

Federal, State and ODOT Requirements for Federally Funded A&E Procurements by Local Public Agencies (LPAs)

Oregon Department of
Transportation
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Federal, State and ODOT Requirements for Federally Funded A&E Procurements by Local Public Agencies (LPAs)

Overview of Training Agenda

Introduction. LPA Certification, Q&A – Sam Johnston, Beth Vargas-Duncan

OPO Services and Support for LPAs - Dan Oven

A&E Contracting - Federal and state rules; RFP/contract document and procedural requirements – Kim Rice & Mary Wandell

Basics on Federal Cost Principles, Billing Rates, Invoices & Contract Closeout – Chaye Bookey & Margaret Cole

OPO Training Options – Mary Wandell

Q&A Session, and 1 on 1 coaching for LPAs (time permitting)

Training Objectives

By the end of training the participants will be able to:

- Identify the Federal and State regulations impacting A&E Consultant contracting
- Have an understanding of FHWA and ODOT expectations related to A&E Procurement
- Apply various tools and resources to the solicitation, contracting processes
- Identify key procurement processes and required RFP/Contract provisions for A&E consulting services
- Identify basic requirements of billing rates and invoices

OPO Services

Dan Oven

- Services and support for LPAs
- Access to Price agreements – Tier 2
- Potential changes
- Define A&E Services vs. Non-A&E
- Review sample RFP submittal

A&E Consultant Contracting

Kim Rice & Mary Wandell

- FHWA & ODOT Expectations/Responsibilities
- Summary of applicable state & federal laws and FHWA policy/requirements
- Tools and Resources
- A&E Procurement Overview
- Direct Appointments

FHWA & ODOT Expectations

- Procurements with state or federal funding will follow applicable laws, rules, policies and procedures.
- Fair and open solicitations that encourage competition.
- Contract statements of work with clearly defined tasks, deliverables and delivery schedule.
- Adequate documentation related to solicitations, selections, negotiation, award and contract administration.

ODOT Responsibilities

- Ensure compliance with state and federal laws on federal-aid projects.
- ODOT, in collaboration with FHWA, interprets federal and state laws, rules and regulations and provides guidance in the form of manuals, guidebooks, handbooks and reference materials.
- Provide assistance to the local agencies in interpreting the regulations, manuals and guidelines as they apply to specific projects.
- Provide training to LPAs and LALs.

ODOT Responsibilities

Per FHWA, the state DOT retains approval authority for the following regardless of LPA certification:

- NEPA documents
- Local Design Standards
- Design Exceptions
- Right of Way Certification
- Sole Source Justification Approval
- DBE Goals & Program
- Pre-award audit of consultant contract over \$250,000
- Owner Force Account Work
- Reject of Bids (or Proposals)
- Labor Compliance Enforcement
- Project Cost Eligibility
- Project Final Inspection and Acceptance
- Federal-aid Payments

On-Line Tools & Resources

ODOT Resources:

- [LAG Manual](#) (Section C, Chapter 12)
- [Overview of Federal, State and ODOT Requirements for Federally Funded A&E Procurements by LPAs](#) (LPA A&E Requirements Guide) – prepared by ODOT Procurement Office.
- [OPO Statement of Work Writing Guide and SOW Templates](#)
- [Geo Environmental SOWs](#)

On-Line Tools & Resources

FHWA Report on LPA Federal Aid Projects:

- [Background information](#) (FHWA site)
- [“The Administration of Federal-aid Projects by Local Public Agencies”](#)

FHWA’s on-line [A&E Contracting Q&A](#) page

Summary of Applicable State Laws

For A&E Procurements that include federal funding:

- Per Oregon Revised Statute (ORS) 279A, Federal law is superior where State and local laws are silent or in conflict.
- Agencies follow State and local laws but must also be in conformance with federal requirements.
- Additional information and links to statutes and rules are in the [LPA A&E Requirements Guide](#).

Summary of Applicable State Laws

- ORS 279A
- ORS 279C.005 through 279C.125
- HB 3316 – from ACEC. Revises ORS 279C to remove ability of LPAs to use price on self-funded A&E procurements.

For LPAs operating under DOJ's Model Rules:

- Oregon Administrative Rule (OAR)137-046
- OAR 137-048

Summary of Applicable State Laws

279C.307 Limitations in procurement of personal services; exception. (1) Except as provided in subsection (2) of this section, a contracting agency that procures personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract that is subject to this chapter may not:

(a) Procure the personal services from a contractor or an affiliate of a contractor who is a party to the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services; or

(b) Procure the personal services through the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services.

(2) Subsection (1) of this section does not apply to a procurement that qualifies as a construction manager/general contractor procurement or a design-build procurement, both as defined in OAR 125-249-0610 or 137-049-0610.

(3) As used in this section, “affiliate” means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the contractor described in subsection (1)(a) of this section.

[Implemented by OAR 137-048-0130(6)]

Summary of Applicable Federal Laws

23 United States Code (U.S.C.)112(b)(2) –Contracting for engineering and design services.

- 23 U.S.C. 112(b)(2) is federal statute that applies if A&E contract includes any federal-aid dollars
- This statute is interpreted and implemented by 23 Code of Federal Regulations (CFR) Part 172

Summary of Applicable Federal Laws

23 CFR Part 172 - ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICE CONTRACTS

- Prescribes policies and procedures for the administration of engineering and design related service contracts in conformance with 23 U.S.C. 112 as supplemented by the common grant rule, 49 CFR part 18.
- Requires QBS selections for A&E consultant.
- Requires consideration of Disadvantaged Business Enterprise (DBE) firms. The DBE program is administered by ODOT.

Summary of Applicable Federal Laws

23CFR 172 continued:

- Requires approval of written procedures for various procurement steps. Listed in section C.12.B of LAG Manual is a list of the written procedures ODOT must approve.
- Other FHWA approval requirements
- Includes requirements for consultant indirect cost rates to be in conformance with federal cost principles (48CFR Part 31); acceptance of cognizant audit.
- Cannot request or negotiate lower O/H rate. May accept lower O/H rate only if offered by firm.
- Includes requirements regarding audits of engineering contracts.

Summary of Applicable Federal Laws

49CFR Part 18.36 – Procurement section of “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” – referred to as the **“Common Rule”** or **“Common Grant Rule”**.

The Common Rule includes required contract clauses and various procedural requirements related to contracting. These requirements are further detailed in the LPA A&E Requirements Guide.

Summary of Applicable Federal Laws

48CFR Part 31 Federal Contract Cost Principles and Procedures:

- Includes considerable detail regarding allowable and unallowable costs.
- Direct and indirect costs as applied to cost estimates (regardless of method of compensation) and work performed by consultants under agency contracts must be in conformance with 48CFR Part 31.

FHWA Guidance, Policies & Approvals

FHWA guidance/policy information is linked in the LPA A&E Requirements Guide, including:

- Q&A pages related to A&E contracting
- Geographic or locality preference is limited to 10% weight in selection criteria.
- Brooks Act guidance memo
- NHS Act memo
- Consultant certification of compliance with Federal Cost Principles
- Permissible activities during NEPA Process
- Required FHWA Approvals

A&E Procurement, Basic Steps

The LAG Manual section C, Chapter 12.D outlines the basic procurement steps including:

- Identify and Define Project
through
- Contract Closeout

Scope of Work

- Purpose: To describe overall project purpose, objectives and basic timeline
- A scope of work should:
 - Include overview and background information to explain why the project and contract is necessary
 - Describe range of services to be performed
 - Set limits to changes in services
 - Provide enough information so prospective consultants can (1) understand the magnitude of services the agency is seeking, (2) decide if they are qualified and capable of performing the services required, and (3) decide if they wish to compete for the contract(s).
- Scope of work is higher level, less detailed than statement of work

Statement of Work (SOW)

- The statement of work is the meat of a services contract.
- A well-written statement of work states the obligations of each party with sufficient detail that another qualified firm could understand the requirements and delivery schedule, perform the services and submit the deliverables in the formats needed.

Basic Components of Statement of Work

- A statement of work includes:
 - **Tasks:** Assign obligations and responsibilities for activities and outcomes
 - **Deliverables:** Clearly describe requirements and acceptance standards for tangible, measurable task outcomes
 - **Schedule:** Define estimated dates (flexible) and mandatory/milestone dates (required) to pace progress
 - **Budget:** Include negotiated breakdown of costs for tasks or fixed price amounts for deliverables

Basic Requirements of Statement of Work

For a well written statement of work:

- Establish Consultant obligations using active voice
- Clearly define tasks, deliverables and delivery schedule (for independent contractor, not employee)
- Be consistent when using defined terms and acronyms
- Ensure deliverables correlate with all items produced in task
- Specify deliverable requirements, including format (software type and version, hard copy or electronic, and size)
- Best practice - Include Contingency Tasks when appropriate
- Should include a table of definitions for terms and acronyms

Samples from SOW Task Language

Are these well written?

1. The cities TSP will be in conformance with the county plan.
2. A literature search shall be conducted by our qualified cultural resource staff to determine whether there are any cultural or historic resources recorded for the site.

Samples from SOW Task Language

Are these well written?

3. We will provide required flaggers and signing based on the approved plan.
4. The field exploration program will include a total of six (8) soil borings. There should be a minimum spacing of 20 ft. between borings.

Deliverables:

Soil borings

SOW Development Team

- Assemble team of appropriate technical staff and other stakeholders
 - Develop scope of work
 - Develop statement of work
 - Develop evaluation scoring criteria for the RFP
 - Participate in proposal evaluation and selection
 - Develop internal cost estimate
 - Assist with contract negotiations

Contract & RFP Documents

- What to include
- What not to include

Contract Requirements

- **23 CFR 172.1 Purpose and applicability.** “This part prescribes policies and procedures for the administration of engineering and design related service contracts under 23 U.S.C. 112 as supplemented by the common grant rule, 49 CFR part 18. It is not the intent of this part to release the grantee from the requirements of the common grant rule.”
- **49 CFR Part 18.37 Subgrants.** “States shall: (1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations”
- **49 CFR Part 18.36(i) Contract provisions.** “A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section.”

Contract Requirements

What to include in the contract –

- Scope of work and final negotiated statement of work (and contingency tasks, if any)
- Contract phasing, if applicable
- Insurance requirements
- Terms & conditions, required contract clauses

Contract Requirements

What to include in the contract –

- Method of compensation (contract type)
 - Cost Plus Fixed-Fee (CPFF)
 - Fixed Price
 - Time and Materials with Not to Exceed (T&M)
 - Mixed methods
- Determining appropriate method of compensation
 - LPA A&E Requirements Guide, [section 4.3.15](#)

Contract Requirements

What to include in the contract –

The LPA A&E Requirements Guide, section 2, includes sample contract language for:

- List of required clauses per 49CFR 18.36.i and FAR 36.609
Clauses required by Oregon statute
- Compensation and invoicing language
- Required DBE and Title VI provisions

RFP Requirements

- Must be qualifications based selection (QBS) per Federal requirement. Competitive pricing and/or breakdown of hours prohibited
- Evaluation/selection criteria; must allow for open, fair competition; may not be restrictive (49 CFR 18.36)
- Locality preference limited to 10% weight per FHWA
- Formal RFP required contents: OAR 137-488-0220(4)
- Informal RFP required contents: OAR 137-048-0210(2)(a)

RFP Requirements

- Minimum qualifications
- DBE provisions and DBE Goal
- Non-discrimination provisions (Title VI)
- Anticipated Method of Compensation (Contract Type); CPFF, Fixed Price, T&M, Mixed methods
- Cost Information Provisions
- Required Proposer Certifications
- Anticipated Phases of Project/Contract

Section 3 of the LPA A&E Guide includes additional detail and sample provisions to meet the requirements.

Contract & RFP Documents

What not to include –

- Language that conflicts with state or federal requirements
- Rule/statute citations that do not apply to A&E Contracting
- DBE and MWESB Preference is not allowed in the selection process
- Geographic, reciprocal and in-state preferences are not allowed in solicitation
- Request for pricing information (including breakdown of hours) is not allowed

The LPA A&E Requirements Guide, section 1 provides some guidance regarding conflicts.

Conducting the Solicitation

Basic steps include:

- Public notice/RFP advertisement
- Requests for Change and RFP Protests
- Pass/Fail review
- Evaluation/selection process
- Intent to award notice.
- Award protest
- Billing rate/overhead review
- SOW review, independent estimates and negotiation
- Contract execution & procurement file documentation

Conducting the Solicitation

Public Notice/RFP Advertisement

- Do solicitations for engineering services have to be advertised?
- Can we make noncompetitive awards to consultant that city/county normally uses for its design services?
- Formal Solicitation (RFP over \$100K). Per LAG Manual:
 - Advertise the availability of the solicitation in a major newspaper of general circulation or technical publication of widespread circulation (e.g. Daily Journal of Commerce) for a period not less than 14 calendar days; and
 - Identify and send the solicitation to organizations qualified to do specified work as well as professional societies and recognized DBE organizations.
- Informal solicitations [up to \$100K (fed limit) or lower threshold required by the LPA] must go to a minimum of 5 qualified firms for A&E svcs.

Conducting the Solicitation

- **Pre-proposal Meetings**
- **Questions, Requests for Change and RFP Protests**
 - Single point of contact at agency
 - Written protests/change requests normally due 7 days before close (unless stated otherwise), no verbal
 - Request questions in writing
 - Best Practice - Responses to questions go to all proposers and in writing.
 - Changes to RFP requirements must be by written addendum

Conducting the Solicitation

Pass/Fail review

- Must fail late submittals
- Must reject non-responsive proposers that do not meet requirements of RFP
- Substantial conformance (minor informalities)
- Per FHWA, ODOT must approve bid/proposal rejections.
- Best Practice – Do not include items as pass/fail in RFP unless necessary and you intend to fail all firms that don't meet the requirement.

Conducting the Solicitation

Evaluation/Selection

- LPAs must have approved written procedures
- COI disclosure
- Minimum of 3 [qualified] evaluators
- Best practice: pre-eval meeting with eval team
- Proposal scoring is based only on criteria in RFP
- Document evaluations (comments to justify scores)
- Selection Meeting - Select top firm for negotiation and rank alternates in case negotiations fail

Intent to Award Notice

- The ITA notice should include request for:
 - (For prime and subs) direct labor rates, overhead info and recent audits [OR] fully loaded Negotiated Billing Rates (NBRs) if applicable. LPA may request ODOT rates on file.
 - Consultant certification of compliance with 48 CFR Part 31
 - Certificates of Insurance
 - Any other award submittal requirements stated in RFP.
- Provide selection status and copy of ITA to all proposers not selected. This starts award protest period.
- ITA is tentative and contingent upon successful negotiation.

Award Protests

- Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency [49 CFR 18.36(b)(12); LPA A&E Guide].
- RFP must include protest procedures or a statement directing proposers to the protest procedures.
- DOJ Model Rules include protest procedures in OAR 137-048-0240(2).

Pre-award Review

- Pre-award review of NBRs and/or direct labor, overhead breakdown and available audits
- Negotiate labor rates as necessary
- Firm may offer lower O/H rate but agency may not request lower rate or make it a condition of award.
- Responsibility determination per 49 CFR 18.36(b)(8)
- Contracts over \$250K require ODOT pre-award review per LAP Quick Reference Guide. Also see section 4.5 of LPA A&E Requirements Guide)

Negotiations

- A Contract that is beneficial to both parties is the desired outcome of a successful negotiation. However, the Agency must also be willing to terminate negotiations and back away from agreements it believes are unreasonable.
- The timeline for procurement/negotiations must allow for negotiation with one or more alternate Proposers in case agreement is not reached with the top ranked Proposer.
- The number one rule for negotiations is to be prepared.

Negotiations

Per 49CFR 18.36 - “A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis is required when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders. Grantees and subgrantees must perform a cost analysis in connection with every A&E procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving contractor’s cost estimate ”

Negotiations

- **Assemble team (based on project size/complexity)**
- **Discuss/clarify statement of work with consultant**
 - Pre-negotiation meeting/teleconference to review and discuss project scope and negotiate SOW
 - Revise SOW as necessary per meeting
- **Independent Estimates**
 - Following SOW review, each party prepares detailed independent estimates (prior to receipt of consultant estimate; can use third party consultant to prepare agency's estimate)
- **Conduct cost analysis**
 - Appropriate staff compare Agency and consultant estimates (classifications and hours per task/subtask, travel and other expenses)
 - Prepare pre-negotiation plan

Negotiations

Pre-negotiation Plan should identify (best practice):

- Maximum duration allowed for negotiations and turnaround time allowed for items requested from consultant (such as revised estimates, detailed breakdown from subcontractors, SOW reviews, etc.) These should be conveyed to consultant at (or prior to) initial negotiation meeting;
- Maximum \$ amount (Agency's estimate plus some reasonable percentage for variance) and predetermined walk-away points. Determine the maximum acceptable spread between Agency and consultant positions.

Negotiations

Pre-negotiation Plan (continued):

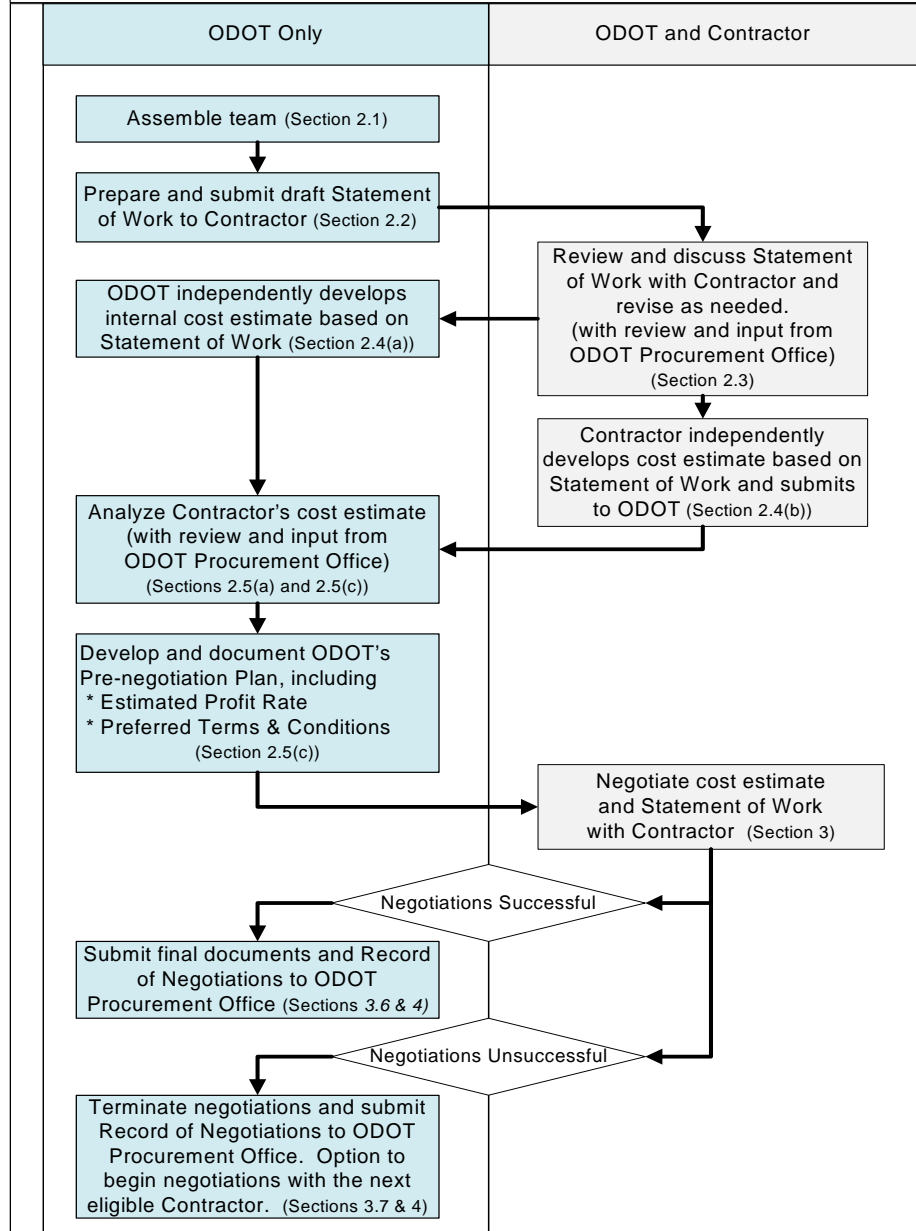
- Tasks or expenses that are more than 5% to 10% higher than Agency's estimate (noted during Cost Analysis review of consultant's estimate);
- Tasks or expenses that appear to be unrealistically low on hours/cost.
- Tasks or portions of the project that Agency may be able to do internally;
- Maximum duration allowed for completion of deliverables;
- Method of compensation for the contract (normally in RFP);
- Profit/fee objective based on Agency's Profit Worksheet.

Negotiations

Conducting the Negotiation & Documentation

- Face-to-face, telephone or video conference
- Communicate reasonable turnaround time on requests and schedule for completion of negotiations
- Reach agreement or terminate negotiations and move on to next highest ranked firm
- Consultant is not paid direct compensation for preparing cost estimates or negotiation (overhead)
- Procurement File – Prepare Record of Negotiations and other documentation that demonstrates how reasonableness was determined.

Outline of Negotiation Process
(With references to corresponding sections in the ODOT Negotiations Guide)



Direct Appointments

- **Use of Direct appointments and avoiding fragmentation.**

- **LPA Limit**

The dollar amount of a direct appoint contract is limited by the maximum allowed for direct appointments included in the LPA's procurement rules (up to the limits established in applicable Federal and State laws).

- **Federal Limit**

23 CFR 172(5)(a)(2) Small Procurements. "States and subrecipients of States may use the State's small purchase procedures for the procurement of engineering and design related services provided the total contract costs do not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11), currently \$100K". Exceeding this limit for direct appoint, sole source or emergencies requires justification and FHWA approval.

Direct Appointments

Direct Appoint Limits per DOJ Model Rules

- **Small Purchases** (up to \$50K) may be procured as a direct appointment in conformance with OAR 137-048-0200(1)(b).
- **Continuation of a Project With Intermediate Estimated Fee** may be procured as a direct appointment in conformance with requirements of OAR 137-048-0200(1)(c) – currently up to \$150K. However, exceeding \$100K for non-competitive selection requires FHWA approval.

Purpose of Contract Administration

To ensure the terms of the contract are met by both parties, including compliance with technical specifications, schedule, and cost aspects of the contract.

Contract Administration Responsibilities

- Maintain independent contractor relationship
- Manage to what's in the contract
- Receive and evaluate contract deliverables
- Review invoices; process payments
- Evaluate and document consultant's performance
- Amend contract when needed
- Close out the contract when done

Maintain Independent Contractor Relationship

- Reduces risk of determination that consultant is an employee
- Determination may be made by:
 - IRS for tax purposes
 - Workers' Comp for claims to benefits
 - Court
 - To determine liability for damages
 - For entitlement to employee benefits; health insurance, PERS
 - For compliance with federal and state requirements for employee rights; FMLA, overtime pay, unemployment benefits, and more

Maintain Independent Contractor Relationship

Courts look at the contract and how it's administered

- Use deliverables-based Statement of Work
- Manage to what's in the contract
- Focus contract administration on:
 - Are we receiving deliverables as scheduled?
 - Do deliverables meet the requirements in the contract?
- Do not control the means and manner of how Consultant's accomplishes the result

Summary Report of Subcontractors Paid

- Required for A&E and Related Services contracts
- Form available online at <http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/forms.shtml>
- Completed form must be received by 5th of month following payment
 - Consultant sends invoice to agency in February for work completed in January
 - Agency pays Consultant in March – Consultant pays subconsultants
 - Consultant sends *Summary Report of Subcontractors Paid* to agency by April 5th (reflecting payment for work completed in January)
 - Agency sends *Summary Report of Subcontractors Paid* to ODOT's regional Office of Civil Rights Field Coordinator (via ODOT's Local Agency Liaison)

Contract Amendments

- Amend the contract to reflect changes that impact:
 - Contract terms and conditions
 - Services and deliverables to be completed
 - Cost of services and deliverables
 - Deliverable schedule
 - Duration of contract
- To maintain legal enforceability of the contract:
 - Don't authorize work until the contract (or amendment) is executed
 - Don't pay for deliverables that are not in the contract
 - Don't pay for deliverables that do not meet contractual requirements

Procurement & Contract Administration Files

The procurement and contract administration file(s) for Federal-aid or state funded A&E procurements must include sufficient documentation for audit purposes. This includes, but is not limited to the items listed in section 4.3.6 of the LPA A&E Requirements Guide.

Lessons Learned

If the IGA includes federal funding but doesn't state that QBS procedures must be followed, then the LPA can include price in the consultant selection process.

True or False?

Lessons Learned

False

If the A&E contract will include any FHWA/FTA/FAA funding, then price may not be a selection factor.

Lessons Learned

Our LPA has a consultant we keep on retainer for A&E design services. Will we be able to contract directly with them for any design projects that come up?

Yes or No?

Lessons Learned

No -

For Federal-Aid A&E contracts that exceed the small procurement threshold, there must be advertisement of the solicitation and full and open competition from qualified in-state and out-of-state proposers.

Reference 49 CFR 18.36(c).

Lessons Learned

The highest scoring firm was selected for negotiations, but their audited overhead rate is 211%. Can we impose a limit on overhead or request a lower rate?

Yes or No?

Lessons Learned

No. The contracting agency cannot request or negotiate for a lower rate (if the rate is determined by an approved audit; i.e., cognizant audit).

However, in accordance with the Brooks Act a contracting agency can turn to the next qualified candidate if the contracting agency determines the total contract would not be at a fair and reasonable price. (per FHWA Q&A and 23 CFR 172.7)

The agency can accept a lower rate if offered by the consultant.

Lessons Learned

- Can a contract be modified to add work that was not included in the services the consultant was qualified for (per QBS criteria used to evaluate proposals)?

Yes or no?

Lessons Learned

No. Any modification of the contract to add work beyond the scope of work the contractor was qualified for would in effect circumvent the Brooks Act qualification based evaluation and selection procedures

Example: If a firm was selected for an environmental EIS and the selection criteria related to environmental work only, the contract could not be modified to include design tasks. However, if the selection criteria also included design elements for rating of the contract, then it would be permissible to modify the contract to include some design.

Billing Rates, Invoices & Closeouts

Chaye Bookey & Margaret Cole

- Compliance with Federal Cost Principles
- Direct Salary & Indirect Rates
- Negotiated Billing Rates (NBRs)
- Invoices
- Closeouts

Standard Billing Rate Schedules & Consultant Submittal Requirements

- Direct Salary Rates (DSR)
 - Listing of all employees that will work on Agency projects, including:
 - Job classification/title
 - Current actual base hourly salary
 - The wage should not include any bonus or other type of compensation
- Federal Acquisition Regulations (FAR) Compliant Overhead (OH) statement from the most recent Fiscal Year End (FYE)
- Certification stating both the proposal of final indirect costs are allowable, and those specifically not allowed have been removed, per:
 - FAR 48, Code of Federal Regulations (CFR) part 3
 - Directive 4470
- Cost Disclosure Questionnaire (CDQ)
 - A two page form with questions meant to determine basic financial and accounting information from the Consultant

Audit Services

- External Audit Services consists of one manager and two Senior Auditors
- Audit Services:
 - Desk Review
 - Independent CPA Working Paper Review
- We determine whether costs are allocable, allowable, and reasonable using:
 - FARS 48 Chapter 1 Part 31
 - Cost Accounting Standards (CAS)
 - AASHTO Audit and Accounting Guide
 - DCAA Contract Audit Manual
 - Independent Survey data

Overhead Rates

A Schedule of Indirect Costs is often referred to as an Overhead Rate

XYZ Firm Calculation of Overhead Rate For the Fiscal Year Ended mm/dd/yyyy				
Description	Financial Stmt Expenses	Unallocable Expenses	*Ref	Total Proposed
Direct Labor	\$ 718,455	\$0.254	(1)	\$ 771,709
Fringe Benefits:				
Vacation	\$ 15,666			\$ 15,666
Holiday	\$ 19,210			\$ 19,210
Sick Leave	\$ 24,815			\$ 24,815
Payroll Taxes	\$ 90,124			\$ 90,124
Group Insurance	\$ 82,740			\$ 82,740
Incentive Payments - Bonuses	\$ 100,000			\$ 100,000
Profit Sharing	\$ 300,000	(\$200,000)	(2)	\$ 100,000
Retirement Benefits	\$ 6,294			\$ 6,294
Total Fringe Benefits	\$ 630,849			\$ 430,849
General Overhead:				
Indirect Labor	\$ 400,812	(\$0.254)	(1)	\$ 480,050
Building Rental and Expenses - net	\$ 97,200	(\$7,055)	(3)	\$ 60,175
Utilities	\$ 34,890			\$ 34,890
Travel and Expenses - general	\$ 30,750			\$ 30,750
Employer's Expenses	\$ 24,551			\$ 24,551
Supplies	\$ 36,700			\$ 36,700
Taxes - general	\$ 8,510			\$ 8,510
Depreciation and Amortization	\$ 45,333			\$ 45,333
Postage	\$ 3,054			\$ 3,054
Subscriptions	\$ 0,945			\$ 0,945
Donations	\$ 0,490	(\$0.490)	(4)	\$ -
Insurance (including Key Man)	\$ 14,751	(\$0.003)	(5)	\$ 9,660
Bad Debts	\$ 2,644	(\$2,644)	(6)	\$ -
Office Expense	\$ 39,625			\$ 39,625
Interest - net	\$ 5,579	(\$5,579)	(7)	\$ -
Professional Services	\$ 17,257			\$ 17,257
Printing	\$ 12,412			\$ 12,412
Temporary Help	\$ 24,444			\$ 24,444
Goodwill	\$ 5,450	(\$5,450)	(8)	\$ -
Advertising/Promotional materials	\$ 24,800	(\$24,800)	(9)	\$ -
Bid and Proposal Costs	\$ 12,518			\$ 12,518
Computer Expense	\$ 49,500			\$ 49,500
Other (Example: Other Direct Cost Credit)	\$ (55,000)		(10)	\$ (55,000)
Total General Overhead	\$ 941,216			\$ 798,778
Total Fringe Benefits and General Overhead	\$ 1,579,565			\$1,232,122
Total Fringe Benefits and General Overhead Rate				
Percent of Direct Labor	221.40%			159.66%
Facilities Capital Cost of Money (FCCM)	\$5,112			\$ 5,112
Percent of Direct Labor	0.72%			0.66%

Facilities Capital Cost of Money

- Facilities Capital Cost of Money (FCCM)

Although interest costs associated with the financing of capital are unallowable, FCCM (an imputed cost) is allowable. FCCM is not required to be recorded in the consultant's formal accounting records; instead, FCCM is computed as a charge rate based on the following:

- The average annual net book value of the consultant's investments in the fixed assets used for allowable business activities as established by the Cost Principles of FAR Part 31
- The prorated average Prompt Payment Act Interest Rate determined by the Secretary of the Treasury for the accounting period in question
- The consultant's direct labor base used to determine overhead rates

NOTE:

FCCM may be considered to be an indirect expense associated with the general indirect cost pool; however, FCCM should be a separately identified charge rate and should not be included as part of the submitted overhead rate.

Web Resources

- ODOT's Billing Rate Policy:
<http://www.oregon.gov/ODOT/CS/OPO/docs/aepage/AGR0601.pdf#brpolicy>
- AASHTO Audit and Accounting Guide:
<http://www.transportation.org/?siteid=43>
- FAR part 31:
http://www.access.gpo.gov/nara/cfr/waisidx_04/48cfr31_04.html
- DCAA Contract Audit Manual:
<http://www.dcaa.mil/>
- 23 CFR 172 - Administration of Engineering and Design Related Service Contracts Q & A:
<http://www.fhwa.dot.gov/programadmin/172qa.cfm>

Standard Billing Rates

Loading Factors

- The DSR is used to establish the Escalated Billing Rate (ESR) table
 - The ESR uses the average and maximum rate for each classification
- To establish the fully loaded averages and maximums include:
 - Base rates multiplied by the firm's accepted OH
 - Profit that has been negotiated on a per project basis
 - Firm's FCCM as applicable
- Rates are escalated by 4.5% annually to estimate multiple year contracts
- Updated DSR information is submitted every third year including new ESRs
- When invoicing:
 - Consultant is required to use the actual wage of the employee performing the billable task burdened by the OH, profit and FCCM
 - ESR is used to verify the billed rate does not exceed the maximum established rate for each classification

Sole Proprietors

Small firms or firms without an OH based accounting

- Firms are In the Negotiated Billing Rate (NBR) system
- Firms are required to fill out:
 - Financial Questionnaire (a shortened CDQ)
 - DSR if there are any employees
 - NBR form (An NBR is a flat rate per classification that is all encompassing of OH and profit)
- Agency performs a reasonableness review on the proposed rates
 - Review web sites
 - Check status of Excluded Party List and Oregon Business Registry
 - Determine OH proposed rates using the OH calculator
 - Compare rates to those of same classifications in like disciplines
- If the proposed rates fail the above tests:
 - Billing Rate Action Team (BRAT) will counter-propose
 - Negotiations continue until acceptable rates are agreed on by parties
 - All tests are documented to show how final rates are determined

Invoice Requirements & Compensation Methods

- Certain basic elements are required on all invoices regardless of the compensation method
 - Consultant/contractor name and address
 - Remit address if different than address of record
 - Invoice date as the current date of submittal
 - Project title and location
 - Contract, work order and task numbers if applicable
 - Invoice number
 - Billing period specified with beginning and ending dates
 - Total amount due for the billing period
 - Total to date billing summary
 - Progress Report as stipulated in the contract

Additional Requirements

- Time and Material contracts require the following if allowed:
 - Hourly labor breakdown by employee name, classification and rate
 - Mileage requires:
 - Break down of all miles being charged with name of person traveling, destination, purpose and total miles for each trip
 - A mileage log is a best practice for submission
 - Copies requires:
 - Receipts for any outside vendor used
 - Copy logs, or some other form of documentation, for internal copying charges
 - Travel requires:
 - Hotel receipts (ODOT will reimburse up to the per diem for the county/location)
 - Meals for overnight travel will be reimbursed by per diem allowed for the county/location. Receipts are not necessary.
 - Meals for non-overnight stays are reimbursed per Oregon Accounting Manual rules (Lunch is not compensable for non-overnight stay)
 - Supplies, vendor payments, sub consultants, and miscellaneous

Additional Requirements

- Cost Plus Fixed Fee (CPFF) requires:
 - The same documentation as T&M
 - However, profit is not used in the calculation of billing rates
 - Profit is a 'fixed fee' calculation and billed as a separate line item
- Fixed Fee or Lump Sum contracts are:
 - Paid as one billing at the end of the project or as milestones are completed
 - Generally paid as a percentage of the project completion on a monthly basis and require:
 - Percentage complete and Amount Paid to Date to be tracked on invoice
 - A progress report to be submitted
 - Payout details to be outlined in the contract

Contract Closeout Elements

Invoice Summary and Budget Reconciliation

- Email confirmation from Consultant Accounting that:
 - Records match the Agency records
 - There are no outstanding invoices
 - Retainage account (if applicable) has been paid out by the Agency
- Agency Closeout Memo signed by Agency Project Manager (APM) verifying that:
 - Project has been satisfactorily completed
 - All deliverables have been received
 - All financial obligations have been met
- Consultant Closeout Memo signed by the Consultant Project Manager (CPM) verifying that:
 - Project has been satisfactorily completed
 - All deliverables have been submitted
 - All financial obligations from the Agency have been met
 - Consultant has paid any sub consultants that have been used on the project
- Liability Disclaimer
 - Memos have statements confirming that neither party is surrendering rights or being released from obligations made in the contract. Additionally it is stated that Agency Audits may still choose to perform a closeout audit on the project financials.

Performance Evaluations

- Performance Evaluation
 - The Agency Project Manager is responsible for completing a Consultant Performance Evaluation in regard to the project
 - The evaluation is presented to the Consultant and they are afforded a chance to rebut any items
 - Oversight will act as a mediator if necessary
 - Performance evaluations are kept in a database and may be used by the Agency for future selection processes
- Final notice
 - Sent to all interested parties indicating:
 - Successful closure of the contract
 - De-obligation of any unused budget funds

Q&A



Questions?