

Section 2.1 Qualifications Based Selection Process

Chapter 2.1 Qualifications Based Selection

List of Revisions

November 6, 2016:

- Issuance of Chapter.

August 25, 2017:

- Revised paragraph 2.1.12 to include “Technical Proposal Formatting Requirements” statement.
- Updated Appendices:
 - Renamed various appendices to correspond to appropriate paragraph numbering.
 - Revised Appendix 2.1.2 “Process Outline” to better reflect current process as described within the chapter and to provide hyperlinks.
 - Added Appendix 2.1.12.1 “Technical Proposal Formatting Requirements”
 - Revised Appendix 2.1.12 to revise statement concerning technical proposal formatting.

Mar. 1, 2019:

- Added/Revised paragraph 2.1.1 Definitions to include Contract Manager, Federal Acquisition Regulation, Indirect Cost, Indirect Cost Rate (ICR), and Pre-Award Technical Review
- Revised paragraph 2.1.17 “Request for Fee Proposal” to include:
 - Renamed previous paragraph 2.1.17 “Fee Proposal Submission” to be paragraph 2.1.17.6
 - Inserted paragraph 2.1.17.1, 2.1.17.2 and 2.1.17.3 to include the requirements of a Salary Cap Waiver Request.
 - Added paragraph 2.1.17.4 concerning “Salary Rate Calculation Requirements”.
 - Moved paragraph 2.1.18 “Pre-Award Technical Review” to be paragraph 2.1.17.5
 - Revised paragraph 2.1.17.6 “Fee Proposal Submission” to include additional guidance during fee negotiations and fee matrix development.
 - Renumbered paragraphs 2.1.19 to 2.1.24 due to elimination of paragraph 2.1.18
 - Added paragraph 2.1.18.1 “Simultaneous Technical Proposal and Cost Proposal Submissions”.
- Updated Appendices:
 - Revised several of the letters and memos to contain fillable “form fields” instead of the using sample project examples.
 - Revised Appendix 2.1.2 “Process Outline” to better reflect current process as described within the chapter.
 - Added Appendix 2.1.6.2a – “Continue to Part B” example memo
 - Eliminated Appendix 2.1.12.1 “Technical Proposal Formatting Requirements”

- Added Appendix 2.1.12.1a “Technical Proposal Formatting Requirements (Standalone)”
- Added Appendix 2.1.12.1b “Technical Proposal Formatting Requirements (On-Call)”
- Eliminated Appendix 2.1.17 “Selection and Fee Proposal Request”.
- Added Appendix 2.1.17a – “Fee Proposal Request Letter – Standalone”
- Added Appendix 2.1.17b – “Fee Proposal Request Letter – On-Call”
- Added Appendix 2.1.17.1 “Salary Benchmark (Cap) Back-up Information”
- Added Appendix 2.1.17.2 “Salary Cap Waiver Request Memo”
- Added Appendix 2.1.17.4a “Contract Salary Rate Calculation Form”
- Added Appendix 2.1.17.4b “SAMPLE - Contract Salary Rate Calculation Form”
- Added Appendix 2.1.17.5 “Technical Review Request Memo”
- Renumbered Appendices 2.1.19 - 2.1.24
- Eliminated Appendix 2.1.23 – “Notice to Proceed”
- Added Appendix 2.1.23a – “Notice to Proceed - Standalone”
- Added Appendix 2.1.23b – “Notice to Proceed – On-Call”

2.1 Qualifications Based Selection (QBS) Process (23 USC 172)

2.1.1 Definitions:

Additional work - Services beyond those in the original scope of work in each agreement.

Administrative Guidelines - Procedural guidelines established by the Department of Administrative Services governing the submission of material to the Governor and Council.

Agreement - A contract for professional/technical services between the Department and an individual or firm (Consultant).

Notice to Proceed - Written notification by the Department staff to the Consultant to begin work (as specified in the Agreement).

Consultant - An individual or firm providing professional/technical services to the Department.

Consultant Selection Committee – A committee consisting of seven (7) upper level staff members from the Division of Project Development who meet regularly to manage the QBS process for consultant contracts. See Section 2.1.3 for more details about the committee.

Consultant Selection Subcommittee - A subcommittee of the Consultant Selection Committee appointed by the Chairperson for the purpose of negotiating the final details and fee of a contract.

Contract Manager – The Department’s point of contact for receiving invoices from the consultant firm and for questions or issues related to invoicing by either the consultant or internal Department staff. The Contract Manager is predetermined prior to consultant solicitation and may be the Bureau Administrator, Project Manager, Section Chief, or another lead person.

Contract Types - There are generally three (3) types of contracts that the Department uses: Project Specific Contracts (23 CFR 172.9(a)(1)), Multi-Phase Contracts (23 CFR 172.9(a)(2)), and On-Call or Indefinite Delivery/Indefinite Quantity (IDIQ) Contracts (23 CFR 172.9(a)(3). See Section 2.1.6 for more details about these contract types.

Cost-Per-Unit-of-Work Payment - Payment at an agreed rate (which includes salary, overhead, direct expenses, and fixed fee) for each unit of work, limited to a maximum total amount.

Cost-Plus-Fixed-Fee Payment - Payment of an agreed dollar amount based on salary costs times an overhead factor (which includes indirect costs) plus direct expenses and fixed fee, limited to a maximum total amount.

Director - The Director of the Division initiating the request for Consultant services.

Eligible Consultant List – A list maintained and published by the Department, periodically updated, that lists active consultants and the type of consultant service they provide based upon information in the SF 330 the consultant submitted to the Department.

Fee and Man-hour Proposal - A proposal stating the Consultant's costs for providing the services required for the project, including the breakdown of the proposed services by work hours, job classifications, salary rate, overhead, anticipated direct expenses, and fixed fee, plus any subcontracts.

Federal Acquisition Regulation, Part 31 (FAR) – The primary regulation, codified in 48 CFR 31, governing the acquisition of supplies and services with Federal funds and sets the criteria for determining costs eligible for reimbursement on Federally-funded agreements.

FHWA - Federal Highway Administration; generally the New Hampshire Division office, in Concord.

Final Audit - An audit performed by the Department Internal Audit Office prior to the final acceptance of a contract for the purpose of confirming and approving costs charged and/or paid for services rendered.

Fixed Fee - A dollar amount negotiated to cover the Consultant's profit and business expenses not attributable to overhead.

G & C - The Governor and Council of the State of New Hampshire.

Indirect Cost – Any cost that is not directly identified with a single final cost objective, but is identified with two or more final cost objectives or with at least one intermediate cost objective. The term is also commonly referred to as “overhead.”

Indirect Cost Rate (ICR) – A factor/ratio computed by adding together all of a firm's costs that cannot be associated with a single cost objective (e.g., general and administrative costs and fringe benefit costs), divided by a base value (typically direct labor cost) to determine a rate. The rate is applied to direct labor, as incurred on projects, to allow a firm to recover the appropriate share of indirect costs allowable per the terms of the agreement. The term is commonly referred to as the “overhead rate.”

Lump-Sum Payment - Payment of an agreed total dollar amount (which includes wages, overhead, direct expenses, and a fixed fee).

Maximum Limiting Fee – The total amount negotiated in the contract agreement including all direct labor, overhead, fixed fee, direct expenses and all sub-consultant costs.

Negotiations - The process whereby the Department and the Consultant come to agreement on the details of the contract services to be provided and the estimated hours and value of those services.

Pre-award Technical Review – A review of the consultant's proposed labor and overhead costs performed by the Department's Internal Audit Office to establish cost factors used in the fee negotiation.

Profit - The compensation accruing to a Consultant for the assumption of a particular risk in doing business (does not include overhead, wages or direct costs).

Project Manager - The person who manages the Agreement while it is in force. (The Department and Consultant each assign their own Project Manager).

Request for Proposal (RFP) - The formal request for specific technical services for a project.

Scope of Work - A description of the work to be performed as required by the Department.

Short List - Those firms (usually three for a single contract) approved by the Assistant Commissioner to receive Requests For Proposals (RFP) for a particular project.

Shortlisted Consultant - One of several firms selected by the Consultant Selection Committee for further consideration to provide the required services on a particular project

Special Members - Non-voting Department staff or outside person that may be assigned to the Consultant Selection Committee to aid in selection of a consultant. These members are picked based upon their specific area of expertise concerning the particular project or consultant services contract under consideration. Multiple Special Members may be assigned per project or contract under consideration. These Special Members could be a project manager, design chief or other staff person. On projects that involve considerable public input or community concern a Special Member, such as a community representative or Town/City staff member, may be selected to serve on the Consultant Selection Committee. Special Member attendance at meetings and comments are specifically used to aid in the selection process and for the Committee to gain a better understanding of project or contract requirements.

Solicitation for Letters of Interest – The formal request to all consultants to express their interest in performing specific technical services for the Department.

Specific Rates of Pay - Payment at an agreed specific hourly rate (including wages, overhead, and profit) for each classification of employee (made up of employees that may be directly engaged in the work). This method of payment may only be used for inspection or other types of services where the consultant's personnel have no control over the hours worked.

SF 330 - Federal Standard Form (SF) 330, entitled "Architect-Engineer and Related Services Questionnaire". A form completed by the consultants listing details of their firm and services they typically provide.

Technical Proposal (TP) - A technical presentation by a Consultant on a specific project based on a preliminary scope of work, including technical data, proposed work procedures, and qualifications relative to that project.

2.1.2 Process Outline

The process outlined in this section concerns the consultant selection process for "Engineering and Design Related Services" only. From a Federal viewpoint this encompasses program management, construction management, feasibility studies, planning, preliminary engineering, design engineering, surveying, mapping or architectural related services with respect to infrastructure construction projects. (23 CFR 172.3) (NH RSA 21-I:22)

For other non-engineering and design related services, such as environmental consultants, hired fee appraisers, geotechnical exploration firms, etc., these consultant or contractor firms may be selected using a "Low Bid Selection Process". See Section 2.2 Statewide On Call Low Bid Selection Process for more details.

The Qualifications Based Selection (QBS) process outlined within is required to follow the Federal requirements found in 23 U.S.C. 112(b), Public Law 92-582, 40 U.S.C. 541, et seq., October 27, 1972, Title IX - Selection of Architects and Engineers, which is commonly known as the Brooks Act. The full wording of the Brooks Act can be found in Appendix 2.1.2a. Also the Selection of Engineers, Architects and Surveyors is covered in State law under RSA 21-I:22 (see Appendix 2.1.2b).

The QBS process encompasses projects and consultant services that are posted for interest as “Projects Soliciting for Interest” on the Department’s website, as needs arise. Consultant firms that are interested in, and qualified for, providing these services are encouraged to submit a Letter of Interest to the Department. The Consultant Selection Committee will nominate a long list of interested consultants and then recommend a short list for approval by the Assistant Commissioner. Upon approval of the short list, a firm will be notified that it has been short listed by receipt of a Request For Proposal (RFP) from the Department. This is a technical RFP request only. Upon receipt and rating of the technical proposals, the short listed firms will be notified of the results and the highest rated firm will be asked to submit a scope of services and a fee proposal for negotiations. Final contract approval is by Governor and Council action. The process flowchart can be found in Appendix 2.1.2. A more detailed process discussion is included in the following:

2.1.3 Consultant Selection Committee (Committee)

The Consultant Selection Committee is made up of one representative from each Bureau within the Project Development Division, except the Right-of-Way and Construction Bureaus. The members listed below are all voting members. A quorum will be considered when four (4) or more voting members are present at the meeting.

- Assistant Director of Project Development – Chair
- Chief Project Manager
- Bureau of Bridge Design Administrator
- Bureau of Environment Administrator
- Bureau of Highway Design Administrator
- Bureau of Materials and Research Administrator
- Bureau of Planning and Community Assistance Municipal Highways Engineer

If a voting member is absent, or is unable to participate in the selection process on a specific project due to a potential conflict of interest, then that member may assign a designee from the Department, usually from their Bureau, to act in their place. The designee will have the responsibility to review all pertinent materials and will vote as a member on that specific project.

2.1.3.1 Special Members

Many times when reviewing and rating RFQs and RPFs there is a need for expertise from outside the Committee. A Special member is a non-voting Department staff or outside person that is assigned to the Consultant Selection Committee to aid in selection of a consultant. These members are picked based upon their specific area of expertise concerning the particular project or consultant services contract under consideration. Multiple Special Members may be assigned per project or contract under consideration. These Special Members could be a project manager, design chief or other staff person. On projects that involve considerable public input or community concern a Special Member, such as a community representative or Town/City staff member, may be selected to serve on the Consultant Selection Committee. Special Member attendance at meetings and comments are specifically used to

aid in the selection process and for the Committee to gain a better understanding of project or contract requirements.

2.1.4 Posting on the Department Webpage as a Possible Action Project (23 CFR 172.7(1)(i))

Every six (6) months in January and June, projects and consultant services that are anticipated to be forthcoming will be posted for interest as “Possible Action Projects” on the Department’s website, because it is anticipated that these services will be needed in the near future. Once the project or consultant services move forward, a Solicitation of Interest posting will be created. See Appendix 2.1.4 for a typical listing of anticipated projects.

2.1.5 Development of Scope of Work (Checklist and Article I) and Estimating Project Cost

The Contract Manager/Project Manager will work with Department staff to develop the Scope of Work (see sample in Appendix 2.1.5). The Article I scope of work will be used to give consultant firms a general description of the project intent as well as to provide a list of anticipated project tasks for which the consultant will be responsible. The Checklist Scope of Work (see Appendix 2.1.5a) will list specific details about the project and specific tasks and areas of expertise needed to complete the project or consultant services activity. The Checklist Scope of Work and the Draft Article I will be included with the RFP to the short listed firms. Both the Checklist Scope of Work and the Article I scope of work are subject to revisions based upon negotiations with the selected firm, until the contract is awarded.

The Contract Manager/Project Manager will also work with Department staff to develop a preliminary project cost estimate for project specific and multi-phase contracts (i.e., does not apply to on-call contracts). This should include a reasonable estimation of Planning Phase costs, Preliminary Engineering costs, Right-of-Way costs and a draft Construction cost estimate. These projections will be used to program project funding and to compare various costs during the consultant fee negotiations.

It is the responsibility of the Contract Manager/Project Manager to anticipate the need to hire a consultant and to anticipate the timeframe necessary to get from solicitation to Notice to Proceed, so that the project schedule is maintained and milestone dates are met.

2.1.6 Presentation to Consultant Selection Committee

The Contract Manager/Project Manager or designated staff person shall present the draft Posting and Checklist Scope of Work to the Committee with sufficient detail and in a comprehensive manner such that the Committee may proceed with the selection procedure. The Committee will approve adding the Posting to the Department website for solicitation of Letters of Interest.

At the time of the posting presentation to the Committee, the Bureau Administrator will present a draft negotiation schedule outlining the selection timeframe from Posting to Notice to Proceed (see Appendix 2.1.6 for a sample Negotiation Schedule). This will be used for internal monitoring of the selection process as well as to inform the consultants (especially the selected firm) of the anticipated timetable and when a Notice to Proceed will be given and when the work effort should begin.

The Bureau Administrator or lead staff person will also make a determination of the type of contract that will be used. There are generally three (3) types of contracts that the Department uses. They are explained in greater detail in the following sections.

2.1.6.1 Project Specific Contract (23 CFR 172.9(a)(1))

This is a contract between the Department and a consultant firm (or consultant team) for the performance of services with a defined scope of work related to a specific project or projects.

2.1.6.2 Multi-Phase Contract (23 CFR 172.9(a)(2))

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

A typical example of a multi-phase contract is where a preliminary design agreement includes a provision for the possibility of continuing with the same consultant for the final design, at the discretion of the Committee. In this case, the Part A agreement will contain the following sentence: "Assuming a successful Public Hearing, the Department reserves the right to either negotiate a fee for Part B or terminate the contract." See Appendix 2.1.6.2 for an sample Posting)

As the Part A Agreement nears completion, the Contract Manager/Project Manager will determine if the Part A Agreement will end at the completion of Part A or if the Agreement should continue to Part B with the existing Consultant. If the contract is going to be terminated, the Consultant shall receive written notification from the Contract Manager/Project Manager.

If the Contract Manager/Project Manager recommends continuing with the Part A consultant for Part B services, a draft scope of services (Article I and Checklist Scope of Work) for Part B will be developed. The project is then presented to the Committee for their concurrence with the recommendation to retain the consultant for the Part B contract, and to approve the Part B scope of work. Committee recommendation and acceptance of the scope of work is by a majority vote of the quorum members present. The Contract Manager/Project Manager will create a Part B Continuation Memo (see Appendix 2.1.6.2a for a sample) for the signature of the Committee Chair. This information is entered into the Department Management Tracking System (MTS) for Front Office approval. This memo is passed through the Division Director and approved by the Assistant Commissioner. The Assistant Commissioner shall approve the recommended Part B Continuation Memo or return the recommendation to the Committee for further appropriate action. The Contract Manager/Project Manager will request a scope of work and fee proposal from the consultant.

2.1.6.3 On-Call or Indefinite Delivery/Indefinite Quantity (IDIQ) Contract (23 CFR 172.9(a)(3))

This is a contract for the performance of services for a number of projects, under task or work orders issued on an as-needed or on-call basis, for an established contract period. See Appendix 2.1.6.3 for a sample On-Call Posting.

The solicitation and contract provisions shall address the following requirements:

- (i) Specify a reasonable maximum length of contract period (which is typically 3 years, but shall not exceed 5 years);
- (ii) Specify a maximum total contract dollar amount that may be awarded under the entire contract;
- (iii) Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services; and
- (iv) If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services, the Department will identify the number of consultants that may be selected or number of contracts that may be awarded from the solicitation. Once the consultant firms are selected, a task order will be negotiated with the firm that the Department feels is best suited for the assignment based upon past experience, staff availability, proximity to the project site, and/or expertise in the field (if a specialty is applicable).

2.1.7 Posting on the Department Webpage as a Solicitation for Letters of Interest (23 CFR 172.7(1)(i))

An email message to all consultants on the Eligible Consultant List will be sent out by the Department with notification of the new Posting. Consultant firms that are interested in and qualified for providing the services shown on the Posting are encouraged to submit a Letter of Interest to the Department by the deadline given. Interested consultants should review the Posting thoroughly so a comprehensive understanding of the work, schedule, and task requirements can be met. A Department contact person should be identified on the solicitation so if a firm has questions they can contact that person. The contact person identified should be intimately familiar with the scope of services being requested. If a responding firm does not have the expertise to complete all tasks within the Posting, sub-consultants can be used. The Letter of Interest should explain what activities/disciplines the firm will be sub-contracting to other firms.

2.1.7.1 *Department of Information Technology Involvement*

If the contract includes any involvement or interaction with the Department's computer systems, ITS systems, and/or databases, the Department of Information Technology (DoIT) shall be contacted to ensure the proper coordination and inclusion of DoIT contracting requirements in any agreement with a consultant firm. This coordination should be done prior to the posting of the solicitation to ensure the Department can properly answer any questions regarding DoIT involvement in the contract or scope of work that may arise.

2.1.7.2 *Conflict of Interest*

See Section 3.3 for determination of Conflict of Interest.

2.1.8 Long Listing of Consultants Expressing Interest (23 CFR 172.7(1)(i))

Prior to the next Committee meeting the chair will compile and distribute to all voting members the Letters of Interest received by the deadline listed in the Posting. Letters of Interest received after the deadline will not be reviewed, or considered further, for that particular project or consultant services contract. At the next appropriate Consultant Selection Committee meeting, members of the Committee, after reviewing the eligible firms and their Letters of Interest, applicable work experience, and staffing capabilities to perform the Scope of Work desired, will vote to nominate a Long List of Consultants to be considered. Any firm that is deemed nonresponsive to the Posting requirements could be considered ineligible for consideration. The vote will be based on a majority rule of the quorum members present.

2.1.9 Short Listing of Consultants Expressing Interest (23 CFR 172.7(1)(i))

The Committee, after further review of the applicable work experience, staffing capabilities, current workload, past performance, reference checks, and other knowledge of the Long Listed firms, will reduce the number of Long Listed firms to a minimum of three firms. These remaining firms are known as the Short List. For on-call consultant services contracts where more than one contract will be awarded, more than 3 firms may be considered for the Short List. The total number of Short Listed firms will be determined by the Committee. The vote will be based on a majority rule of the quorum members present.

If there is limited response to a solicitation, due to some factor such as complexity or specialty services required, and it is determined that competition is inadequate and that it is not feasible or practical to issue a new solicitation then the State may pursue procuring the contract under a noncompetitive method.

2.1.10 Establishing the Negotiation Sub-Committee

Upon establishing the Short List, the Committee Chair will appoint a Negotiation Sub-Committee for the purpose of conducting contract negotiations with the firm ultimately approved for the assignment. The Sub-Committee will be chaired by a voting member of the Committee as well as two (2) other voting members. Other non-voting, Special Members, may be named to aid with project scope of work development, negotiations of fee and other project related activities. For unique or high-cost projects, the entire Committee may serve as the Negotiating Sub-Committee. The Sub-Committee Chair will develop a Request for Proposal memorandum for signature by the Committee Chair and ultimately approval by the Division Director and Assistant Commissioner.

2.1.11 Approval of Recommended Short List

Once the Short List is voted on by the Committee, the Sub-Committee chair will create a Short List Approval Memo for the signature of the Committee Chair. This memo is passed through the Division Director and approved by the Assistant Commissioner. The Assistant Commissioner will approve the

recommended Short List or return the recommendation to the Committee for further appropriate action. An approved Short List recommendation will be returned to the Committee Chair. This information is entered into the Department's MTS for Front Office approval. When the shortlist is approved it shall be posted to the Department's website. See Appendix 2.1.11 for a sample memo.

2.1.12 Request for Proposals (RFP) (23 CFR 172.7(1)(ii))

2.1.12.1 *RFP Preparation – Support*

The RFP will be prepared by the staff of the Bureau initiating the project (see Appendix 2.1.12 for sample). Projects involving more than one Bureau, the Administrators of those Bureaus will agree on which Bureau will act as the lead in the RFP preparation (generally, this will also be the Bureau that will manage the Agreement). The RFP shall contain sufficient information so that the Consultant can prepare the submission. The document shall contain technical information relating to the Scope of Services (Article I and Checklist Scope of Work) requested, the evaluation criteria used by the Committee in their selection, the type of payment compensation format and the Department Disadvantaged Business Enterprises (DBE) goal established in accordance with 49 CFR Part 26, if financed in whole or in part with Federal funds. The RFP shall also include the Technical Proposal Formatting Requirements that must be adhered to (see Appendix 2.1.12.1a for the sample Standalone requirements, and Appendix 2.1.12.1b for the sample On-Call requirements). Typically, the Department's DBE annual goals are met through our construction contracts, so a defined DBE goal on a design project, while encouraged, may not be mandatory.

2.1.12.2 *Issuing the RFP*

The Sub-Committee Chair will issue the RFP to the approved shortlisted Consultants. The RFP's shall be prepared and mailed by the Chair of the sub-committee under the signature of the Committee Chair and shall specify a date of receipt of the Technical Proposal by the Committee Chair. To expedite receipt of the RFP, every attempt will be made to e-mail the RFP as well as sending a hardcopy through the postal mail service. Technical Proposals received after close of business on the date given in the RFP will not be reviewed, or considered further, for that particular project or consultant services contract. Typically, the Consultants solicited are given approximately 30 calendar days to prepare the Technical Proposals.

2.1.12.3 *Consultant Submission*

Based on the directions received with the RFP letter, each of the short listed Consultants must submit a Technical Proposal. Failure to follow the instructions within the RFP could result in a rejection of the proposal and disqualification of the firm, as being non-responsive to the RFP instructions. If a Consultant fails to submit a Technical Proposal, or the proposal is rejected for some reason, then the next recommended Short Listed firm will be asked to submit a Technical Proposal and the process in 2.1.12.2 will start over. Any previously submitted proposals by other firms will be held, unreviewed, until the newly solicited firm submits their Technical Proposal. Once all the Technical Proposals are received, all will be reviewed and rated. Multiple electronic and/or paper copies (the specific type and number will be determined by the Committee and shall be contained within the RFP letter) of the

Technical Proposal shall be returned to the Department by each of the shortlisted Consultants, addressed to the Committee Chair.

2.1.13 Preparation for Rating the Technical Proposals

Committee members will review each Technical Proposal and may assign to their staff specific sections of the Scope of Work for which they may be responsible for more detailed examination.

2.1.13.1 *Oral Interviews*

In some cases where the project is overly complex, publicly sensitive or unique, the Committee may recommend that oral interviews of the Short Listed firms be conducted as part of the rating of the Technical Proposals. This will be determined at the Issuance of the RFP and within that issuance letter the Short Listed firms will be given the evaluation criteria concerning the oral interviews and how the interview will be scored and used in the RFP evaluation process.

2.1.14 Rating of Technical Proposals (23 CFR 172.7(1)(iii))

At a Committee meeting, Committee members will present a summary of their reviews of the Technical Proposals with support of appropriate staff.

After hearing all discussion and presentations relative to the Technical Proposals, the Committee will evaluate and rate the shortlisted firms in the order of preference. While the contract agreement will be with the prime consultant the rating of the proposals shall consider the qualifications of all sub-consultants identified as participating on the project. The evaluation criteria include: comprehension of the assignment (20%); clarity of the proposal (20%); capacity to perform in a timely manner (20%); quality and experience of project manager/team (20%); previous performance (10%); and overall suitability for the assignment (10%) (see Appendix 2.1.14 for sample rating sheets). The evaluation criteria and/or percentage may be changed at the discretion of the Committee. Any changes in criteria or percentages will be identified and included within the RFP (section 2.1.12.1).

Factors that cannot be used in the rating or selection of a consultant firm include price or cost related items, as well as in-state or local preference. While NH Professional Licensure for design and construction contracts is required, it is not a requirement that the firm or engineer be located within New Hampshire. Also, a consultant's offer to voluntarily lower their indirect cost rate (overhead rate) may be accepted for use on a contract, but it shall not be a condition of getting a contract or used in the selection process.

2.1.15 Recommended Selection of Consulting Firm

The overall order of rating will be determined by a written vote of a quorum of the Committee members present. The Sub-Committee Chair will prepare a memo outlining the Committee's recommendation, signed by the Sub-Committee members for presentation to the Division Director and for approval of the Assistant Commissioner (see Appendix 2.1.15 for a sample memo). This information is entered into the Department's MTS for Front Office approval. The Assistant Commissioner shall approve the

Recommended Selection of Consulting Firm or return the recommendation to the Committee for further appropriate action. An approved Selection of Consultant Firm recommendation shall be returned to the Committee Chair.

2.1.16 Notification to Consultants on Selection (23 CFR 172.7(1)(iv)(E))

The Sub-Committee Chair will prepare letters, for signature by the Committee Chair, notifying all Short Listed firms of the approval of the top-rated firm. Shortlisted consultants will be notified of either their selection (see Appendix 2.1.17a or 2.1.17b) or non-selection (see Appendix 2.1.16).

2.1.17 Request for Fee Proposal

The Sub-Committee Chair will contact the top-rated firm and make arrangements for that firm's preparation of a fee proposal. This may include meeting with the firm to more specifically establish the Scope of Work as well as the presentation format for the fee proposal. The Request for Fee Proposal letter to the consultant (see Appendix 2.1.17a – Standalone contract or Appendix 2.1.17b – On-Call contract for sample Fee Proposal letters) shall list the Contract Manager's contact information and request submission of following documentation:

- Salary Cap Waiver Requests (if applicable),
- A Certified Employee Salary Schedule that lists all employees anticipated to work on the project,
- Completed Salary Rate Calculation Form (for Project-Specific or Multi-Phase contracts only),
- Pre-Award Technical Review Documentation (current payroll register/journal and a copy of the consultant's current overhead rate submission documentation),
- Blank Fee Proposal matrix for development of the Department's Independent Government Estimate (IGE), and
- Consultant Contact Information.

2.1.17.1 *Salary Cap Waiver Requests*

The Department, with ACEC and FHWA concurrence, has developed a maximum direct labor rate of \$60/hour for all consultant firm employees, including sub-consultant employees (See Appendix 2.1.17.1). However, consultants may submit a Salary Cap Waiver Request for instances in which the contract requires specialty work or specific expertise of an employee who earns more than \$60/hour. The Salary Cap Waiver Request shall be a written request from the firm with justification for the waiver and include the following information for each employee in which a waiver is requested:

- Employee name.
- The employee's resume stating work experience in the specialty field required within the contract.
- The employee's current direct labor rate and the requested waived direct labor rate (if different than their current rate).
- An explanation of why the employee is necessary to complete the work effort.

Salary Cap Waivers are granted on a case-by-case basis and need to be submitted for each contract. Examples of previously granted salary cap waivers include specialty experience in tolling, railroad engineering, and complex regional traffic modelling. Salary cap waivers are not typically considered on Statewide On-Call contracts since the majority of the work required on the contract assignments is not specialty work, but they may be requested if applicable.

2.1.17.2 Salary Cap Waiver Approval

Upon receipt of the firm's Salary Cap Waiver Request, the Sub-Committee Chair will develop a Salary Cap Waiver Approval memo (See Appendix 2.1.17.2) to be forwarded to the Front Office. The Salary Cap Waiver Approval memo shall contain the above information (see 2.1.17.1) and a recommendation as to whether the waiver should be granted. The memo shall be entered into MTS and forwarded through the Director of Project Development, the Deputy Commissioner, and then to the Assistant Commissioner for approval or denial.

2.1.17.3 Salary Cap Waivers in Fee Development

The use of waived direct labor rates shall have some restrictions during fee proposal development and later when the consultant firm invoices for work efforts completed. Some restrictions include:

- Approved Salary Cap Waivers apply to a specific individual employee at a fixed labor rate for the life of the contract.
- Waived direct labor rates shall not be allowed in an average rate calculation for a labor classification. Employees with an approved salary cap waiver must be included as a separate labor classification in the fee proposal to prevent artificially increasing the average pay rates for a labor classification that has both capped and uncapped salaries.
- Waived direct labor rates shall be fixed for the duration of the contract. Raises or escalation increases to waived direct labor rates are prohibited. A firm has the option to submit an updated Salary Cap Waiver Request (as outlined in 2.1.17.1) for review and approval in the event of a salary adjustment/increase.
- The salary cap applies to all sub-consultants as well as the prime. A sub-consultant may request a salary cap waiver if their work requires a specialty type expertise (using same requirements as the prime).

A Salary Cap Waiver Request may be made anytime during the contract negotiations. However, approval of the request will affect the fee proposal and labor classification rates used in developing the fee proposal. To be most efficient and limit rework, the Salary Cap Waiver Request should be made prior to the development and submission of the Salary Rate Calculation Forms and the fee proposal.

2.1.17.4 Salary Rate Calculation Requirements

Prior to submission of the fee proposal, the consultant shall submit a Certified Employee Salary Schedule (see Appendix 2.1.17.4a and Appendix 2.1.17.4b for examples) listing the certified payroll rates of all employees anticipated to work on the project, their classification, and the average (also referred to as the "blended rate") classification rate proposed. For Project-Specific or Multi-Phase contracts, the

consultant must also submit a completed Salary Rate Calculation form, which must include calculated rates using the current approved NHDOT escalation rate. This form shall be reviewed and approved by the Contract Manager prior to submitting the technical review request and the fee proposal submission.

The payroll rates used shall be the employee's actual, current, certified direct labor rates (unless the employee rate is capped at \$60/hr.). The rates shall not include any rounding, escalation, anticipated raises or promotions. Since these rates will be verified during the pre-award technical review by the Internal Audit Office, the consultant must send a current payroll register/journal for employees who will be working on the project. The payroll register/journal shall correspond with the rates listed in the salary schedule and calculation form and must contain the employee name, number of hours worked for the pay period, and the gross pay for the hours worked.

2.1.17.4.1 Salary Rate Calculations for Standalone Agreements

The Certified Employee Salary Schedule and Salary Rate Calculation form will be used to create the anticipated salary rates used for each classification in the fee proposal. Once the classification rates are reviewed and approved, they are used to create the budget; however actual salary rates are paid.

2.1.17.4.2 Salary Rate Calculations for Statewide On-Call Agreements

The Certified Employee Salary Schedule will be used to create the salary rates for each classification that will be appended to the contract and used to calculate task order assignment budgets (task order hours and not to exceed dollar value), however actual salary rates are paid. The consultant is required to submit a new schedule any time there are changes in personnel, classification and salary rates for employees working on the project. The revised schedule will be included as an attachment to the fully executed Agreement.

2.1.17.5 Pre-award Technical Review

When the estimated fee for services, for the prime consultant and/or any sub-consultants, is equal to or greater than \$200,000, a pre-award technical review must be conducted.

The pre-award technical review is performed by the Department's Internal Audit Office and must be requested prior to the fee proposal submission. The purpose of the review is to determine whether the consultant's proposed costs are reasonable, can be supported, and are in accordance with the contract. Review recommendations are then considered during negotiations with the selected firm.

The Contract Manager requests the pre-award technical review by sending a Technical Review Request memo (see Appendix 2.1.17.5 for a sample memo) to the Agency Audit Manager in MTS. The Contract Manager should also attach copies of the Certified Employee Schedule, approved Salary Rate Calculation Form (for Project-Specific or Multi-Phase Contracts only) , current payroll register/journal, Article II of the draft agreement (for Statewide On-Call contracts only) ,and indirect cost rate documentation submitted by the selected firm. The Contract Manager's approval of the Salary Rate Calculation Form shall be noted in the memo.

Once the requested documentation is received, the Internal Audit Office examines the consultant's proposed labor and indirect cost rates. Independent labor rate calculations are performed using the consultant's payroll register/journal and are compared with the rates listed by the consultant on the Certified Employee Salary Schedule and/or Salary Rate Calculation Form. The Internal Audit Office also verifies that the consultant has an approved indirect cost rate on file in accordance with the requirements outlined in Section 2.1.17.6 of this manual.

Following the review, the Internal Audit Office will issue recommendations directly to the Contract Manager. A copy of the recommendations are also uploaded and routed to the Deputy and Assistant Commissioners in MTS. The Deputy Commissioner, or designee, shall issue administrative direction or guidance (if necessary) after review of the recommendations and inform the Sub-Committee Chair, Auditor, Administrator of the Bureau of Finance and Contracts, and FHWA, when required.

2.1.17.6 Indirect Cost Rate Submission Requirements

Consulting firms providing services under a contract reimbursed with Federal-aid Highway Program (FAHP) funds are required to develop an indirect cost rate in accordance with the Federal cost principles outlined in the Federal Acquisition Regulations (FAR) of part 31 of title 48, Code of Federal Regulations. Likewise, as a contracting agency, NHDOT is required to accept indirect cost rates developed in accordance with the Federal cost principles and apply those rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment.

To comply with regulatory requirements, the selected firm (or sub-consultants with a contract total of \$200,000 or greater) must submit an Indirect Cost Rate Audit and required documentation (as listed below) to the Internal Audit Office in the following circumstances:

- During contract negotiations, unless the firm has a current approved indirect cost rate on file.
- Annually for each year work is performed under a contract, unless the indirect cost rate is fixed for the duration of an On-Call/IDIQ contract.

Indirect cost rate submissions are due within six months of the consultant's fiscal year end and shall be submitted to the Internal Audit Office either electronically or in writing. Upon receipt, the Internal Audit Office will perform a risk analysis to obtain reasonable assurance that the firm's indirect cost rate was developed in accordance with the FAR cost principles. To comply with the FAR, the firm's Indirect Cost Rate Audit must meet the following requirements:

- Be conducted by an independent Certified Public Accountant (CPA), a Federal government agency, or another state transportation agency.
- Be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the U.S. Government Accountability Office (GAO) and with the cost principles and procedures set forth in part 31 of the FAR.

- Follow the guidance of the most recent American Association of State Highway Transportation Officials (AASHTO) Uniform Audit and Accounting Guide for Audits of Architectural and Engineering Consulting Firms (AASHTO Audit Guide).

Along with the Indirect Cost Rate Audit, the firm is requested to submit the following documentation:

- AASHTO Internal Control Questionnaire (ICQ) for Consulting Engineers form with the required attachments.
- Certification of Final Indirect Costs as required pursuant to 23 CFR 172.11 and FHWA Order 4470.1A.
- Complete copy of the firm's annual audited financial statements.
- Analysis of reasonableness of executive compensation as outlined in the AASHTO Audit Guide.
- Cognizant letter of concurrence issued by a cognizant agency, if available.
- A listing of all contracts, with dollar amounts, the consultant currently has with NHDOT as a prime consultant or sub-consultant.

Upon completion of the risk analysis, the Internal Audit Office will notify the consultant by letter of their approved indirect cost rate. The rate remains valid until the due date for next year's submittal, unless the Internal Audit Office determines the rate must be adjusted. Internal Audit will also notify the Negotiation Sub-Committee Chair during contract negotiations of the firm's approved indirect cost rate during the pre-award technical review phase. A contract shall not be executed if the selected firm does not have a current approved indirect cost rate on file with the Internal Audit Office.

The Consultant Selection Committee will work with the Internal Audit Office annually to identify consultants and sub-consultants with active contracts who are required to have an annual indirect cost rate on file. The Chair of the Consultant Selection Committee will send a notification of the requirement to submit an annual Indirect Cost Rate Audit and required accompanying documentation to the identified consultants and sub-consultants.

The Internal Audit Office will perform a one-time courtesy audit for small consulting firms located in New Hampshire who do not have a current CPA-audited indirect cost rate. However, the consultant is required to submit an Indirect Cost Rate Audit prepared by an independent CPA, and shall comply with the requirements listed in this section, upon completion of the following fiscal year.

2.1.17.7 Fee Proposal Submission

The Consultant firm shall submit an electronic copy of the BLANK Fee Proposal matrix and Scope of Work to the Sub-Committee Chair when the fee matrix is finalized and complete so the Department staff can develop an Independent Government Estimate (IGE) prior to the submission of the Consultant's Fee Proposal. No hours should be included in the BLANK fee matrix, but the approved direct labor rates (from the Salary Rate Calculation form), the approved Overhead Rate (from the pre-award technical review) and the proposed Fixed Fee percentage should be included.

During the fee negotiations, the following guidance should be considered:

- The indirect cost rate is non-negotiable. A lower indirect cost rate may be accepted for use on a contract if submitted voluntarily by a consultant. However, the consultant's offer of a lower indirect cost rate shall not be a condition or qualification for consideration for the work or contract award.
- The fixed fee is a negotiable part of the contract. Typically the Department has set a maximum fixed fee of 10% for cost plus fixed fee and 15% for lump sum compensation methods, but the fee can be adjusted based upon risk, complexity of the work, required timeframes, etc. Any negotiation of the fixed fee portion of the contract should be explained in the Front Office Fee Approval memo that requests approval of the contract amount.
- Direct labor rates are a negotiable part of the contract. Any negotiation of the direct labor rates portion of the contract should be explained in the Front Office Fee Approval memo that requests approval of the contract amount. If Direct Labor rates are negotiated after the pre-award technical review is completed, a copy of the Front Office Fee Approval memo, outlining the negotiated rates, shall be copied to the Internal Audit Office for their records. A new pre-award technical review is not necessary if direct labor rates are negotiated subsequent to these reviews being completed. The Internal Audit Office shall be copied on any documentation to change direct labor rates based upon contract negotiations. Any negotiation of direct labor rates above \$60/hour requires a Salary Cap Waiver Request and approval (see Section 2.1.17.1)
- Rounding of the salary rates is not permissible in the fee proposal. Rather, the rates shown in the fee proposal should be rates listed in the pre-award technical review memo issued by the Internal Audit Office.
- "Loaded Rates" (rates that include direct labor, overhead and profit as one hourly labor rate) shall not be used in the fee proposal calculations. The fee proposal shall list salary rates separately from overhead and profit.
- Vacant positions within a labor classification should be reviewed and treated on a case-by-case basis. Vacant positions shall not be included in the average rate calculation for a classification that contains multiple employees. For a classification with one or two employees, a determination will be made as how to treat the salary rate of that vacant position with regards to the average salary rate within that classification.
- A firm can charge clerical or administrative staff as an indirect cost or on an hourly rate basis, but not both. If clerical or administrative staff are charged as an indirect cost, they cannot be included in the salary rate classification calculations.
- A sub-consultant can be paid as a direct expense when a sub-consultant fee is less than \$100,000.

A fee proposal submission is not required for an On-Call (IDIQ) contract since an On-Call contract has a pre-determined set maximum fee from the beginning. There is no fee negotiation in an On-Call Contract so there is no need to have this task included. An On-Call contract does require the use of average pay rates to develop the profit/fee for each Task Order. See paragraph 2.1.17.4 for use of the Certified

Employee Salary Schedule for On-Call contracts. Certified pay rates for an On-Call contract will be requested prior to executing contract to justify the initial use of average rates.

The Consultant submission of their fee proposal shall be made in hardcopy only and delivered to the Committee Chair. No electronic copies are allowed until the Department's IGE has been set and the Consultant Fee Proposal has been opened. The Fee Proposal envelope should be clearly marked as containing a Fee Proposal. The Department's negotiating team will coordinate with the Consultant the number of hardcopies needed with the submission. The fee proposal will remain unopened until the Department's IGE is set.

2.1.18 Develop/Adopt the Department Independent Government Estimate (IGE) (23 CFR 172.7(1)(v)(B))

The Sub-Committee Chair, with staff support, shall develop an IGE to perform the specified services using the approved Scope of Work and Blank Fee Matrix previously submitted by the Consultant per Section 2.1.17. The estimate shall contain an appropriate breakdown of the specific types of labor required, work hours, estimate of the Consultant's fee, and direct expenses. See Appendix 2.1.18 for sample independent IGE calculation forms, or the Department staff may use the fee matrix developed by the consultant in 2.1.17. This estimated fee shall be presented to the Committee by the Sub-Committee or designated staff. The Committee will discuss/review/amend and recommend the total number of hours and total contract fee by majority vote of the quorum voting members present. This will become the Department's IGE for final negotiation purposes. This action must be completed prior to viewing the Consultant's Fee Proposal.

2.1.18.1 Simultaneous Technical Proposal and Cost Proposal Submissions (23 CFR 172.7(1)(ii)(F)) and 23 CFR 172.7(1)(v)(D)

While rarely used by the Department this method is allowed under Federal rules, 23 CFR 172. This method allows for the submission of the cost proposal or elements of the cost proposal at the same time as the technical proposal submission. This method requires a concealed format with separate submissions of the technical proposals and fee proposals. The Technical Proposals for all solicited firms are opened, reviewed and scored based upon qualifications.

Once the most qualified firm is selected based upon their technical proposal, their cost proposal may be opened and the fee negotiated. The concealed cost proposals from the unsuccessful firms shall remain unopened and returned to the firm.

2.1.19 Negotiation of Fee for Consultant Services

The Sub-Committee will review the Consultant's Fee Proposal in detail, utilizing the Project Manager and Bureau staff, as appropriate.

2.1.19.1 Accept Fee

The Sub-Committee may accept the fee submitted by a Consultant. The Sub-Committee shall exercise good judgment in accepting the fee and provide their rationale for comparison to the Department's IGE.

2.1.19.2 *Reject Fee*

The Sub-Committee may reject the initial fee outright as being too far out-of-line with the Department's IGE to commence negotiations. In this case, the Sub-Committee will state their reasoning and judgment in making this decision and advise the Consultant accordingly directing them to resubmit their Fee Proposal.

2.1.19.3 *Negotiate Fee*

The Sub-Committee may negotiate all parts of the total fee with the Consultant, using the Department's IGE as a guide. This process could involve several meetings between the Sub-Committee, Department staff, and the Consultant (and their Sub-Consultants) to review the hours/fee assigned to the tasks within the fee matrix.

2.1.19.4 *Unable to Agree on Fee*

If agreement on a fee cannot be reached, the Sub-Committee will refer the matter to the Committee. If the Committee concurs that agreement on a fee cannot be reached, the Committee will recommend to the Division Director and/or Assistant Commissioner that the negotiation/award process be terminated. If the Director/Commissioner concur that agreement of a fee cannot be reached, the Committee will notify the Consultant that negotiations are being terminated and will request a fee proposal from the next highest Consultant on the short list from the RFP Technical Proposal rating process. The process will start over with Section 2.1.17 with the new consultant firm until an agreement is reached or the solicitation terminated. See Appendix 2.1.19.4 for additional details pertaining to 40 U.S.C. 1104(b).

2.1.19.5 *FHWA Agreement Submission and Approval (when required)*

In advance of receiving approval of the fee by the Assistant Commissioner, the Sub-Committee Chair will advise the Administrator of the initiating Bureau that agreement on the fee has been reached and that a submission may be made to FHWA. The submission shall include a copy of the Technical Proposal, Scope of Services, a copy of the final Fee Proposal in support of the approved fee, a copy of the draft Agreement, and copies of the Department's Fee Approval memo, the Department's IGE, and the Pre-Award Technical Review (if applicable). The submission shall be made by the appropriate staff of the initiating Bureau.

In those projects involving FHWA oversight, following appropriate review, comments, and modifications, FHWA concurrence/rejection of the firm and fee and the draft Agreement should be received in writing. When disagreement occurs, further coordination with FHWA is pursued in order to resolve differences.

2.1.19.6 *Approval of Negotiated Fee*

Upon reaching agreement with the Consultant on the estimated hours and fee amounts, the Consultant shall submit a final Scope of Work and Fee Proposal that incorporates all changes/recommendations from the negotiations. The Sub-Committee Chair will prepare a Fee Approval memo, signed by the Sub-Committee for presentation to the Division Director and for approval by the Assistant Commissioner

(see Appendix 2.1.19.6 for a sample memo). This information is entered into the Department's MTS for Front Office approval. The Assistant Commissioner shall approve the recommended fee or return the recommendation to the Committee for further appropriate action. An approved fee recommendation shall be returned to the Committee Chair.

2.1.19.7 Notify Consultant

The Sub-Committee Chair will notify the Consultant in writing that the negotiated fee has been approved by the Department, subject to final approval by FHWA, if applicable.

2.1.20 Agreement Final Approval

The Consultant shall review the draft Agreement and contribute to the resolution of all questions and outstanding issues.

2.1.21 Preparation of Contract and Governor and Council Resolution

2.1.21.1 Preparation of Documents

Staff members of the initiating Bureau or administering Bureau will prepare the final Agreement documents. Copies of the Agreement document and a draft Governor and Council Resolution, backed up by supporting information, are prepared.

As part of the document preparation the Consultant should be prepared to submit for inclusion in the contract the following supplementary documents:

- i) Certificate of Good Standing, issued by the NH Secretary of State.
- ii) Certificate of Vote, giving the person signing the contract the authority to enter into the Agreement.
- iii) Copy of current Insurance with amounts and conditions as stated in Article IV of the Agreement.

The Agreement transmittal letter will have specific requirements about each of the above (required dates, required signatures, etc.). See Appendix 2.1.21.1 for a sample letter.

2.1.21.2 Execution of Agreement

The Bureau preparing the Agreement forwards three (3) copies of the Agreement to the Consultant firm for their execution. The consultant firm must sign, with original signatures, all three copies of the Agreement and return them along with all contract attachments.

2.1.21.3 Document Review

The draft Governor and Council Resolution and all required backup material support documents are entered into the internal Department's MTS to be routed for review and approval by the Bureau of

Finance and Contracts, the Division Director and the Deputy and Assistant Commissioners (and returned to the initiating Bureau for revisions, if required) before going to the Commissioner for signature.

2.1.21.4 *Final Resolution*

Upon receipt of the Commissioner's signature on the Governor and Council Resolution, the Bureau of Finance and Contracts attaches the required number of copies of the Agreement and the entire package is then forwarded by the Bureau of Finance and Contracts to the Office of the Attorney General, Department of Administrative Services for further review and processing

2.1.21.5 *Other Department Processing*

The Bureau of Finance and Contracts tracks and expedites the circulation of the documents through the Office of the Attorney General and the Department of Administrative Services to obtain all requisite reviews and approvals prior to inclusion on a meeting agenda of the Governor and Council. The Bureau of Finance and Contracts shall coordinate any questions or required additions/revisions with the Director and/or initiating or managing Bureau for resolution and resubmission through the process.

2.1.22 Agreement Approval/Disapproval

2.1.22.1 *Governor and Council Action*

The contract documents will be presented to The Governor and Council as an agenda item for appropriate action, including approving, disapproving or tabling the agenda item. Should the Governor and Council table or disapprove the agenda item, the Administrator of Finance and Contracts shall advise the Director and others, as needed, so that the initiating or managing Bureau may take the appropriate action.

2.1.22.2 *FHWA Approval (when required)*

Upon receiving notice of approval by the Governor and Council, the Bureau of Finance and Contracts shall forward an original and one copy of the Agreement to the FHWA for formal approval, if applicable. FHWA approves (stamps) the Agreement, retaining the copy and returning the original to the Bureau of Finance and Contracts, and also issues a form to the Department (Director) authorizing the work.

2.1.23 Notice to Proceed

Upon receiving proper approval, the Project Manager or the initiating or managing Bureau's staff shall notify the Consultant in writing that the work may proceed (see Appendix 2.1.23a Notice to Proceed-Standalone and Appendix 2.1.23b – Notice to Proceed – On-Call). Should the initiating or managing Bureau receive notice of tabling or disapproval by the Governor and Council, that Bureau shall take appropriate action under the direction of the Division Director.

The contract becomes effective immediately upon Governor and Council approval, but a formal Notice to Proceed will be sent to the consultant firm prior to work beginning. If FHWA approval is required, the Notice to Proceed will be delayed until such time as FHWA approval is received.

The Department will not reimburse the Consultant for any expenses incurred prior to the proper approval of the Agreement and the subsequent issuance of the Notice to Proceed.