



## **Consultant Services Unit (CSU) Manual**

*Procurement, Management, and Administration of  
Engineering and Design-Related Services*

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# 1 Introduction

The Mississippi Department of Transportation (MDOT) Consultant Services Unit (CSU) is responsible for the oversight of engineering and design-related consultant services contracts as well as other professional services contracts. CSU oversees the administration of all non-technical aspects related to the selection and execution of and compliance with these contracts, including the administration of the selection process, contract execution, invoice processing, correspondence related to the contract, contract modifications, and performance evaluations.

CSU has developed and maintains an internal system called the Consultant Services Tracking System (CSTS) to monitor contracts and aid MDOT in the administration of contracts and management of projects. CSTS helps to ensure compliance with 23 CFR 172 due to its ability to track data and provide information, includes several approval levels during contract initiation, and allows for the export of data to provide various performance measures.

This MDOT CSU manual is intended to provide guidance for the MDOT Divisions and Districts regarding the procurement, management, and administration of engineering and design-related services under 23 U.S.C. 112 and as supplemented by the Uniform Administrative Requirements for Federal Awards rule for contracts administered through the CSU. The Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards rule (2 CFR 200) shall apply except where inconsistent with the requirements of 23 CFR 172 and other laws and regulations applicable to the Federal-aid Highway Program (FAHP).

MDOT shall develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design-related consultant services, reimbursed in whole or in part with FAHP funding, as specified in 23 U.S.C. 302(a), as well as other professional services procured through or administered by the Consultant Services Unit (CSU). As such, MDOT is responsible for procuring, managing, and administering engineering and design-related consultant services as well as other professional services in accordance with applicable federal and state laws, regulations, and approved policies and procedures, as specified in 23 CFR 1.9(a).

This manual details the policies and procedures and provides guidance in allocating responsibilities regarding the procurement, management, and administration of federally-funded and non-federally (state) funded engineering and design-related services in furtherance of highway or other construction projects. This manual is written in accordance with 23 CFR 172, as revised by the final rule effective June 22, 2015, to ensure a qualified consultant is obtained through an equitable qualifications-based selection procurement process and that prescribed work is properly accomplished in a timely manner at a fair and reasonable cost.

Federally-funded contracts for services not defined as engineering and design-related or in furtherance of a highway or other construction project or activity subject to the provisions of 23 U.S.C. 112(a) are not subject to the requirements of 23 CFR 172 and shall be procured and administered under the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards rule, and other procedures applicable to such activities.

For activities subject to 23 CFR 172, unless specifically stated otherwise, adherence to the policies and procedures contained within this manual is necessary to ensure compliance with federal and state laws as well as maintain the public trust.

This manual may be revised as deemed necessary by MDOT to include any subsequent changes in policies and procedures.

## 2 Procurement Methods, Contract Types, and Methods of Payment

### 2.1 Procurement Methods

The CSU utilizes the following methods to procure engineering and design-related services and other professional services, where applicable, related to a highway or other construction project subject to the provisions of 23 U.S.C. 112(a) by utilizing federal and non-federal (state) funds:

- Competitive Negotiation (Qualifications-Based Selection) - All engineering and design-related contracts procured or administered by CSU in excess of the federal simplified threshold and for which there is adequate competition must undergo a competitive negotiation (qualifications-based selection) process complying with 40 USC 1101 – 1104, commonly referred to as the Brooks Act. The competitive negotiation (qualifications-based selection) process is the most commonly used procurement method, as it requires consultants to initially compete solely based on their qualifications and demonstrated expertise. Consultants are evaluated on qualifications-based factors, and a contract is awarded to the consultant(s) deemed to be the most qualified without consideration of cost or fee.
- Small Purchase - The CSU may utilize the small purchase selection process when procuring engineering and design-related services and other professional services for contracts with total costs below the federal simplified acquisition threshold, in accordance with the federal regulations. Total contract costs, including modifications and supplementals, cannot exceed the federal simplified acquisition threshold. The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures, as specified in 23 CFR 172.7(2)(i).
- Noncompetitive - MDOT may utilize a noncompetitive selection process in certain circumstances, such as for sole-source service availability or emergency contracts, or when it is determined there is inadequate competition.
- Alternative Methods of Procurement - When 23 CFR 172 is not applicable and engineering and design-related services are not being utilized, an alternative method of procurement, such as the best value method may be developed, subject to the approval of the Chief Engineer. Should Federal funds be utilized, the CSU will procure those services in accordance with The Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards rule (2 CFR 200).

### 2.2 Contract Types

The CSU utilizes the following contract types:

- Project-specific - A contract between MDOT and the consultant for the performance of services and defined scope of work related to a specific project(s). The consultant selection process for project-specific type contracts is initiated by completing the ADM-101, Consultant Services Request Form. These may include contracts entered into using the small purchase procedures providing those services are project specific.

- Indefinite Delivery/Indefinite Quantity (IDIQ) - A contract(s) for the performance of services for a number of projects under work assignments issued on an as-needed or on-call basis. The consultant selection process for IDIQ type contracts is initiated by completing the ADM-101, Consultant Services Request Form.
  - Work Assignments to IDIQ contracts - Work or task order awarded to a consultant that holds an IDIQ contract. The project must fall within the scope of the IDIQ contract and must not exceed the maximum contract amount of the IDIQ contract. Prior to initiating negotiations for work assignments to IDIQ contracts, an ADM-301, Consultant Services Request Form, must be completed and approved.
- 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. The consultant selection process for multiphase-type contracts is initiated by completing the ADM-101 Consultant Services Request Form.

The contract type(s) shall be specified in the RFQ and/or RFP.

## 2.3 Methods of Payment

The CSU utilizes the following payment methods:

- Cost Plus Fixed Fee - The consultant is reimbursed for all eligible direct and indirect costs plus a negotiated fixed fee that is fixed at the inception of the contract. For each contract, MDOT applies a fixed fee ranging from seven (7) to fifteen (15) percent dependent on the contract type, project and scope of services, size, complexity, duration and degree of risk involved in the work, and professional nature of the services to be rendered. A fixed fee in excess of fifteen (15) percent may be justified only when exceptional circumstances exist as determined by MDOT and shall be approved by FHWA when federal funding is utilized.

The cost plus fixed fee payment method includes both a maximum total contract amount payable and a fixed fee payable under the agreement.

The entire amount of the fixed fee is paid to the consultant only upon completion of the contracted services regardless of the actual cost to complete the work. If, through no fault of the consultant, the contract is not completed, the consultant may be paid a percentage of the fixed fee relative to the percentage of the actual work completed.

- Labor Hour/Unit Price - The consultant is paid based on the negotiated not-to-exceed rate per hour or Unit of work performed. 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 costs with any reasonable degree of accuracy. The labor hour rate/unit price payment method is typically used for projects with repetitive tasks. This payment method should be limited to contracts or components of contracts for specialized or support-type services for which the consultant is not in direct control of the number of hours worked, such as construction engineering and inspection. MDOT shall manage and monitor the consultant's level of effort and classification of employees used to perform the contracted services.



Labor hour rate, as the term is used herein, shall include all direct salaries, payroll additives, overhead rate, and profit. Unit price, as the term is used herein, shall include all direct costs and profit, and any other associated costs, unless specified otherwise within the contract.

Labor hour rates and unit price rates are established in the contract during negotiations. The contract shall specify a maximum amount payable which shall not be exceeded unless adjusted by a supplemental agreement.

Escalation rates based on industry average annual compensation increases may be incorporated into multi-year contracts subject to an annual escalation. See [Section 9.3.6: Escalation of Salary Rates](#) for more information.

- Lump Sum/Firm Fixed Price - The consultant performs the services stated in the contract for an agreed-upon price that is not subject to any adjustment based on the consultant's cost experience in performing the contract. The lump sum/firm fixed price payment method shall only be used when MDOT has established the extent, scope, complexity, character, and duration of the work required to a degree that fair and reasonable compensation, including profit, can be determined at the time of negotiation. This method of payment provides the maximum incentive for the consultant to control costs and perform effectively while imposing a minimum administrative burden on MDOT.

When the lump sum/firm fixed price payment method is utilized, consultants may submit:

- One (1) final billing to MDOT at the conclusion of the contract;
- Monthly progress billings based on the percent completion of the contracted services; or
- Monthly progress billings in accordance with a milestone schedule established in the contract.

Alternate methods of payment may be considered for projects where federal funds are not being utilized upon approval from the CSU Director.

The payment method(s) shall be specified as potential payment methods to be utilized in the RFQ and/or RFP. During the negotiation phase with the selected consultant, the payment method(s) will be chosen from the methods identified in the RFQ and/or RFP. The chosen payment method(s) to the consultant will be set forth in the contract as well as any contract modification thereto. Cost plus percentage of cost and percentage of construction cost methods of payment shall *not* be allowable, as specified in 23 CFR 172.9.

## 3 Initiating the Consultant Selection Process

MDOT has established a procedure for estimating the level of effort, schedule, and costs of needed consultant services and associated staffing and resources for management and oversight in support of project authorization requests submitted to FHWA for approval, as specified in 23 CFR 630.106.

Once the need for engineering and design and/or other professional services by a consultant is determined, the Project Manager (PM) or designee who will have primary oversight of the proposed project will need to gather the following information to facilitate the accurate completion of the request form as described below.

### 3.1 Consultant Services Request Form (ADM-101)

The following information will need to be provided on the Consultant Services Request Form (ADM-101). The PM or designee should contact the CSU if additional clarification is needed on the information required for completion of the ADM-101. The information provided will include, but not be limited to, the following:

- *General Information*
- *Responsible Contract/Project Individuals*
- *Project and Contract Details*
- *Justification*

***For Competitive Negotiation Contracts, the following additional information/action is required:***

- *Evaluation Factors and Weights*
- *Selection Committee*
- *Authorizations*
- *Disadvantaged Business Enterprise (DBE) Goal*
- *MDOT Consultant Services Approval*

***For Small Purchase Contracts, the following additional information/action is required:***

- *Recommended Firm and All Firms Considered*
- *Authorizations*
- *DBE Goal*
- *MDOT Consultant Services Approval*

***For Non-Competitive Contracts, the following additional information/action is required:***

- *Type of Non-Competitive Selection*
- *Recommended Firm*
- *Authorizations*
- *DBE Goal*
- *MDOT Consultant Services Approval*

### 3.2 Consultant Services Request Form (ADM-301) for Work Assignments to an Existing IDIQ Contract

The following information will need to be provided on the IDIQ Work Assignment Request Form (ADM-301). The PM or designee should contact the CSU as needed on the information required for completion of the ADM-301. Prior to completing the ADM-301, the PM or designee shall refer to [Section 6: Process](#)

[for Selecting and Awarding Work Assignments to IDIQ Contracts](#). The information provided will include, but not be limited to, the following:

- *General Information*
- *Responsible Contract/Project Individuals*
- *Project and Contract Details*
- *Justification*
- *Authorizations*
- *DBE Goal*
- *MDOT Consultant Services Approval*

The CSU will coordinate with the PM or designee to ensure the necessary information to proceed with the identified selection process has been accurately and adequately compiled. Supplemental Agreement (SA) requests shall require additional approvals via the ADM-101S or ADM-301S process and are covered in further detail in [Section 10: Contracts and Administration](#).

### 3.2.1 [Alternative Method of Procurement: Best Value Method](#)

An alternative method of procurement, such as the best value method, is not allowable when procuring engineering and design-related services utilizing federal funds or state funds related to a highway or other construction project subject to the provisions of 23 CFR 172.

When an alternative method of procurement, such as the best value method, is utilized for issuing a Work Assignment under existing IDIQ Contracts, a consultant selection does not have to be made prior to submitting the ADM-301 form. Approval of an ADM-301 form utilizing the alternative method of procurement authorizes the PM or designee to proceed with an alternative method of procurement, such as a best value selection. The responsible Division/District utilizing the alternative method of procurement shall establish a process by which it will recommend the best value consultant. That process shall follow all applicable federal and state guidelines and shall be approved by the Chief Engineer, subject to review by the CSU and MDOT's Legal Division. Once a best value selection has been performed, the PM shall provide written correspondence to the CSU identifying the selected best value consultant. The CSU will verify the ADM form has been properly completed prior to contract execution.

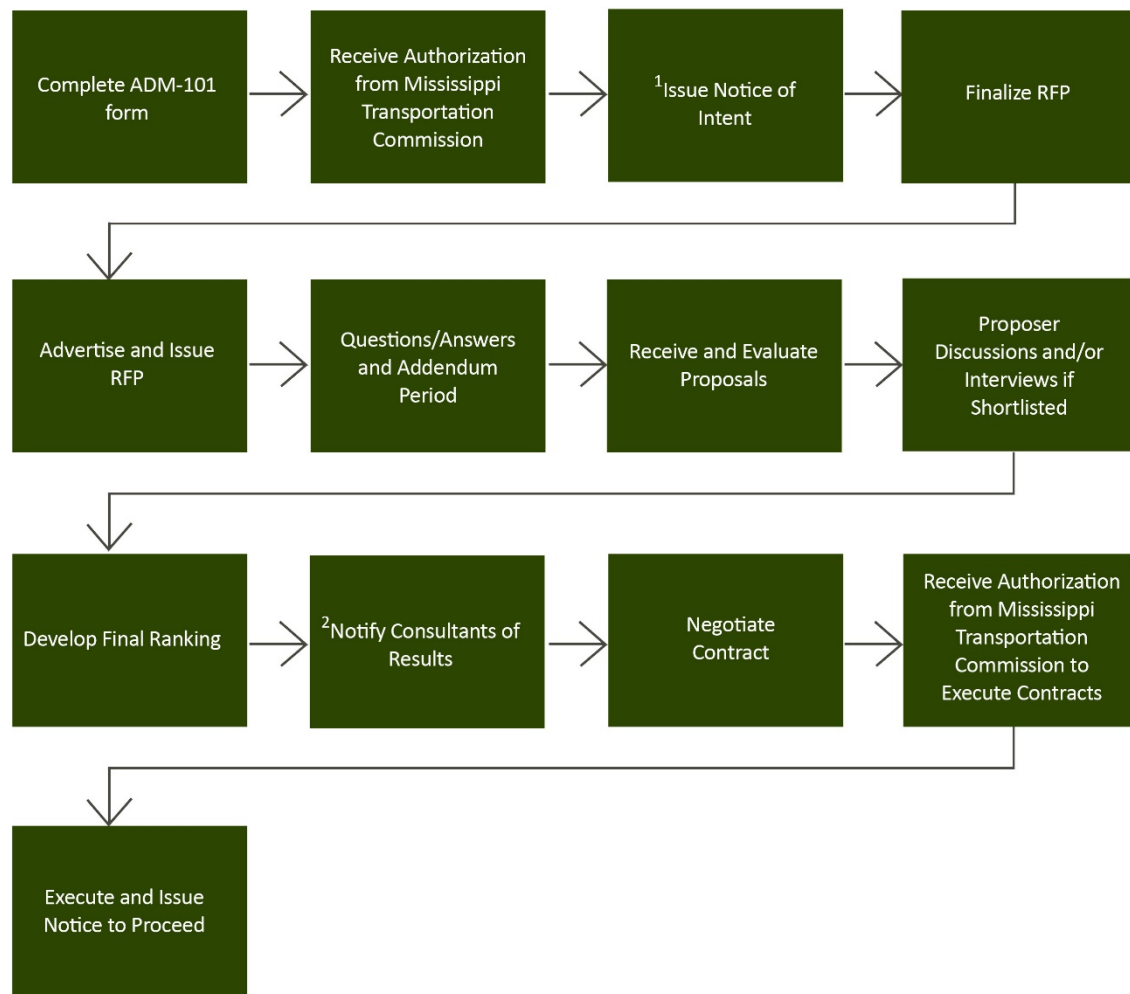
## 4 Competitive Negotiation (Qualifications-based Selection)

All engineering and design-related contracts procured or administered by CSU in excess of the federal simplified acquisition threshold and for which there is adequate competition must undergo a competitive negotiation (qualifications-based selection) process complying with 40 USC 1101 – 1104, commonly referred to as the Brooks Act. This process requires consultants to initially compete solely upon their qualifications and demonstrated expertise. The consultant deemed to be most qualified is selected without consideration of cost or fee. Weighted criteria are used to evaluate qualifications-related factors during the selection process. The contract award is subject to a successful cost negotiation with the most qualified consultant at a fair and reasonable price.

### 4.1 Competitive Negotiation (Qualifications-based Selection)

When utilizing the competitive negotiation (qualifications-based selection) process, the CSU may procure consultant services using a single-step (RFP) or a two-step (RFQ and RFP) process as shown in each of the following flow charts:

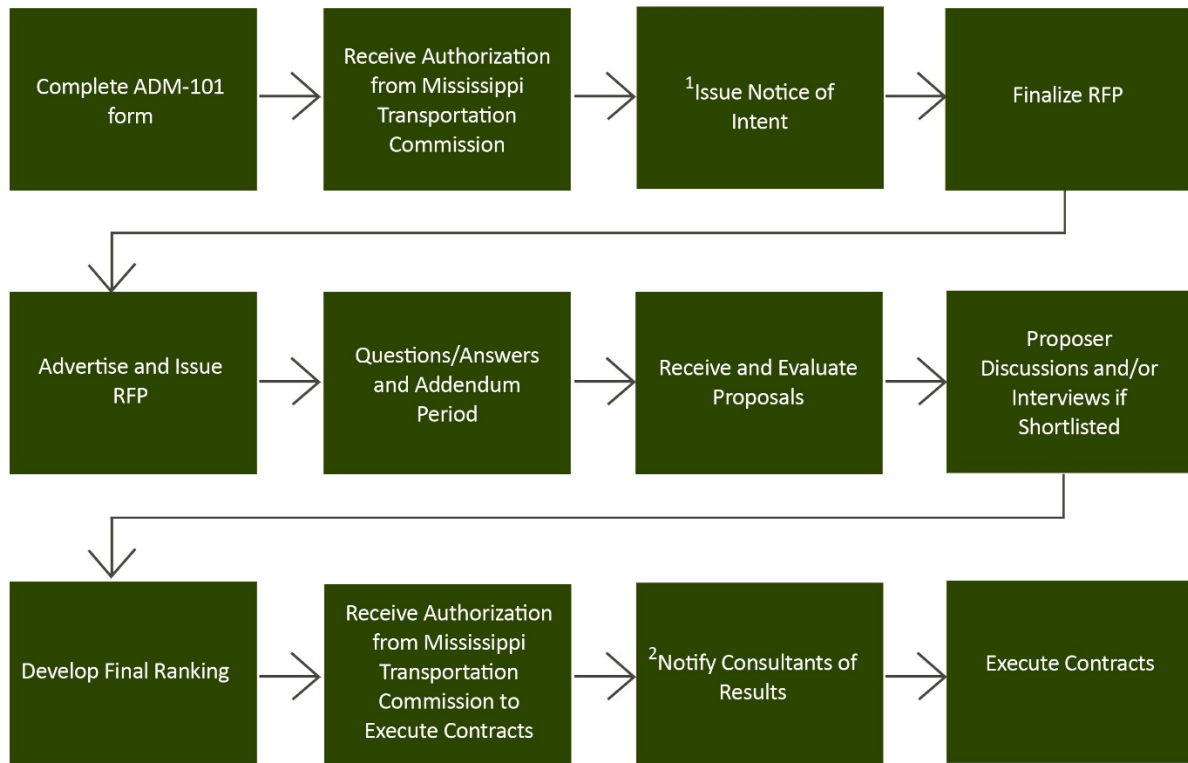
Figure 1a: Single-step (RFP) Process Flow Chart for Project-specific Contracts



<sup>1</sup>The CSU reserves the right to issue a Notice of Intent prior to the legal advertisement.

<sup>2</sup> If requested, debriefings may be conducted prior to the deadline specified in the RFP.

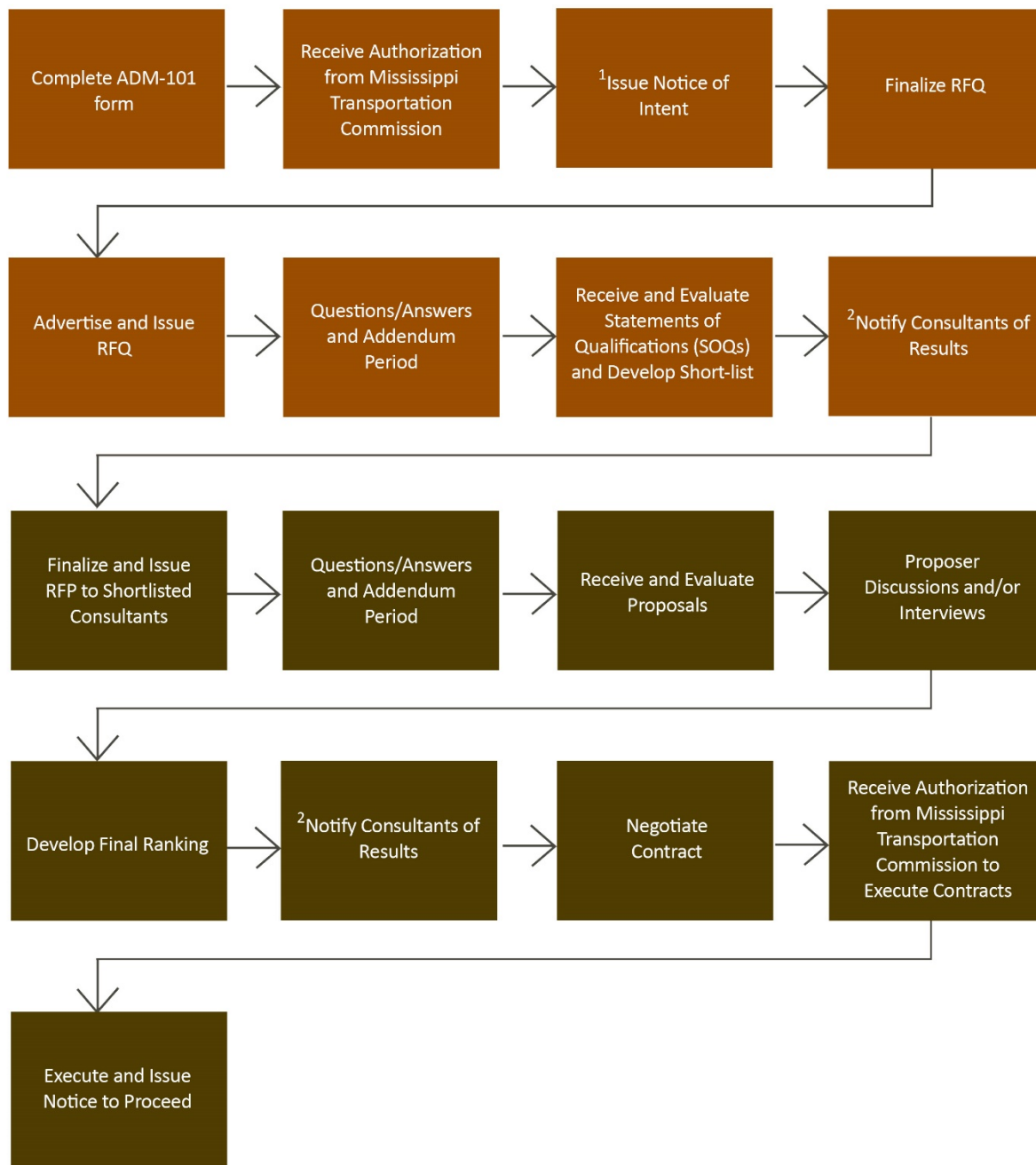
Figure 2b: Single-step (RFP) Process Flow Chart for IDIQ Contracts



<sup>1</sup>The CSU reserves the right to issue a Notice of Intent prior to the legal advertisement.

<sup>2</sup> If requested, debriefings may be conducted prior to the deadline specified in the RFP.

Figure 3: Two-step (RFQ and RFP) Process Flow Chart



<sup>1</sup>The CSU reserves the right to issue a Notice of Intent prior to the legal advertisement.

<sup>2</sup>If requested, debriefings may be conducted prior to the deadline specified in the RFQ.

For the single-step process, consultants are evaluated based on their response to a single RFP. The RFP in the single-step process is open to all interested consultants. For the two-step process, consultants are initially evaluated based on their response to a Request for Qualifications (RFQ); then, a minimum of three (3), if available, of the highest-ranking consultants are asked to respond to a project-specific RFP. The responses to the RFP are also evaluated, and a final ranking is determined. For the two-step process, the

RFQ is open to all interested consultants, and the RFP is issued only to a short list of consultants. It should be noted that for either process, the CSU may choose to engage in discussions or conduct interviews with consultants during the evaluation phase as detailed in [Section 4.1.16: Consultant Discussions and Interviews \(Optional\)](#).

#### 4.1.1 Notice of Intent (Optional)

Prior to the advertisement and issuance of an RFQ in a two-step process or RFP in a single-step process, the CSU may choose to issue a Notice of Intent (NOI). An NOI informs potential consultants of the upcoming solicitation for professional services. An NOI is typically utilized for large, complex and/or specialized projects that may require a lengthy amount of time for interested consultants to form teams in order to adequately respond to an RFQ or RFP. An NOI may also be utilized when the upcoming advertisement is for services rarely procured by MDOT. The NOI is typically released approximately one month in advance of the legal advertisement and RFQ or RFP. The NOI may be distributed to various industry groups.

#### 4.1.2 RFQ/RFP Content Requirements

In accordance with CFR 172.7(a)(1)(ii), the RFQ/RFP shall include the following information:

- Qualification requirements;
- General description of the project;
- Services to be performed;
- Evaluation factors including relative weight of importance;
- Anticipated contract type(s);
- Anticipated method(s) of payment;
- Reference to MDOT's contract template for any contract requirements or special provisions;
- Procedure for consultants to ask questions should they need additional clarification prior to submittal deadline (See [Section 4.1.9 on Pre-submittal Questions](#) for more information);
- DBE participation goal for the project in accordance with the current MDOT Disadvantaged Business Enterprise (DBE) Program Manual and the current fiscal year goals for the participation of DBEs in MDOT federally funded contracts;
- Information on how to request a debriefing following the announcement of the shortlisted or selected consultant(s) (See [Section 4.1.19 on Debriefings](#) for more information);
- Statement regarding conflicts of interest;
- Statement regarding suspension and debarments;
- Submittal deadline of no less than 14 days from the issuance of the request;
- Estimated schedule for the procurement process and project;
- Clear and accurate description of the scope of work (SOW) and technical requirements;
- Requirements for any discussions that may be conducted with three (3) or more of the highest-ranking qualified consultants following the initial evaluation of proposals; and
- If cost proposals are requested, a statement requiring submission of any requested cost proposals or elements of cost to be in a concealed format and separate from technical/qualifications proposals.

The description of the SOW shall include the project's purpose and describe all work elements to meet the project objectives. It should clearly define the appropriate criteria; project termini; and applicable standards, specifications, policies and assumptions to be applied to the work, as well as the requirements and deliverables. It should include all the major work items required to be performed by the consultant. Examples of potential services and deliverables include but are not limited to the following:



- Develop Phase A (Final Right of Way) bridge plans
- Develop Phase A (Final Right of Way) roadway plans
- Develop Phase B (Final Construction) bridge plans
- Develop Phase B (Final Construction) roadway plans
- Provide Phase C design and review services
- Perform feasibility and planning studies
- Perform capacity and traffic analyses
- Perform environmental services/studies and reporting
- Provide structural design services of bridges, retaining walls, and appurtenances
- Provide hydraulic design for bridges
- Provide hydraulic design for roadway
- Perform geotechnical investigations (bridges and retaining walls) reporting, and testing
- Provide surveying services including LiDAR, GPR and Infrared scanning, and aerial mapping
- Provide design of erosion control plans
- Develop roadway lighting plans
- Develop roadside development plans
- Perform plan quality control reviews
- Develop traffic signal plans
- Develop permanent signing plans and details
- Develop ITS plans and provide other related ITS services
- Provide constructability reviews
- Provide construction engineering and inspection and testing services
- Develop manuals, specifications, and other documents necessary for design and construction
- Provide right of way maps and deeds
- Provide bridge scour analysis
- Provide bridge safety or repair inspection
- Provide structure maintenance and repair plans
- Provide bridge load rating
- Provide site development design related services (i.e. grading and drainage, pathways, sidewalks, landscaping)
- Develop design build documents and other design build or alternative delivery services

A more detailed and comprehensive SOW will be developed during negotiations with the selected consultant. All services that could potentially be needed as part of the contract should be indicated in the RFP. Failure to do so could result in the need to perform an additional selection to include the omitted services.

Professional licensure may be a requirement for the minimum qualifications and competence of a consultant to perform the services requested.

The RFP will state the CSU reserves the right to engage in discussions, conduct interviews, or request additional information during the selection process. See [Section 4.1.16: Consultant Discussions and Interviews \(Optional\)](#) for more information.

If requested, submission of sealed cost proposals or other elements of cost may be submitted along with a consultant's proposal. However, sealed cost proposals are prohibited from being opened and used in

the evaluation, ranking, or selection of consultants performing engineering and design-related services. At the completion of the selection process and once the most qualified consultant has been selected and notified, only the selected consultant's cost estimate will be opened and shall be used as the starting point in the negotiation process. All other sealed cost proposals shall be returned to the proposer(s).

#### 4.1.3 RFP Content Requirements for IDIQ Contract Solicitations

At a minimum, IDIQ contract solicitations shall include the following additional requirements in the RFP:

- Specify a reasonable maximum length of contract period, which shall not exceed five (5) years;
- Specify the maximum total contract dollar amount to be awarded under the contract;
- Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services; and
- If multiple consultants are to be selected and multiple IDIQ contracts awarded through a single solicitation for specific services:
  - Identify the maximum number of consultants that may be selected or contracts that may be awarded from the solicitation; and
  - Specify the procedures MDOT will use in competing and awarding work assignments among the selected, qualified consultants.

Information as specified in [Section 4.1.2: RFQ/RFP Content Requirements](#) should be included in the RFP for IDIQ contract solicitations as appropriate.

#### 4.1.4 RFQ and RFP Evaluation Criteria

The RFQ and RFP shall identify evaluation criteria, including relative weight of importance. The evaluation criteria shall be listed in descending order of importance. For the single-step process, all of the evaluation criteria listed below may be included in an RFP; however, for the two-step process, evaluation criteria may be divided between the RFQ and RFP as follows:

- A. Typical RFQ Evaluation Criteria for two-step process
  - Past performance and qualifications on similar projects with MDOT and/or other clients;
  - Experience, performance, and qualifications of the team's staff;
  - Experience, performance, and qualifications of the consultant's proposed PM;
  - Workload capacity of the team; and
  - Quality of submittals.
- B. Typical RFP Evaluation Criteria for two-step process
  - Technical approach;
  - Project understanding;
  - Innovative concepts or alternatives;
  - Quality control procedures; and
  - Quality of proposal.

The CSU will coordinate with the appropriate technical staff to develop modified criteria where needed. Criteria weights shall not be modified once proposals have been received by the CSU.

#### 4.1.5 Non-Qualifications-Based Evaluation Criteria

For federally-funded contracts, non-qualifications-based evaluation criteria are permitted under the specified conditions, provided the combined total of these criteria do not exceed a nominal value of ten

(10) percent of the total evaluation criteria to maintain the integrity of a qualifications-based selection. Non-qualifications-based evaluation criteria include, but are not limited to, the following:

1. **A local presence** may be used as a nominal evaluation criterion as appropriate. This criterion shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis to contracts for which the following is true: 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.
2. **DBE:** The participation of qualified and certified DBE subconsultants may be used as a nominal evaluation criterion as appropriate in accordance with 49 CFR 26 as well as MDOT's FHWA-approved DBE program. MDOT shall consider DBE consultants in the procurement of engineering and design-related service contracts subject to 23 U.S.C. 112(b)(2) in accordance with 49 CFR 26. When DBE program goals cannot be met through race-neutral measures, additional DBE participation on engineering and design-related service contracts may be achieved in accordance with MDOT's FHWA-approved DBE program through either:
  - a. Use of an evaluation criterion in the qualifications-based selection of consultants, as specified in 23 CFR 172.7(a)(1)(iii)(D); or
  - b. Establishment of a contract participation goal.

#### 4.1.6 Selection Committee Composition

When completing the ADM-101, the PM with primary oversight of the proposed project shall make recommendations for the Selection Committee members. The PM shall list three (3) to six (6) voting members on the form as well as additional non-voting members, as appropriate, unless otherwise authorized by the Chief Engineer. The list shall clearly identify those that are non-voting. Non-voting members will assist in the evaluation process as directed but are not responsible for evaluating the proposals. The voting members of the Selection Committee are responsible for evaluating each of the proposals based on the evaluation criteria included in the RFQ and/or RFP. The PM will coordinate with the Project Director (PD) to ensure appropriate MDOT personnel with adequate knowledge of the subject matter in the SOW are included as part of the Selection Committee. The Selection Committee Chair is typically the PD. The composition of the Selection Committee shall remain confidential at all times. The CSU will notify the Selection Committee members of their appointment via the Chief Engineer.

#### 4.1.7 Authorization to Advertise

The authority to advertise must be approved by the Mississippi Transportation Commission (MTC). The CSU will develop and submit the request for an "authority to advertise" item to be placed on the agenda for approval by the MTC. Once approved, the CSU will move forward with issuing the legal advertisement for the contract. Approval by the MTC is not required prior to issuing an NOI.

#### 4.1.8 RFQ or RFP Advertisement

Once approved, the CSU will issue the legal advertisement for the RFQ in a two-step process or RFP in a single-step process via the MDOT website.

In addition to the MDOT website, MDOT may distribute the legal advertisement by other means , as appropriate, to ensure qualified in-state and out-of-state consultants are given a fair opportunity to be considered for contract award in accordance with the qualifications-based selection provisions of the Brooks Act and FHWA guidance.

#### 4.1.9 Pre-submittal Questions

The CSU Director or designee will accept questions in accordance with the instructions specified in the RFQ or RFP. The CSU will forward questions of a technical nature to the PM, and the PM is responsible for communicating with the appropriate technical staff to prepare a response. The PM shall forward the response to the CSU. The CSU will answer questions of a contractual or administrative matter. The CSU will post all questions and answers on the MDOT website, and consultants are responsible for checking the website for updates.

#### 4.1.10 Addenda

Should a change to an RFQ or RFP be warranted, the CSU will coordinate with the PM and MDOT's Legal Division, as appropriate, to develop an addendum in accordance with the instructions specified in the RFQ or RFP. The CSU will forward any proposed addenda of a technical nature to the PM, and the PM is responsible for communicating with the appropriate technical staff to prepare a draft addendum if needed. The PM will forward the draft addendum to the CSU. The CSU will consult with the Legal Division as needed and finalize the addendum. The CSU will prepare and finalize any addenda of a contractual or administrative nature and consult with the Legal Division as needed. The CSU will post all finalized addenda on the MDOT website, and consultants are responsible for checking the website for updates.

#### 4.1.11 Receipt of Proposals

The CSU will be responsible for receipt of all proposals and ensure appropriate personnel are available to verify proposals are received by the date and time specified in the RFQ or RFP. Consultants are responsible for ensuring delivery by the submittal deadline, as late submissions may be rejected. MDOT will accept no responsibility for misdirected or lost proposals.

Should fewer than three (3) proposals be received for a solicitation, the CSU will review the RFQ or RFP to examine if it was written in a manner that may have limited competition. This may include, but will not be limited to, the following actions:

1. Review the solicitation for any items that may have been too specific or limiting.
2. Contact a reasonable number of consultants to inquire why they did not respond to the legal advertisement.

If it is determined the RFQ or RFP *did* limit competition, appropriate revisions will be made, and the RFQ or RFP will be re-advertised.

If it is determined the RFQ or RFP *did not* limit competition, the CSU will document all steps taken to make the determination. The CSU will then either continue with the review of the received proposals or utilize a different selection process as described in [Section 8: Other Non-competitive Procurement](#).

The CSU shall provide a preliminary review of all received proposals for responsiveness prior to making the proposals available to the Selection Committee. The Selection Committee shall be responsible for identifying any additional non-responsive items.

#### 4.1.12 Non-responsive Proposals

Prior to evaluation, the CSU will provide a preliminary review and identify any potential non-responsive elements within the proposal. Non-responsive elements may include, but are not limited to, the following:

- Not arriving by date/time specified in the RFQ or RFP;
- Failure to provide all information required in the proposal;
- Failure to conform to the material requirements of the RFQ or RFP;
- One or more obvious conflicts of interest which cannot be avoided or mitigated to the satisfaction of MDOT (see [Section 12: Conflict of Interest](#));
- Consultant or subconsultant is determined to be currently suspended or debarred;
- Conditional proposals; or
- Failure to provide complete and honest information.

Once identified, the CSU Director will present the potential non-responsive element to the Selection Committee Chair. If appropriate, the potential non-responsive element may also be presented to Legal Division for further counsel. The Chief Engineer will make the final determination on whether or not the proposal is responsive, based on information provided by the CSU Director and the Selection Committee Chair. The CSU will document the reason(s) for deeming a proposal non-responsive, record any pertinent information, and develop a draft letter notifying the consultant of the reason(s) for non-responsive determination. The letter shall be approved and signed by the Chief Engineer and sent to the consultant, along with the non-responsive proposal.

#### 4.1.13 Suspension and Debarment

The CSU will make sure the Prime CONSULTANT certifies (via the contract) that it and any subconsultants are not suspended or debarred, as specified in 2 CFR 1200 and 2 CFR 180.

#### 4.1.14 Pre-evaluation Meeting - Proposal Distribution to Selection Committee

The CSU will schedule a pre-evaluation meeting with the Selection Committee in order to brief members on the selection procedures and provide instructions for completing the Selection Evaluation Form (Scoresheet). The CSU will distribute the Selection Committee Package and review the schedule for the selection process. The CSU, in coordination with the Selection Committee Chair, will facilitate discussions of the responsive proposals received. The CSU will answer questions from committee members and review the criteria and weights to be used in the evaluation.

The Selection Committee Package includes the following materials:

- Legal advertisement;
- RFQ or RFP;
- Questions and answers, if applicable;
- Addenda, if applicable;
- Responsive proposals;
- Past performance evaluations\*;
- Conflict of Interest Certification Form (to be completed by voting Selection Committee members, and any non-voting members at the discretion of the Selection Committee Chair);
- Printed blank selection evaluation form (Scoresheet); and
- Any other information deemed appropriate by the CSU.

\*Relevant, available past performance evaluations for each consultant will be provided.

During the pre-evaluation meeting, the CSU and Selection Committee will review the organizational charts in each of the proposals and identify any potential conflicts of interest (see [Section 12: Conflict of Interest](#)).

Each member of the Selection Committee shall complete the Conflict of Interest Certification form. If any member of the Selection Committee identifies a potential conflict of interest, the person shall be removed. If desired, the Selection Committee chair may replace the member.

While the RFP may require all consultants submitting proposals to identify any potential conflicts of interest, the Selection Committee, at the direction of the Chairman, may identify potential conflicts of interest and request that the CSU obtain and/or request additional information or clarification from consultant(s) at any time during the evaluation phase.

At the conclusion of the pre-evaluation meeting, the CSU will schedule the final evaluation meeting.

#### 4.1.15 Preparation of Draft Evaluations

Following the pre-evaluation meeting, each member of the Selection Committee will be responsible for evaluating consultant proposals based on the criteria established and published within the public solicitation.

Members should not engage in communications with other Selection Committee members while preparing their draft evaluations. Members should communicate with the CSU and Selection Committee Chair only if they have any questions or need additional clarification on the process or proposals during preparation of their draft evaluations. If a Selection Committee member identifies a potential conflict of interest during preparation of their draft evaluations, they should immediately contact the CSU and Selection Committee Chair to mitigate the potential conflict of interest (see [Section 12: Conflict of Interest](#)). Similarly, if a Selection Committee member determines that a proposal may be potentially non-responsive, the Selection Committee member should immediately contact the CSU and Selection Committee Chair for further instructions. Each Selection Committee member shall be prepared to discuss their draft evaluations at the final evaluation meeting. Each Selection Committee member shall complete their draft evaluations in accordance with the instructions and schedule specified during the pre-evaluation meeting. The CSU and Selection Committee Chair will review all draft evaluations and be prepared to identify any notable discrepancies in individual scoring among members for discussion during the final evaluation meeting.

#### 4.1.16 Consultant Discussions and/or Interviews (Optional)

During the evaluation phase, discussions and/or interviews with consultants may be held based on the size and complexity of the project. Should the CSU elect to engage in further discussions and/or conduct interviews with consultants, the CSU shall do so with a minimum of three (3), if available, of the highest-ranking qualified consultants. Discussions and/or interviews may be written, by telephone, video conferences, oral presentations, or any other means as directed by the CSU. Discussions and/or interviews are to clarify the technical approach, qualifications, and capabilities provided in the response to the RFP. The CSU is responsible for notifying all consultants by written correspondence with additional information regarding the discussions and/or interview process and materials. The manner in which the interviews and/or discussions are held shall be consistent with each of the consultants.

Topics for consultant discussions and/or interviews may include, but are not limited to, the following:

- Team members and organization
- Professional qualifications
- Past experience on comparable projects or related services
- Approach or innovative solutions to the services requested
- Example work sequence and schedules
- Projected office workload and staff availability

#### 4.1.17 Final Evaluation Meeting

During the final evaluation meeting, the Selection Committee will discuss the results of the draft evaluations for each consultant, including any notable discrepancies in individual scoring among members. The CSU will record notes from the discussions which may be used during any requested consultant debriefings.

Each Selection Committee member shall finalize and input their final evaluation scores. The CSU will develop a final ranking based on the Selection Committee members' scores for each consultant. As a result of the final ranking, the Selection Committee shall recommend one of the following: a) the most qualified consultant based on the highest ranking or the Selection Committee; 2) a short list of consultants from which more information may be requested as described in [Section 4.1.16: Consultant Discussions and Interviews \(Optional\)](#); or 3) the discontinuance of the selection process

At the conclusion of the final evaluation meeting, the CSU shall retain supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant. See [Section 10.6: Record Keeping and Retention Requirements](#) for more detailed information on materials collected.

For IDIQ contract solicitations, the Selection Committee may recommend the selection of multiple consultants based on the highest rankings (most qualified).

The CSU will prepare meeting minutes stating the recommendation of the highest-ranking consultant(s) and submit to the Selection Committee Chair, the Chief Engineer, and the MDOT Executive Director for their signatures. These signatures authenticate the recommendation made by the Selection Committee.

#### 4.1.18 Notify Consultants of Results

Once the selection has been authenticated by the Executive Director and the contract authorized by the MTC (IDIQ contracts only), the CSU will send a letter to the selected consultant(s) notifying them of the selection. Notification letters will also be sent to all consultants who responded to the RFP but were not selected. For selections utilizing the two-step process, notification letters will identify the top three (3), if available, most highly qualified consultants on the selection list (project-specific). For selections utilizing the single-step process, notification letters will only identify the selected consultant. For IDIQ contracts, notification letters will identify all selected consultants.

#### 4.1.19 Debriefings

Following announcement of the selected consultant or shortlisted consultant(s), debriefings, if contemplated in the RFQ or RFP, may be requested in accordance with the instructions specified in the RFQ or RFP. Debriefings will be limited to the merits of the individual consultant's proposal by any means as directed by the CSU. The CSU will contact the Selection Committee Chair to schedule a debriefing. Once determined, the CSU will provide meeting details to the consultant. Prior to the meeting, the CSU will be responsible for distributing a debriefing package to the Selection Committee Chair, which will include the

consultant's proposal, individual score sheets, final ranking sheet, summary of discussion notes, RFQ or RFP, questions and answers, addenda, and any other information as requested by the Selection Committee Chair. The Selection Committee Chair will conduct the meeting, and the CSU Director may be requested to attend.

#### 4.1.20 [Negotiations](#)

MDOT may enter into contract negotiations with the selected consultant. The CSU will work closely with the PM to assist in the negotiation process as needed. See [Section 9: Negotiations](#) for more information.



## 5 Alternative Procurement Methods: Best Value Method

MDOT may elect to procure non-engineering and non-design professional services, which 23 CFR 172 does not apply, through a competition based on the ranking of each consultant's proposal according to an alternative procurement method, such as a best value method, which may be based on a combination of criteria such as qualifications, cost, and time. For all services, which 23 CFR 172 is not applicable, alternative methods shall be approved by the Chief Engineer (and subject to review by CSU and Legal Division), unless expressly prohibited under state or federal law.

## 6 Process for Selecting and Awarding Work Assignments to IDIQ Contracts

MDOT may utilize an IDIQ contract to issue work assignments for specific projects within the SOW of the IDIQ contract. This contract type allows MDOT to maintain an efficient and productive competitive process for both the consultant and agency. This contract type also allows MDOT to procure professional services on an on-call or as-needed basis, especially when:

- a. Time is of the essence; and/or
- b. IDIQ contract has been awarded using competitive negotiation (qualifications-based) procedures with the appropriate scope identified.

### 6.1 Work Assignment to Existing IDIQ Contract Initiation

Once the need for professional services of a consultant is determined, the PM or designee who will have primary oversight of the proposed project shall complete the ADM-301 form. Further clarification on information needed for the ADM-301 can be found in [Section 3.2: Consultant Services Request Form \(ADM-301\) for Work Assignments to an Existing IDIQ Contract](#).

#### 6.1.1 Identification of Consultants

Prior to completing the ADM-301, the PM shall consider a minimum of three (3) of the consultants previously selected for the IDIQ contract. The PM or designee may choose to contact considered consultants. If the PM or designee does so, the PM or designee should communicate to each consultant that they are only being considered at this time for a future work assignment under the existing IDIQ contract. The PM or designee should also communicate to each consultant that this inquiry does not indicate the consultant will ultimately be selected for the work assignment.

#### 6.1.2 Consultant Selection (Qualifications-Based Procurement)

Under competitive negotiation (qualifications-based) procurement, each work assignment shall be awarded to the selected, qualified consultants:

1. Through an additional qualifications-based selection procedure, which may include, but does not require, a formal RFP in accordance with 23 CFR 172.7; or
2. On a regional basis, whereby the state is divided into regions and consultants are selected to provide IDIQ services for an assigned region(s) identified within the solicitation.

Work assignments shall not be competed and awarded among the selected, qualified consultants on the basis of costs under IDIQ contracts for services procured with competitive negotiation procedures.

When using an additional qualifications-based selection process, the PM or designee shall gather sufficient information to allow for the selection of one of the three (3) or more consultants and may utilize the following means to evaluate all of the consultants being considered:

- Reviewing the consultant's IDIQ proposal relative to the services needed and evaluating based on qualifications;
- Reviewing past performance evaluations;
- Submitting inquiries to the consultants and/or requesting additional information from the consultants;
- Requesting the consultant's approach to the project and any other related information;

- Interviewing the consultants; and/or
- Considering any other factors in accordance with federal regulations.

Information gathered from all of the consultants being considered shall be taken into account during an additional qualifications-based selection. Once the PM has made a recommendation for selection, the PM or designee should complete the ADM-301 form. Should negotiations with the recommended consultant be unsuccessful, the PM or designee may begin the negotiation process with another consultant listed on the ADM-301 form or develop a new ADM-301 and start the process over again.

At a minimum, selections shall include a brief statement explaining the reason for the recommendation for selection included as part of the ADM-301 form. The PM or designee may consult with CSU during the course of the selection process for guidance or assistance.

#### 6.1.3 Negotiations

Once the ADM-301 has been approved, MDOT may enter into contract negotiations with the selected consultant. The CSU will work closely with the PM or designee to assist in the negotiation process as needed. See [Section 9: Negotiations](#) for more information.

#### 6.1.4 Alternative Methods

For all services not applicable to 23 CFR 172, an alternative procurement method such as the best value method, as approved by the Chief Engineer (subject to review by CSU and Legal Division), may be utilized unless prohibited under state or federal law.

## 7 Small Purchase Contract

When the agency wishes to procure professional services through the CSU, the small purchase method may be utilized, providing an adequate number of qualified sources are reviewed (a minimum of three) and the total costs are below the federal simplified acquisition threshold.

When utilizing the small purchase procedures, the total contract cost, including supplementals and modifications, cannot exceed the current simplified acquisition threshold (as defined in 48 CFR 2. 101). The full amount of any contract modification or amendment that would cause the total contract amount to exceed the established simplified acquisition threshold is ineligible for federal-aid funding. The FHWA may withdraw all federal-aid funding from a contract if it is modified or amended above the applicable established simplified acquisition threshold. The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures. When negotiating costs for contracts utilizing the small purchase selection process, the allowability of costs shall be determined in accordance with the Federal Cost Principles (48 CFR 31).

### 7.1 Small Purchase Contract Initiation

Once the need for professional services by a consultant is determined, the PM or designee who will have primary oversight of the proposed project shall complete the ADM-101 form. Further clarification on the information needed for completion of the ADM-101 can be found in [Section 3.1: Consultant Services Request Form \(ADM-101\)](#).

#### 7.1.1 Identification of Consultants

Prior to completing the ADM-101, the PM shall consider a minimum of three (3) consultants for a small purchase contract. The PM or designee may choose to contact considered consultants. If the PM or designee does so, the PM or designee should only communicate to each consultant that they are being considered for a future contract utilizing the small purchase process, and the PM or designee is merely inquiring if the consultant is interested in being considered for selection. The PM or designee should also communicate to each consultant that this inquiry does not indicate the consultant will ultimately be selected for the small purchase contract.

#### 7.1.2 Consultant Selection

The PM or designee may contact the CSU for any available information on file for each of the three (3) or more identified consultants. The CSU maintains limited information on file that may assist the PM in making a recommendation for consultant selection. Information that may be used to consider consultants under the small purchase procedures may include, but not necessarily limited to, the following:

- Past performance evaluations of the consultant on similar projects with MDOT;
- Descriptions of previously completed similar projects with MDOT and/or other clients;
- Previous proposals submitted;
- Qualifications or resumes of the consultant's staff; and
- Any other relevant information to the consultant.

While a consultant selection utilizing the small purchase bypasses a competitive selection-based process, the PM shall utilize appropriate information to ensure each of the interested consultants are qualified to perform the proposed services.

Should the PM or designee need additional information for any of the three (3) or more considered consultants in order to recommend a final selection, the PM or designee may contact the consultant(s) directly to request the needed information. The PM or designee should communicate to each consultant that this inquiry does not indicate the consultant will ultimately be selected for the small purchase contract.

Once the PM has made a recommendation for selection, they should complete the ADM-101 form by indicating the recommended consultant.

#### 7.1.3 [Negotiations](#)

Once the ADM-101 form has been approved, MDOT may enter into contract negotiations with the selected consultant. The CSU will work closely with the PM or designee to assist in the negotiation process as needed. See [Section 9: Negotiations](#) for more information.

## 8 Non-Competitive Procurement

MDOT may choose to award a contract for engineering and/or design-related services by noncompetitive procedures under limited circumstances. MDOT's non-competitive procedures include the following:

- Sole Source - The service is only available from one source;
- Emergency - There is an emergency which will not permit the time necessary to conduct a competitive negotiation (qualifications-based selection); or
- Inadequate Competition - After solicitation of a number of sources, competition is determined to be inadequate.

Procurement by noncompetitive procedures may be used only when contract award is not feasible under the competitive negotiation (qualifications-based selection) or small purchase procedures.

### 8.1 Noncompetitive Contract Initiation

Once a Division or District identifies the need to procure a consultant using noncompetitive procedures, the Division or District shall prepare draft written correspondence requesting the use of the noncompetitive procurement method along with justification of need. The written correspondence shall be submitted to the CSU Director. The CSU will prepare the appropriate correspondence and send to the Executive Director for approval. Additional approval must be obtained from FHWA for contracts utilizing federal funds prior to utilizing a noncompetitive procurement method. When negotiating costs for contracts utilizing the noncompetitive method, the allowability of costs shall be determined in accordance with the Federal Cost Principles.

#### Sole Source

A contract may be awarded without competition if there is only one source available to provide the required services. The PM may request a sole source procurement by providing the CSU Director with written documentation. In cases of reasonable doubt, competition must be solicited. Any decision that procurement be restricted to one potential consultant must be accompanied by a written explanation as to why no other consultant will be suitable or acceptable to meet the need.

#### Emergency Contract

Emergency procurement of consultant services shall comply with state law and federal law, where applicable. Emergency procurement shall be limited to those services necessary to address the emergency which will not permit the time necessary to conduct competitive negotiations. Requests must include the basis for the emergency procurement and the selection of the particular consultant.

#### Inadequate Competition

If competition is determined to be inadequate and it is determined not to be feasible or practical to issue a new solicitation, MDOT may proceed with the noncompetitive procurement method for consultant services.

##### 8.1.1 Identification and Selection of Consultants

Prior to completing the ADM-101 Request Form, the PM may solicit interest from the proposed consultant. At this stage, the PM should only communicate to the consultant that they are being considered for a selection under the appropriate non-competitive process and the PM is merely inquiring if the consultant is interested in being considered for selection.

Once the PM has made a recommendation for selection, they should complete the ADM-101 form by indicating the recommended consultant.

#### 8.1.2 Negotiations

Upon approval of the ADM-101 form, MDOT may enter into contract negotiations with the selected consultant. The CSU will work closely with the PM or designee to assist in the negotiation process as needed. See [Section 9: Negotiations](#) for more information.

## 9 Negotiations

The primary objective in negotiation is to reach agreement on a price which is fair and reasonable while providing the consultant the greatest incentive for efficient and economical performance. The process for negotiation of the contract shall comply with the requirements codified in 40 U.S.C. 1104(b) for the order of negotiation.

The focus of negotiation should be on refining the existing scope of services and tasks included in the RFQ and/or RFP as well as determining the level of effort to complete those tasks, experience and classifications of staff required/assigned to complete those tasks (which collectively result in total direct labor costs), other direct costs, and fixed fee.

Once a consultant is selected, the PM will be notified that he or she may initiate negotiations via approval of the appropriate ADM Form or distribution of the notification letter. The negotiation team will be assigned by the PM unless authorized otherwise by the PD. Upon request from the PD or PM, a contract negotiation specialist from the CSU may facilitate negotiations. An independent state estimate and determination of cost allowance in accordance with 23 CFR 172.11 shall be developed for all consultant contracts, unless an exemption has been granted by the Chief Engineer and FHWA (when FAHP funds are utilized), to ensure consultant services are obtained at a fair and reasonable price, as specified in 40 U.S.C. 1104(a).

MDOT shall provide reasonable assurance that consultant costs on contracts reimbursed in whole or in part with FAHP funding are allowable in accordance with the Federal Cost Principles and consistent with the contract terms considering the contract type and payment method.

### 9.1 Payment Methods

One or more of the following payment methods included in the RFQ and/or RFP will be determined during contract negotiations with the selected consultant once the scope of services is finalized:

Cost Plus Fixed Fee

Labor Hour Rate /Unit Price

Lump Sum/Firm Fixed Price

For additional information on each of these payment methods, see [Section 2.3: Methods of Payment](#).

Alternate methods of payment may be considered for projects in which federal funds are not being utilized upon approval from the CSU Director.

Costs or prices based on estimated costs for contracts shall be eligible for Federal-aid reimbursement only to the extent that costs incurred or cost estimates included in negotiated prices are allowable in accordance with the Federal Cost Principles. Additional information may be requested from the consultant by CSU at any time during their negotiation process to support these principles.

MDOT may retain compensation in accordance with the applicable prompt payment statutes and federal regulations.

When the method of payment is other than lump sum/firm fixed price, the contract shall specify a maximum amount payable which shall not be exceeded unless adjusted by a contract modification.



MDOT shall use the Federal Cost Principles in determining the reasonableness, allowability, and allocability of other direct contract costs.

## 9.2 Acceptance Process of Indirect Cost Rates

### Accepted Indirect Cost Rates

All portions of this section shall apply when utilizing federal funds for engineering and design consultant contracts administered by CSU. MDOT's acceptance process of indirect cost rates adheres to the *AASHTO Uniform Audit and Accounting Guide for Audits of Architecture and Engineering (A/E) Consulting Firms*. MDOT will also apply the same referenced policies for non-federally funded engineering and design consultant contracts. However, MDOT may restrict the use of certain indirect costs and/or prescribe certain cost accounting methodologies that vary from methodologies normally applied by an engineering and design consultant and used for federally-funded contracts.

In the preparation of cost proposals, consultants and subconsultants shall apply their most current accepted indirect cost rate to the proposed direct labor costs, in accordance with the contract. Any consultant and/or subconsultant without a current accepted indirect cost rate should be instructed to contact the MDOT Audit Division and obtain information necessary to comply with MDOT's acceptance process as outlined below. A current accepted indirect cost rate must be on file with MDOT's CSU before negotiations can be finalized.

To maintain a current accepted indirect cost rate on file with MDOT's CSU, consultants must submit to the MDOT Audit Division the appropriate indirect cost rate documentation on an annual basis. The indirect cost rate schedule must be established from the financial data of the consultant firm's most recent fiscal year. In the preparation of the indirect cost rate schedule, consultants must adhere to the Federal Acquisition Regulations, Part 31 (FAR). A current accepted indirect cost rate is valid until nine months after the end of the consultant's most current annual accounting period (fiscal year).

For purposes of this section, any reference to the "consultant" shall also apply to "subconsultant".

### "Audited" versus "Provisional" Indirect Cost Rates

A consultant's indirect cost rate will be accepted by MDOT either as an "audited" rate or as a "provisional" rate. If a contract exceeds \$250,000 in total value (or is estimated to exceed \$250,000 in total value), the indirect cost rate presented in the consultant's cost proposal must be current and on file as an "audited" rate. If the contract value is below the \$250,000 threshold, the indirect cost rate presented in the consultant's cost proposal must be current and on file as a "provisional" rate. However, if a current "audited" rate is on file as accepted, the "audited" rate should be used.

"Audited" Indirect Cost Rate - For engineering and design consulting firms that are headquartered in Mississippi, the consultant's most current audit report which was prepared by an independent Certified Public Accountant (CPA) shall be submitted to the MDOT Audit Division. MDOT Audit Division will review the audit report and conduct a risk assessment to determine the acceptability of the indirect cost rate(s) presented in the audit report. If the risk level of FAR noncompliance is assessed as low risk at the conclusion of the risk assessment, MDOT Audit Division may issue an acceptance letter to MDOT's CSU which will state the "audited" rate(s) should be accepted.

For engineering and design consulting firms that are headquartered outside of Mississippi, the consultant may submit to the MDOT Audit Division either a cognizant acceptance letter issued by the cognizant

agency (as defined in 23 CFR 172.3) that presents the most current “audited” rate(s); or the consultant’s most current audit report which was prepared by an independent Certified Public Accountant (CPA). MDOT Audit Division will review the audit report and conduct a risk assessment to determine the acceptability of the indirect cost rate(s) presented in the audit report. If the risk level of FAR noncompliance is assessed as low risk at the conclusion of the risk assessment, MDOT Audit Division may issue an acceptance letter to MDOT’s CSU which will state the “audited” rate(s) should be accepted. When a cognizant acceptance letter is submitted, the MDOT Audit Division will issue an acceptance letter to MDOT’s CSU accordingly which presents the results of the review work performed by the consultant’s Home State DOT. The MDOT acceptance letter will state the “audited” rate(s) are accepted.

If an out-of-state consultant submits an “audited” rate that is in dispute, MDOT Audit Division will follow the prescribed federal regulations to determine acceptance of an indirect cost rate for use in an MDOT or LPA contract.

“Provisional” Indirect Cost Rate – If a consultant determines their proposed contract value is below \$250,000, an Indirect Cost Rate Schedule which has been compiled internally or by the consultant’s CPA should be submitted to the MDOT Audit Division. The schedule should be prepared based on the latest fiscal year’s accounting records and in an appropriate format as prescribed in the most current version of the *AASHTO Uniform Audit and Accounting Guide for Audits of Architecture and Engineering (A/E) Consulting Firms*. MDOT Audit Division will review the schedule and conduct a risk assessment to determine the acceptability of the indirect cost rate presented. If the risk level of FAR noncompliance is assessed as low risk at the conclusion of the risk assessment, MDOT Audit Division may issue an acceptance letter to the CSU which will state the “provisional” rate should be accepted and is subject to adjustment if an indirect cost rate audit is conducted for the referenced fiscal year.

MDOT “Safe Harbor” Indirect Cost Rate – FHWA has provided guidance to allow firms that were previously unable to participate in federally funded projects due to certain barriers to establish a safe harbor indirect cost rate. 84 Fed. Reg. 29277-29280 (June 21, 2019). Along with existing regulations at 23 CFR 172.11(b)(1)(iii)(D) and (c)(2)(ii)(C), this guidance provides the framework for the MDOT to establish requirements that allow participation in a safe harbor indirect cost rate for contracts awarded by the State of Mississippi using FHWA funds. MDOT Audit Division has developed an MDOT Safe Harbor Indirect Cost Rate policy based on the above guidance and regulations. The use of the MDOT Safe Harbor Indirect Cost Rate is voluntary for both MDOT and the requesting firm. Eligible firms must submit in writing to the MDOT Audit Division their request to use the MDOT Safe Harbor Indirect Cost Rate using the “Safe Harbor Rate Request” form. Based on the review of the submitted documentation, MDOT Audit Division may issue an acceptance letter to MDOT’s CSU which will state the accepted “Safe Harbor” indirect cost rate. At any point, if a firm receives a provisional or audited overhead rate, the MDOT Safe Harbor Indirect Cost Rate will become void and the accepted rate must be used until expiration.

#### “Self-imposed” Indirect Cost Rate

If submitted voluntarily by a consultant, a lower indirect cost rate than the “audited” rate may be accepted for use on a contract. MDOT Audit Division will review the consultant’s written reasoning to use the lower rate to ensure compliance with federal regulations. Based on the review of the submitted documentation, MDOT Audit Division may issue an acceptance letter to MDOT’s CSU which will present the accepted “self-imposed” indirect cost rate. MDOT understands that a consultant’s offer of a lower indirect cost rate shall not be a condition or qualification to be considered for the work or contract award.

#### Consultant Cost Certification

As part of the MDOT acceptance process, a *Certificate of Final Indirect Costs shall be submitted*. Federal regulations stipulate indirect cost rate proposals for the consultant's one-year applicable accounting period shall not be accepted, and no agreement shall be made by MDOT to establish final indirect cost rates unless the costs have been certified by an official of the consultant as being allowable in accordance with the Federal Cost Principles. MDOT Audit Division will review the certification to ascertain that the indirect cost rate information presented within the certification is accurate and complies with the prescribed federal regulations. MDOT Audit Division will inform the CSU in the acceptance letter that the required certification was submitted and will be maintained on file by MDOT Audit Division.

#### Risk-based Analysis

MDOT Audit Division employs a "risk-based oversight" approach to effectively obtain reasonable assurance that a consultant has developed an indirect cost rate in compliance with the Federal Cost Principles. MDOT Audit Division's risk-based oversight process addresses the evaluation and acceptance of consultants indirect cost rates for application to MDOT and LPA contracts.

The risk assessment document utilized by MDOT Audit Division consists of applicable risk factors used to evaluate the level of FAR noncompliance risk associated with the indirect cost rate(s) submitted by a consultant for acceptance. Based upon the level of risk concluded as a result of the assessment, MDOT Audit Division will accept the indirect cost rate(s) or if needed, perform additional procedures as deemed necessary to mitigate the risk level in order to obtain reasonable assurance of compliance with the Federal Cost Principles. MDOT Audit Division will then accept or reject the consultant's indirect cost rate(s) for use in MDOT and LPA contracts.

The MDOT Audit Division will maintain the supporting documentation of the risk-based analysis procedures performed to support the allowability and acceptance of a consultant's indirect cost rate(s).

#### Prenotification Confidentiality of Data

MDOT Audit Division will follow 23 U.S.C. 112 and 23 CFR 172 when sharing audit information. MDOT Audit Division understands that audit information shall not be provided to other consultants or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the MDOT's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. 112 and this part without the written permission of the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances; however, should a release be required by law or court order, such release shall make note of the confidential nature of the data.

#### The Acceptance Letter

MDOT Audit Division will notify the CSU by means of a written acceptance letter which indicates the accepted indirect cost rate(s) that may be used for contract negotiations, billings and if applicable, cost proposals for any needed future Supplemental Agreements to the contract. CSU will communicate to the consultant the acceptance of the indirect cost rate(s).

The CSU will maintain a record of the accepted overhead rates and their expiration date, for each active consultant, based on the acceptance letters presented to CSU by the MDOT Audit Division.

## 9.3 Order of Negotiations

### 9.3.1 Finalize Scope of Services and Schedule with Selected Consultant

MDOT and the selected consultant may initially meet to establish a detailed understanding of the scope of work and responsibilities for project development, deliverables, schedules, and other important facets of the project. The PM or designee may schedule a scoping meeting with the selected consultant and invite any needed staff from the appropriate MDOT Divisions or Districts to develop and/or finalize the scope of work for the project as well as the estimated schedule for completion of the services. Depending on the size and complexity of the project, the discussion may take place during a formal face-to-face scoping meeting or conference call with the selected consultant. The PM or his/her designee should ensure that meeting minutes are recorded and distributed to the team following the meeting for review.

It should be noted that any scope items not included in the RFQ and/or RFP shall not be added during the negotiation process as it could result in the need for MDOT to re-advertise.

### 9.3.2 Finalize Independent State Estimate (Labor Hours by Classification and Direct Costs)

Prior to receipt of the consultant's cost proposal, MDOT will prepare/refine an independent state estimate of the work to be performed on the contract, as specified in 23 CFR 172.7. The independent state estimate shall contain an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent state estimate shall serve as the basis for negotiations.

Independent State Estimates may be based on historical data, relative experience, industry standards, and other related factors. The PM or his/her designee is responsible for coordinating with other Divisions/Districts within the Department to obtain the estimated amount of labor hours by classification or unit costs, schedule, fixed fee, and other direct costs for tasks related to their specific areas of expertise.

MDOT may modify the independent state estimate throughout negotiations, including but not limited to, the following circumstances:

- Changes are made to the scope of services; or
- Project included uncertainties or other unknowns at the time the independent state estimate was prepared.

### 9.3.3 Receive Consultant Cost Estimate

Once a detailed mutual understanding of the scope has been made, the selected consultant shall prepare a complete cost estimate to perform the services. Upon completion of the independent state estimate, the PM or designee should request the consultant submit their cost estimate using the approved cost estimate template established by the appropriate Division, if required. Some projects may require the PM or designee to develop a specialized cost estimate format for the specific project, which should be reviewed by the CSU prior to distribution to the consultant.

If sealed cost estimates were submitted in conjunction with proposals during the selection process, MDOT may consider only the cost estimate of the consultant with whom negotiations are initiated. The cost estimate shall be used as the starting point in the negotiation process.

#### 9.3.4 Negotiating the Contract

The PM or designee and other supporting staff (the negotiation team) will review the estimated amount of labor hours by classification or unit price; the classification of employee relative to the work being performed; and the schedule, fixed fee, and other direct costs contained within the consultant's cost estimate. If necessary, meetings to discuss discrepancies between MDOT's independent state estimate and the consultant's cost estimate may be done via formal face-to-face meetings or conference calls. After these initial meetings, if necessary, MDOT and/or the consultant may modify their initial cost estimates. Should MDOT or the consultant modify their estimated fee, the PM or designee shall document the change on the Negotiation Recap Form. The consultant shall be able to explain and support their cost estimate and/or offer appropriate revisions when any element of cost differs from the acceptable range of those cost elements contained within MDOT's independent state estimate. When necessary, the PM or designee and other supporting staff will review and determine if the explanation is justifiable. Written justification shall accompany the negotiation recap form if the final negotiated amount of labor hours by classification or unit price; classification of employee relative to the work being performed; or schedule, fixed fee, or other direct cost is outside of the acceptable range of MDOT's independent state estimate. The justification shall be reviewed and if appropriate, approved by the PD.

Once MDOT and the consultant have arrived at a final negotiated amount of labor hours by classification or unit price; the classification of employee relative to the work being performed; and the schedule, fixed fee, and other direct costs, the PM or designee shall submit the following information as reviewed and approved (also known as the "negotiation package") to the CSU:

- Negotiation recap form (with justification and PD approval, if applicable);
- Consultant cost estimate;
- Appropriate draft contract documents (e.g., Scope, Exhibit 8 or Supplemental Agreement);
- Project progress schedule, if applicable; and
- MDOT's independent state estimate.

For IDIQ contracts, the negotiation package may simply consist of compiling the appropriate draft contract documents at the discretion of the CSU. The negotiation recap form, consultant cost estimate, project progress schedule, and MDOT's independent state estimate may not be required.

If the PM and consultant are unable to reach an agreement on amount of labor hours by classification or unit price, schedule, fixed fee, and other direct costs within an acceptable range in a reasonable amount of time, the PM may terminate the contract negotiation. See [Section 9.3.8: Termination of Negotiations](#) for more information.

#### 9.3.5 CSU Review Submittal Process

Once the PM has submitted the negotiation package, the CSU will review the following:

- Scope of Work - The CSU will review the scope of work for quality assurance purposes, which may include, but will not be limited to, the following items: clarifying intent, identifying responsibilities, ensuring goals and/or deliverables are stated, ensuring consistency with the legal advertisement, validating that work to be performed under a supplemental agreement is additional work, and providing any additional formatting, editing, or grammatical modifications.
- Compensation - The CSU may request additional information, such as payrolls or certifications of wage rates, from the consultant to determine compliance with 23 CFR 172.11.

- Audited Indirect Cost Rate - The CSU will coordinate with the Audit Division to verify the consultant is utilizing the proper approved audited indirect cost rate in accordance with the details contained in [Section 9.2: Acceptance Process of Indirect Cost Rates](#) within this manual.
- Cost Fee Breakdown - The CSU will review the cost fee breakdown and verify that all figures are calculated correctly. In addition, the CSU will review the fixed fee (if applicable), any direct expenses (including equipment), travel expenses, or other related fees to ensure state and federal compliance. If appropriate, the CSU may request additional supporting documentation to validate expenses on the cost fee breakdown, including but not limited to quotes from vendors, support for rental fees, etc.
- Progress Schedule - The CSU will validate that the progress schedule has been provided in accordance with the contract.
- Contract Template - Upon review of the scope, the CSU will coordinate with the Division to complete the appropriate contract template.
- DBE Goal - The CSU will review the consultant's cost estimate to ensure that the DBE goal in the legal advertisement is reflected in the cost estimate. The CSU will coordinate with the MDOT Office of Civil Rights as needed.
- Negotiation Recap Form and Independent State Estimate - The CSU will review the recap form and independent state estimate for compliance with MDOT-adopted policies and procedures as indicated in [Section 9.3: Order of Negotiations](#). The CSU reserves the right to always request additional information from the consultant and/or division to ensure compliance with Federal Regulations and policies.
- Consultant work effort – The CSU shall verify that the prime Consultant is performing at least 40% of the work as indicated in the contract.

The CSU will coordinate any changes, questions, or comments through the PM or designee. When requested, the PM or designee will coordinate all of CSU's changes, questions, and comments with the consultant until such time that CSU agrees that all matters have been resolved. Should the consultant and/or MDOT be unable to resolve any matters, the negotiations may be terminated.

#### 9.3.6 Escalation of Salary Rates

Salary escalation is the practice of anticipating that salary rates will increase during the performance of a contract and basing the compensation structure on an average of the current rate and the estimated future rate. Escalation rates may be contemplated during the negotiation process based on the firm's historical wage rate increase, Consumer Price Index (CPI-U), industry averages, and/or other state practices.

#### 9.3.7 DBE Commitment Sheet

The consultant shall provide justification when the use of a DBE's services will not meet the DBE contract goal. The consultant must make corrections if there is an unjustified deficiency, or possible termination of negotiations can occur. CSU will work with the Office of Civil Rights to address any DBE goal nonconformance matters. Failure to meet the DBE contract goal or show good faith efforts to meet the goal may result in termination of negotiation with the consultant as described in [Section 9.3.8: Termination of Negotiations](#).

#### 9.3.8 Termination of Negotiations

MDOT reserves the right to terminate contract negotiations at any time. Overall cost or bottom line price alone is not justification to terminate contract negotiations as MDOT must make a good faith effort to negotiate the scope and level of effort at a fair and reasonable price with the selected consultant. If MDOT

and the selected consultant are unable to negotiate a fair and reasonable contract, MDOT shall formally terminate negotiations and begin the negotiation process with the next highest-ranking consultant, continuing the process until an agreement is reached as per 40 U.S.C. 1104(b).

Should MDOT need to proceed with terminating negotiations with the selected consultant, the PM shall provide written correspondence to the CSU Director stating the reason(s) for recommending termination of negotiations, and, if applicable, request approval to begin negotiations with the next highest-ranking consultant. The CSU Director will evaluate the written correspondence and may discuss the negotiation process with the PM. The CSU Director shall coordinate with the Chief Engineer and/or his/her designee to obtain approval to terminate contract negotiations and, if applicable, begin the negotiation process with the next highest-ranking consultant.

The CSU Director or designee will notify the consultant in writing of the termination of negotiations. A copy of this written correspondence will be provided to the Chief Engineer, PD, and PM. Once the original consultant has been notified of termination of negotiations, the CSU Director or his/her designee will coordinate with the PM to provide written notification to the next highest-ranking consultant of their selection for the project and begin the negotiation process, if applicable.

Instances where contract negotiations may be subject to termination include, but are not limited to, the following:

- MDOT determines to terminate the procurement;
- MDOT determines there is no longer a need for the project;
- Significant changes are made to the scope requiring the selection process to be repeated;
- MDOT and the consultant are unable to agree on the required amount of labor hours by classification or unit price, the classification of employee relative to the work being performed, fixed fee, and/or other direct costs;
- MDOT and the consultant are unable to reach an agreement within a reasonable timeframe;
- MDOT and the consultant are unable to agree on the schedule;
- Consultant staff is not available to complete the project in a timely manner;
- Personnel modifications are made differing from those identified during the selection process;
- Conflict of interest is identified, and the consultant is unable to mitigate; and/or
- The consultant fails to agree to MDOT's contract terms.

#### 9.3.9 [Record of Negotiation Activities](#)

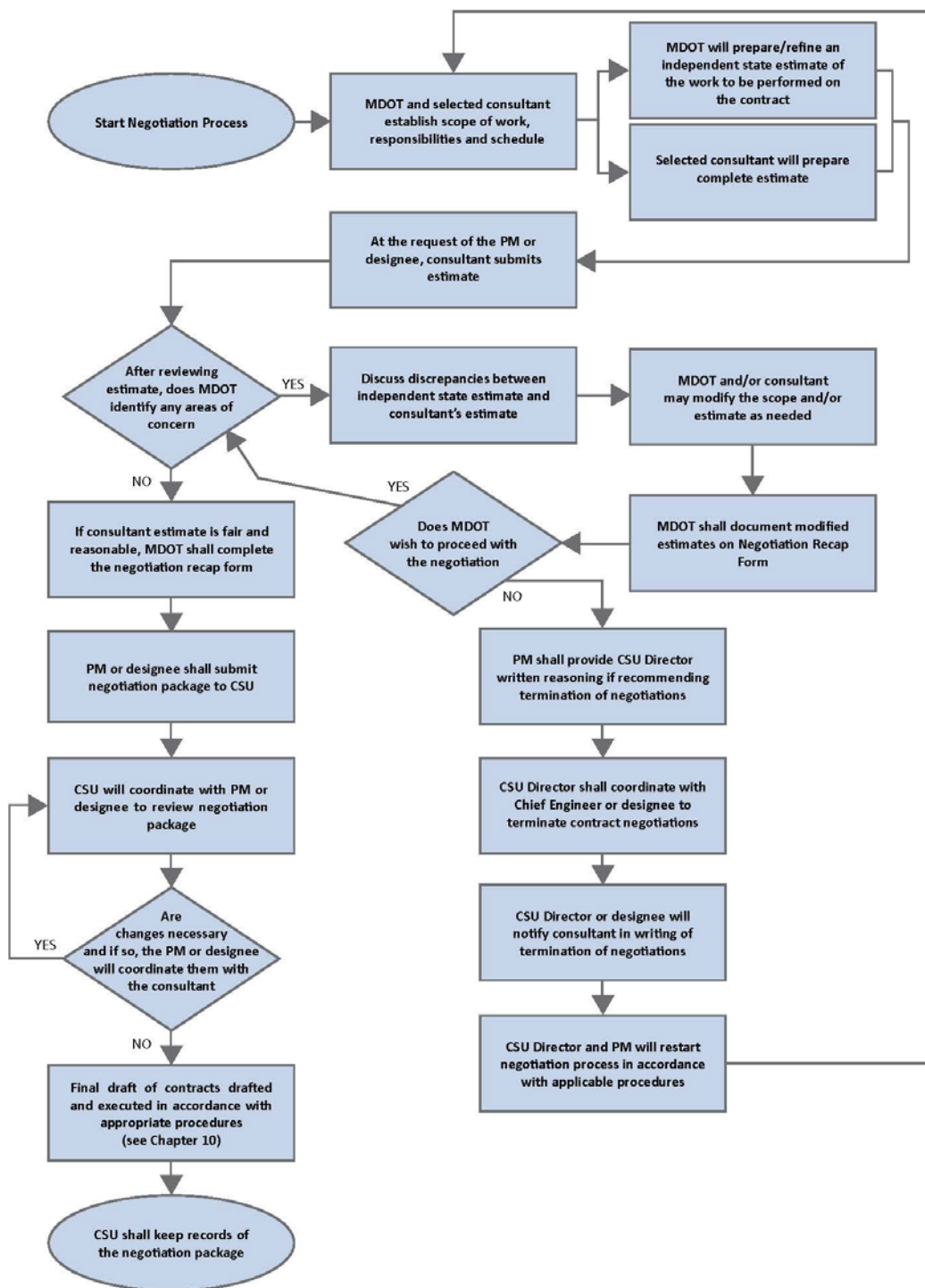
Once negotiations have concluded, the CSU shall retain the following documentation of the negotiation activities:

- Negotiation recap form (with justification and PD approval if applicable);
- Consultant cost estimate;
- MDOT's independent state estimate; and
- Any additional information the CSU determines shall be retained as documentation of the completed negotiations.

#### 9.3.10 [Cost Estimates Disposal](#)

Due to the confidential nature of the data, as specified in 23 U.S.C. 112(b)(2)E, any sealed cost estimates from a consultant who responded to the RFP but was not selected shall be returned to the respective consultant.

Figure 4: Negotiation Process Flow Chart





## 10 Contracts and Administration

Once all negotiations have taken place, CSU will oversee post-negotiations procedures and monitor contract or work assignment execution, payment, and closeout, as well as administer any contract modifications, including supplemental agreements, letter agreements, and addenda. CSU will maintain a document management system in compliance with state transparency laws and document contract monitoring activities and maintain supporting contract records, as specified in 2 CFR 200.333.

### 10.1 Post-negotiations Procedures

The CSU will administer contract execution in accordance with the following steps. The CSU will route all necessary contractual documentation to the appropriate parties. It should be noted that if the project is an FHWA Federal Project Involvement (FPI), the CSU will forward the contract to the FHWA for a preliminary review and draft approval.

Prior to contract execution, the consultant shall submit the DBE Commitment Sheet, if required, reflecting the DBE contract goal or good faith efforts to meet the goal. The CSU will provide the appropriate forms from the Office of Civil Rights for the consultant to complete and submit to the CSU.

#### **Project Specific and Multiphase Contracts**

1. Once the negotiation package (See [Section 9.3.4: Negotiating the Contract](#)) has been reviewed and finalized, the CSU will develop the proposed contract.
2. The CSU will forward the appropriate number of originals of the proposed contract to the consultant, along with the appropriate Office of Civil Rights forms, if required.
3. The consultant will return the signed originals of the proposed contract and the completed Office of Civil Rights forms to the CSU, if required.
4. The CSU will review the proposed contract for compliance.
5. If FPI, the CSU will forward the proposed contract to FHWA for its review and approval, if appropriate.
6. The CSU will develop and submit a Commission agenda item.
7. The CSU will send the proposed contracts to the Secretary of the Commission.
8. Once the agenda item is approved by the Commission, the Secretary of the Commission/CSU will send the authorized contracts to the Executive Director's office.
9. The Executive Director will return the fully executed contracts to the CSU.
10. The CSU will draft the Notice to Proceed (NTP) Letter for the PD to sign.
11. The CSU will issue the NTP and one fully executed contract to the consultant.

#### **Supplemental Agreements to Project-specific and Multiphase Contracts**

1. Once the negotiation package (See [Section 9.3.4: Negotiating the Contract](#)) has been reviewed and finalized, the CSU will e-mail the proposed contract documents, along with any appropriate Office of Civil Rights forms, if required, to the PM or designee.
2. The PM or designee will forward the proposed contract documents and appropriate Office of Civil Rights forms, if required, to the consultant.
3. The consultant will return the appropriate number of signed originals of the proposed contract documents and completed Office of Civil Rights forms to the PM or designee.
4. The PM or designee will forward the signed originals of the proposed contract documents and completed Office of Civil Rights forms to the CSU.

5. If FPI, the CSU will forward the proposed contract documents to FHWA for its review and approval, if appropriate.
6. The CSU will develop and submit a Commission agenda item.
7. The CSU will send the proposed contract documents to the Secretary of the Commission.
8. Once the agenda item is approved by the Commission, the Secretary of the Commission/CSU will send the authorized contract documents to the Executive Director's office.
9. The Executive Director will return the fully executed contract documents to the CSU.
10. The CSU will draft the NTP Letter for the PD to sign.
11. The CSU will issue the NTP along with one fully executed original to the consultant.

#### **IDIQ Contracts**

1. Once the negotiation package (See [Section 9.3.4: Negotiating the Contract](#)) has been reviewed and finalized, the CSU will develop the proposed contract.
2. The CSU will develop and submit a Commission agenda item.
3. Once the agenda item is approved by the Commission, the CSU will forward the appropriate number of originals of the proposed contract to the consultant.
4. The consultant will return the signed originals of the proposed contract.
5. The CSU will review the proposed contract for compliance.
6. If FPI, the CSU will forward the proposed contract to FHWA for its review and approval, if appropriate.
7. The CSU will send the proposed contracts to the Secretary of the Commission.
8. The Secretary of the Commission/CSU will send the authorized contracts to the Executive Director's office.
9. The Executive Director will return the fully executed contracts to the CSU.
10. The CSU will draft the notification letter for the PD to sign.
11. The CSU will issue the notification letter and one fully executed contract to the consultant.

#### **Supplemental Agreements to IDIQ Contracts**

1. Once the negotiation package (See [Section 9.3.4: Negotiating the Contract](#)) has been reviewed and finalized, the CSU will e-mail the proposed contract documents to the PM or designee.
2. The PM or designee will forward the proposed contract documents to the consultant.
3. The consultant will return the appropriate number of signed originals of the proposed contract documents to the PM or designee.
4. The PM or designee will forward the signed originals of the proposed contract documents to the CSU.
5. If FPI, the CSU will forward the proposed contract documents to FHWA for its review and approval if appropriate.
6. The CSU will develop and submit a Commission agenda item.
7. The CSU will send the proposed contract documents to the Secretary of the Commission.
8. Once the agenda item is approved by the Commission, the Secretary of the Commission/CSU will send the authorized contract documents to the Executive Director's office.
9. The Executive Director will return the fully executed contract documents to the CSU.
10. The CSU will draft the notification letter for the PD to sign.
11. The CSU will issue the notification letter along with one fully executed original to the consultant.

### **Work Assignments to IDIQ Contracts**

1. Once the negotiation package (See [Section 9.3.4: Negotiating the Contract](#)) has been reviewed and finalized, the CSU will e-mail the proposed contract documents and appropriate Office of Civil Rights forms, if required, to the PM or designee.
2. The PM or designee will e-mail the proposed contract documents and appropriate Office of Civil Rights forms, if required, to the consultant.
3. The consultant will return the appropriate number of signed originals of the proposed contract documents and completed Office of Civil Rights forms, if required, to the PM or designee.
4. The PM or designee will forward the signed originals of the proposed contract documents and completed Office of Civil Rights forms, if required, to the CSU.
5. If FPI, the CSU will forward the proposed contract documents to FHWA for its review and approval, if appropriate.
6. The CSU will develop and submit a Commission agenda item.\*
7. The CSU will send the proposed contract documents to the Secretary of the Commission.\*
8. Once the agenda item is approved by the Commission, the Secretary of the Commission/CSU will send authorized contract documents to the Executive Director's office.\*
9. The Executive Director will return the fully executed contract documents to the CSU.
10. The CSU will draft the NTP Letter for the PD to sign.
11. The CSU will issue the NTP along with one fully executed original to the consultant.

*\*Given the Commission's authorization during award of the IDIQ Contract, Work Assignments under \$100,000 do not require additional Commission approval.*

### **Supplemental Agreements to Work Assignments**

1. Once the negotiation package (See [Section 9.3.4: Negotiating the Contract](#)) has been reviewed and finalized, the CSU will e-mail the proposed contract documents, and appropriate Office of Civil Rights forms, if required, to the PM or designee.
2. The PM or designee will e-mail the proposed contract documents and appropriate Office of Civil Rights forms, if required, to the consultant.
3. The consultant will return the appropriate number of signed originals of the proposed contract documents and completed Office of Civil Rights forms, if required, to the PM or designee.
4. The PM or designee will forward the signed originals of the proposed contract documents and completed Office of Civil Rights forms, if required, to the CSU.
5. If FPI, the CSU will forward the proposed contract documents to FHWA for its review and approval, if appropriate.
6. The CSU will develop and submit an agenda item.\*
7. The CSU will send the proposed contract documents to the Secretary of the Commission.\*
8. Once the agenda item is approved by the Commission, the Secretary of the Commission/CSU will send authorized contract documents to the Executive Director's office.\*
9. The Executive Director will return the fully executed contract documents to the CSU.
10. The CSU will draft the NTP Letter for the PD to sign.
11. The CSU will issue the Notice to Proceed along with one fully executed original to the consultant.

*\*Given the Commission's authorization during award of the IDIQ Contract, Supplemental Agreements to Work Assignments for which the total combined cost is under \$100,000 do not require additional Commission approval.*

## 10.2 Contract Provisions

The CSU has developed and maintains standard contract template(s) approved by the Legal Division, FHWA, and the Deputy Executive Director - Chief Engineer. Any substantial changes to the contract template(s) will require the approval of the Legal Division, FHWA, and the Deputy Executive Director - Chief Engineer. However, minor editorial changes may be made to the contract template(s) at the CSU Director's discretion. The CSU shall be responsible for coordinating all changes and maintaining all current contract template(s). The Legal Division shall be responsible for notifying the CSU when changes in state law may affect the contract template(s). Information regarding changes in federal law that may affect MDOT's contract template(s) may be obtained from the FHWA Division Office.

At a minimum, MDOT's contract template(s) shall include the following provisions required in accordance with 23 CFR 172.9 as well as any other applicable federal regulations, when utilizing federal funds:

- Administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and provide for such sanctions and penalties as may be appropriate;
- Notice of requirements and regulations pertaining to reporting;
- Requirements and regulations pertaining to copyrights and rights in data;
- Access by the recipient, subrecipient, FHWA, U.S. Department of Transportation's Inspector General, Controller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
- Retention of all required records for no less than three (3) years after MDOT makes final payment and all other pending matters are closed;
- Standard DOT Title VI Assurances (DOT Order 1050.2);
- Disadvantaged Business Enterprise (DBE) assurance, as specified in 49 CFR 26.13(b);
- Prompt pay requirements, as specified in 49 CFR 26.29;
- Determination of allowable costs in accordance with the Federal Cost Principles;
- MDOT requirements pertaining to consultant errors and omissions;
- MDOT requirements pertaining to conflicts of interest, as specified in 23 CFR 1.33 and 23 CFR 172.9; and
- A provision for termination for cause and termination for convenience, including the manner by which it will be affected and the basis for settlement.

All contracts and subcontracts exceeding \$100,000 shall contain, either by reference or by physical incorporation into the language of each contract, a provision for lobbying certification and disclosure, as specified in 49 CFR 20.

In addition, the contract shall contain a provision requiring the prime consultant to perform a minimum of 40% of the work indicated in the contract.

Any substantive change to these provisions shall be considered a substantial change and require all necessary approvals indicated above.

## 10.3 Contract Administration and Monitoring

### 10.3.1 Consultant Personnel Modifications

Consultant key individuals are to remain for the duration of the project. Changes are discouraged and cannot be made without prior MDOT approval. Modifications to key individuals without MDOT approval

can result in the costs being ineligible for federal or state reimbursement. MDOT will not approve requests for modification without proper justification. The PM will authorize modifications to key individuals.

Should the consultant need to add or modify key individuals, the consultant shall send a written request to the CSU. Should the consultant send this information to the PM, the PM shall immediately forward it to the CSU for further guidance prior to responding to the consultant. The request from the consultant shall include the following information:

- The nature of the desired change;
- The reason for the desired change;
- The new individual's job title and raw wage rate (if necessary); and
- The new individual's resume.

The CSU will provide a preliminary review to ensure that all necessary documents were provided as indicated above while also ensuring that the modification does not violate contractual requirements.

If appropriate, the CSU will forward the information to the PM. The PM will review the documentation provided to ensure that the change in employee is appropriate and meets all qualifications. Upon notice from the PM, the CSU will develop a draft letter detailing the personnel modification to be approved and formally signed by the PM. The CSU will send an original signed agreement to the consultant, maintain a copy for CSU's records and forward additional copies to all other appropriate staff. If applicable, the CSU will update the Consultant Services Tracking System (CSTS) with the personnel modification.

MDOT reserves the right to determine if key personnel proposed are qualified to work on the project and deny any requests to add/substitute key personnel. The CSU will provide the consultant written correspondence stating the reason for the denial.

For contracts utilizing the labor hour/unit cost payment method, a letter agreement modifying the rate table in the contract must be executed in order to modify key personnel. For more information, see [Section 10.3.8: Letter Agreement](#).

#### 10.3.2 Subconsultant Modifications

Subconsultant(s) are to remain for the duration of the project. Changes are discouraged and cannot be made without prior MDOT approval. Modifications to subconsultant(s) without MDOT approval can result in the costs being ineligible for federal or state reimbursement. MDOT will not approve requests for modification without proper justification. The PM will authorize modifications to subconsultant(s).

Should the prime consultant need to add or modify subconsultant(s), the consultant shall send a written request to the CSU. Should the consultant send this information to the PM, the PM shall immediately forward it to the CSU for further guidance prior to responding to the consultant. The written correspondence provided by the consultant shall include the following information:

- The nature of the desired change;
- The reason for the desired change;
- The new subconsultant(s)' roles, responsibilities, and cost fee breakdown; and
- Any resumés for the subconsultant's personnel if requested.

The CSU will provide a preliminary review to ensure that all necessary documents were provided as indicated above while also ensuring that the modification meets contractual requirements (approved

overhead rates, DBE goals, etc.). Should the subconsultant change impact the DBE goal for the project, the CSU will contact the Civil Rights Division for further instructions.

If appropriate, the CSU will forward the information to the PM. The PM will review the documentation provided to ensure that the subconsultant modification or addition is appropriate and meets all qualifications. Upon notice from the PM, the CSU will develop a draft letter detailing the subconsultant modification or addition to be approved and formally signed by the PM. The CSU will send an original signed approval letter to the consultant, maintain a copy for CSU's records and forward additional copies to all other appropriate staff.

Additionally, once the subconsultant has been authorized, the CSU will make all appropriate revisions to the CSU-001 form and if applicable, the CSU will update the CSTS with the subconsultant modification.

MDOT reserves the right to deny any requests to add or modify subconsultants. The CSU will provide the prime consultant with written correspondence stating the reason for the denial.

#### 10.3.3 Progress Schedule

If applicable, the executed contract will contain a progress schedule based on the total time to complete the services described in the scope of work. The amount of time to complete the tasks and/or project milestones is established during contract negotiations. The consultant shall be responsible for any schedule updates and provide written correspondence to MDOT should any major deviations in the actual versus estimated projected timeframes occur.

If a delay to the progress schedule is anticipated by the consultant, the consultant may request in writing to the PM a modification to the project schedule along with an explanation of the circumstances necessitating the change. Acceptable reasons for modifications to the progress schedule may include the addition of extra work or changes in conditions outside the control of the consultant which may result in delays in the project. If the PM determines that the justification provided by the consultant is acceptable, the PM shall provide written correspondence to the consultant approving the revised schedule.

Should the PM determine that the justification provided by the consultant for a revised schedule is not acceptable, the PM shall notify the CSU to determine the appropriate response.

#### 10.3.4 Contract Expiration

Prior to the contract termination date, the CSU will coordinate with each Project Manager to determine if a contract term extension is needed. The PM shall indicate to the CSU if any contracts need to be extended upon being notified by the CSU. If it is determined by the PM that a contract term extension is necessary, the CSU will develop the necessary contract addenda and deliver the appropriate paperwork to the consultant for their execution. Once the appropriate paperwork is returned by the consultant to the CSU, the CSU will obtain approval and signature from the Executive Director upon appropriate Commission action. All contract addenda extending the contract term must be fully executed prior to contract expiration. If the contract is an FHWA FPI, the CSU will forward the contract addendum to FHWA for review and approval. The CSU will send an original copy of the addenda to the consultant, maintain a copy for their records and forward additional copies to all other appropriate staff. The CSU will modify the CSU-001 invoice form as well as the CSTS to reflect the contract termination date.

Should an addenda to extend contract time fail to obtain the necessary execution prior to the contract termination date, the CSU will immediately notify the PM.

#### 10.3.5 Responsible Charge

MDOT shall designate a PM qualified to ensure the work delivered under a contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. The PM and Assistant PM may serve in responsible charge of multiple projects, and MDOT may use multiple employees to fulfill monitoring responsibilities.

More specifically, the PM's responsibilities shall include, but are not limited to, the following:

- Meet periodically with the Assistant PM to discuss project status, budget, and progress;
- Providing final signatory on all invoices;
- Approving performance evaluations;
- Resolving any complex matters brought forth by the Assistant PM;
- Approving any changes to key personnel and/or subconsultant(s); and
- Approving any changes to the progress schedule.

Additionally, the PM can designate an Assistant PM to assist with oversight responsibilities such as, but not limited to, the following:

- Monitoring the project progress and budget;
- Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
- Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work to ensure the work is progressing in accordance with established scope of work and schedule milestones;
- Evaluating and participating in decisions for contract modifications;
- Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel and/or subconsultant(s);
- Coordinating day to day activities;
- Communicating directly with the consultant and all other Divisions/Districts;
- Reviewing all submittals, as required;
- Reviewing consultant's monthly status updates;
- Evaluating compliance, performance, and quality of services provided by consultant;
- Monitoring contract status and progress schedule;
- Reviewing any design variance;
- Resolving any performance issues;
- Maintain documentation of decisions affecting the project; and
- Coordinate and communicate any needed contract modifications with the CSU.

The PM and Assistant PM should communicate often enough that the PM is confident the Assistant PM has properly performed all delegated project oversight responsibilities.

If there is a change to the PM during a contract, the CSU Director will be notified by MDOT Leadership. The CSU will coordinate internally to update all documents and data in CSTS.



The CSU will assist in administrative tasks as well as provide quality assurance to ensure all federal regulations governing the contract are strictly enforced.

#### 10.3.6 Communication of Design Revisions

In no event shall the consultant make any design revisions to an existing set of plans for the project without the written approval of the PM or designee. No requests for design revisions to an existing set of plans by any other MDOT office, consultant, or employee shall be issued by the consultant without the written approval of the PM or designee. MDOT will not be responsible for any oral or other exchange that occurs outside of the written approval of the PM or designee regarding design changes.

#### 10.3.7 Sanctions and Penalties

If consultants violate or breach terms and conditions as outlined by the contract, MTC and/or MDOT shall pursue administrative, contractual, or legal remedies and such sanctions and penalties as may be appropriate. Pursuant to state law, the contract shall not limit the liability of the consultant or waive any remedies available to the State of Mississippi, unless expressly authorized in state statute.

Sanctions and penalties that may be imposed by the MTC and/or MDOT, as appropriate, include, but are not limited to, the following:

- Terminating or nullifying the contract;
- Withholding payments to the consultant;
- Prohibiting a consultant from being considered for MDOT contracts for a period of up to 12 months; and/or
- Pursuing any or all administrative, contractual, or legal (civil and criminal) remedies available to MTC and/or MDOT.

In addition, consultants on FAHP-funded projects are subject to suspension and debarment actions, as specified in 2 CFR 1200 and 2 CFR 180; potential causes of action under the False Claims Act, as specified in 32 U.S.C. 3729-3733; and prosecution for making a false statement, as specified in 18 U.S.C. 1020.

#### 10.3.8 Letter Agreement

Minor changes to the contract, which do not involve changes in the not-to-exceed contract amount, extensions of time, or changes in the goals and objectives of the project may be made by letter agreement of such change between MDOT and the consultant. Either MDOT or the consultant can initiate a letter agreement. Should a consultant submit a request for a letter agreement to the PM, the PM should forward the request to the CSU. When a minor change is requested, the CSU will research the matter to determine if the change warrants a letter agreement or if approval by the PM will suffice.

The most common example of an appropriate use of a letter agreement involves contracts which utilize the labor hour/unit cost payment method. For this type of contract, a labor rate table is established to monitor labor classification and rates. The consultant shall not alter the personnel, classifications, and rates listed in the labor rate table without an approved letter agreement. A letter agreement may be executed when modifications to the original labor rate table occur. The consultant shall provide a written request to the CSU and/or PM to modify the labor rate table in the contract including the reason(s) for the change(s) along with any new labor classifications, raw wage rates, anticipated new personnel, and resumés. Should the request involve adding a new labor classification, the CSU may request the associated responsibilities and general qualifications of the classification prior to approving the consultant's



proposed employee to work on the project. The CSU will provide the information collected from the consultant to the PM for review and approval. Upon approval from the PM, the CSU will develop the letter agreement and notify the consultant to sign and return the letter agreement(s) to the CSU. The CSU will then request approval and signature from the Executive Director. The CSU will send an original copy of the signed agreement to the consultant, maintain a copy for their records, and forward additional copies to all other appropriate staff.

#### 10.3.9 Contract Modifications - Supplemental Agreements

If, prior to the satisfactory completion of the contract services, MDOT materially alters the scope, character, complexity or duration of the services from those required in the contract, contract modification in the form of a supplemental agreement may be executed between MDOT and the consultant. In order to negotiate and execute a supplemental agreement, both parties must agree that the consultant's compensation should be increased or decreased due to an increase or decrease in the nature, scope, or amount of work necessary to properly provide the services required on any particular phase or project begun. Supplemental agreements may also be used to initiate additional phases of a multi-phase type project.

Once the need for a supplemental agreement is determined, the PM or designee will need to gather the following information to facilitate the accurate completion of the appropriate request form as described below.

- **Supplemental Agreement Consultant Services Request Form (ADM-101S)** – For those projects requiring a supplemental agreement for a project-specific contract, an IDIQ contract, or a multi-phase contract, the following information will need to be provided on the Consultant Services Request Form (ADM-101S). The PM should contact the CSU if additional clarification beyond the details contained within this manual is needed on the information required for completion of the ADM-101S.
  - *General Information*
  - *Responsible Contract/Project Individuals*
  - *Project and Contract Details*
  - *Justification*
- **Supplemental Agreement Consultant Services Request Form (ADM-301S) for Work Assignments to an Existing IDIQ Contract** – For those projects requiring a supplemental agreement for a Work Assignment to an existing IDIQ Contract, the following information will need to be provided on the Supplemental Agreement Consultant Services Request Form (ADM-301S). The PM should contact the CSU if additional clarification beyond the details contained within this manual is needed on the information required for completion of the ADM-301S.
  - *General Information*
  - *Responsible Contract/Project Individuals*
  - *Project and Contract Details*
  - *Justification*

Once the appropriate ADM form has been approved, the PM shall follow those procedures outlined in the [Section 9.3: Order of Negotiations](#) in this manual. The CSU will maintain and provide any Supplemental Agreement templates to be utilized for these purposes.

The following requirements apply to supplemental agreements:

- Changes made to the contract shall be clearly defined and documented.
- The method of payment for any adjustments in contract costs shall be established.
- The supplemental agreement shall be in compliance with the terms and conditions of the contract and original procurement. Appropriate approvals must be obtained prior to initiating any additional work under the terms of a supplemental agreement. If the consultant performs any work prior to the effective date of the NTP, costs incurred prior may be deemed non-reimbursable.
- The proposed work shall be a modification to the original contract.
- The proposed modification to the contract was included within the scope of services of the original solicitation from which a qualifications-based selection was made.

For any additional engineering and design-related services outside of the scope of services established in the original solicitation, MDOT shall:

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

Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a contract which utilizes the cost plus fixed fee payment method. Permitted changes to the scope of work through the execution of a supplemental agreement may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee payment method.

Once the proposed supplemental agreement has been reviewed and approved by the PM, CSU, and the consultant, the PM and CSU shall follow the process outlined in [Section 10.1: Post-negotiations Procedures](#).

#### 10.3.10 Terminating a Contract

During the contract term, MDOT reserves the right to terminate the contract in whole or in part, at any time, with or without cause, notwithstanding any just claims by the consultant for payment for services rendered prior to the date of termination. The PM in coordination with the CSU shall prepare written correspondence stating the reason(s) for recommending termination of the contract. Examples of reasons that a PM may recommend termination may include, but are not necessarily limited to, the following:

- It is deemed in the best interest of MDOT to cease work on a project;
- Consultant adds/substitutes/removes key personnel without written approval from MDOT;
- Consultant is unable or unwilling to remedy an MDOT denied request to add/substitute key personnel;
- Consultant is unable or unwilling to remedy a conflict of interest;
- MDOT and the consultant are unable to resolve a dispute;
- Performance is deemed unsatisfactory;
- Consultant staff is not available to complete the project in a timely manner; and
- Interim project deliverables provided by the consultant do not meet the scope requirements or expected level of quality.

Approval shall be obtained from the Executive Director and the MTC. It should be noted if the project is a FPI, the CSU will forward the letter to the FHWA for approval. The CSU Director or designee will notify the consultant in writing of the contract termination. A copy of the letter will be provided to the PD and PM. Upon notice from MDOT, the consultant shall suspend all activities under the contract.

The entire amount of the fixed fee is paid to the consultant only upon completion of all contracted services. If the project as defined in the scope is not completed, the consultant will be paid a percentage of the fixed fee relative to the percentage of consultant's completion of contract.

In addition to payment for services rendered prior to the date of termination, MDOT shall be liable only for the reasonable costs, fees, and expenses for demobilization and closeout of the contract, based on actual time and expenses incurred by the consultant in the packaging and shipment of all documents covered by the contract to MDOT. In no event shall MDOT be liable for lost profits or other consequential damages.

#### 10.4 Payment Process - Invoices

Following the effective date of the NTP, the consultant may begin working on the project. The consultant may not begin work on any aspect of the project prior to the effective date of the NTP. Progress payments will be made in accordance with the terms of the contract. The CSU will receive all billing from the consultant via the approved submission process. The consultant's invoice packet shall include the following items:

- CSU-001 (recap Summary Sheet);
- An original current consultant invoice;
- All DBE/Federal forms, as appropriate;
- All supporting documentation for payment of the invoice (i.e., timesheets/billing backup, hotel receipts, mileage logs and all other information indicated in the contract);
- Progress Status Report, as appropriate; and
- Any additional information as required by the contract or requested by the CSU.

MDOT's CSU-001 Form (recap Summary Sheet) must precede all submitted invoices. The CSU will provide the CSU-001 Form to the consultant following the effective date of the NTP. The consultant shall include all time and allowable expenses through the end of the billing period. Direct expenses, as used herein, include items such as, but not limited to, the costs of travel, subsistence, shipping charges, printing, and other related items if it is not company accounting policy to include these costs in overhead rates. Except as otherwise specifically provided within the contract, the procedures generally outlined in the MDOT State Travel Handbook shall govern the allowability of any expense reimbursement.

If required by the contract, the consultant shall develop a project management plan in accordance with the contract for tracking and updating progress based on the approved project schedule and budget.

If required by the contract, the consultant shall submit a progress status report in accordance with the contract with each billing based on the approved project management plan. The PM or designee will review the progress status report associated with each invoice (see Invoice Review).

The progress status report will be used to verify the consultant's performance in relationship to the costs claimed and allow the PM to monitor the consultant's efforts. The consultant shall be responsible for any

schedule updates and provide written correspondence to MDOT should any major deviations in the actual versus estimated projected timeframes occur.

#### 10.4.1 Invoice Review

Upon receipt of the invoice package from the consultant, the CSU will review each invoice and oversee distribution of the invoice to all appropriate parties.

The CSU's invoice review includes, but is not limited to, the following:

- CSU-001 form is correctly completed and in agreement with the consultant's invoice;
- All forms have been completed and correctly utilized;
- All previous payments have been reconciled in the current invoice;
- All labor costs claimed are in accordance with the labor rate table, if applicable;
- Subconsultant invoice(s) are correctly segregated and in the same format (unless stated otherwise in the contract) as the consultant's invoice with appropriate backup documentation provided;
- Labor detail summary report has been substantiated with appropriate backup documentation;
- Direct costs have been itemized by type and substantiated with appropriate backup documentation;
- All retainage has been properly accounted for, if applicable;
- Summary of costs is balanced with the consultant's current invoice;
- All work claimed is performed during the contract period; and
- Address for payment remittance is included.

The CSU is responsible for administering invoice payment and ensuring consultant costs billed are allowable in accordance with the Federal Cost Principles and consistent with the contract terms. Once the CSU reviews the invoice as detailed above, the CSU will forward the invoice packet to the PM or designee for review.

The invoice review includes, but is not limited to, the following:

- Judgmentally analyze that costs billed are appropriate for work accomplished during the billing period;
- Verify the fixed fee (for cost plus fixed fee contracts) is appropriate relative to the percent complete;
- If necessary, include other Divisions in the invoice review process (if involved in the funding or review of the project);
- Verify that the Progress Status Report is acceptable and work billed does not exceed the work completed beyond an acceptable range; and
- Key individuals and other relevant employees are performing adequately as negotiated.

Once the PM approves the invoice, the PM or designee will forward the invoice packet to the CSU. The CSU will sign the approved invoice and forward to MDOT's Financial Management Division for processing and payment. The CSU will send a copy of the approved invoice to the consultant.

For contracts not defined as engineering and design related or in furtherance of a highway or other construction project or activity subject to the provisions of 23 U.S.C. 112(a), the CSU will coordinate with the appropriate Division to establish an invoice review process.

#### 10.4.2 Invoice Dispute

As necessary during the invoice review process, the CSU will coordinate with the consultant to correct any minor errors. An invoice may be disputed at any time by MDOT during the review process should an error or other discrepancy be identified.

If a PM wishes to dispute an invoice during the review process, the PM or designee will forward the invoice to the CSU along with an explanation of the dispute. If necessary, the CSU will communicate directly with the PM to discuss the reasons for the dispute. MDOT may request additional information from the consultant regarding a dispute. All justifications for disputes must be filtered back through the CSU in order to maintain consistency in policy. If appropriate, the CSU will then forward the invoice back to the consultant along with an explanation of the dispute. The consultant must clarify or revise the invoice for further processing. The CSU may assist in mediation to achieve a resolution to a dispute.

### 10.5 Final Closeout Package

At the conclusion of the performance of the work in accordance with the contract, the consultant shall submit the final closeout invoice package, which shall consist of the following documents:

- Final invoice with all appropriate information as indicated in [Section 10.5.1: Final Invoice and Payment](#);
- Performance evaluation;
- Final audit report; and
- Any other appropriate State or Federal Forms.

#### 10.5.1 Final Invoice and Payment

Final invoices and requests for payment shall be authorized only after all terms of the contract have been completed or the contract has been terminated.

When a final invoice from the consultant is received, the CSU will verify the invoice has been labeled as “Final.” The CSU will update the CSTS to place the contract in “Audit” status. All final invoices and requests for payment will be forwarded to the Audit Division unless determined exempt by the Audit Director. Additionally, the CSU will notify the PM that the final invoice has been received and is subject to the Audit Division’s review.

The final invoice audit will include an independent review by the Audit Division of the invoices for the contract to confirm the final amount of payment. The Audit Division will randomly select a month or months, depending on the time period of the project, to review the project costs. The Audit Division may request additional documentation from the consultant at any time during the review process. If required in the contract, the Audit Division will also adjust the overhead rates in the invoices to reflect the most current accepted overhead rate on file. Upon completion of the audit, the Audit Division will prepare a “Final Audit Report” detailing all findings and the final invoice amount. The report shall be provided to the CSU for further handling. CSU will receive the Final Audit Report, prepare the FINAL CSU-001 based on the final invoice amount, and forward to the PM for their review and preparation of the performance evaluation.

Should a consultant contract terminate and the consultant fails to submit a final invoice to MDOT, the CSU will provide written notification to the consultant stating the contract will be closed if a final invoice is not received within a specified timeframe. If a final invoice is not received within the specified

timeframe, the CSU may forward all records of the project to the Audit Division for a final audit. The CSU will notify the PM of this action.

#### 10.5.2 Performance Evaluation

As part of MDOT's final closeout package, MDOT shall prepare an evaluation summarizing the consultant's performance on a contract (also known as the "Consultant Performance Evaluation"). The Consultant Performance Evaluation should include, but not be limited to, an assessment of the timely completion of work, adherence to contract scope and budget, and quality of the work conducted. MDOT shall provide the consultant a copy of the performance evaluation and an opportunity to provide written comments to be attached/documented along with the evaluation. MDOT may prepare additional interim performance evaluations based on the scope, complexity, and size of the contract as a means to provide feedback, foster communication, and achieve desired changes or improvements.

The Performance Evaluation template for the contract shall be provided by the CSU to the PM for completion once the Final Audit report has been completed and submitted to CSU, and the CSU-001 has been developed by CSU and sent to the PM. The PM may coordinate with the Assistant PM (or others as deemed appropriate) to complete the performance evaluation in accordance with 23 CFR 172.9. A rating to the nearest tenth with a minimum of one (1) or maximum of five (5) shall be applied to each evaluation area in order to establish a performance factor.

The evaluation must be fair. Ratings shall be based on facts and documentation. The evaluation should consider only the performance of the consultant during the contract period.

Once the performance evaluation has been approved by the PM, the CSU will review the evaluation and contact the PM should there be any changes necessary. Written justification shall accompany scores less than three (3.0) for any component on the performance evaluation. The CSU will provide the consultant a copy of the performance evaluation as part of their final closeout package and allow the consultant an opportunity to submit a rebuttal or request a follow-up to discuss the performance evaluation. The CSU will coordinate all responses and rebuttals between the PM and consultant. Upon receipt of the consultant's response and/or rebuttal to a previously completed performance evaluation, MDOT may choose to provide a final response to the consultant. In addition, upon completion of the performance evaluation, the CSU may schedule a closeout meeting between MDOT and the consultant, if appropriate.

MDOT reserves the right to amend a completed performance evaluation at any time to account for any additional information that may become available (e.g., errors and omissions found during the construction phase). In this situation, the CSU Director will work with the appropriate MDOT staff to amend the previously completed performance evaluation to account for the additional information. MDOT will notify the consultant of their amended performance evaluation.

Completed performance evaluations are maintained for consideration as an element of past performance in the future evaluation of the consultant to provide similar services.

The CSU Director may determine that a performance evaluation is not feasible if information is not available to assess the timely completion of work, adherence to contract scope and budget, and quality of the work conducted under the contract (e.g., on-call contracts where no work is assigned). CSU will document this decision for the file.

### 10.5.3 Refund Requests

Upon recommendation from the MDOT Internal Audit Division (IAD), the consultant may be required to remit payment to the Mississippi Department of Transportation (MDOT) as reimbursement for excess payments made during the life of the contract. The CSU will provide notification to the consultant stating the adjustments made by IAD. The amount of the refund request will be stated in the notification to the consultant as well as a specified timeframe to receive payment. Upon receipt of payment from the consultant, the CSU will log all pertinent information and promptly forward the required documentation to MDOT's Financial Management Division (FMD) for further processing. If the allotted time has passed without receipt of payment, the consultant's project information will be forwarded to the CSU Director for further action. The CSU Director may inform the Chief Engineer of any delinquent amounts owed by the consultant. The consultant may be subject to sanctions and penalties in accordance with [Section 10.3.7: Sanctions and Penalties](#) or other legal action.

## 10.6 Record Keeping and Retention Requirements

CSU shall maintain adequate and readily accessible project performance and financial records, supporting documents, and other pertinent information. The manner in which records are maintained shall be in accordance with the policies and procedures described herein to ensure consistent and uniform record keeping. MDOT will retain all records for a minimum of three (3) years in accordance with 2 CFR 200.333 unless a longer period is required by state law.

The CSU maintains the following documentation:

- The appropriate ADM Form
- Mississippi Transportation Commission minute excerpts (when required)
- Notice to Proceed
- Original contract and/or contract modifications
- RFQ and/or RFP documents
- Proposal(s)
- Scoresheets
- Selection letters
- Documentation of negotiation process
  - Negotiation Recap Form
  - MDOT independent state estimate
  - Consultant's contract fee estimate
- Insurance information
- Performance evaluations
- Claim information
- Invoices
- Final Audit Report
- Any additional information as recommended by MDOT's Legal Division



## 11 Errors and/or Omissions

Consultants shall be responsible for the performance of and compliance with all terms of the contract, including the SOW and other exhibits, technical specifications, and special requirements of MDOT, to the satisfaction of MDOT and the MTC. Consultants shall be responsible for any negligent acts, errors, and/or omissions, including those as to conduct, care, format, and content, for all aspects of the contract and professional quality and technical accuracy of all designs, drawings, specifications, and other services provided.

Errors and/or omissions can be identified at any time during the delivery of transportation improvement projects. In cases where an error and/or omission by the consultant is discovered prior to the construction phase of a project, the consultant shall correct the error and/or omission to MDOT and the MTC's satisfaction at no additional cost to MDOT or the MTC.

Where indicated in the contract (and absent further agreement to the contrary), errors and/or omissions identified during the construction phase of a project shall be handled as described in the following sections. For contracts that do not reference or require the errors and/or omissions process herein, this process may be followed if both parties agree to do so.

### 11.1 Identification of Potential Error and/or Omission

Upon the discovery of a potential error and/or omission during the construction phase of a project, MDOT staff will promptly notify the appropriate MDOT Project Engineer assigned to the construction project. At this time, the MDOT Project Engineer shall promptly notify the District Construction Engineer and District Engineer to determine if the issue could be due to negligence by the design consultant and whether or not additional construction time and/or cost could be required to satisfactorily resolve the issue.

There are instances due to the minor magnitude of the potential error and/or omission, for which MDOT may direct a field change that does not significantly impact the cost of the project. The errors and/or omissions process as described in this chapter is not intended to be utilized on those types of minor potential errors and/or omissions as they can be easily remedied during project construction. Procedures that are more informal may be used in those cases where the potential damages to MDOT are relatively minor at the discretion of the Chief Engineer or designee.

### 11.2 Project Director Notified

Once the Project Engineer, District Construction Engineer, and District Engineer confirm the potential error and/or omission, they shall notify the appropriate Project Director (PD). MDOT may quickly initiate an internal review of the circumstances to assess whether the issue is likely one of the following:

- (a) design-related;
- (b) construction-related; or
- (c) due to other causes outside of the responsibility of the design consultant or the contractor.

### 11.3 Internal Research Team Assembled for Initial Review

The PD will assemble an Internal Research Team (IRT) to review the potential error and/or omission to determine the validity, responsibility and extent of the problem. The CSU will provide consultant contract documents to the IRT to assist in an assessment of the responsibilities of the consultant. The IRT will determine if a potential error and/or omission for which the consultant is responsible does or does not



exist and provide the results to the PD. If the IRT determines that a potential error and/or omission for which the consultant is responsible does not exist, the process will end.

Should the IRT reasonably believe the consultant has made an error and/or omission on an MDOT project, the IRT will consider the following:

- Validity, responsibility, and extent of the potential error and/or omission;
- Level of effort required and the likelihood of recovering damages; and
- Potential effectiveness of all possible responsive actions.

The IRT will then recommend to the PD to proceed with one of the following steps:

- Proceed with the errors and/or omission process as further detailed in this chapter;
- Forward the matter directly to the Legal Division for review and potential legal action; or
- Close the matter and end the process.

#### 11.4 Notification to Consultant of Error and/or Omission

If the IRT determines a potential error and/or omission does exist and if determined to proceed in accordance with [Section 11.3: Internal Research Team Assembled for Initial Review](#), the PD shall promptly notify the consultant. The IRT shall prepare a notification letter to the consultant that shall be approved and signed by the PD. The letter shall communicate to the consultant that an alleged error and/or omission has been discovered and include known details pertaining to the error and/or omission.

The letter should also inform the consultant of the date that time begins for recording any costs incurred by the consultant due to work associated with investigating and/or handling the potential error and/or omission identified in the notification letter. Accompanying the written notification should be a summary of MDOT's errors and/or omission process as outlined herein. If at any time after the issuance of the letter MDOT determines that the consultant is not responsible for the alleged error and/or omission, the consultant shall invoice MDOT in accordance with [Section 11.8.1: E&O Panel Upholds Consultant's Appeal](#).

The extent of liability for the alleged error and/or omission may be determined at a later point in the process and may not be included in the initial notification to the consultant. The PD may choose to contact the consultant directly and give advance notice of the written letter to expedite the process. In this case, the date noted in the letter that time begins for calculating delay costs should reflect the date of the PD's advance notice.

Responsiveness by the consultant is critical at this stage, as early involvement by the consultant is needed to minimize potential costly delays to the project and provide a process that is fair to both MDOT and the consultant. It also provides the consultant the earliest opportunity to participate in determining a solution. The consultant should promptly present any findings from their own internal investigation.

#### 11.5 Consultant Meets with MDOT

At MDOT's request, the consultant shall meet promptly with the PD (and any other MDOT staff familiar with the details of the alleged error and/or omission) to discuss the situation in further detail. As soon as practical, MDOT will determine who shall propose a solution to the alleged error and/or omission. This may be:

- The consultant;
- MDOT staff;

- Another consultant retained by MDOT; or
- A combination of any of the above.

The PD shall prepare and sign a written letter detailing the roles and responsibilities for implementing the corrective action(s) and provide to the consultant. It should be noted, it is not an admission of liability if the consultant agrees to propose the solution to the alleged error and/or omission. Likewise, it is not an admission of liability if MDOT elects to provide the solution. Since a timely solution must be identified promptly, responsibility and consultant restitution (if applicable) will be determined at a later time in the process.

### 11.6 Determination of Corrective Action

If MDOT elects to provide the solution for the alleged error and/or omission, either MDOT or a consultant retained by MDOT will revise the construction plans as needed and track all expenses associated with the corrective action.

If MDOT determines the consultant shall propose the solution to the issue, the consultant may meet with MDOT to discuss corrective action to mitigate any additional costly delays to the project. The consultant will propose a solution to the IRT in writing for approval. The IRT will review the proposed solution and approve or disapprove.

If the IRT disapproves the consultant's proposed solution, MDOT will communicate the reason to the consultant. The consultant shall propose a new solution, repeating the process as often as deemed necessary by MDOT.

If the IRT approves the consultant's proposed solution, the consultant shall revise the construction plans or perform other corrective action as needed and track all expenses associated with their corrective action.

Once the consultant has revised the construction plans, the IRT and any other appropriate MDOT staff will review and approve the plans or propose other corrective action prior to submitting to the contractor. Should the plans require additional revisions, the consultant will continue to revise until approved.

If MDOT and the consultant are unable to agree on a satisfactory solution or plan revisions in a timely manner, MDOT may proceed with determining the solution and/or revising the plans or performing other corrective action as needed, either in-house or through the utilization of another consultant. MDOT will track all expenses associated with the corrective action. Alternatively, MDOT may forward the matter directly to the Legal Division for review and potential legal action.

### 11.7 Recovery of Damages Process Through Written Notice of Decision

The IRT will consider all relevant factors, including, but not limited to, costly delays to the project in order to calculate damages due as a result of the alleged error and/or omission. There is no set formula for determining damages, and MDOT reserves all rights to include all relevant factors (i.e., costly delays to the project and/or any premium on costs of items added to the project after the original bid) in its calculation of damages. There is no minimum or threshold amount of damages required to trigger efforts to recover such damages. MDOT will submit a written Notice of Decision to the consultant.

The Notice of Decision shall include a summary of justification describing how the IRT determined the proposed damages. The Notice of Decision shall specify a timeframe dependent on the complexity of the project for the consultant's response. If the consultant agrees with the Notice of Decision, they shall sign and return the notice to MDOT in the timeframe specified. Upon receipt of the signed Notice of Decision from the consultant, the matter will be forwarded to the Legal Division for the preparation of all needed documents to conclude the matter subject to MTC approval.

Should the consultant fail to respond within the specified timeframe in the Notice of Decision, MDOT shall promptly submit the alleged error and/or omission to the Legal Division for review and potential legal action.

It should be noted that agreement with the IRT's Notice of Decision does not relieve the consultant from liability resulting from additional errors and/or omissions discovered on the project. Each Notice of Decision is specific to the set of circumstances involved with the error and/or omission and does not release the consultant of additional future liability resulting from any other error and/or omission on the same project.

## 11.8 Appeals Process

Should the consultant dispute the IRT's Notice of Decision, the consultant may appeal to an MDOT Errors and/or Omissions (E&O) Panel. The panel shall consist of MDOT staff appointed by the Chief Engineer.

The consultant's request for the E&O Panel's review of the alleged error and/or omission shall be in writing. The request shall specifically state the basis for the consultant's disagreement with the IRT's Notice of Decision. The consultant shall specifically state the reason for the appeal and include its own calculation of damages (if applicable).

The E&O Panel will review any relevant documentation and conduct such investigations and interviews as needed to determine the extent of liability for the alleged error and/or omission and issue one of the following decisions:

### 11.8.1 E&O Panel Upholds Consultant's Appeal

If the E&O Panel determines the consultant is not responsible for the alleged error and/or omission, the consultant may submit an invoice to MDOT subject to the approval of the MTC in order to recover costs incurred during the errors and/or omissions process. The invoice must include an itemized full accounting of the costs incurred by the consultant during the errors and/or omissions process. The matter will be forwarded to the Legal Division for the preparation of any necessary documents to facilitate the payment of the invoice upon approval by the MTC.

### 11.8.2 E&O Panel Upholds IRT's Notice of Decision

If the E&O Panel determines the consultant is liable for the alleged error and/or omission and chooses to uphold the IRT's original Notice of Decision, then the consultant will be notified in writing that they are to comply with the terms of the Notice of Decision within a specified timeframe. The Notice of Decision shall specify a timeframe dependent on the complexity of the project for the consultant's response.

If the consultant is in agreement with the E&O Panel's determination to uphold the original Notice of Decision, the consultant shall sign the notice and return it to MDOT in the timeframe specified. Upon

receipt of the signed Notice of Decision from the consultant, the matter will be forwarded to the Legal Division for the preparation of all necessary documents to conclude the matter subject to MTC approval.

Should the consultant fail to respond within the specified timeframe in the E&O Panel's Notice of Decision, MDOT shall promptly submit the alleged error and/or omission to the Legal Division for review and potential legal action and will signify the end of the errors and/or omission process.

#### 11.8.3 E&O Panel Issues New Notice of Decision

If the E&O Panel determines the consultant does share in some amount of liability for the alleged error and/or omission but disagrees with the settlement terms as proposed by the IRT, the E&O Panel can propose a new Notice of Decision to the consultant. The consultant will be notified in writing that they are to comply with the terms of the new Notice of Decision. This new Notice of Decision shall specify a timeframe dependent on the complexity of the project for the consultant's response. The Notice of Decision shall also include the E&O Panel's justification for the revised terms.

If the consultant agrees with the E&O Panel's new Notice of Decision, they shall sign the notice and return to MDOT in the timeframe specified. Upon receipt of the signed Notice of Decision from the consultant, the matter will be forwarded to the Legal Division for the preparation of all necessary documents to conclude the matter subject to MTC approval.

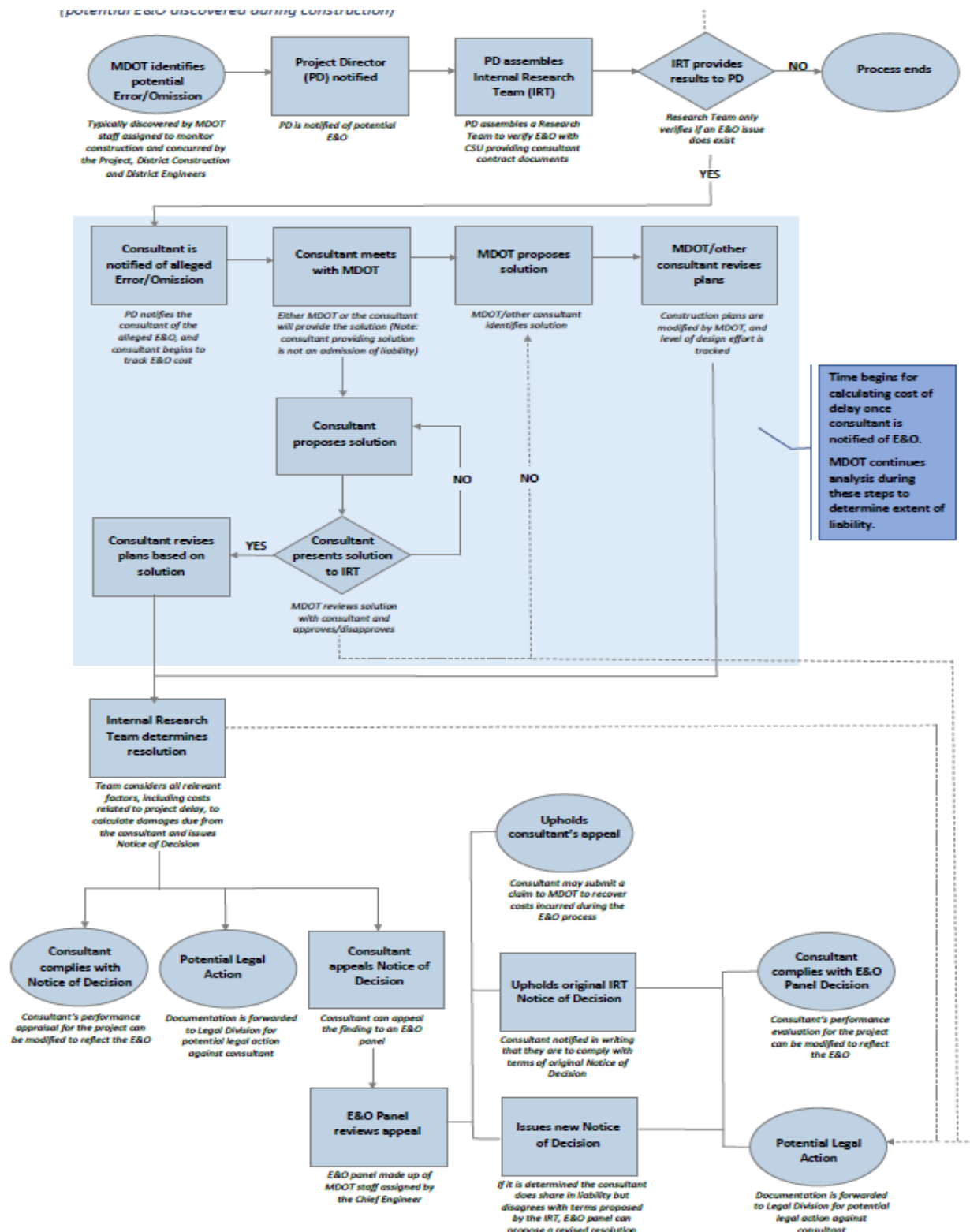
Should the consultant fail to respond within the specified timeframe in the E&O Panel's new Notice of Decision, MDOT shall promptly submit the alleged error and/or omission to the Legal Division for review and potential legal action and will signify the end of the errors and/or omissions process.

If the consultant complies with any of the above E&O Panel's rulings, it does not relieve the consultant from future liability resulting from additional errors and/or omissions discovered on the project. Each Notice of Decision is specific to the set of circumstances involved with the error and/or omission and not dispositive of additional liability resulting from any other error and/or omission on the same project.

#### 11.9 Consultant Performance Evaluation

If MDOT has previously completed the final performance evaluation for the consultant prior to the discovery of the error and/or omission, MDOT can amend the performance evaluation to account for the error and/or omission and the manner in which the consultant resolved the error and/or omission. In this situation, the CSU Director will work with the appropriate staff to revise the previously completed final performance evaluation to account for the error and/or omission. MDOT will notify the consultant of their revised performance evaluation.

Figure 5: Errors and Omissions Process Flow Chart



## 12 Conflict of Interest

MDOT shall attempt to avoid real, apparent, or potential conflicts of interest, whether those of its employees or consultants. Where MDOT identifies or is made aware of such conflicts of interest during CSU procurement and/or contract administration activities, appropriate action shall be taken to mitigate or neutralize any conflict.

### 12.1 MDOT Employee Standard of Conduct

In order to avoid conflicts of interests by employees involved in CSU procurement and/or contract administration activities, MDOT has adopted the following standards of conduct:

- (a) As defined in state law, no employee, officer, or agent of MDOT shall use his or her official position to obtain, or attempt to obtain, pecuniary benefit for himself (other than that compensation provided for by law) or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he is associated. To the extent prohibited by state law, this includes gratuities, favors, or any economic benefit from consultants, potential consultants, or parties to sub-agreements.
- (b) In addition, no employee, officer, or agent of MDOT shall participate in selection, award, or administration of a contract if there is a financial or other interest in the consultant selected for award by:
  - (i) The employee, officer, or agent;
  - (ii) Any member of his or her immediate family;
  - (iii) His or her partner; or
  - (iv) An organization that employs or is about to employ any of the above.
- (c) In addition to the potential conflicts identified above, MDOT may take any such action as is appropriate to mitigate or neutralize real, apparent, or potential conflicts of interest of its employees. When FAHP funds are involved in the administration and/or procurement of a contract, MDOT shall promptly disclose in writing any potential conflict of interest to FHWA.

Furthermore, the MDOT CSU shall develop a conflict of interest certification, verifying that employees have been provided and will abide by the above listed policies. This certification shall be provided to MDOT PM's to distribute to MDOT staff involved in the CSU procurement and/or contract administration process. Signed certifications shall be returned to the CSU. The CSU will maintain these records on file and will update the file, as appropriate.

During the CSU procurement and/or contract administration activities addressed in this manual, should MDOT's employee, officer, or agent, identify a potential conflict of interest, real or apparent, that individual shall promptly contact the CSU Director and provide any information associated with such conflict of interest. The CSU Director will disclose all known facts regarding the potential conflict of interest to the Chief Engineer. At the direction of the Chief Engineer and in consultation with Legal Division, Human Resources Division, and other appropriate MDOT staff, the CSU will work with the individual(s) involved to avoid, neutralize, or otherwise mitigate the conflict. Failure to mitigate any conflict of interest shall be referred to MDOT's Human Resources Division.

To the extent permitted by MDOT's policies and state law, MDOT may also provide for penalties, sanctions, or other disciplinary actions for violations of such standards by MDOT's officers, employees, or agents.

## 12.2 Consultant Conflict of Interest

MDOT shall require all consultants (via RFQ, RFP, and contract) to disclose in writing any information and facts concerning potential conflicts of interest and concerning any past, present, or currently planned interests which may present a conflict of interest. When FAHP funds are involved in the administration and/or procurement of a contract, MDOT shall promptly disclose in writing any potential conflict of interest to FHWA.

When responding to an RFQ or RFP, the consultant shall state how its interests or those of its chief executives, directors, individuals, or subconsultants for the contract may result in, or could be viewed as, a conflict of interest. Furthermore, the consultant shall describe actions taken, or proposed to be taken, to mitigate stated conflicts or potential conflicts.

The CSU will review any potential conflicts of which it is aware, including those identified in a consultant's response to an RFQ or RFP, and report the potential conflict of interest to Legal Division. If it is determined that a conflict of interest does exist, the consultant will be given the opportunity to avoid, neutralize, or otherwise mitigate the conflict. If the consultant chooses to retain the interest constituting the conflict or cannot eliminate the conflict, the proposal will be deemed non-responsive and ineligible for selection.

The responsibility of the consultant to disclose a conflict of interest if one is discovered is ongoing, prior to award and throughout the contract period.

Should the conflict of interest be identified after selection approval but prior to award, the consultant will be given the opportunity to avoid, neutralize, or otherwise mitigate the conflict. If the consultant chooses to retain the interest constituting the conflict or cannot eliminate the conflict, MDOT may terminate the negotiations.

For conflicts identified during the contract period, the contract shall require that the consultant make an immediate and full disclosure to MDOT that includes a description of the action that the consultant has taken or proposes to take to avoid or mitigate such conflict. If a potential conflict of interest is identified during the contract period, the conflict shall be promptly reported to the CSU Director. If the CSU, through consultation with the Legal Division, believes that a potential conflict of interest may exist, the CSU will contact the consultant and give the consultant the opportunity to avoid, neutralize, or otherwise mitigate the potential conflict. If it is determined the potential conflict of interest has not been resolved to the satisfaction of the MDOT, the CSU will recommend action to the Chief Engineer. Possible action may include termination of the contract.

## 13 Consultant Services in Management Support Role

MDOT shall obtain approval from FHWA before utilizing a consultant in a management support role in which federal-aid funds are utilized unless an alternate approval procedure has been approved. When utilizing consultants in management support roles, MDOT shall still assume all responsibilities associated with the use of federal-aid funds. When a consultant is serving in a management support role but was not procured in accordance with federal and state requirements, federal-aid funding may *not* be utilized.

MDOT's utilization of consultants in management support roles should be limited to large projects or circumstances where unusual cost or time constraints exist, unique technical or managerial expertise is required, and/or an increase in MDOT staff is not a viable option. Management support roles may include, but are not limited to, providing oversight of an element of a highway program, function, or service or may involve managing or providing oversight of a project, series of projects, or the work of other consultants and contracts on behalf of MDOT.

MDOT has conflicts of interest standards in place for consultants or subconsultants in management support roles and adequate staffing in place to administer and monitor the management consultant contract.

MDOT may prohibit consultants serving in a management support role from providing additional services on projects, activities, or contracts under its oversight due to potential conflicts of interest.

Where benefitting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles applicable to the contracting agency, as specified in 2 CFR 200, subpart E - Cost Principles.

It should be noted that while an independent consultant may be procured to serve in a program or project management support role, as specified in 23 CFR 172.7(b)(5), or to provide technical assistance in review and acceptance of engineering and design-related services performed and products developed by other consultants, MDOT will designate a public employee as being in responsible charge.



## 14 Subrecipient Responsibilities

In administering subawards, MDOT provides oversight of the procurement, management, and administration of engineering and design-related consultant services by subrecipients to ensure compliance with applicable federal laws and regulations.

Subrecipients shall develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design-related consultant services, reimbursed in whole or in part with FAHP funding, as specified in 23 U.S.C. 106(g)(4)(A). Responsibilities shall include the following:

(1) Adhering to the written policies and procedures developed by MDOT and contained within the *Project Development Manual for Local Public Agencies* and the *Local Public Agency Consultant Operating Procedures for Professional Services* for the procurement, management, and administration of engineering and design-related consultant services.;

(2) Procuring, managing, and administering engineering and design-related consultant services in accordance with applicable Federal and State laws, regulations, and approved policies and procedures, as specified in 23 CFR 1.9(a).

MDOT shall prepare and maintain written policies and procedures for the procurement, management, and administration of engineering and design-related consultant services for subrecipients. The FHWA shall approve the written policies and procedures, including all revisions to such policies and procedures, of MDOT to assess compliance with applicable requirements. These policies and procedures shall address, as appropriate for each method of procurement a contracting agency proposes to use, the following items to ensure compliance with federal and state laws, regulations, and the requirements of this part:

(1) Preparing a scope of work and evaluation factors for the ranking/selection of a consultant;

(2) Soliciting interests, qualifications, or proposals from prospective consultants;

(3) Preventing, identifying, and mitigating conflicts of interest for employees of both the contracting agency and consultants and promptly disclosing in writing any potential conflict to the STA and FHWA, as specified in 2 CFR 200.112 and 23 CFR 1.33 and the requirements of this part;

(4) Verifying suspension and debarment actions and eligibility of consultants, as specified in 2 CFR part 1200 and 2 CFR part 180;

(5) Evaluating interests, qualifications, or proposals and the ranking/selection of a consultant;

(6) Determining, based upon state procedures and the size and complexity of a project, the need for additional discussions following RFP submission and evaluation;

(7) Preparing an independent agency estimate for use in negotiation with the selected consultant;

(8) Selecting appropriate contract type, payment method, and terms and incorporating required contract provisions, assurances, and certifications in accordance with § 172.9;

- (9) Negotiating a contract with the selected consultant including instructions for proper disposal of concealed/sealed cost proposals of unsuccessful bidders;
- (10) Establishing elements of contract costs, accepting indirect cost rate(s) for application to contracts, and assuring consultant compliance with the Federal cost principles in accordance with § 172.11;
- (11) Ensuring consultant costs billed are allowable in accordance with the federal cost principles and consistent with the contract terms, as well as the acceptability and progress of the consultant's work;
- (12) Monitoring the consultant's work and compliance with the terms, conditions, and specifications of the contract;
- (13) Preparing a consultant's performance evaluation when services are completed and using such performance data in future evaluation and ranking of consultant to provide similar services;
- (14) Closing out a contract;
- (15) Retaining supporting programmatic and contract records, as specified in 2 CFR 200.333 and the requirements of this part;
- (16) Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;
- (17) Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions and providing for such sanctions and penalties as may be appropriate; and
- (18) Resolving disputes in the procurement, management, and administration of engineering and design-related consultant services.