

LPM

CHAPTER 6

CONSULTANT PROCUREMENT AND ADMINISTRATION

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NOTE: This Chapter has associated appendices and forms that can be found at
www.dot.ny.gov/plafap

6.1 INTRODUCTION

The purpose of this chapter is to guide Sponsors, who need to procure consultant services, through the federal and state procedures necessary to hire and manage consultants. A Sponsor may procure a consultant to perform all or part of a project design and the Sponsor may employ consultants to perform architectural, engineering, landscape architectural, surveying, and construction inspection and related services needed to develop a locally administered federal aid transportation project. Consultants may be solicited for:

- a specific project, all phases;
- a specific phase of a project (e.g., design, environmental analysis, construction inspection, project management, materials testing services);
- more than one project;
- general project-related services (support services for Sponsor's staff); or
- a combination of the above. See Federal Regulation [23 CFR 1.33](#)¹ and Section 6.7.2, Conflict of Interest, in this chapter for further guidance.

For purposes of defining consultant type, Architectural or Engineering (A/E) consultants are those private consulting persons or firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction inspection and management services. They are procured using a Qualification Based Selection (QBS) method, as detailed by the procedures in this chapter.

Consultants other than A/E consultants [professional (engineering, architectural and surveying)] or non-professional services which do not require a license from the NYS Education Department (ex. ROW Acquisition Firms) can be selected using cost as one of the selection criteria or, for that matter, as the sole selection criterion. This chapter does not detail specific requirements for selecting these consultants. The procedures outlined in this chapter could be modified for selecting non-A/E consultants by adding a cost bid to the proposal. A detailed proposal and draft contract would be required.

The information contained in this chapter is not intended to supersede local laws and guidelines. Localities and other authorized users must also follow their own governing laws and guidelines relative to procurements, as long as they are not in conflict with federal and State requirements.

6.1.1 Consultant and Contractor Selection

Sponsors must follow the selection and contracting procedures to procure consultants and to administer consultant contracts if federal or state funds will be sought for reimbursement of (1) consultant services or (2) credit toward the non-federal or non-State share of a project. A Sponsor seeking federal or state funds for consultant services may use their existing procurement procedures *only* if those procedures meet the required federal or state procurement procedures. If federal or state reimbursement for consultant services (or credit thereby toward the non-federal share) will *not* be sought, the Sponsor may then hire the consultant(s) using their own procurement procedures.

Sponsors can procure a consultant using one of the following methods:

¹ <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=17bbe9f4a897e4f9009f236b793a3aa9&rqn=div8&view=text&node=23:1.0.1.1.1.0.1.13&idno=23>

- Project Specific Selection Process.
- Local Design Services Agreement (LDSA) through New York State County Highway Superintendents Association (NYSCHSA).
- Selection Process for Non-Architectural/Engineering Services.
- Procurement Using Small Purchase Procedures.
- Non-Competitive Negotiations (Sole Source).
- NYS Selection Method for Consultant Procurement.

These methods, and their specific applicability, are described in detail in Section 6.3, Consultant Selection Methods.

6.1.2 Federal Legislation

The provisions of [40 USC 11\(the Brooks Act\)](#)² require the award of federally funded architectural/engineering contracts on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications. The corresponding regulations are found in [23 CFR 172](#)³. This type of selection is commonly referred to as Qualification Based Selection (QBS). Cost may not be used as a basis for selecting A/E consultants. Contracts with such consultants must be negotiated so the most qualified consultant is retained at prices determined to be fair and reasonable to the Sponsor.

6.1.3 State Legislation

[Article 9 Section 136-a of the State Finance Law](#)⁴ contains provisions for the selection of consultants similar to those of the Brooks Act. NYSDOT and other state agencies must comply with Section 136-a when hiring or facilitating the selection of A/E consultants.

6.1.4 Authorization to Proceed

NYSDOT must give the Sponsor an *Authorization to Proceed* prior to the performance of any work for which federal or state reimbursement is to be requested or credited claimed thereby for the non-federal share (See Chapter 3). NYSDOT will obtain required approvals from FHWA as needed.

All procedures described in this chapter must be followed if federal or state funds will be sought for consultant services or if credit toward the non-federal share will be sought. To expedite a particularly important project, a Sponsor may occasionally wish to begin consultant procurement activities before *Authorization to Proceed* is granted. In this instance, the Sponsor may begin procurement activities at its own expense. The Sponsor should note, however, that executing the consultant contract with the consultant prior to the receipt of the *Authorization to Proceed* places federal funding or reimbursement (or credit thereby claimed for the non-federal share) at risk. If it decides to proceed without authorization, the Sponsor should notify the Regional Local Projects Liaison, (RLPL). Copies of the *Authorization to Proceed* and the consultant contract must be retained in the project files for future audit purposes.

² <http://uscode.house.gov/download/pls/40C11.txt>

³ <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=1bdaae1bf3456467ccd7368d39f1aaa0&rgn=div5&view=text&node=23:1.0.1.2.3&idno=23>

⁴ [http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\\$\\$STF136-A\\$\\$@TXSTF0136-A+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=53192114+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$STF136-A$$@TXSTF0136-A+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=53192114+&TARGET=VIEW)

6.2 IDENTIFY AND DEFINE THE NEED FOR CONSULTANT ASSISTANCE

The need for consultant assistance is identified by comparing the project's schedule, objectives and documentation with the Sponsor's capabilities, staff availability, and funding resources. If the Sponsor does not have sufficient staff capabilities, it may choose to solicit assistance from another agency (State or Municipality) or hire a qualified private consultant to perform the required work.

6.2.1 Designate Project Manager (PM)

Title [23 CFR 635.105\(b\)](#)⁵ requires the Sponsor to provide a full-time employee to be in responsible charge of the project even when using consultants to provide engineering and construction inspection services or project management. This employee is referred to as the Project Manager (PM). The PM will report to the Responsible Local Official (RLO) who will have ultimate oversight and responsibility for the project. The PM and the RLO may be the same individual if the RLO has project management experience. Appendix 6-1 contains a Sample Project Manager's Checklist.

The PM will be appointed by the RLO. The PM will be involved in determining the need for consultant services and in the development of the contract and administration of the consultant's work for the duration of the contract. The PM is responsible for the quality of consultant contract deliverables. Duties include:

- Providing direction to ensure the proposed work is advertised properly, the description of work and task list are prepared and distributed, and the draft contract is appropriately prepared.
- Arranging for preparation of an advanced, independent estimate of the value of the work to be contracted out, per [23 CFR 630.106\(a\)\(3\)](#)⁶. (If the Sponsor lacks the expertise to prepare the independent estimate, a consultant may be procured to perform this task. If the Scope of Work is less than \$25,000, the consultant may be procured using the Sponsor's small purchase procedures.)
- Selecting the consultant⁷.
- Obtaining pre-negotiation audits of prime and subconsultants as required.
- Analyzing the selected consultant's cost proposal.
- Serving as the selected consultant's primary contact person.
- Monitoring the consultant's progress and provide direction.
- Scheduling and attending progress meetings with the consultant.
- Involvement in decisions leading to change orders or supplemental agreements.
- Familiarity with the qualifications and responsibilities of the consultant's staff.
- Visiting the project or consultant's offices and monitor work quality and progress.
- Keep informed of day-to-day operations for construction engineering service contracts.
- Approving the consultant's progress payments and assuring costs billed are consistent with the applicability and progress of the consultant's work.

⁵ <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=1bdaae1bf3456467ccd7368d39f1aaa0&rgn=div8&view=text&node=23:1.0.1.7.23.1.1.5&idno=23>

⁶ <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=1bdaae1bf3456467ccd7368d39f1aaa0&rgn=div8&view=text&node=23:1.0.1.7.21.1.1.3&idno=23>

⁷Steps in the process are: 1. Define scope of Consultant work. 2. Develop independent estimate based on proposed scope of Consultant work. 3. Begin negotiations with top ranked Consultant firm.

- Completing the *Sample Project Manager's Checklist* (See Appendix 6-1).
- Initiate timely closeout at project completion.

A consultant retained by the Sponsor can provide technical support and advice in the administration of a consultant hired to perform project design or construction inspection work (see Section 6.8, Consultants Retained by Sponsors). The use of a consultant for management or contract administration role, however, should be limited to unusual circumstances. These situations require a thorough justification as to why the Sponsor cannot perform the management duties, as well as a thorough review project delivery capability.

6.2.2 Determine Project Schedule

The Sponsor will develop a project schedule which should include sufficient time to select consultants, develop consultant contracts, complete the pre-negotiation audit, conduct meetings, perform project reviews, and construct projects (including inspection/support). Time should be allotted in the project schedule to conduct the consultant close-out audit and project close-out procedures, including execution of supplemental project agreements, if needed. These tasks can significantly postpone project close-out, potentially delaying submittal of final reimbursement claims sufficiently to jeopardize federal aid reimbursement.

6.2.3 Segmenting Consultant Work

In the case of projects covering two or more distinct phases, when the cost of the second phase depends on decisions which will be made in the first phase, the original consultant contract should only cover in detail the terms and conditions of the first phase. Work associated with the second phase may be added to the original consultant contract by a supplemental agreement. The Sponsor is not obligated, however, to use the same consultant for all phases. Retaining a consultant to complete subsequent phases should depend upon whether or not performance has been satisfactory, along with favorable supplemental agreement terms.

The most common occurrence is the contracting for design services in the original contract and the addition of construction inspection services in a supplemental agreement. The Sponsor is neither obligated nor prohibited from using the same consultant to perform design work and construction inspection services.

If the Sponsor anticipates including additional phases of work in a consultant contract by supplemental agreement, then the advertisement and selection process must be based on the qualifications of the consultant to perform all the contemplated project work. Should the Sponsor decide to use different consultants to perform various tasks, then separate consultant procurement processes are needed, and the advertisement needs to clearly reflect this.

6.2.4 Develop Consultant Scope of Services (SOS)

The Scope of Services (SOS) which must be included in the consultant contract is a detailed description of the products and services the consultant will need to provide. From the SOS, consultants determine staffing and time requirements and develop a detailed staff-hour and cost estimate for the contract.

The Project Manager develops the consultant contract Scope of Services (SOS) which will vary depending on the type of project and phase(s) of work. Appendix 6-4 contains a Sample Scope of Services (with instructions) which can be used to develop a Scope of Services for Sponsor projects. The PM should tailor the SOS specifically for each project by eliminating unnecessary

tasks and adding detail to those tasks as needed, such as special or unique tasks. Additional modification will likely be required for non-traditional transportation projects. A scope of services which covers all aspects of consultant design work which can assist in development of the consultant contract is available in Appendix 6-4.

6.2.5 Subcontracted Services

The consultant is responsible for performing all work required under the Sponsor's Consultant Contract in a manner acceptable to the Sponsor. The consultant's organizational structure and all associated consultants must be identified in the proposal submitted to the Sponsor.

If the consultant wishes to use a firm not specified in the proposal, prior written approval must be obtained from the Sponsor. If a subcontract for work or services to be performed by such firms exceeds \$25,000, the subcontract must contain all required provisions of the prime contract.

6.2.6 Establish Intent for DBE Participation

A Sponsor receiving federal funds must comply with NYSDOT's adopted Disadvantaged Business Enterprise (DBE) Program Plan, which reflects federal rules and regulations (see Chapter 13). The Sponsor must take steps to assure DBE prime consultants and subconsultants are used when possible. Such steps include good faith efforts (GFEs) as defined in [49 CFR 26, Appendix A](#)⁸ to solicit DBE firms and, when feasible, organize the project schedule and task requirements to encourage participation by DBE firms. DBE firms must perform a Commercially Useful Function (CUF) as defined in [49 CFR 26.55\(c\)](#)⁹ a role in which a firm is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing and supervising the work involved. The prime consultant has the responsibility to solicit DBEs as subconsultants or vendors for work appropriate to the subcontract. If a DBE subconsultant is unable to perform, the prime consultant must make a good faith effort to replace that subconsultant with another DBE subconsultant. Good faith efforts must be documented by the prime consultant and verified by the Sponsor. For the prime consultant and for every DBE utilized, every firm needs to enter its Affirmative Action/Equal Employment Opportunity/DBE Officer information into the Equitable Business Opportunities (EBO) reporting system NYSDOT provides on its website.

6.2.6.1 Architectural & Engineering (A&E) Consultant Contracts

A dollar amount is not specified for DBE participation on consultant A&E contracts. All NYSDOT A&E consultant contracts use a 20% level of utilization; which will be used for the Sponsor's contracts as well. The percentage may be adjusted based on the scope of the contract as well as availability of DBEs to accomplish the work. Requests for adjustments must be reviewed and approved by the RLPL prior to advertisement. DBE participation must be monitored by the Project Manager as the project progresses. Attainments should be reported by the prime consultant to the Sponsor utilizing EBO each time a payment request is submitted.

⁸ <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=1bdaae1bf3456467ccd7368d39f1aaa0&rgn=div9&view=text&node=49:1.0.1.1.20.6.18.6.12&idno=49>

⁹ <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=1bdaae1bf3456467ccd7368d39f1aaa0&rgn=div8&view=text&node=49:1.0.1.1.20.3.18.8&idno=49>

6.2.6.2 Non-Architectural & Engineering (Non-A&E) Consultant Contracts

Non-A&E contracts (Right-of Way appraisals and acquisition, legal services, accounting, auditing, public relations, etc.) estimated to cost at least \$500,000 must include a DBE goal. The DBE goal will be determined during the final stages of drafting the Request for Proposals (RFP) as the scope and cost of work become more clearly defined. The Sponsor, in cooperation with the RLPL and NYSDOT's Contract Management Bureau, will determine an appropriate DBE goal based on the value of the contract, the types of work involved which could be subcontracted, and the availability of DBEs to accomplish the work, as determined by NYSDOT's methodology (see NYSDOT's current year [DBE Program Plan](#)¹⁰). Attainments shall be reported by the prime consultant to the Sponsor utilizing EBO each time a payment request is submitted. For additional information concerning the procedures and reporting requirements for the use of DBE firms, including the Standard Civil Rights Reporting Software (EBO), contact NYSDOT [Office of Civil Rights](#).¹¹

6.2.7 Estimate Cost of Consultant Work

The Sponsor is required by [23 CFR 630.106](#)¹² to prepare an independent estimate of the cost of consultant services to ensure the services are fair and reasonable. The estimate is prepared prior to evaluating consultant proposals, so the Sponsor's negotiating team has a detailed analysis of the project from which to evaluate the strengths and weaknesses of the proposal. The independent estimate is kept confidential for use only by the Sponsor's negotiating team.

A good cost estimate may be prepared only if the scope of services list and assumptions are clearly defined. The estimate must include a breakdown of:

- Direct labor costs
- Indirect costs
- General and administrative costs
- Other direct costs
- Subconsultant fees
- Fee

If more than one project is to be developed within the consultant contract or if a Supplemental Agreement for extra work under the original contract is needed, then a separate estimate must be prepared for each new project and each Supplemental Agreement.

Appendix 6-14, Construction Inspection Estimate Calculator, is a tool developed to assist in estimating construction inspection costs. This tool should be used in conjunction with the LPM Section 15.3.3.2, Construction Inspection and Table 1, Construction Inspection Staffing Guidance. Staffing numbers are approximate values and should be discussed for adjustment with the RLPL based on the project complexity and contractor schedule. A project must be staffed with an EIC and field inspectors in accordance with the approved CMP.

Note that the construction inspection calculator does not take into consideration tasks

¹⁰ https://www.dot.ny.gov/main/business-center/civil-rights/civil-rights-repository/NYSDOT_2010_DBE_Program_Plan.txt

¹¹ <https://www.dot.ny.gov/main/business-center/civil-rights>

¹² <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=3353fecf5dc55717f14cbfd4074d9f9b&rgn=div8&view=text&node=23:1.0.1.7.21.1.1.3&idno=23>

associated with construction design support and direct non-salary costs, such as printing, mailing, permit fees, etc. The Construction Inspection Estimate Calculator will be updated as needed to reflect current average rates for each construction inspector level. The Calculator is a starting point in estimating the construction inspection cost.

6.2.8 Determine Type of Contract

The Contract Type, which must be determined prior to contract execution, will establish how the consultant is to be paid. There are four methods of payments allowed on consultant contracts:

- Cost Plus Fixed (or Net) Fee
- Lump Sum
- Cost Per Unit of Work
- Specific Rates of Compensation

6.2.8.1 Cost Plus Fixed (or Net) Fee

A Cost Plus Fixed (or Net) Fee contract enables a Sponsor to compensate the consultant for all eligible direct and indirect costs within defined limits which are specified in the contract, plus a pre-determined fixed (or net) fee.

This method of compensation is used when the extent, scope, complexity, character, or duration of the work can be reasonably determined in advance. Types of work appropriately contracted with the cost plus fixed (or net) fee method include preparation of environmental documents, design documents, and contract documents, including plans, specifications and estimate (PS&E), for large or complex projects. The costs are determined by:

- The salaries of employees for the time directly chargeable to the project, and salaries of principals for the time they are productively engaged in work necessary to fulfill the terms of the agreement. (Actual rates of pay for employees, including principals, actively involved in the project are included in each agreement.)
- Direct non-salary costs incurred in fulfilling the terms of the agreement.
- The consultant's overhead or indirect costs to the extent they are properly allocable to the project. (A break out of overhead items needs to be included in each contract.)
- Management reserve or contingency funds (to be included at the Sponsor's discretion) which account for overruns of direct salary and overhead costs.

Fixed Fee

The fixed fee is derived by considering the financial and professional investments required of the consultant; the extent, scope, complexity, character and duration of the services; the degree of responsibility to be assumed by the consultant; and other factors contemplated at the time of the negotiations (see the fixed fee guidelines in section 6.5.6, Cost Verification and Documentation).

Documentation is crucial in case it becomes necessary to adjust the amount of the fixed fee. However, the fixed fee is not adjustable throughout the life of the contract, except when significant changes in the scope of work occurs, in which case the fee may be renegotiated.

Net Fee.

In Cost plus Fixed Fee, the consultant is entitled to the full fixed fee if it completes all of the work

in the agreement. Fixed Fee is used in design-type agreements where the consultant provides a discreet deliverable (plans, drawings, analysis, etc.). The Net Fee concept may be more appropriate in situations in which there is no real discreet deliverable except the provision of staffing, such as is the case with construction inspection services. With a Net Fee, if the consultant effort does not fully expend the full value of the service specified in the agreement, it is not entitled to the full fee. For instance, if the consultant was originally estimated to perform 1,000 hours of effort, but only expended 900 hours, it may not be entitled to the full fee.

Included in the consultant contract are the consultant's estimate of work, cost rates, overhead rate, and the fixed or net fee. All costs must be agreed upon by the Sponsor.

6.2.8.2 Lump Sum

A Lump Sum Contract enables the Sponsor to pay a consultant a fixed amount of compensation for services, which are established ahead of time in the consultant contract.

This method of compensation can be used for a well-defined scope of work (quantity and type). Lump sum compensation is generally used for investigations, studies, and preparation of environmental documents, design documents, and contract documents, including Plans, Specifications and Estimate (PS&E), for simple projects with well defined parameters. This method of compensation is *not* acceptable for construction inspection and management contracts in which total costs are not well defined.

The Lump Sum agreed amount must be based on a breakdown of direct and indirect costs, overhead costs, and profit. No contingency amount may be included in the Lump Sum Payment. The calculated amount (or less if appropriate) must be used. No more than 50% of Direct Non-Salary Costs (DNSC) should be included in the fee calculation. If there are extremely large DNSC such as Maintenance & Protection of Traffic (MPT), Traffic Control Plan (TCP) or equipment rental, those costs may not be used in the Fixed Fee Calculation.

The Sponsor can ask the consultant for a printout of its NYSDOT electronic Consultant Selection System (CSS) submission. The Sponsor should contact the Regional Local Project Liaison (RLPL) if there are questions.

6.2.8.3 Cost Per Unit of Work

A Cost Per Unit of Work contract enables the Sponsor to pay a consultant based on the work performed. This method of compensation is used when the unit cost of the work can be determined with reasonable accuracy in advance, but the extent of the work is indefinite. Examples of work contracted using the cost per unit of work method include soil borings (per foot of hole), soil testing, structural foundation analysis, and construction inspection and management. Contract payment provisions must specify what is included in the price to be paid for each item.

6.2.8.4 Specific Rates of Compensation

A Specific Rates of Compensation Contract enables a Sponsor to pay a consultant at an agreed upon (and supported) specific fixed hourly or daily rate for each class of employee engaged directly in the work. Such rates of pay include the consultant's estimated costs and fee.

This method of compensation is used as a basis of payment for relatively minor items of work of indeterminable extent, and is considered only when none of the other three compensation methods can be used. Examples of work contracted using the specific rates of compensation

method include certain soils investigations, landscape planting inspections, bridge inspections, certain construction inspections, supplementing Sponsor staff on small design projects or studies, construction support services, claim testimony, and for on-call services.

The method requires constant and direct control of time and class of employees used by the consultant. The specific rates of compensation include an hourly breakdown, direct salary costs, salary additives, indirect costs, and fee. Other direct costs may be set forth as an element of the specific rate or may be included as independent cost items. An estimate of the amount of work required for a specific task should be completed based on the negotiated rates of compensation before starting each task.

6.3 CONSULTANT SELECTION METHODS

As previously stated, there is more than one method Sponsors may use to select consultants. The selection method used should be:

- (1) Dependent on the type of work to be completed,
- (2) Dependent on the value of the work to be completed
- (3) At the discretion of the Sponsor.

The consultant selected should not be the same individual or firm currently under contract with the Sponsor to provide the same or similar services to the Sponsor (e.g., if XYZ Engineering is the Sponsor's "Municipal Engineer" then XYZ Engineering should not be hired by the Sponsor as a consultant). A consultant firm retained as a "Municipal Engineer, however, may prepare the PS&E for a project, if both of the following apply:

- (1) The work is within the scope of the consultant's current contract with the Sponsor and
- (2) The consultant was selected using an open and competitive process within the last 3 years.

A consultant firm retained by a Sponsor may either prepare the Request for Qualifications (RFQ) and independent estimate, or compete in the selection process, but not both. In the event a consultant firm retained by a Sponsor intends to participate in the selection process, the Sponsor should hire an independent consultant to prepare the RFQ and independent estimate. Due to the limited scope of this work, the hiring of this consultant will not require a QBS process, and may be accomplished through the Sponsor's small purchase process (see 6.2.1, Designate Project Manager). In the event a consultant already retained by a Sponsor is the highest rated firm, prior to beginning negotiations, the Sponsor shall submit a written plan to the RLPL listing how any potential conflicts of interest will be eliminated. NYSDOT will obtain approval from FHWA as needed (see Section 6.8.1, Consultants Retained by Sponsors).

6.3.1 Industry Wide Consultant Selection Process

The process described below for one and two committee selections explains how a Sponsor may select any qualified A/E consultant from all the possible consultants who provide the type of service required by the Sponsor and meet federal requirements. Some of the other methods of selection explained in this chapter are less time consuming and reduce administrative effort but limits the Sponsor's choice of a consultant to predetermined consultants.

This selection process may be used to procure a consultant, for one project, for several specific projects, or for multiple projects to be designated within a prescribed time-frame, usually the time period cannot extend more than two or three years from the original designation date. The Sponsor is encouraged to contact their RLPL for guidance if multiple firms are to be selected or

if this process is used to establish a Local Design Services Agreement specifically for the Sponsor.

6.3.1.1 One Committee Process

The one committee process is the most frequently used project-specific selection process, and is appropriate for most projects. The steps for this process are:

1. Appoint Consultant Selection Committee - The Sponsor appoints a consultant selection committee at the beginning of the selection process. There is no requirement concerning the minimum committee size, but NYSDOT recommends a minimum of three persons be assigned to the selection committee to avoid ties. For larger, more complex projects where total consultant costs exceed \$1,000,000, a larger committee may be warranted; again, an odd number of members is recommended to avoid ties. Committee members should be familiar with the project development process but need not have professional training in engineering or related fields. Committee members should be familiar with State and federal conflict of interest regulations and with the need for confidentiality and the handling of propriety information.

Representation on the committee should include the Project Manager. The committee reviews and scores the Consultant Proposal materials submitted by consultants in response to the advertisement for proposals. The committee may select the most qualified consultant from the responses submitted or develop a short list of the most qualified consultants to be further evaluated by an interview process or the submission of additional material (short listing is an optional step). A short list is comprised of the top-ranked two to five responding consultants as ranked by the selection committee. The short listed consultants are further evaluated by a selection committee (the original committee or another committee) and the top-ranked firm is selected from the field of short listed candidates. In both instances (short list/ no short list) at the completion of the selection process the committee develops a final ranking and identifies the top-ranked consultant.

The RLPL will be available to help guide the committee through the selection process but generally will not be a member of the committee and will not participate in ranking the consultants. An exception would be if the project involves close coordination with NYSDOT, for example an Intelligent Transportation Systems (ITS) project which requires compatibility with NYSDOT systems. In this case it would be appropriate for the RLPL to serve as NYSDOT's representative on the committee. The Sponsor may request participation by NYSDOT.

2. Develop a Schedule for Consultant Selection - Before an advertisement to hire a consultant is placed, the Project Manager completes a contract schedule including key dates for consultant selection activities. A completion date for the consultant selection process should be included in the advertisement.
3. Develop Criteria for Evaluation of Proposals - The Project Manager is responsible for developing the selection criteria, and their relative weight, which is used to evaluate and rank the consultant team proposals. These criteria will apply to the entire consultant team not just to the prime consultant. The criteria and relative weights must be included in the advertisement. This format is not mandatory but is recommended in the interest of developing consistency among the many agencies and consultants operating in the State. The Sponsor should consult with the RLPL before making major changes to the suggested approach. (See Table 6-2, Recommended Selection Criteria for A/E Consultants, for cases

in which cost is not used as a rating factor.)

4. Advertise for Consultants - Federal law ([23 CFR 635.112](#)¹³) requires widespread advertisement. To satisfy this requirement, all advertisements for consultants must be placed in the NYS Contract Reporter.¹⁴ Sponsors based in New York City may fulfill this requirement via an advertisement in The City Record and The NYS Contract Reporter. Sponsors are also required to place the advertisement in their official newspaper or newspapers, if any, and are encouraged to place the advertisement in other technical or general publications of widespread circulation. Advertisements may also be sent to organizations qualified to perform the specified work, such as professional societies and recognized DBE organizations. In some cases, it may be desirable to advertise nationwide for a particular project or service. All advertisements must contain all the administrative and technical information necessary for the consultant to submit a proposal. In addition, all recipients must receive the same information and be given the same amount of time in which to prepare their proposals. As a minimum, advertisements should include the following:
- Project Identification Number (PIN).
 - A brief conceptual description of the project, including making available for review reports, studies and other types of information relevant to project.
 - A ballpark estimate of total project cost. (including design, right-of-way, construction, and inspection)
 - An anticipated project start and completion date.
 - A brief description of services to be provided.
 - Evaluation criteria and their relative weights.
 - Proposal format and submission instructions.
 - Deadline date for submitting proposals and an anticipated date for completion of the

¹³ <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=a5d148c30435b6298192fc590295df4f&rgn=div8&view=text&node=23:1.0.1.7.23.1.1.12&idno=23>

¹⁴ The NYS Contract Reporter is the official publication in connection with solicitation activities for New York State agencies, public authorities and public benefit corporations. The publication is relied on by the consultant and construction industry for accurate information about solicitations for public construction projects. The [NYS Contract Reporter \(NYSCR\)](#)¹⁴ is an online publication only.

The *Publication Schedule* may be viewed under *Public Links* on the NYSCR website. New solicitations appear every Monday morning. Any advertisement successfully submitted to the NYSCR system Monday through Sunday (by 11:59 pm) one week, appears the following Monday. When an advertisement is successfully submitted through the online system, the NYSCR assigns an ad number and informs the Sponsor the ad will appear in the NYSCR and gives the date of the issue, and the details of the advertisement. A confirmation page shows the ad details which may be printed, and the system offers a confirmation email option.

The system complies with State finance law requirements for advertising time. The earliest bid due date allowed in the ad insertion form complies with the State minimum of 15 business days once the ad is published. Questions about the NYSCR may be sent through the *Contact Us* link on the NYSCR website.

Sponsors must be approved to submit advertisements to the NYSCR. The application form is located on the NYSCR site under *Public Links* in the menu on the home page for *Agency Application*. If a Sponsor is unsure if they are in the NYSCR system, it may submit an inquiry through the *Contact Us* link on the NYSCR site.

- selection process.
- DBE utilization level
- Licensing requirements.
- The method(s) of payment for the contract.
- Identification of the project as federally aided.
- Identification of the Sponsor as an Equal Opportunity Employer (EOE) meeting the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, as amended.

The Sponsor shall retain a copy of all advertisements, including those in The NYS Contract Reporter, in the project file.

5. Receive and Evaluate Expressions-of-Interest (EOIs) and Develop a Short List - Number of firms to be on the short list should be established prior to the receipt of EOIs. Otherwise, there is potential for perceived inappropriateness. The first step in the evaluation process is to determine that each proposal contains all forms and other information required by the advertisement. Submittals may be considered non-responsive if all required information is not provided, and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered non-responsive and should be rejected. Submittal of additional information after the due date is not allowed. The Consultant Selection Committee reviews the submitted Expressions-of-Interest according to the published evaluation criteria and weighting factors. Scores are given to each consultant proposal based on the information contained in the proposals.

Based on the scores and a discussion of the firms' proposals, the committee establishes a short list of consultants it determines to be best qualified to perform the contract work. The committee makes an independent random check of one or more references for each of the short-listed consultants, and of any consultants which are being seriously considered for the short-list. This check applies to major subconsultants as well. All rating and ranking information should be adequately documented.

The short list should have two to five consultants and should include those consultants which may be invited to an interview. The committee determines which consultants will be interviewed. Interviews are held at the discretion of the Sponsor. While there is no minimum or maximum number of firms which may be interviewed, the committee should limit interviews to those firms with a realistic chance of being ranked as the top-ranked consultant. The committee should be sensitive to the fact that preparing for interviews is a time-consuming and expensive effort for consulting firms. When interviews are conducted for fewer than all the short listed firms, documentation must be retained to explain why a short listed firm was not interviewed.

6. Notify Consultants of Short List - **All consultants who submitted a proposal in response to the advertisement must be notified of the results of the review.** The notification is to identify only those consultants which will be invited to attend an interview, if the Sponsor decides to conduct interviews. A sample letter is included in Appendix 6-3.
7. Interview Top-Ranked Consultant(s) - This is not a mandatory step; the decision to hold interviews is solely at the discretion of the Sponsor.

Each consultant to be interviewed is given a copy of the draft contract proposal defining the detailed project requirements. This should be sent with the initial notification of the interview. Interviews are to be structured and conducted in a formal manner. Each consultant should be allowed the opportunity to make a presentation of a specified length of

time. Following the presentation, the Consultant Selection Committee members should be given the opportunity to ask questions. Interview questions should be prepared in advance. Two types of questions may be asked:

- Questions to be asked of all competing consultants.
- Questions relating to each specific consultant, based upon the reference checks and the strengths and weaknesses identified during the evaluation of the proposals.

The Sponsor may request competing consultants to bring additional information or examples of their work to interviews if the additional information facilitates the interview or evaluation process. Additional information should be kept to a minimum, i.e., only information required to select the most qualified consultant for the project.

8. Develop Final Ranking and Notify Consultants of Results - The Consultant Selection Committee discusses and documents the strengths and weaknesses of each consultant on the short list, based on the results of the interview (if held) and the evaluation of the proposal, and determine the final ranking. All consultants interviewed must be informed of the final ranking of consultants. It is important that all competing consultants receive the same information. A sample letter is included in Appendix 6-3.

When the top-ranked firm is identified, notification must be sent to the “non-selected” consultant firms; this does not preclude contacting a lower ranked firm if negotiations with the top-ranked firm fail.

Once the committee has a recommendation of a consultant firm, they submit it to their Approving Entity (such as a Legislative Body) if required. The Approving Entity should in most circumstances approve the committee’s recommendation; otherwise, it gives the impression the legislature is requesting “do-overs” until a desired result (a particular firm or a lower fee) is obtained, which is contrary to [23 CFR 172.5](#).¹⁵ If this occurs the RLPL should be contacted.

6.3.1.2 Two Committee Process

The two-committee process should be used only for very large and complex projects. Before using the two committee process, the Sponsor should evaluate the impact of the additional time and effort required to implement this process. The Two Committee Process may better accommodate the organizational and operational structure of certain Sponsors (for example, those Sponsors who have a separate Board or Committee which must approve or hire all consultants).

The steps are similar to the steps for the one committee process, and are outlined below:

- Appoint Consultant Selection Committees - Two committees are appointed.
- The first committee, called the Short List Committee, should be formed as described in step 1 of the one committee process.
- The second committee, called the Selection Committee, should also be appointed as described in step 1 of the one committee process. However, no one should serve on both committees.

¹⁵<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=a5d148c30435b6298192fc590295df4f&rqn=div8&view=text&node=23:1.0.1.2.3.0.1.3&idno=23>

- The Project Manager prepares a schedule for consultant selection as described in step 2 of the one committee process.
- The Project Manager develops the criteria for evaluation of proposals as described in step 3 of the one committee process.
- Advertisements are placed as described in step 4 of the one committee process.
- The Short List committee receives and evaluates the Expressions-of-Interest, and develops a short-list of qualified consultants as described in step 5 of the one committee process. This is the end of the Short List Committee's role.
- The Project Manager notifies all consultants of the short list as described in step 6 of the one committee process. (For large and complex projects, the Sponsor may request a more detailed proposal; if this is the case, then a detailed request must accompany the letter.)
- The Selection Committee interviews the short listed consultants and ranks them based on their proposals and the results of the interviews. Only those consultants identified by the Short List Committee may be evaluated by the Selection Committee. Interviews are conducted as described in step 7 of the one committee process.
- Once the Selection Committee has decided on a consultant firm, they submit the recommendation to the Approving Entity as described in step 8 of the one committee process.
- The Selection Committee finalizes the rankings and notifies all consultants of the results as described in step-8 of the one committee process.

6.3.1.3 Notification to Non-Winning Consultants

Sponsors must notify in writing any consultant who responds to a solicitation for services and is not selected to be the top-ranked consultant for that project. At the time a short list is developed for additional evaluation, any consultant not selected for the short list must be notified in writing of its non-selection. When the short list evaluation process is completed any non-selected short listed consultant must receive notification in writing that another consultant was selected for the project. (Communication in writing includes electronic communication.) A sample non-selection letter is included in Appendix 6-3, Sample Letters to Consultants.

6.3.2 Local Design Services Agreement

In each NYSDOT Region (excluding NYC and Long Island), the NYS County Highway Superintendents' Association ([NYSCHSA](http://www.countyhwys.org/))¹⁶ has identified and selected a number of A/E consultants to provide services exclusively for locally administered federal aid transportation projects. Under this process, the Local Design Services Agreements (LDSA) were created. LDSAs provide Sponsors the flexibility in obtaining a consultant in the most effective manner. The Counties select up to 15 A/E consultants per LDSA to provide A/E services. These consultants are available to any Sponsor within the specific NYSDOT Region. Selection of consultants may be made from the current LDSA list for Counties in that specific Region for a three-year period typically as designated in the Request for Proposals (RFP).

In each Region, one County Highway Superintendent has been identified to coordinate the LDSA County list. Firms are listed based on responses to a RFP issued by the Coordinating Superintendent. This process complies with both federal and State requirements. Selection of consultants may be made from the current LDSA for a two to three-year period as designated in the RFP. The Coordinating Superintendent is responsible for distributing all selected Consultant's Expressions of Interest (EOI) to all Sponsors in their Region seeking to make a selection from the LDSA. The Coordinating Superintendent shall provide the RLPL with the

¹⁶<http://www.countyhwys.org/>

County list of all the firms selected to provide services under the LDSA in the Region, and a copy of each LDSA firm's original EOI.

Whenever a County LDSA contains more than six firms, a project specific selection must be made either (1) from the Expressions of Interest (EOI) submitted for the original LDSA selection or (2) another Expression of Interest relevant to the specific needs of the new project which must be submitted by each LDSA firm. A project specific selection may be made from the Expressions of Interest submitted for the original LDSA selection process only if enough pertinent information is included in the original EOI to make an informed selection. Project specific selections must be based upon LDSA firms' qualifications specific to the project being considered. If the information contained in the original EOI is insufficient to form the basis of a selection criterion similar to the one originally used in the LDSA selection, a second selection should be conducted with weighted values suited to the specifics of the project. For guidance on committee size and procedures for completing a selection process, see section 6.3.1, Industry Wide Consultant Selection Process and the associated Appendix. Submission of a second round of EOIs must be open to all firms on the LDSA, and does not need to consist of more than one or two pages providing information relevant to the specific project under consideration. A selection may be made from the firms submitting a second round EOI or a short list may be developed from those submissions and an additional round of evaluation may be conducted. The request should include: expertise with the specifics of the project, workload, and experience of the personnel to be assigned to the project. Fees paid to a LDSA consultant when using this or another process must be negotiated only after the consultant is selected and must not be a factor in the selection process. Costs should not be required prior to the selection of a consultant. If the selected firm does not have an appropriate overhead history with NYSDOT, it may be necessary for a pre-negotiation audit to be conducted; if so, only one audit will be needed and can be used in future designations if the consultant is designated for more than one project.

The Sponsor is responsible for notifying the Coordinating Superintendent and the RLPL of its selection for each project pursuant to this Section. All firms considered in the selection process for a project are required to be notified in writing of the short list winning firm selected to provide services under the terms of the LDSA; see Section 6.3.1.3, Notification to Non-Winning Consultants.

Sponsors may contact the coordinating County Highway Superintendent in their Region or the RLPL to obtain information regarding LDSA consultants and to coordinate designation of locally administered federal aid transportation projects to a LDSA consultant. The RLPL should be consulted for direction and assistance as required to complete the LDSA process appropriately.

6.3.3 Individual Sponsor Developed LDSA

Sponsors anticipating the initiation of numerous engineering projects within the span of several years may deem it appropriate to develop an LDSA specifically for their own geographic area. No more than six (6) consultants may be selected for any individual Sponsor's LDSA. The appropriate advertisement and selection procedures as required for a single project outlined in Section 6.3, *Consultant Selection Methods*, must be adhered to when establishing a LDSA. Once a Sponsor has established an LDSA, project specific selections may be made by completing a written justification explaining on what technical grounds the selected LDSA consultant was deemed the most appropriate to provide engineering services for a particular project. The RLPL should be consulted for direction and assistance in establishing an LDSA for a particular Sponsor and informed when an LDSA is established and a consultant is selected for a project. As is the case with county LDSAs, sponsor developed LDSAs need to be refreshed after a three-year period, which should be specified in the RFP.

6.3.4 Alternate Process Developed by Sponsor

Federal law [23 CFR 172](#)¹⁷ allows for the development and use of alternative selection processes for the selection of A/E firms to perform work for which federal reimbursement will be sought by the Sponsor. Any alternative process must comply with [23 CFR 172](#) and must be approved, in writing, by the FHWA, or NYSDOT on their behalf, prior to the commencement of any selection activities (including advertisement). All requirements of this chapter apply unless alternative procedures have been approved.

6.3.5 Selection Process for Non-Architectural/Engineering Services

Consultants other than A/E consultants are selected using cost as one of the selection criteria. This chapter does not detail specific requirements for selecting these consultants. The procedures outlined in this section could be modified for selecting non-A/E consultants by adding a cost bid to the proposal. A detailed proposal and contract would be required.

6.3.6 Procurement Using Small Purchase Procedures

A/E consultant services which cost less than \$50,000 for work to be performed in the highway right-of-way may be procured using small purchase procedures. The cost threshold listed above is a cumulative limit for services provided by an individual consultant or consultant firm.

The method of procurement must be one established by the Sponsor for providing small purchases which is sound and appropriate for procurement of consulting services. The Sponsor can use a local process or follow the State process which state agencies use to procure similar services. The method must be open and competitive, advertised appropriately, ensure price or rate quotes are obtained from an adequate number of qualified sources, and provide opportunities for DBE consultants when appropriate.

Products and services (other than printing costs) which total less than \$15,000 are exempt from advertisement in the NYS Contract Reporter. All purchases of printing in excess of \$5,000 must be advertised. Sponsors may engage A/E consultants to perform A/E services without advertising or competitive selection process, if the total cost of those services does not exceed \$15,000. This procurement procedure may be used by a Sponsor during preliminary engineering/environmental, right-of-way, design and construction phases of work to hire a consultant needed to complete that particular phase of work where total cost can not be reasonably expected to exceed \$15,000. Such services must be under the direction and control of the Sponsor's Project Manager in charge of the phase of work being conducted and must be for logical segments of the work. Any consultant or its affiliate retained pursuant to this procedure to assist in the development of a scope of service or independent estimate for a project is not eligible for selection as a prime or subconsultant in a subsequent solicitation for that project. This requirement is based on the State Finance Law, complies with federal requirements and can be used for work for which federal reimbursement is sought by the Sponsor.

The following written documentation must be approved by the Sponsor and retained in the project files:

¹⁷ <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=20e4d7599bf1879f9f0b2caeb3cca57c&ty=HTML&h=L&r=PART&n=23y1.0.1.2.3>

- Explanation of the services needed and why they cannot be provided by the Sponsor.
- Name and qualifications of the consultant providing the services.
- Explanation of the selection process and criteria.
- Documentation of the fees showing which fees are within the prevailing range and are reasonable by comparative standards.
- Copy of the agreement between the Sponsor and the consultant.

6.3.7 Non-Competitive Negotiations (Sole Source)

A non-competitive, negotiated contract may be developed when special conditions arise. FHWA must approve non-competitive procurement of a consultant prior to acquisition. Conditions under which non-competitive negotiated contracts may be acceptable include:

- Only one organization is qualified to perform the work.
- An emergency exists of such magnitude that delay cannot be permitted.
- Competition is determined to be inadequate after solicitation of a number of sources.

The Sponsor must:

- Follow its defined process for non-competitive negotiation.
- Discuss the need for a sole source selection with the RLPL.
- Develop an adequate scope of work, evaluation factors and cost estimate.
- Conduct negotiations to ensure a fair and reasonable cost.
- Maintain appropriate documentation and records.

The Sponsor must carefully document details of the special conditions and provide adequate written justification to NYSDOT. The RLPL will coordinate submission to FHWA for their authorization. Non-competitive services should not be acquired without prior approval of FHWA.

6.3.8 Selection Method for Locally-Funded Services

Regardless of the type of consultant sought, if the Sponsor funds the design, right-of-way acquisition or construction inspection work entirely without federal reimbursement and without using the value of the work as a credit toward the non-federal share, then the consultant may be selected and hired following the Sponsor's normal procurement procedures. However, if federal funds are to be used to fund a later phase of the project, the consultant(s) chosen in this manner must comply with all federal aid project development requirements.

6.4 PRE-NEGOTIATION AUDIT

Pre-negotiation audits of all selected Consultants are required for all federally aided consultant contracts per [23 CFR 172.7](#).¹⁸ The objective of the pre-negotiation audit is to determine if:

- The consultant's accounting system and internal controls are adequate to support cost reimbursement type agreements under the [Federal Acquisition Regulations \(FAR\)](#).¹⁹
- Proper justification exists for the proposed rates to be charged (including overhead/indirect

¹⁸ <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=81e444a8c067adf3b384f8379edf6414&rqn=div8&view=text&node=23:1.0.1.2.3.0.1.4&idno=23>

¹⁹ <https://www.acquisition.gov/far/>

- cost rates).
- The consultant is aware of FHWA's cost eligibility and documentation requirements.

Pre-negotiation audits must be performed by a qualified professional government auditor or an independent Certified Public Accountant (CPA). Obtaining the required pre-negotiation audit for both the prime (lead) consultant and any subconsultants included in the proposal is the responsibility of the Sponsor. The Sponsor may acquire professional auditing assistance not to exceed \$50,000 without solicitation. If the services are provided by a DBE firm the threshold increases to \$100,000 without solicitation.

Each consultant and any subconsultants exceeding the \$300,000 threshold are subject to the pre-negotiation audit requirements outlined in this section. Pre-negotiation audits may be waived where sufficient audited consultant data is available to permit reasonable comparisons with the cost proposal and the proposed agreement is not expected to exceed \$300,000. However, a pre-negotiation audit is required for agreements of less than \$300,000 where:

- There is insufficient knowledge of the consultant's accounting system.
- There is previous unfavorable experience regarding the reliability of the consultant's accounting system.
- The proposed agreement involves procurement of new equipment or supplies for which cost experience is lacking.

The latest pre-negotiation audits performed by NYSDOT within the last two fiscal years may be used to satisfy this requirement. For existing pre-negotiation audit reports, NYSDOT will only confirm an audit report was issued to a specific consultant on a specific date. The consultant will then provide the Sponsor with a copy of NYSDOT's report. If a current pre-negotiation audit performed by NYSDOT is not available, the Sponsor must arrange for the pre-negotiation audit using its own audit staff who meet the minimum qualifications and experience to perform such work, or by contracting with a qualified CPA firm.

The RLPL will maintain a reference list of CPA firms, known to have qualifications in auditing government contracts. These or other qualified CPA firms may be engaged directly by the Sponsor in accordance with its procurement practices. When the performance of a pre-negotiation audit is necessary, the cost is eligible for federal aid reimbursement per [23 CFR 140.807](#).²⁰ Pre-negotiation or pre-award audits performed by other State or federal agencies may be used to fulfill these requirements. However, such reports should be submitted to the RLPL who will coordinate their review with NYSDOT's Contract Audit Bureau to determine if they are acceptable. The Contract Audit Bureau is available to provide technical guidance on all audit matters. The RLPL should be contacted to arrange such assistance.

If it is determined a pre-negotiation or pre-award audit is required for an A/E consultant, Sponsors may use their own auditing resources to perform the audit or they may acquire auditing services through existing small purchase procedures.

6.4.1 Procedures for Pre-Negotiation Audit

- Sponsor should ask their project consultants (prime and subconsultants) if they have a current (within the last two fiscal years) NYSDOT pre-negotiation audit report or

²⁰<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=c102438cb3c920339fc6b7bc6f30ea40&rgn=div8&view=text&node=23:1.0.1.2.2.5.1.4&idno=23>

overhead audit report available. If available, copies of the pre-negotiation report should be obtained from the consultant(s). Sponsors should be sure they receive a pre-negotiation or overhead audit report (see Figure 6-2), and not a [NYSDOT Form CONR 385](#) acknowledgment letter, pre-negotiation letter, or an overhead rate letter without the related audit reports. None of these are acceptable for the purpose of meeting the required pre-negotiation audit requirements.

2. If the designated firm is a frequent participant in NYSDOT agreements, it is likely NYSDOT has conducted timely pre-negotiation or overhead audits of the firm.
3. The Sponsor should review NYSDOT's audit reports for each consultant and obtain a written statement from each firm that no changes have occurred in the consultant's accounting system, and the consultant has had no unfavorable audit experience concerning cost reimbursement audits or no unfavorable audits of the reliability of the firm's accounting system to support cost reimbursement type agreements for project file documentation.
4. If a pre-negotiation audit is required and a recent NYSDOT pre-negotiation or overhead audit is available to establish the adequacy of the consultant's accounting system and the reasonableness of the overhead rates, the Sponsor may use such information in analyzing the cost proposal in lieu of the pre-negotiation audit.
5. If a pre-negotiation audit is required and NYSDOT pre-negotiation or overhead audit reports are not available, the Sponsor is responsible for performing or arranging for the pre-negotiation audit. To conduct the pre-negotiation audit, the Sponsor may use either professional staff auditors who meet the educational and experience requirements as professional auditors [e.g., 24 credit hours of accounting courses, a bachelor's degree and experience conducting financial or financial related audits in accordance with current government auditing standards] or a contracted CPA firm with the requisite experience.
6. Per [23 CFR 172.7](#), the audit must be conducted in accordance with generally accepted auditing standards. The cost principles in [48 CFR 31](#)²¹ (FAR) are the governing criteria for determining eligible costs. Audit guidance in the Professional Standards of the American Institute of Certified Public Accountants (AICPA), Section 400 (see paragraphs .70-.74) should be followed.
7. NYSDOT, through the RLPL, can provide assistance in identifying CPA firms with the requisite experience.
8. The cost of pre-negotiation audits performed in accordance with [23 CFR 172](#) is eligible for federal aid reimbursement. Funding should be addressed at the time of negotiation of the federal aid project agreement.
9. If Sponsors or their auditors require technical assistance with audit programs and reporting to meet the pre-negotiation audit requirements, they should request assistance from the Contract Audit Bureau through the RLPL.
10. Information acquired from consultants during the pre-negotiation audit process is

²¹<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=dbc1373eeb33449b66800d9ce1871bef&rgn=div5&view=text&node=48:1.0.1.5.30&idno=48>

proprietary and should be excluded from [Freedom of Information Law \(FOIL\)](#)²² requests. The confidentiality of proprietary information should be addressed in the auditor's reports and in the terms of their agreement. The distribution of any audit reports should limit the use of those reports to the Sponsor, NYSDOT, the Federal Highway Administration, other State highway agencies, the Office of the State Comptroller and other Sponsors contracting with the same consultant on federal aid projects. Audit reports may be distributed to other highway agencies or Sponsors only with the written permission of the consultant.

The RLPL should be advised of cases where the estimated value of the consultant's work effort is less than \$300,000 but the pre-negotiation audit cannot be waived as the consultant firm does not have a pre-negotiation audit history with NYSDOT. Depending on the estimated amount and the type of payment provision proposed in the consultant agreement, the NYSDOT may be able to suggest appropriate procedures to meet pre-negotiation requirements.

6.5 CONTRACT NEGOTIATIONS

Once selection of a consultant is made, negotiation begins with the top-ranked firm which may be found in the following sections.

6.5.1 Conduct Negotiations Meeting

The Project Manager meets with the first ranked consultant's project manager to review the project Scope of Services (SOS) and to ensure the consultant has a complete understanding of the work which is required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered completely for the consultant.

6.5.2 Revise Project Scope of Services (SOS) or Independent Estimate

Based on the discussion at the SOS meeting, it may become necessary to revise the SOS. The Sponsor's Project Manager is responsible for making any revisions to the SOS and forwarding the revised SOS to the first-ranked consultant. If revisions are made to the SOS, by anyone other than the Sponsor's Project Manager, the Project Manager should review and revise the SOS and, if necessary, the independent cost estimate (see Section 6.2.4, Develop the Consultant Scope of Services).

6.5.3 Request Cost Proposal

The first-ranked consultant is asked to provide staffing tables and a cost proposal to perform work described in the revised SOS and clarified at the Scope of Services Meeting. The revised SOS becomes part of the draft contract. The project work is to be performed according to conditions described in the draft contract using the payment method described therein. If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract.

6.5.4 Negotiate Costs with Selected Consultant

After the selected consultant submits a cost proposal, the Sponsor will review it and a contract is negotiated. The goal of negotiation is to agree on a final contract which defines the services or products to be completed at a fair and reasonable cost. The independent cost estimate

²²<http://www.dos.ny.gov/coog/foil2.html>

developed in advance by the Sponsor is an important basis for negotiations. A pre-negotiation audit of the consultant's operations may be required (see Section 6.3, Consultant Selection Methods). If so, detailed cost negotiations must not begin until after the audit report is received. Discussions on other aspects of the contract may occur concurrently with the preparation of the audit.

The items typically negotiated include:

- Work Plan.
- Schedule.
- Products to be delivered.
- Classification and experience level of personnel to be assigned.
- Cost items, payments and fee.

The contract is only awarded after the consultant has either satisfied the intent for DBE participation or made a good-faith effort to do so (see Chapter 13).

6.5.4.1 Failure to Reach Agreement

If after a good faith effort the Sponsor and the selected consultant fail to reach an agreement, negotiations with that consultant may be formally terminated and new negotiations with the second-ranked consultant initiated. Formal termination of negotiations requires the Sponsor to notify the consultant's principal in writing of the Sponsor's final offer for the advertised services and allow the consultant a reasonable time period (i.e., seven to ten working days) to respond to that offer. If the consultant fails to respond or fails to meet the Sponsor's cost or performance requirements in a reasonable time period, the Sponsor may terminate in writing negotiations with the first-ranked consultant and begin negotiations with the second-ranked firm in the selection process. If this new negotiation fails, the process is repeated with the next lower-ranked consultant until a contract is negotiated successfully. Negotiations cannot be resumed with any firm once negotiations have been formally terminated. Comprehensive records must be retained to verify all aspects of the negotiation and termination process.

6.5.5 Termination of a Consultant

A consultant contract may be terminated if circumstances develop where the Sponsor no longer wants to progress the project or if the consultant fails to perform adequately during the term of the contract. During negotiations, prior to contract execution, a consultant may fail to agree on cost or scope. If pre-contract negotiations fail or consultant performance after contract execution is poor, the Sponsor must advise the principal of the firm in writing of the consultant's failure(s) as soon as the Sponsor determines the consultant is not performing adequately or fails to reach agreement. The consultant must be provided with a reasonable opportunity to address the Sponsor's issues. If the consultant does not adequately meet the Sponsor's requirements in a reasonable period of time, the Sponsor may terminate in writing the consultant's services. If it has been less than twelve months since the initial consultant selection or if the Local Design Service Agreement (LDSA) from which the initial selection was made is active, the Sponsor may begin negotiations with the second-ranked firm in the selection process. If it has been more than twelve months since the initial consultant selection or if the LDSA from which the initial selection was made is no longer active, the Sponsor should initiate a new selection process to select another consultant to complete the balance of the project. A Sponsor must not begin negotiating with a second consultant prior to completing termination of the selected consultant. Before any Sponsor terminates a consultant it should inform the RLPL of the situation and its intentions. Comprehensive records should be retained by the Sponsor regarding all aspects of the negotiation resulting in the termination of a consultant.

6.5.6 Cost Verification and Documentation

Costs proposed by consultants for federal aid transportation projects must be based on the consultant's actual costs related to their labor rates, out-of-pocket expenses, overhead, and profit (fee). The use of industry wide standard multipliers or a percentage of construction cost as a method of basing payment to a consultant is not acceptable for federal aid reimbursement.

When the Cost Plus Fixed Fee payment method is selected, the agreement between the contracting agency and the consultant must contain detailed cost information. Lump Sum contracts only contain the aggregate value of the proposed work. Detailed cost information (including labor rates, an overhead rate and fee) substantiating the lump sum value must be included in the negotiation package retained in the project file by the Sponsor. The ultimate value of a Lump Sum contract is determined by the cost proposal less direct non-salary costs.

Similarly, the retained records for Specific Rates of Compensation contracts must indicate the projection factor, overhead, and profit rate (fee) applied to the firm's base salary rate which result in the fully loaded salary rates which appear in the consultant contract.

Salary rates for consultant personnel must be verified to assure reasonableness. Verification may be performed by:

- The consultant certifying, in writing, that the proposed salary rates conform to the most recent certified salary roster submitted by the firm to NYSDOT on a specific date.
- The consultant certifying, in writing, that proposed salary rates are the lowest salary rates it charges clients for similar services (applies only to services provided by the consultant valued at less than \$250,000), or
- The consultant submitting a certified salary roster to NYSDOT (through the RLPL) and to the Sponsor, if one is currently not on file.

Reasonable fees (profit) vary from 15% to 10% based upon the full value of work provided by the consultant on a project. The value of a consultant's work is cumulative across the project; that is, if a project consists of several separate phases (e.g., design, construction support, and construction inspection), the value of the previous phase(s) of work must be taken into account when evaluating the proposed fee for each successive phase.

To simplify the fee evaluation process, the Project Manager should apply the following percentages to obtain the maximum allowable fixed fee:

Value of Work	Fee (profit)
Less than \$500,000	11% Multiplier
Greater than \$500,000	10% Multiplier

These percentages are applied to the contract sum of labor (straight and overtime), 50% of the direct non-salary costs (less subcontractor and subconsultant costs), and overhead. Fees are evaluated separately for each consultant. If the consultant proposes a lesser fee amount than that yielded by this fee calculation, the Sponsor should accept the lesser amount.

6.6 CONTRACT EXECUTION

6.6.1 Develop Final Contract

The Project Manager has the responsibility to ensure the final negotiated contract is complete and verify all required back-up documents have been provided. Copies of the contract are to be sent to the consultant for signature.

6.6.1.1 Major Projects

If a project's estimated cost is greater than \$100 million dollars, a written financial plan for the project must be submitted to the RLPL for submission to FHWA for approval per [23 USC 106](#).²³ If the project's estimated cost is greater than \$500 million dollars, then the contract, any contract revision and any contract settlement for design services must be submitted to FHWA for approval. The Sponsor should contact the RLPL for advice if the project's estimated cost is greater than \$100 million.

6.6.2 Retainage Provisions

NYSDOT's policy is not to hold retainage on construction or consultant contracts. (See [Section 103-6, Article 7, of the NYSDOT Standard Specifications](#).²⁴) [Title 49 CFR 26.29](#)²⁵ mandates that States adopt *Prompt Payment* requirements as part of their DBE program, and describes how this affects retainage. New York State's Prompt Payment requirement has been incorporated into New York State Finance Law 139-F and [Article 5A Section 106-b of the General Municipal Law](#).²⁶ Both the Sponsor and the Prime Consultant (if employing subconsultants) are subject to this legislation.

Sponsors advancing federally funded transportation projects must comply with NYSDOT's Disadvantaged Business Enterprise (DBE) Program Plan; which is available at <https://www.dot.ny.gov/main/business-center/civil-rights>. This Plan does not permit retainage to be held on federally-funded construction or consultant contracts. Payments MUST be made promptly within seven (7) calendar days of receipt of payment from the Sponsor. See Chapters 12 and 13 for additional information.

6.6.3 Review and Approval of Sponsor Actions and Contracts

Proposed contracts for consultant services, including those for subcontracted work exceeding \$25,000, must be reviewed by the Sponsor to verify that:

- Compensation is fair and reasonable.
- Appropriate conditions are included and objectionable features are deleted.
- Work activities and schedules are consistent with the nature and scope of the project.
- A pre-negotiation audit is conducted when appropriate (see section 6.4, Pre-Negotiation Audit).

The *Sample Project Manager's Checklist* (Appendix 6-1) and *Sample Consultant Contract* (Appendix 6-5) should be used to ensure required documentation is provided.

²³ <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title23/pdf/USCODE-2011-title23-chap1-sec106.pdf>

²⁴ <https://www.dot.ny.gov/main/business-center/engineering/specifications/english-spec-repository/espec1-10-13english.pdf>

²⁵ <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=d21c8e6f33a02787d9b788103bac7b9d&rgn=div8&view=text&node=49:1.0.1.1.20.2.18.5&idno=49>

²⁶ [http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\\$\\$GMU106-B\\$\\$@TXGMU106-B+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=24480916+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$GMU106-B$$@TXGMU106-B+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=24480916+&TARGET=VIEW)

A cost proposal must include costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees and backup calculations.

Before approving consulting services contract, the Project Manager must be satisfied the consultant's organization is:

- Qualified to perform the services required.
- In a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed.
- Fully apprised of all applicable federal and State laws, including implementing regulations, design standards, specifications, previous commitments which must be incorporated in the design of the project, and administrative controls including those of the FHWA.

Any questions raised during the pre-negotiation audit must be resolved before the Sponsor approves the contract.

A statement must be included in the contract stating the consultant is required to modify its work when necessary to meet the level of acceptability stipulated by the contract. The contract must provide for reviews by the Sponsor at appropriate stages during performance of the work to determine if any changes to the contract or other actions are warranted. The contract must include provisions requiring the prime consultant and its subconsultants to maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials are to be available for inspection by federal, State and Sponsor authorized representatives, and copies thereof must be furnished upon request. Following final settlement of the contract accounts with the FHWA, such records and documents must be retained for a three-year period after processing of the final voucher by the FHWA.

Consultant contracts covered by this manual must not be approved by the Sponsor until the certifications (sample in Appendix 6-7) are executed and incorporated into the document. The certifications must be executed by a principal or authorized corporate official of the consultant and by a principal administrative officer of the Sponsor responsible for the selection of the consultant. It is essential these certifications be preserved in the project files.

Agreements between Sponsors and consultants are not subject to NYSDOT approval to qualify for federal reimbursement, although they must include all federal requirements. Federal aid is contingent on meeting federal requirements and may be withdrawn if the procedures are not followed and documented. The Sponsor's files must be maintained in a manner which facilitates future FHWA and/or NYSDOT process reviews.

The Sponsor is responsible for the settlement of all contractual or administrative issues. NYSDOT will not participate in resolving disputes between the Sponsor and its (prospective or procured) consultants.

6.6.4 Execute Contract and Issue Notice to Proceed to Consultant

The Project Manager notifies the consultant when the contract is fully executed and issues a notice to proceed. Federal funds may not be used to reimburse the Sponsor for procurement costs or consultant costs incurred before NYSDOT Authorization to Proceed is issued. Costs incurred prior to federal authorization are not reimbursable. The Sponsor may proceed on an authorized phase(s) prior to the SLA being fully executed at its own risk. Reimbursement of costs to the Sponsor, however, cannot be made until NYSDOT has signed and the AG and OSC have approved the SLA for the project (see Chapter 3, section 3.8).

6.7 CONTRACT ADMINISTRATION

6.7.1 Administer the Contract

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the Sponsor manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards and within budget.

Contract administration activities ensure contractual obligations are completed satisfactorily. Generally, these activities include:

- Monitoring project progress and compliance with contract requirements.
- Receiving, reviewing and assessing reports, plans and other required products.
- Reviewing invoices and approving payments.
- Record-keeping and reporting.
- Controlling costs and schedule.
- Identifying changes to the scope of work and preparing of supplemental agreements.
- Completing performance evaluations.

For cost and progress management purposes, consultants must submit monthly progress reports to the Sponsor. Each progress report must include, at a minimum, a signed Progress Report Summary Sheet (see Appendix 6-11). The Sponsor, at its discretion, can request their consultant(s) to provide additional detailed information as part of the progress report. The Progress Report Summary Sheet must be approved and signed by the Project Manager. Signed Progress Report Summary Sheets (but not any additional detailed information) must be included with reimbursement requests submitted to NYSDOT (see Chapter 5).

6.7.2 Conflict of Interest

Government should always maintain high ethical standards. Conflicts of Interests and Appearances of Conflicts of Interest should always be avoided. [Title 23 CFR 1.33](#) states that “no official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project can have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. Furthermore, no engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project can have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.”

The *Revolving Door* provisions of [Article 4, Section 73 of the Public Officers Law](#)²⁷ apply to employees of local municipal Sponsors as well as New York State employees in regard to public employees accepting positions with firms doing business with their former employer.

²⁷ <http://www.nycourts.gov/scar/Public%20Officers%20Law%2074.pdf>

6.7.3 Supplemental Agreements to the Consultant Contract

Supplemental agreements are required for modification in the terms of the original consultant contract to provide changes such as extra time, added work, or modification of payment (see Appendix 6-5). Supplemental agreements must clearly outline the changes, and contain a mutually agreed upon method of compensation as identified in this chapter.

The scope of work to be performed in supplemental agreements must be approved by the Sponsor and the RLPL prior to the performance of work. When attention requires work to begin without delay, it may not be practicable to finalize the cost negotiations prior to commencing the work. In such a case the Project Manager must carefully identify the work performed to ensure there will not be an overrun. Work performed prior to the execution of the contract is considered “at risk” work. If the contract is never executed, the consultant won’t be paid.

If a task will not be performed or the project is suspended, the PM should initiate a supplemental agreement to take unspent money out of the contract as soon as practical if the consultant contract is to remain open.

6.7.4 Close-Out Project

Sponsors are encouraged to close-out consultant contracts quickly. If the contract was for preparation of contract documents, such close-outs are to be delayed until after physical construction of the project is completed. Waiting for project completion ensures the consultant’s availability if problems arise or the need for changes occur.

Sponsors are required to have written procedures for the acceptance and close out of consultant contracts. The procedures must include the provision for a close out audit. Such audit activity should be based on the assessed risk to the participating government and Sponsors. Risk assessment and audits should be performed by an independent Certified Public Accountant (CPA) or professional government audit staff with requisite accounting and auditing education and experience to conduct audits in accordance with Government Auditing Standards.

All risk assessments, audit work papers and reports should be retained by the Sponsor in conformance with State law for a period not less than three years from project completion, acceptance and final payment. Audit reports and work papers must be made available to the USDOT, its operating agencies such as FHWA, NYSDOT, the United States Government Accountability Office (GAO) and the Office of the State Comptroller (OSC).

Sponsors or contracted audit firms performing audits should notify NYSDOT (through the RLPL) of planned and completed audit activities. NYSDOT will provide Sponsors with technical audit assistance through sharing of audit programs, and by providing instructions, interpretation and guidance on the Federal Acquisition Regulation (FAR).

Project related audits performed in accordance with Government Auditing Standards are eligible for federal reimbursement per [23 CFR 140](#)²⁸. Audit notifications and any project related audit questions should be directed to the RLPL. For Contract Audits see Chapter 16 and for project close-out see Chapter 17.

²⁸<http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=3c123268981d988d4af90ef1b10086eb&ty=HTML&h=L&r=PART&n=23y1.0.1.2.2>

6.7.5 Performance Evaluation

Title [23 CFR 172](#) requires the evaluation of consultants chosen through federally-mandated procedures by the hiring agency. To satisfy this requirement, the Project Manager (PM) should prepare a written evaluation of the consultant's performance after the consultant's final payment and progress report have been submitted and after the PM has conducted a detailed evaluation with the consultant's project manager. The report should include, but not be limited to, an evaluation of such items as timely completion of work, conformance with contract cost and the quality of work. A copy of the report must be sent to the consultant for review and/or comments. Any written comments submitted to the Sponsor by the consultant must be attached to the final evaluation.

6.7.6 Project Records

6.7.6.1 Information to be Transmitted to NYSDOT

Upon completion of the consultant procurement process, the Sponsor must submit a letter to NYSDOT (through the RLPL) identifying the project(s) and the selected consultant(s), stating the cost of the consultant contract and the work to be performed by the consultant, and transmitting the Sponsor's certification indicating compliance with this chapter (see Appendix 6-7, Sponsor Certification).

6.7.6.2 Information to be Retained by the Sponsor

For audit purposes, project records and documentation must be kept for a minimum of 6 years after the date of acceptance of the resulting construction contract or 6 years after the final payment is received, whichever is later.

Among the records to be retained by the Sponsor are:

- Solicitation/advertisement documents.
- Identification of selection committee members.
- Evaluation and ranking documents.
- Independent cost estimate.
- Negotiations.
- Pre-negotiation audit, when applicable.
- Executed consultant contracts and supplemental agreements.
- Documentation of DBE efforts and participation.
- Construction oversight/progress meetings.
- Progress and final payments.
- Performance evaluation.
- Project Manager's Checklist.

These records must be made available upon request to NYSDOT, FHWA, USDOT or any other governmental organization having oversight responsibility for federal transportation funds.

6.8 CONSULTANTS RETAINED BY SPONSORS

6.8.1 Consultants Retained by Sponsors

A Sponsor may retain a qualified consultant as County, Town, City or Village Engineer. The

retained consultant may be an individual or firm providing professional services. The retained consultant may provide technical support and advice in the management of a consultant hired to perform project work or, under certain circumstances, perform project-related tasks for which federal reimbursement will be sought by the Sponsor.

Absent a municipal engineer, the Sponsor may utilize a retained consultant to provide technical guidance regarding the project, to assist in the procurement of a consultant selected following guidelines in this Chapter and to manage a consultant hired to perform the project work. Costs incurred by the Sponsor for the retained consultant's services (i.e., staff effort) may be federally reimbursable.

The Sponsor may obtain federal reimbursement of costs incurred by the retained consultant in the performance of project-related work only if ALL the following requirements have been met.

- The retained consultant must have been selected in compliance with the selection procedures specified in this chapter.
- There must be a contract between the Sponsor and the consultant specifying in detail the services to be performed.
- The retained consultant must be designated as County, Town, City or Village Engineer.
- The selection of the retained consultant must have been through an open and competitive process conducted within the last three years.

If engineering services for a project are within the scope of the services described in the retained consultant's contract, they may be performed by the person or firm designated as County, Town, City and Village Engineer. If the services are not within the scope, a new consultant contract must be developed. Retained consultants involved in the preparation of the advertisement or other selection activities may not compete for the resulting work.

For example: *Mohawk County* employs *ABC Consulting* under contract as its County Engineer, after having selected ABC Consulting according to the selection procedures in this chapter within the last three years. Mohawk County now needs to develop Plans, Specifications and Estimates (PS&E) for a Federally aided transportation project.

- If it is within the scope of their contract, ABC Consulting may prepare the PS&E; otherwise Mohawk County will have to retain another consultant.
- ABC Consulting may prepare the Independent Estimate and SOS (Scope of Services) and participate in the selection process; however, if this is the case, ABC consulting *may not* compete in the selection process, as this represents a potential conflict of interest.
- Mohawk County may also hire an independent consultant ("XYZ Consulting") to prepare the independent estimate and SOS, and to participate in the selection process. In this case, ABC consulting would be eligible to compete in the selection process, but XYZ consulting would not. In the event that ABC Consulting chooses to compete, a written plan must be submitted to NYSDOT and FHWA detailing how any potential for conflict of interest will be eliminated.

6.9 DESIGN ERRORS

The Sponsor should include a clause in engineering contracts requiring the consultant to perform such additional work as may be necessary to correct errors in the work required under the contract without undue delays and without additional cost to the Sponsor. In general, however, a consultant should not be held responsible for additional costs in subsequent related construction resulting from errors or omissions which are not a result of gross negligence or

carelessness.

6.10 CONSTRUCTION ENGINEERING SERVICES

The Sponsor must ensure that work is performed in accordance with the approved contract documents. A consultant may be utilized for full-time or periodic technical inspection of construction. A formal consultant contract must be executed which follows all of the requirements in this chapter. The prime responsibility for general supervision of construction must remain with the Sponsor. As [23 CFR 635.105\(c\)\(4\)](#) states, “In those instances where a local public agency elects to use consultants for construction engineering services, the local public agency shall provide a full-time employee of the agency to be the “Project Manager” in responsible charge of the project.” The Project Manager will be in responsible charge of the project and have oversight of the entire project development process. This employee may perform this role in addition to his or her regular duties or may be in charge of multiple projects.

Generally, the consultant’s engineering responsibility is to act as a professional adviser to the Sponsor. The activities performed by the consultant are under the overall supervision of the Project Manager. These operations may include construction surveys, foundation investigations, measurement and computation of quantities, testing of construction materials, review of shop drawings, preparation of estimates and reports, and other inspection activities necessary to ensure the construction is being performed in accordance with the plans and specifications.²⁹ The consultant contract defines the relative authorities and responsibilities of the Project Manager and of the consultant’s inspection staff.

6.11 REFERENCES

Federal Laws and Regulations

23 USC 106
40 USC 11
23 CFR 1.33
23 CFR 140
23 CFR 172
23 CFR 630.106
23 CFR 635.105(b)
23 CFR 635.105(c)(4)
23 CFR 635.112
48 CFR #1 through #27
48 CFR 31
49 CFR 26

State Laws and Regulations

NYS State Finance Law, Section 136-a
NYS State Finance Law, Section 139
NYS General Municipal Law, Section 106-b
NYS Public Officers Law, Section 73
NYS Freedom of Information Law (PUBLIC OFFICERS LAW, ARTICLE 6, Sections 84-90)

General

²⁹ The **Consultant** must provide sufficient trained personnel to adequately and competently perform the scope of services defined in the consultant contract. Qualifications of consultant personnel are discussed in section 9.06 of Appendix 6-4, Sample Scope of Services (SOS) with Instructions.

American Institute of Certified Public Accountants (AICPA)

Table 6-1 Typical Time Frames for Consultant Procurement Activities

Typical Time Frames for Consultant Procurement Activities	
Develop Task List	1 to 2 days, depending on project complexity, if Base Task List is used (Appendix 6-4, Sample Scope of Services with Instructions)
Develop Independent Estimate	1 to 2 days, depending on project complexity
Advertisement Period	1 week lead time needed for <i>NYS Contract Reporter</i> 15 working days (minimum) for interested consultants to prepare Expression-of-Interest
Evaluate Expressions-of-Interest	Rule of Thumb: Each evaluator should be prepared to spend approximately 1 hour per Expression-of-Interest received
Interviews	Consultants should be given a minimum of 2-3 weeks, depending on project complexity, to prepare presentations.
Perform Pre-Negotiation Audit	2 days to 2 weeks, depending on review needed, and availability of auditor
Negotiations	Consultants should be given a minimum of 1-2 weeks, depending on project complexity, to prepare initial cost proposal. Negotiations should be completed within 1 - 2 months after initiation.

Table 6-2 Recommended Selection Criteria for A/E Consultants

Criteria	Max Pts Allowed	Rating
Understanding of the work to be done	25	
Experience with similar kinds of projects or work	20	
Quality of staff for work to be done	15	
Familiarity with Federal and State requirements	15	
Organization and financial responsibility	15	
Logistics and familiarity with the project area	10	
Total	100	

Understanding of the work to be performed - Firms should be rated on how well they understand the challenges associated with the project, the project objectives, key elements of the project, project approach, etc. Firms should not necessarily be rated on or expected to provide detailed project solutions at this point; solutions will be identified and determined as the project is developed, information is gathered, and coordination is performed.

Experience with similar kinds of projects or work - This is a qualitative (superior vs. marginal products) and quantitative (frequency and depth of exposure) assessment of the firms' experience with similar projects or project work.

Quality of staff for work to be done - Firms should be rated on the skills, training and experience of the people designated to perform work on the project(s). (This should include subconsultants who will be rated as part of the team.)

Familiarity with federal and State requirements - Firms should be rated on their knowledge and application of pertinent federal and State requirements.

Organization and financial responsibility - This criterion is intended to allow weight to be given to the firms' ability to perform their work in a cost-effective manner, to identify and implement cost-effective solutions to identified problems, and to manage and stay within designated budgets. The firms should also be rated on their organizational structure, including the use of subconsultants, and their ability to develop and meet project schedules. Per [23 CFR 172](#),³⁰ **cost cannot be a factor in the selection of A/E consultants.**

Logistics and familiarity with the project area - Firms should be rated not only on their physical proximity to the project, but also on their knowledge and understanding of the project area. Past experience with the Sponsor and responsiveness of the firm are also included.

³⁰<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=1bdaae1bf3456467ccd7368d39f1aaa0&rgn=div5&view=text&node=23:1.0.1.2.3&idno=23>