the District is critical to the success of an agreement. A “Kickoff” meeting immediately following authorization of the contract provides an effective means of establishing this communication.

All Department staff who might have involvement in the project and other project stakeholders should be present at this meeting.

The kickoff meeting should be run by the Department’s Project Manager. Record minutes of the meeting and distribute copies of the minutes to all attendees and the project file.

Anticipated accomplishments gained from holding a kickoff meeting include:

- A partnership is formed between the District and consultant, and other stakeholders.
- The consultant design team and the district contract/project administration team get to meet face to face and know one another.
- The consultant will be introduced to key District **key** staff, i.e. R/W **specialist**, bridge **specialist**, etc.
- Development of a communication plan that ensures that both the Department’s Project Manager and consultant’s Project Manager initiate or approve all communications and decisions relevant to the agreement.
- Review of the project scope of services and information provided by the Department, and clarification of any issues or questions.
- A review of the schedule and required what submissions.
2. Progress Meetings
Regular progress meetings will provide an opportunity to evaluate the schedule, identify and resolve issues, review consultant staff assignments and to review overall progress of the work. The frequency and need for progress meetings will vary based on project size and complexity, the number of stakeholders involved, and the consultant’s performance. Progress meetings are useful but costly for both the consultant and the Department, and should be scheduled when such a meeting will contribute to completion of the project. Appropriate Department staff and other project stakeholders should be invited to progress meetings. Discussion topics may include:

- Are the individuals named in the proposal working on the project?
- Are the consultant’s personnel cooperative?
- What progress has been made?
- Discussions of issues and on-going problems to be resolved
- Have past comments been addressed?

Additionally:
- Consideration should be given to periodically holding progress meetings at the consultant’s office.
- Progress meetings should be run by the Department’s Project Manager. Record minutes of the meeting and distribute copies of the minutes to all attendees and the project file.

3. Technical Reviews
Section 1400 of Volume 3 of the Department’s Location and Design Manual addresses Review Submissions for project development projects. A similar level of review should be used on other types of agreements that require deliverables. The Location and Design Manual is incorporated by reference in all standard scope of services documents for highway projects. Technical reviews should be conducted as follows:

a. Documentation
Comprehensive documentation of plan/document reviews is vital to effective consultant contract administration. Refer to Section 4.4C.1 (Files and Record Keeping) for required procedures.

b. Consistency of Reviews
Statewide consistency is a goal when reviewing plan or document submissions. Consultants should be able to expect the same general set of criteria from all twelve Districts of ODOT and should not need to learn twelve separate sets of requirements. Most comments generated from reviews should be a result of non-compliance with a requirement listed in one of ODOT’s design or procedures manual, not the reviewer’s personal preference. Standard checklists should be used whenever possible.

E. Invoice Preparation and Processing
1. General
This section addresses ODOT’s review and processing of invoices for payment. Related documents and rules include the following:

a. Procedures for use of the Department’s automated invoice spreadsheet are included in Volume 2: Invoice and Project Schedule (IPS).

b. Section 3.03(C) of the Specifications for Consulting Services the consultant to submit an invoice and updated progress schedule (IPS) every thirty (30) days.

c. Ohio Revised Code Section 126.30(B) states:
If the invoice submitted to the state agency contains a defect or impropriety, the agency shall send written notification to the person within fifteen days after receipt of the invoice. The notice shall contain a description of the defect or impropriety and any additional information necessary to correct the defect or impropriety. If the agency sends such written notification to the person, the
required payment date shall be thirty days after the state agency receives a proper invoice.

d. Ohio Revised Code Section 126.30(A) requires that the Department make payment for the services within thirty days after the Department receives a proper invoice. Interest charge may be due the consultant if this requirement is not met.

e. The District shall review and process invoices for payment in accordance with this Section. Return unacceptable invoices to the consultant for correction within fifteen days of receipt as required by ORC 126.30(B).

f. For approved invoices, complete and sign the signature block for “State Review” on the certification page/consultant transmittal. Forward the entire original invoice, with backup information attached, to the Office of Accounting for payment.

2. Preparation of the Initial IPS
When an agreement is executed, the Office of Consultant Services will prepare an initial Invoice and Project Schedule (IPS) using the Department’s standard spreadsheet format documented in Volume 2. The Consultant Services Project Analyst will complete the “0.1 ODOT” worksheet of the Excel spreadsheet with the basic project information, agreement parts, and dollar amounts. The spreadsheet is then uploaded to a SharePoint site that is accessible to the consultant. For modifications, Consultant Services will prepare and upload an updated version.

3. Review of Invoices
   a. General Procedures for All Invoices
      1) All invoices shall be date stamped upon receipt by the Department.
      2) Most agreements require that invoices be submitted every 30 days - contact the consultant concerning invoice status if an invoice is more than 10 days late.
      3) Review the invoice for proper format in accordance with the agreement specific invoice provided by the Department. Subconsultant invoices must be submitted in the same format required of the prime consultant.
      4) The invoice form must be updated to reflect all authorization dates and modified fees, if any.
      5) The invoice must be signed by the consultant.
      6) Electronic Data Interchange (EDI) – the Department accepts invoices submitted electronically through third party vendors. Under this system the electronic invoice will include the amount payable, with the IPS spreadsheet and other backup documentation submitted separately directly to the District via email.

   b. Additional Procedures for Lump Sum Agreements
      Review the stated completion percentages versus the known status of each part of the work. If the stated completion percentage is not commensurate with visible progress, call the consultant and ask for an explanation. Small differences are not normally a cause for concern - we are trying to prevent a situation in which the consultant would owe the Department a substantial sum in the event of termination or the consultant’s failure to complete the work, and to maintain future revenue as an incentive for the consultant to complete remaining work.

   c. Additional Procedures for Costs plus Fixed Fee (Parts of) Agreements
      1) Review the percent complete for each contractual part in accordance with the procedures for lump sum projects. The completion percentage directly determines the amount of Fixed fee to be invoiced, and provides a cross-check on the overall amount. If the overall amount invoiced expressed as a percentage of the maximum fee is substantially greater than the stated completion percentage, call the consultant and request an explanation. If the overall amount invoiced expressed as a percentage of the maximum fee is substantially less than the stated completion
percentage, that part of the work is projected to be completed at less than the maximum fee and is not cause for question. The Fixed Fee should be calculated as the overall percent complete of the contractual part or task. The Fixed Fee is payable in its entirety upon completion of the work. The overall percent complete represents the status of the physical completion of the work—not the percentage of the total fee invoiced.

2) Review the labor summary for excessive billing by principals or other consultant employees whose contributions may be questionable, and unauthorized overtime/premium time billing. Any other costs not commensurate with the stated “Percent Complete this Invoice” or otherwise questionable should be evaluated by calling the consultant or requesting backup documentation.

3) For actual cost based agreements, review the “Current Invoice Actual Costs” versus known activities during the invoicing period. Consultants are required to provide copies of receipts for all non-salary direct costs, with the exception of fixed costs such as per diem costs.

4) The ODOT Office of External Audits approves consultant overhead and cost of money rates on an annual basis. For each invoice the consultant shall use its current rates approved by the Office of External Audits.

5) For actual cost parts, subconsultant invoices are required (only during invoice periods when costs are incurred) and must be submitted in the same format as the prime consultant invoice. Subconsultant invoices shall be reviewed in the same manner as the prime consultant invoice.

d. Rate of Pay or Unit of Work

Review the rates used for each labor category or work unit to ensure they match those included in the agreement.

e. Invoices for Indefinite Delivery/Indefinite Quantity (IDIQ) Agreements

1) Basic review of invoices for IDIQ agreements follow the same procedures required in this section.

2) Review individual tasks to ensure that correct PID’s and encumbrance numbers as applicable are being used.

3) Review individual tasks to ensure that payment methods match the payment methods noted in the proposal and authorization letter.

4) Refer to Section 4.3.F.5. for additional Invoicing rules specific to IDIQ agreements.

F. Change of Project Team / Staff Commitments by the Consultant

One of the major factors in the selection of a consultant to provide services is the make-up of the consultant’s proposed project team. The Department’s consultant selection procedures format require that the consultant project manager and key staff members, including subconsultant staff, be identified in the consultant’s Letter of Interest (LoI). The Department selects consultants based on this promise and must ensure that named staff members actually produce the work. Named staff members that are in responsible charge of the work fulfill the obligation even though other individuals may provide a considerable portion of the necessary labor. The Department’s true objectives are quality services that meet expectations.

1. Procedures for Monitoring Staff Commitments

a. Monitor consultant attendance at the Project Kickoff Meeting versus the staff members named in the consultant’s LoI. Staff commitments should be discussed at the meeting.

b. Monitor attendance at review and/or progress meetings. Attendance lists should always be circulated and retained for later reference. During visits to the consultant’s office, ask to meet with staff members currently working on the project.

c. Monitor initials (designer or checker) shown on drawings.

d. For actual cost agreements, review the detailed labor summary for the invoice period which is required to be submitted with monthly invoices, thereby providing a definitive record of the staff actually working on the project.
e. At any time that the consultant’s performance does not meet expectations, review and discuss staff commitments with the consultant if appropriate.

2. Failure to Fulfill Staff Commitment
In the event that the consultant has failed to fulfill the staff commitment, investigate the situation and take appropriate actions in the following order of preference:

a. Call the consultant and request an explanation. Satisfactory reasons for a change in the named staff include loss of personnel (people quit), illness, etc., although equivalent substitutions are expected. Attempt to reach an acceptable solution and document the conversation with a letter, copy of a conversation record or e-mail to the consultant. Establish a set time period to follow up and review the situation again.

b. If the consultant does not offer a satisfactory solution, write a letter to the consultant restating the staff commitment and the consultant’s failure to honor such. Request a reply in writing and set a limiting date for response.

c. If the above letter does not produce a satisfactory response from the consultant, refer the matter to the Office of Consultant Services for possible referral to the Director’s Consultant Resolution Board. Comments entered in the Consultant Evaluation System shall reflect the unacceptable change in staff.

3. Formal request for change
A consultant may elect to request a change in the named team for a variety of reasons. The consultant must identify named staff members that will not be available, explain the circumstances leading to the change, and name replacement staff members including documentation of credentials, all in writing. Review the request and if acceptable, respond to the consultant in writing. If not approved, a rejection letter needs to be sent, along with an explanation. When adding or changing a subconsultant, a similar procedure should be followed.

Note: Provide a copy to Consultant Services on all correspondence regarding changes to the consultant team. Subconsultants added to the team must be recorded in the CSS record for the agreement by Consultant Services, which will automatically populate the new subconsultant to the SAFe application.

G. Consultant Evaluation System (CES)
Evaluation of consultant performance is addressed in detail in the Volume 5: Consultant Evaluation System. This Section provides a synopsis of the procedures for evaluation of consultant performance.

Basic duties in administering the Consultant Evaluation System are summarized as follows:

1. Upon authorization of an agreement, input the project characterization and add subconsultant rating forms by delineating the subconsultant duties (a rating form will be created in the system by authorizing the agreement).

2. During the course of the agreement, maintain records and notes concerning the consultant’s performance for later reference.

3. In the event of marginal or unsatisfactory performance during the life of the agreement, advise the consultant of such in writing (sample letters will be included in the CES manual). If the unsatisfactory performance is significant, enter a Current Performance Issue in CES and advise the consultant in writing. Include a description of the deficient performance in CES. If the performance issue is resolved to the satisfaction of the Department, remove the issue from the list in CES.

4. The deadlines for completion of ratings by Districts or Offices responsible for the Agreement are included in Table 4-6, below. The evaluation deadlines are based on specific dates included in ODOT systems including Ellis, SMS, Site Manager and CSS. In addition to these evaluation deadlines, feedback from the construction and real estate acquisition phases will continue to provide additional sources of information concerning consultant performance on design projects.
TABLE 4-6: EVALUATION DEADLINES

<table>
<thead>
<tr>
<th>Project Type</th>
<th>Evaluation Deadline</th>
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</thead>
<tbody>
<tr>
<td>Bridge Inspection</td>
<td>60 days after the Report Approval Date in SMS (last structure within agreement)</td>
</tr>
<tr>
<td>District-wide On-call Construction</td>
<td>60 days after the Agreement Completion Date (measured in months from the Authorization Date in CSS, as stated in the Agreement, typically 24 months)</td>
</tr>
<tr>
<td>Inspection Agreements</td>
<td>60 days after Significant Work Completed (Site Manager Milestone)</td>
</tr>
<tr>
<td>Project Specific Construction Inspection</td>
<td>60 days after Significant Work Completed (Site Manager Milestone)</td>
</tr>
<tr>
<td>Agreement</td>
<td>60 days after Award or 180 days after Tracings Complete, whichever is less</td>
</tr>
<tr>
<td>Design</td>
<td>60 days after Award or 180 days after Tracings Complete, whichever is less</td>
</tr>
<tr>
<td>Environmental Design</td>
<td>60 days after Award or 180 days after Tracings Complete, whichever is less</td>
</tr>
<tr>
<td>Environmental</td>
<td>60 days after Environmental Document Approved</td>
</tr>
<tr>
<td>Right of Way Acquisition</td>
<td>60 days after District R/W Certification</td>
</tr>
<tr>
<td>IDIQ</td>
<td>60 days after the Agreement Completion Date (measured in months from the Authorization Date in CSS, as stated in the Agreement, typically 24 months). Base the rating on services complete at this time even though some tasks may not be complete.</td>
</tr>
</tbody>
</table>

5. Prior to the Evaluation Deadline:

   a. Update the project characterization and subconsultant rating forms for any changes during the course of the agreement.

   b. Assemble all personnel associated with the administration of the agreement (reviewers etc.) and rate the consultant’s and subconsultants’ performance. Provide comments concerning each rating. Do not enter an “Evaluation Complete” date at this time.

   c. Meet with the consultant prior to the evaluation deadline and provide the consultant with the ratings. Discuss the consultant’s performance and any areas that should be improved. Discuss each rating and consider the consultant’s comments and explanations concerning any ratings the consultant believes should be changed. If appropriate, revise the ratings in question. Issues that cannot be resolved at the District level should be referred to the Office of Consultant Services, or ultimately the Director’s Consultant Resolution Board. The meeting shall be documented. Enter the “Conference with Consultant” and “Evaluation Complete” dates after completion of the conference and revision of ratings, if any.

6. Receive feedback from the right-of-way acquisition and construction phases and adjust the ratings downward if appropriate. Notify the consultant of any change in rating and the reason for the change.
H. DBE / EDGE Goals

1. Administration of Agreements that Include DBE or EDGE Goals

To comply with the requirements of Title 49 Part 26 (DBE) and Ohio Revised Code section 123.152 (EDGE), the Department has implemented a system of goals to ensure that DBE and EDGE firms have equal opportunity to compete for and perform work for the Department, either directly as prime consultants or indirectly as subconsultants. Goals for specific contracts are established prior to posting on the Department’s website, and the selected consultant’s team must show Good faith Efforts to meet the goal in order to be selected.

Contracts may include either:

- DBE or EDGE Contract Participation Goals that establish a percent of the contract amount that must be paid to DBE/EDGE firms; or
- DBE or EDGE Contract Development Goals that are intended to help DBE and EDGE firms improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency. Contract Development Goals do not include a percentage of the fee or amount that must be subcontracted to DBE/EDGE firms.

2. Administration of Agreements that Include Contract Participation Goals

The following lists the requirements of the prime consultant in italics, followed by the monitoring responsibilities of the Department for each contract that includes a Contract Participation Goal:

a. Prior to starting work, provide a written plan for DBE/EDGE participation including a breakdown by PDP step if applicable (or similar breakdown by task), description of work to be performed by each DBE/EDGE subconsultant, and projected percentage of DBE/EDGE participation during each step of the work.

Review the plan to make sure it meets the goal and is reasonable. Most required information for the current step of the contract will be included in the consultant's price proposal. The written plan should summarize this information and provide a projection for future steps. This document will serve as a benchmark for monitoring progress towards the goal. Deviations from the initial plan may require adjustments in later steps to ensure that the goal is met.

b. Provide an ongoing summary of DBE/EDGE subconsultant amounts invoiced, for the current invoice and as a running total for the contract.

Review each invoice for progress against the consultant's plan for meeting the goal. If the level of participation is falling substantially below the level stated in the plan, request a written explanation. Additionally, Section 2.14 of the Specifications for Consulting Services requires prompt payment of all subconsultants. Refer to Section 4.4.F – Invoice Processing.

c. Provide a quarterly report of the amounts actually paid to DBE/EDGE subconsultants, and certification by the subconsultants of the amounts received.

One month after the close of each fiscal quarter, monitor each contract to ensure that DBE and EDGE subconsultants are actually being paid the invoiced amounts. If payments are not being recorded and certified by subconsultants, notify the consultant in writing and require a response.

d. Provide a written explanation if the level of DBE/EDGE participation falls below the level stated in the DBE/EDGE implementation plan, including a plan to meet the goal. If the goal cannot be met, the Consultant will be required to establish good faith efforts (GFEs).

In the event the Consultant is unable to meet the DBE Goal placed on this project, the Consultant must demonstrate it made good faith efforts to meet the goal. The District must monitor progress towards meeting the goal during the life of the agreement through completion. Good faith efforts may include: (1) Documentation that the consultant has obtained enough DBE participation to meet the goal; or (2) Documentation that it made adequate good faith efforts, as defined in 49 CFR 26.53, to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.
Such information needs to be submitted to the Administrator, Office of Small & Disadvantaged Business Enterprise, Division of Opportunity, Diversity & Inclusion, 1980 West Broad Street, MS: 4190, Columbus, Ohio 43223. The Department will determine whether the Consultant has made a good faith effort to meet the goal in accordance with 49 CFR 26.53 and Appendix A to Part 26.

Note: Each agreement that includes a Goal includes specific language and procedures for further processing within the Department.

3. Administration of Agreements that Include Contract Development Goals

The following lists the requirements of the prime consultant in italics, followed by the monitoring responsibilities of the Department for each contract that includes a Contract Development Goal:

a. Provide quarterly reports of progress towards implementing and completing the provisions of the attached DBE/EDGE Contract Development Goal Implementation Plan.

The agreement will include a DBE/EDGE Contract Development Goal Implementation Plan, with specific objectives for assisting the DBE/EDGE firm in improving their long-term development, increasing opportunities to participate in a variety of kinds of work, handling increasingly significant projects, and achieving eventual self-sufficiency. Ensure that progress reports are received quarterly, and review the reports for compliance with the Implementation Plan. If progress towards written plan is not commensurate with the objectives, request a written explanation.

b. Provide an ongoing summary of DBE/EDGE subconsultant amounts invoiced, for the current invoice and as a running total for the contract.

Review each invoice for progress against the consultant's plan for meeting the goal. The agreement will not include a specific amount to be paid to a DBE/EDGE subconsultant, but will include a fee for the direct and indirect costs incurred by the prime consultant and subconsultant for specific training and assistance to the DBE/EDGE firm through the life of the agreement. If the amounts invoiced are not consistent with the level of effort included in the written plan, request a written explanation. Additionally, Section 2.14 of the Specifications for Consulting Services requires prompt payment of all subconsultants. Refer to Section 4.4.F – Invoice Processing.

c. Provide a quarterly report of the amounts actually paid to DBE/EDGE subconsultants, and certification by the subconsultants of the amounts received.

One month after the close of each fiscal quarter, monitor each contract to ensure that DBE and EDGE subconsultants are actually being paid the invoiced amounts. If payments are not being recorded and certified by subconsultants, notify the consultant in writing and require a response.

d. Provide a written explanation if progress towards implementing and completing the Plan falls below the requirements of the Plan. If progress falls below the requirements of the Plan, a Corrective Action Plan shall be created describing exactly how a specific situation/issue will be changed to better meet the goals of the Plan. If the goal cannot be met, the Consultant will be required to establish good faith efforts (GFEs).

The District must monitor progress towards meeting the goal during the life of the agreement through completion. In the event the Consultant is unable to achieve the DBE Development Goal, the Consultant must demonstrate it made GFEs to meet the goal. Such information needs to be submitted to the Administrator, Office of Small & Disadvantaged Business Enterprise, Division of Opportunity, Diversity & Inclusion, 1980 West Broad Street, MS: 4190, Columbus, Ohio 43223.

4. Evaluation of Good Faith Efforts

Evaluations of Good Faith Efforts are conducted by the Department’s Good Faith Efforts Committee, administered through the Administrator, Office of Small & Disadvantaged Business Enterprise, Division of Opportunity, Diversity & Inclusion.
I. Closing Agreements

1. Timely Closing of Agreements

Timely closing of agreements benefits the Department through:

a. Ensuring that all required services have been completed and deliverables received.
b. Permitting timely completion of a final audit if required.
c. Reducing the administrative burden associated with an open agreement. An open agreement requires periodic reports by the Department and the consultant and encumbrances and other accounting records must be carried forward as long as the agreement is open.
d. Allowing release of excess encumbered funds that can be used for other purposes.
e. Ensuring accurate reports of consultant backlog and open agreements.

2. Procedures for Closing Agreements – Final Invoice IOC

Closing an agreement requires the following steps:

a. Determine that all services have been acceptably completed and all deliverables received in accordance with the scope of services. A thorough review of the agreement and Scope of Services shall be conducted along with use of any standard checklists. For IDIQ (task order) agreements, all tasks should be verified as being complete.
b. An invoice marked “final” (the invoice forms provided by the Department include a checkoff for this purpose) must be received from the consultant.
c. Determine that no additional services (modification) will be required by the Department. Ensure that on-going services during construction are completed, or won’t be needed.
d. Prepare a standard memorandum to the Office of Accounting noting that conditions for closing the agreement have been met, and request payment of the final invoice and release of any remaining encumbered funds.(†)
e. Provide a copy of memorandum to Consultant Services.

(†) Note: A “Final Invoice IOC” is included in Appendix A.

4.5—Breach of Contract / Errors and Omissions

A. Breach of Contract

1. Identification of Breach of Contract

Breach of contract by a consultant will nearly always occur during conduct of the agreement. Problems discovered during a subsequent phase of project development will usually be categorized as negligent acts, errors or omissions, which are addressed below. Additionally, breach of contract results from a consultant’s failure to address an identified problem in the performance of the agreement. The Department must notify the consultant in writing of deficient performance, identify required solutions, and set a deadline for cure. After these steps have been carried out and the consultant has failed to address the deficiency, the consultant may be declared in default (the contract is already in breach at this point) of contract and additional administrative remedies may be pursued by the Department.

Breach of contract will generally fall into one of three categories, as discussed below:

a. Failure to perform work included in the scope of services

A consultant’s interpretation of the scope of services that certain work is not included, when the District believes otherwise, may lead to a disagreement in which the consultant is declared in breach of contract. The District must notify the consultant in writing and if the difference is not resolved, the dispute resolution provisions of Section 2.38 of Specifications for Consulting Services may be utilized. Only after these attempts to resolve the matter have failed will the consultant be declared in breach of contract and appropriate actions taken as described below.
b. Failure to perform timely
Nearly all ODOT consultant contracts include a delivery schedule consisting of an overall completion date and intermediate milestone dates for review submittals. The Department relies on adherence to this agreed schedule in delivery of projects and services. Failure by the consultant to meet the schedule, either intermediate or final completion dates, must be addressed in writing. The letter to the consultant must cite the lack of timely delivery, require a return to the contractual schedule and set a time limit for response by the consultant. If the consultant does not agree to a delivery schedule acceptable to the Department, the dispute resolution provisions of Section 2.38 of Specifications for Consulting Services may be utilized.

c. Failure to perform technically
Nearly all ODOT contracts specify services provided in accordance with standard guidance documents, professional standards, and industry standards. Examples include ODOT’s Location and Design Manual, Bridge Design Manual and Specifications for Subsurface Investigations, Standard Drawings, and various AASHTO standard documents. A breach of contract based on technical performance is defined herein as unsatisfactory performance as more fully described and defined in the Department’s Consultant Evaluation System (CES), as follows:

The consultant’s work was unsatisfactory to the point that extensive involvement by Department personnel was required. Without such extensive involvement by the Department, major errors would go undetected and a usable work product would not be provided.

Consultant performance that falls in the Improvement required category of CES will normally be addressed through the CES and not defined in breach of contract terms or procedures.

As stated above, unsatisfactory technical performance by the consultant must be addressed in writing by the District or other Office. The letter to the consultant must cite the specific areas of unsatisfactory performance, require a return to an acceptable level, and set a time limit for response by the consultant. The consultant’s continued failure to provide an acceptable level of performance may result in default of contract with appropriate actions by the Department as described below.

2. Administrative Remedies for Breach of Contract
As described above, a consultant’s failure to address an identified problem in his performance is the required condition in declaring a consultant in breach of contract. Breach of contract issues are settled through the dispute resolution provisions of Section 2.38 of Specifications for Consulting Services. The following remedies are available to the Department in addressing breach of contract by a consultant:

a. The Department may impose sanctions in accordance with Section 2.39 of the Specifications for Consulting Services.

b. Termination of the consultant’s agreement in accordance with Section 2.41 of the Specifications for Consulting Services.

3. Procedures for dealing with Breach of Contract
Upon receipt of a memorandum documenting the breach of contract, the Administrator, Office of Consultant Services will review the report and take steps needed to initiate a hearing before the Director’s Consultant Resolution Board.

B. Errors and Omissions
1. Identification of Consultant Errors or Omissions
Errors or omissions by a consultant is contractually defined in Section 2.35 (Errors and Omissions) of the Specifications for Consulting Services, as follows:

Services provided by the consultant under this agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
This definition obviously does not define every error by a consultant as a negligent act that must be pursued for reparation of damages, but in all cases of consultant error the consultant must:

a. Respond promptly to the Department’s request for clarification/correction.
b. Prepare any plans or data needed to correct the negligent act, error or omission without additional compensation.

**Note:** The negligent acts, errors or omissions will in most cases be identified during a subsequent phase of the work. Detection of errors, even major errors, during the review process would not normally fall within the errors and omissions standard that is the subject of this Section. Such errors and other review comments must be corrected by the consultant at no cost and later considered in rating the consultant’s performance.

Errors or omissions as discussed herein will generally consist of harm to the State based on the Department’s use of the consultant’s completed work. The most common occurrence will be design errors discovered during bidding or construction, but the Department relies on the completed work product of nearly all consultant agreements and may be harmed by an error of any type. Some additional examples are: wetlands not identified during an environmental investigation that are discovered during later design or construction; failure to identify dangerous conditions during a bridge inspection; or acceptance of a contractor’s work such as bridge painting based on a consultant inspector’s report and later the work is proven clearly deficient.

### 2. Procedures for Dealing with Errors or Omissions

Upon discovery of an alleged error by a consultant during the Department’s reliance on the consultant’s work product (see above), carry out the following procedures:

a. Notify the consultant of the problem either by telephone or in writing, a telephone call will be sufficient in most cases. This is the beginning of a “discovery phase” of investigation that is intended to fully identify the problem (or possibly determine that a problem does not exist).

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**Do:**

1) Ask for clarification of the discrepancy.
2) Agree to a deadline for response.
3) Fully document the call in writing.
4) Direct the consultant to maintain separate cost accounting specific to their effort to resolve the problem. We want to ensure that we do not inadvertently pay the consultant to correct an error, or the services could be compensable under certain circumstances. In either case, the costs must be tracked.
5) Begin to separate and track ODOT labor costs (EIMS) directly attributable to the problem.

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**Do not:**

1) Characterize the discrepancy as an error.
2) Negotiate, reach agreement or sign any document relative to the consultant’s responsibility for the problem.

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b. Fully investigate the discrepancy to determine the extent, impacts (harm to the Department) and source of the discrepancy. Notify other ODOT personnel as appropriate including the Consultant Contracts Manager, the District Planning and Engineering Administrator, District Construction Administrator, and Central Office personnel as appropriate.
c. Take appropriate steps to resolve the issue and minimize damages to the Department including:
   1) Direct the consultant to provide a solution to the problem.
   2) Review the consultant’s recommendation. Involve appropriate District and Central Office personnel. Develop and review other solutions if appropriate.
   3) Continue to involve the consultant in all analysis and decisions.
   4) If the consultant’s recommendation is not accepted, direct the consultant to comment in writing concerning the accepted course of action.
   5) Ensure that the consultant is involved in all aspects of the decision to resolve the error or omission.
   6) Document all communication with the consultant and other relevant information.

d. Complete an investigation of the circumstances of the error or omission including:
   1) A determination that the project was constructed in accordance with the plans and specifications and the problem did not result from contractor error, and reasonable assurance that the project was inspected properly.
   2) An evaluation of the consultant’s scope of services and any review comments or other direction to the consultant that may be related to the issue.
   3) Cost analysis of damages including determination of:
      A. Work performed to correct the error.
      B. Lost work - work performed by the contractor that must be discarded, and original design costs for the work that must be redesigned.
      C. Soft costs incurred such as delay and home office overhead.
      D. Extra work that needed to be done in any case including “betterments” of deficient designs, and quantity increases etc.
      E. Work that would not have been needed but for the error
      F. Alternate designs that would have solved the problem but are precluded by the current situation.
      G. Potential costs mitigated by ODOT actions.
   4) Fully document the investigation in writing including conclusions reached concerning responsibility for the error or omission. (*)
   5) Provide all documentation to the Administrator, Office of Consultant Services.

e. Upon receipt of the District report, the Administrator, Office of Consultant Services will refer the matter to the Director’s Consultant Resolution Board in accordance with Section 2.38 of the Specifications for Consulting Services.

(*) Note: See Appendix A for template for the Department’s Change Order Documentation Report.

4.6—CONFLICT OF INTEREST

A. Potential Conflicts of Interest
Conflicts of interest are addressed in Sections 2.15 through 2.18 of the Specifications for Consulting Services, with references to Ohio Administrative Code Section 4733.35-05 and 23 CFR 636.116(a)(1) and other rules. The most common conflicts of interest are identified in Section 2.17 - Restrictions on Participation in Construction Contracts, and Section 2.18 - Restrictions on Participation in Design-Build Contracts. These contract provisions prohibit consultants (and subconsultants) from working for construction contractors on projects in which they provided services to the Department, and generally from working for two clients on the same project.

However, both sections include provisions for waiver of the requirements based on the Department’s determination that the services provided to the Department did not create an organizational conflict of interest. Procedures for processing requests for waiver of the requirements are included below.
Factors considered in review of requests for waivers include:

1. The need for the consultant’s services during a future phase of work, generally construction. If the consultant’s services may be required to address construction issues, answer questions or help in evaluating contractor claims, waivers will generally not be approved.

2. Whether the role of the consultant or sub-consultant was limited to provision of preliminary design, reports, or similar “low-level” documents, and all documents and reports were delivered to the Department.

3. For design build contracts, whether the consultant provided assistance in development of scope of services documents, instructions to bidders or evaluation criteria.

B. District Responsibilities in Identifying Potential Conflict of Interest

1. Ensure that District personnel involved in all phases of project development, including Planning and Engineering, and Construction, review and understand the requirements of Sections 2.15 through 2.18 of the Specifications for Consulting Services.

2. Ensure communication between the Planning and Engineering section and Construction section concerning the role of consultants and subconsultants on specific projects.

3. When potential conflicts of interest are identified, notify the consultant in writing and request a response in writing.

4. In cases of potential conflict of interest and/or consultant requests for waiver, provide information concerning the services provided by the consultant or subconsultant, and the potential conflict created by services provided to another party.

C. Consultant Request for Review

1. The Consultant may submit a request for a waiver of conflict of interest using the Department’s standard Consultant Conflict of Interest Waiver Form, located on the Consultant Services web page and referenced in Appendix A. The form includes complete instructions for submittal. [http://www.dot.state.oh.us/Divisions/Engineering/Consultant/Pages/Manuals-and-Contract-Documents.aspx](http://www.dot.state.oh.us/Divisions/Engineering/Consultant/Pages/Manuals-and-Contract-Documents.aspx)

2. Waiver Requests shall be directed to the Office of Consultant Services by email or mailed to: Ohio Department of Transportation, Office of Consultant Services, 1980 West Broad Street, Mail Stop 4100, Columbus, Ohio 43223. Provide a copy to the Planning and Engineering Administrator of the relevant District Office.

D. Department Review – Conflict of Interest Waiver Review Committee

1. Upon receipt of a request for a waiver of conflict of interest, the Office of Consultant Services will review the request for completeness of information provided and forward to the District for further review. If additional information is required, Consultant Services will advise the consultant.

2. After completion of the initial review by the District and additional support provided by the consultant if any, Consultant Services will provide copies of the consultant’s request and the District assessment to members of the Conflict of Interest Waiver Review Committee (“CIWRC”).

3. For projects identified as Major Projects in accordance with 23 USC 106(h), any Conflict of Interest Waiver request will be forward to FHWA Ohio Division for review and concurrence.

4. Upon completion of the review and consideration of any additional information submitted, the CIRWC will issue a final determination on the requested waiver in a written decision. The CIRWC may: (1) Grant the Waiver; or (2) Deny the Waiver.

5. The written decision of the CIRWC will be provided to the consultant within thirty (30) days of the Review.
4.7—Termination of Agreements

Termination of a consultant agreement prior to completion of the services may result from a variety of circumstances that are addressed elsewhere herein. This section addresses the procedural steps necessary to terminate an agreement after a decision to terminate has been reached by the Consultants Committee on behalf of the Director. Only the Director or his/her designees (the Consultants Committee) are empowered to terminate an agreement.

Procedures for terminating an agreement:

A. The Office of Consultant Services will issue a letter advising the consultant of:
   1. The Department’s intent to terminate the agreement.
   2. The intention to stop work if the District has not issued a stop work order.
   3. Direction to prepare a proposal for settlement including calculation of the percent complete relative to the original agreement and a separate fee for termination costs, and a list of completed and partially completed work items for delivery to the Department. Termination costs are eligible for compensation if the agreement is being terminated through no fault of the consultant, but may not be eligible for compensation if the consultant is being terminated for cause. The consultant will be directed to maintain separate cost accounting for activities associated with the termination (proposal preparation, assembly of deliverables, meetings, etc.).
   4. The Department (normally the District or other ODOT office assigned to administer the agreement) may schedule a meeting to review the percentage of completion and the list of deliverables.

B. The District or other Office shall evaluate the proposal and the proposed percentage of completion, direct that an independent plan/document audit be performed by the Department if deemed necessary, and arrange a meeting with the consultant if required. The District shall attempt to reach agreement with the consultant concerning the percent complete but not the final costs.

C. The District shall forward the consultant’s proposal and the District’s evaluation to the Office of Consultant Services. The Office of Consultant Services will request a final cost audit if required, negotiate a final fee agreement with the consultant, obtain Consultants Committee approval, and prepare a (termination) modification reflecting the agreed fees. The consultant will be directed to submit a final invoice (if funds are owed the consultant) to the District.

D. After receipt of all deliverables, the District shall forward the invoice along with a memorandum noting a final invoice to the Office of Accounting for payment.

E. The agreement is effectively terminated upon final payment to the consultant.

F. If Federal funds were used in the agreement and designated as a Major Project by FHWA in accordance with 23 USC 106(h), the Office of Consultant Services will notify the Federal Highway Administration of the termination.

4.8—Suspension of Agreements – Stop Work Orders

Under certain circumstances it may be in the Department’s interest to suspend work on a contract. Reasons for this action may include any change in conditions that would place doubt on the value of the work or portions of the work being performed. Examples include changes in funding that may dictate scope reductions or increases, external factors such as private development of adjacent property that would significantly alter traffic volumes, or any other situation that could significantly alter the Scope of Services. In such situations it is in the Department’s interest to stop work, evaluate the necessary scope changes and then take appropriate steps to restart the work or possibly terminate the agreement.

Modification of the agreement may be necessary prior to restarting, or in some cases, the original scope may prove appropriate. Lengthy suspensions of work may also be cause for a modification based on delay (salary escalation) even if no scope changes are initiated.
Suspension of work and the Department’s authority to do so is addressed in Specifications for Consulting Services in Sections 1.57 and 2.40. Section 2.40 requires that such suspensions be provided in writing. The District is responsible for preparing stop work orders if needed. A copy shall be provided to the Office of Consultant Services. Suspension of only part of the work is acceptable but the written notice should be very specific in these instances. Section 2.40 of the Specifications also includes a provision that permits the consultant to request termination if the suspension is not lifted within 120 days. This provision should not be a consideration in most cases as this option has rarely if ever been exercised by consultants.

Note: See Appendix A for a sample stop-order letter.

4.9—Dispute Resolution

In the event of a dispute in which the Consultant and the Department are unable to reach agreement, either the Consultant or the Department may request to resolve the impasse by scheduling a hearing in front of the Director’s Consultant Resolution Board. Disputes may include:

A. Instances in which the Department and a Consultant are not able to agree on compensation that is fair and reasonable as directed by ORC 5526.05(B)(2)(c). If the Consultant does not agree to the hearing, the Department may terminate negotiations in accordance with ORC 5526.05(C).

B. Errors and omissions

C. Sanctions

D. Prequalification issues

E. Disputed indirect cost rates

F. Other issues.

Note 1: Dispute resolution is addressed in Section 2.38 of the Specifications for Consulting Services.

Note 2: Procedures for the Director’s Consultant Resolution Board are addressed in Chapter 4 of the Specifications.

4.10—Records Retention

Records retention requirements are addressed in Section 2.21 of the Specifications for Consulting Services, 23 CFR 172.2, 2 CFR 200.333 and various retention schedules issued by the Department of Administrative Services. Such records may be required in any future dispute concerning the agreement or may be needed for a variety of other reasons. Requirements included in the Specifications and 2 CFR 200.333 are as follows:

Following the Department’s acceptance of the work, the Consultant and all Subconsultants shall maintain all Records pertaining to the Agreement pursuant to 2 CFR 200.333. The record retention period shall be three years after the date of the Department’s payment of the final invoice. If Audit findings have not been resolved, the records shall be retained beyond the three-year period. One copy of the appropriate records shall be furnished to the Department, or any authorized representatives, if requested, at no additional cost to the Department.


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 or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities.
Chapter 5—Allowable Costs and Oversight

5.1—Overview of Prequalification Process and Requirements

A/E Consultants must obtain prequalification status from ODOT to be eligible to do work on ODOT projects. This requires A/E Consultants to demonstrate their technical proficiency in performing engineering design work; additionally, the firms must comply with all Federal and State laws, regulations, and guidance regarding the receipt and use of public funds (i.e., financial and regulatory compliance).

Accordingly, on an annual basis, all A/E Consultants that perform any of the work types or services described in 23 U.S.C. 112(b)(2)(B) must submit a current financial package to the ODOT Office of External Audits (OEA). An indirect cost rate schedule is the primary document in this package, and this schedule is supported by various financial statements, labor-tracking documents, and an internal control questionnaire (ICQ). (For further details, see the definitions in Section 5.2.)

OEA staff auditors perform reviews to ensure A/E Consultants comply with financial and regulatory requirements, and the remaining part of the prequalification process is done by staff from the ODOT Office of Consultant Services, who review the technical engineering qualifications for A/E Consultants to determine the engineering categories for which the various firms are eligible.

Note: Financial and technical prequalification reviews are performed independently by OEA and Consultant Services, respectively. Although firms are required to submit updated financial information annually to OEA, renewal of technical prequalification is done on a biennial basis (every other year) by the Office of Consultant Services. Consequently, technical prequalification is granted for a 2-year period, but A/E Consultants cannot be fully prequalified unless they provide updated financial information annually. See Section 5.3 for more details.

The financial review process is described fully here:
http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/Consultants.aspx.

The types of work/services listed in 23 U.S.C. 112(b)(2)(B), include: program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services.
5.2—ACCOUNTING DEFINITIONS

A. Allowable Costs
Depending on the nature of specific cost items, allowable costs may either be billed directly to contracts or included as overhead (indirect) costs. The allowability of costs is governed by Part 31 of the Federal Acquisition Regulation (FAR Part 31). FAR 31.201-2 provides that a cost is an allowable charge to a government contract only if the cost is—

- reasonable in amount,
- allocable to government contracts,
- compliant with generally accepted accounting principles and standards promulgated by the Cost Accounting Standards Board (when applicable),
- compliant with the terms of the contract, and
- not prohibited by any of the FAR Subpart 31.2 cost principles.

Under Federal law, application of FAR Part 31 is mandatory for contracts with any Federal funding. Additionally, ODOT has adopted FAR Part 31 as the Cost Principles for any State-funded contracts. Accordingly, FAR Part 31 applies to all engineering contracts that are funded in whole or in part by Federal or State funds. Additionally, ODOT has adopted the AASHTO Audit and Accounting Guide (AASHTO Guide) as a set of recommended best practices; thus, Consultants are required to comply with the AASHTO Guide to be deemed compliant with Agreement provisions. The AASHTO Guide is available here: [http://audit.transportation.org/Pages/default.aspx](http://audit.transportation.org/Pages/default.aspx).

B. Allocability
A cost is allocable if it is assignable or chargeable to one or more cost objectives (projects) on the basis of relative benefits received or other equitable relationship. A cost is allocable to a Government contract only if it is incurred specifically for the contract; benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

C. Direct Costs
A direct cost is any cost that is identified specifically with a particular final cost objective, such as a project or agreement/contract. Direct costs are not limited to items that are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the consultant are direct costs of those cost objectives.

Direct costs include labor, materials, and reimbursable expenses incurred specifically for an agreement. All direct labor costs allocable to design and engineering contracts (regardless of the contract type, e.g., lump-sum versus actual cost) must be included in the direct labor base, regardless of whether the costs are billable to a client. Any direct cost that is not part of direct labor is considered an “Other Direct Cost” (ODC).

D. Indirect Costs
Indirect costs are costs that are necessary for operation of a business but are not incurred specifically for, and are allocable directly to, a specific agreement/project. Indirect costs should be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Commonly, manufacturing overhead, selling expenses, and general and administrative (G&A) expenses are separately grouped. The engineering consultant should record indirect costs in accordance with Generally Accepted Accounting Principles (GAAP) and must consistently allocate these costs to intermediate or final cost objectives, as appropriate.

E. Facilities Capital Cost of Money (FCCM)
Facilities capital cost of money (FCCM) is an imputed cost related to an engineering consultant’s investment in fixed assets/facilities used in contract performance, regardless of whether the source of the
investment is equity or borrowed capital. FCCM is billed as a rate; however, FCCM is not a form of interest on borrowing.

Engineering consultants are not required to propose FCCM in pricing and performing a contract. However, when an engineering consultant chooses to claim cost of money, the estimated FCCM must be specifically identified in the cost proposals relating to the contract under which the cost is to be claimed. On the engineering consultant’s indirect cost rate schedule, the FCCM amount must be shown as a separate line item or, alternatively, must be disclosed in the notes. This is necessary to distinguish cost of money from the company’s other expenses. This is required because, per FAR 15.404-4, profit/fee does not include amounts applicable to FCCM.

**F. Indirect Cost Rate (and Indirect Cost Rate Schedule)**

Engineering consultants allocate indirect costs to projects through the development and application of indirect cost rates. These rates are computed on Statements of Direct Labor, Fringe Benefits, and General Overhead (commonly referred to as “indirect cost rate schedules”). Indirect costs are allocated to projects through the use of a cost base, the most common of which is direct labor cost.

For example, if an engineering consultant has computed a 150-percent indirect cost rate, then for each $1 of direct labor incurred on a project, $1.50 of indirect costs also is assigned. These costs may be billed/invoiced on the project, subject to any limitations specified in the agreement, such as “not to exceed” limitations. It should be noted that all costs properly allocable to projects must be assigned to such contracts, notwithstanding any existing contractual limitations.

_Note: The preceding definitions and related discussion are presented as a general overview to provide an understanding of the basic oversight and review process. For further details, including requirements that apply to A/E Consultants, see Chapter 3 of the ODOT Specifications for Consulting Services._

**G. Overtime Premium**

“Overtime premium” is the difference between an employee’s standard hourly wage rate and the special hourly wage rate paid for hours worked in excess of 40 per week. For example, an employee whose standard hourly rate is $10 for the first 40 hours worked per week and $15 per hour for hours worked in excess of 40 has overtime premium of $5 for each hour worked in excess of 40. In cases where overtime is project related, the straight time paid for overtime hours worked must be included in the direct labor base.

_Note: See Section 5.4 for further details regarding the treatment of overtime premium._
5.3—Review Process

ODOT’s authority to conduct overhead reviews and audits comes from 23 U.S.C. sections 112(b)(2)(C) and (D), which provides that contracts or subcontracts funded in whole or in part with Federal-aid highway funds shall be audited in compliance with the cost principles contained FAR Part 31.

Annually, each consultant must prepare and submit a proposed indirect cost rate that complies with FAR Part 31 and State laws and regulations. The indirect cost rate must be computed based on actual costs incurred during the consultant’s fiscal year. To effect the preparation of its indirect cost rate schedule, the consultant must maintain accounting records that properly accumulate, segregate, and allocate costs as required by FAR Part 31.

Accounting systems with adequate segregation of costs exhibit the following characteristics:

- Direct and indirect expenses are recorded in separate accounts.
- Logically-titled accounts are maintained within each major category of expense.
- Commingling of items is kept to a minimum.
- Allowable and unallowable costs are maintained in separate, dedicated accounts.

The ODOT Office of External Audits reviews all A/E Consultant cost submittals for compliance with applicable Federal regulations and State policies and procedures. This review process results in the approval of indirect cost rates for compliant A/E Consultants.

Note: Once an indirect cost rate submittal is approved, External Audits issues an approval certificate to the A/E Consultant, listing the approved indirect cost rate(s), FCCM rates (if applicable), and the method for reimbursement of overtime premium. These rates are compiled in a Master Rate List, available to all ODOT employees at the following address: [http://portal.dot.state.oh.us/Divisions/Finance/Auditing/Billing%20Reviews/Forms/AllItems.aspx](http://portal.dot.state.oh.us/Divisions/Finance/Auditing/Billing%20Reviews/Forms/AllItems.aspx).

ODOT employees responsible for reviewing and approving invoices should reference the Master Rate List before approving and paying any invoice for Actual Costs Plus a Fixed Fee agreements. These rates also are to be used in computing total compensation (total fee) on any new contracts, including contracts structured as Lump Sum, Rate of Pay, or Actual Cost Plus a Fixed Fee.

5.4—Overtime Premium

Engineering consultants must maintain records that properly classify overtime premium amounts as direct or indirect costs. Additionally, engineering consultants must establish overtime policies that are applied consistently and result in equitable cost allocations.

There are several alternative methods that may be used to allocate the cost of overtime premium. For example:

- Overtime premium may be allocated exclusively as an indirect cost and distributed to all projects as part of the indirect cost rate.
- Overtime premium may be allocated as a direct project cost or an indirect cost, based on the activity that caused the overtime hours to be incurred. The engineering consultant must have established criteria to determine where to assign overtime premium when employees earning overtime premium work on multiple projects and indirect activities during a week.
- As an alternative, some firms build the anticipated cost of overtime premium into established standard charge rates for non-exempt employees. In this situation, the standard charge rate is based on an estimate of each employee’s total regular and overtime wages earned divided by the estimated total hours in pay status. Variances between the standard rates and actual rates are allocated through the indirect cost pool in a manner similar to variances for salaried employees who are charged at standard rates.
When overtime premium is allocated as a direct project cost, there are various acceptable practices for allocating indirect costs to overtime premium. For example, some engineering consultants include overtime premium costs in the direct labor base and allocate indirect costs to overtime premium costs. Other consultants exclude overtime premium costs from the direct labor base and do not apply the firm’s indirect cost rate to overtime premium costs.

*Note: Consultants must treat overtime premium costs consistently for all contracts, regardless of the customer (government versus commercial) or type of contract (e.g., lump sum versus actual cost) involved. Accordingly, overtime premium costs must be allocated consistently, regardless of whether the costs are billable.*

Generally, it is presumed that overtime premium is eligible as a direct project cost, as Federal regulations require costs to be allocated directly to projects when a causal relationship can be established between specific project work and the incurrence of a specific cost item. As part of the annual review process, OEA auditors review A/E Consultants’ policies regarding overtime premium policies to ensure consistency in the treatment of overtime.

Accordingly, ODOT district reviewers generally should accept direct billings for overtime, unless there is evidence to suggest that the A/E Consultant is not treating overtime premium consistently. Questions regarding overtime premium should be directed to OEA.

### 5.5 Other Direct Costs (ODCs)

Other Direct Costs (ODCs) are direct project costs not included in the direct labor base. These costs include items such as materials, supplies, project travel, project mileage, direct vehicle costs, and subconsultant costs. ODCs must be allocated and billed at actual cost; no markups are permitted. Accordingly, a complete invoice package should include labor cost detail as well as supporting documentation to establish the allowability of claimed ODCs.

In accordance with requirements from FAR Part 31 and related Federal laws and regulations, all costs directly allocable to contracts/projects must be assigned to those projects as direct costs. It is not acceptable to treat these costs as indirect costs (overhead costs), unless such costs are clearly immaterial in amount and would have a minimal impact on the manner in which the costs are allocated and billed.

*Note: As with overtime premium, consultants must treat other direct costs consistently for all types of contracts, regardless of reimbursement method (e.g., cost plus, lump sum, or unit rate), and the consultant’s cost allocation policies govern how other direct costs are determined and allocated. Accordingly, ODOT personnel must not attempt to prescribe the method by which consultants bill other direct costs.*

### 5.6 Technology Charges and Vehicle Charges

#### A. Technology Charges (CADD Charges)

As computer systems are involved in nearly every aspect of the modern business environment, most consultants include all costs related to computer systems as part of the indirect cost rate. This is by far the most prevalent treatment of these costs. However, some consultants find it more equitable to track the use of dedicated computer equipment to specific contracts. This tracking can be accomplished through the use of computer logs, allocation logarithms, or any other method that matches computer costs to specific projects in accordance with the computer resources consumed by such projects.

In cases where a consultant is able to track and assign computer costs to project, the consultant will compute a technology charge rate to be assigned and billed to contracts as work is performed. Accordingly, the consultant will remove all computer costs from the indirect cost rate and instead recover computer costs based on direct billings.
Note: Consultants that bill computer costs as direct project costs must submit their allocation/billing methodology to the ODOT OEA for review and approval, and this becomes part of the approved rate(s) disclosed on the approval certificates issued by OEA. It is common to see computer costs allocated based on direct labor costs incurred on projects or based on the machine/CPU hours consumed during the performance of project work.

Along with approved indirect cost rates, approved direct rates for computer charges are posted here: http://portal.dot.state.oh.us/Divisions/Finance/Auditing/Billing%20Reviews/Consultant%20Overhead%20Rates.xlsx.

B. Vehicle Charges

1. Generally

As with technology costs, most consultants treat general costs associated with vehicles as indirect (overhead) costs. These costs may include depreciation, maintenance costs, insurance, mileage reimbursements paid to employees, and/or rental and leasing costs. Consultants are required to maintain mileage logs to track costs incurred directly on project and for allowable overhead activities, and the indirect cost rate must be reduced to reflect all direct costs and costs associated with unallowable overhead activities (e.g., costs incurred when using vehicles for lobbying activities or nonbusiness use).

2. Charge Rates for Specific Equipment

For special-use equipment, such as survey vehicles, excavation equipment, and other types of dedicated project equipment, some consultants compute specific charge rates for use in direct project billings. These rates generally are reviewed by the ODOT OEA during the general review of each consultant’s annual indirect cost rate submittal.

Note: In cases where consultants incur direct vehicle costs, these costs may be billed directly to projects. These costs are allowable, subject to any limitations that may exist due to the reimbursement methods specified in the contract and/or contract maximums.

ODOT personnel should not attempt to dictate, or otherwise influence, the manner in which the consultant treats these costs, as this could conflict with the consultant’s established allocation policies and result in inconsistent allocations across the consultant’s mix of contracts.

5.7—Fixed Fee

A. Calculation of Fixed Fee

The Department calculates Fixed Fee (profit) as a percentage of direct labor and indirect costs using a statewide weighted average indirect cost rate (subconsultant costs and non-salary direct costs shall not be included). Standard Fixed Fee Percentages are listed below in section 5.7.B.

Weighted average overhead rates will be revised annually on or about June 1st as new fiscal year information becomes available.

Note: The use of Weighted Average Indirect Cost rates is limited to determination of fixed fees only. These indirect cost rates must not be used on project billings to determine actual allowable costs due to consultants. Consultants are only permitted to bill using approved actual indirect cost rates based on the specific indirect costs incurred during their respective fiscal years.

B. Fixed Fee Percentage

The fixed fee percentage is based on several factors including the size, complexity, duration and degree of risk involved in the work. Table 5-1 indicates standard fixed fee percentages established by the Office of Consultant Services.
TABLE 5-1: STANDARD FIXED FEE PERCENTAGES

<table>
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<tr>
<th>Project Description</th>
<th>Fixed Fee Percentage</th>
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<tbody>
<tr>
<td>Major Project Development</td>
<td>12%</td>
</tr>
<tr>
<td>New alignments in urban areas</td>
<td></td>
</tr>
<tr>
<td>Urban and multilevel interchanges</td>
<td></td>
</tr>
<tr>
<td>Major urban freeways and expressways</td>
<td></td>
</tr>
<tr>
<td>Generally Level 3 Bridge Design</td>
<td></td>
</tr>
<tr>
<td>Median Project Development</td>
<td>11%</td>
</tr>
<tr>
<td>New alignments in rural areas</td>
<td></td>
</tr>
<tr>
<td>Small urban projects</td>
<td></td>
</tr>
<tr>
<td>Rural Interchanges</td>
<td></td>
</tr>
<tr>
<td>Rural Freeways</td>
<td></td>
</tr>
<tr>
<td>Generally Level 2 Bridge Design</td>
<td></td>
</tr>
<tr>
<td>Minor Project Development</td>
<td>10%</td>
</tr>
<tr>
<td>Small rural projects</td>
<td></td>
</tr>
<tr>
<td>Generally Level 1 Bridge Design</td>
<td></td>
</tr>
<tr>
<td>Bridge Inspection</td>
<td></td>
</tr>
<tr>
<td>Major Bridges</td>
<td>11%</td>
</tr>
<tr>
<td>Minor Bridges</td>
<td>10%</td>
</tr>
<tr>
<td>Construction Inspection</td>
<td>9%</td>
</tr>
</tbody>
</table>

Note: The following may affect fixed fee percentage:
1. Expedited schedule requirement
2. Special expertise
3. For IDIQ (Task Order) agreements, use a weighted average of expected mix of services.

Note: For projects that do not meet any of the above project descriptions, a fixed fee percentage shall be determined based on the size, complexity, duration and degree of risk involved in the project, with the above percentages used as guidance.

C. Example Fee Calculation

Example - ABC Engineering, Inc.

Total Direct Labor (DL) $150,000
ABC Engineering’s Overhead Rate 145%
Weighted Average Overhead Rate 151.58%
Fixed Fee Percentage 12%

Fixed Fee Calculation = [DL + DL(Weighted Avg O/H Rate)] x (Fixed Fee%) = [$150,000 + $150,000(1.5158)] x (.12) = $150,000 + $227,370] x (.12) = $45,284
OR
= [(DL) x (1.00 + Weighted Avg O/H Rate)] x (Fixed Fee%)] = 150,000(2.5158)(.12) = $45,284
# Internet Links to Useful Guidance

The Consultant Contract Administration document references various published manuals, procedures, forms, documents, State and Federal Codes, and websites. These documents are located on either the internet, the ODOT website, or the Consultant Services subdirectory on the ODOT O: drive. This section provides links to these various references, listed under the Chapter in which they appear.

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CHAPTER 1 – ORGANIZATION, PURPOSE, OBJECTIVES, AND LAWS AND REGULATIONS

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