

Division Office Process Review of Consultant Process

(Consultant Selection Process and Preliminary
Engineering Stage of State Federal-aid Projects only)

..... DIVISION
1989/1990

THE FEDERAL HIGHWAY ADMINISTRATION

Consultant Coordinator

District Engineer:

A. PURPOSE OF REVIEW:

To evaluate the State's conformity with Federal Regulations and Federal approved State procedures. To determine if the State has adequate control and oversight over the consultant contracting process and to determine if there are any areas of deficiencies or weaknesses and offer recommendations for improvement. A

secondary purpose is to follow up on a request from the Inspector General's Office concerning an anonymous complaint concerning bias in selecting consultants with ex-State employees.

B. CRITERIA:

The review will be based on the following publications:

1. Federal Highway Administration, Division Office Memorandum D1105.1, dated April 17, 1989.
2. STA A & E Consultant Services Manual (Draft).

C. SCOPE:

This process review will be limited to consultant selection and preliminary engineering stage of consultant services only.

This process review will be conducted in STA Districts ., ., ., & .. A goal of 4 consultant contracts currently underway was set to be reviewed in each District for a total of 16 contracts. The contracts will include both Interstate and Primary highway related projects since Federal approval authority has been delegated to STA for nearly all consultant activities on both Federal-aid systems.

D. APPROACH:

This process review guideline was prepared to standardize our review procedures. An opening introduction and interview will be held in STA HQ in advance of our reviews in the Districts. The reviews will be done in 2 phases: (1) An interview of those responsible for advertising, review, selection, award, and monitoring of the consultant contracts, and (2) a review of the records in this area as well as those of the 16 contracts mentioned above. Closeout meetings will be held immediately after the review in each of the respective Districts. Upon completion of the reviews, a final report will be prepared summarizing the review findings with recommendations for improvement and a conclusion. If there are any major deficiencies, a separate closeout meeting will be held in STA HQ.

E. REVIEW RESPONSIBILITIES:

The team or teams will consist of primarily of FHWA District . members with participation by other appropriate staff personnel.

Appropriate personnel from STA HQ were also invited to participate.

F. REVIEW SCHEDULES:

Activity Completion date

- | | |
|--|-----------------|
| 1. Opening introduction and interview in STA HQ. | April 19, 1990 |
| 2. Conduct process reviews in Districts ., ., ., & ... | May & June 1990 |
| 3. Conduct closeout meeting in STA HQ, if necessary. | July 1990 |
| 4. Prepare final report and transmit to STA. | July 1990 |
| 5. Follow up report, if any. | January 1990 |

PROCESS REVIEW GUIDELINES - STA CONSULTANT PROCESS
Consultant Selection through Preliminary Engineering

INTERVIEW: (The following questions are for both STA HQ and the Districts, but will only apply where applicable.)

1. How is the STA consultant services staff structured in Headquarters?
2. How is the STA consultant services staff structured in the District?
3. What is the function of HQs consultant services versus the Districts?
 - a. in the consultant selection process?
 - b. in other consultant services activities?
4. It is our understanding that HQs is retaining the final approval authority for consultant contracts in conjunction with the State Department of General Services (the latter required by State law for contracts over \$50,000). Will this authority ever be delegated to the Districts? Will the \$50,000 amount be increased to conform to the new proposed Federal rules?
5. How many consultant selection processes are there?
6. What determines which process to use and which is used most often?
7. Has there been any deviation from the processes identified in the STA consultant selection manual or any proposed changes, to the manual in this regard? Were they approved by FHWA?
8. Has STA ever used the small purchases procedures for a consultant contract? If so, was the contract amount less than \$10,000? This amount is soon to be raised to \$25,000 per proposed rules by U. S. DOT in the Federal Register.
9. If the small purchase procedure was used, were quotations obtained from 2 or more consultants?
10. Has STA ever used the noncompetitive negotiation procedures for a consultant contract? Was FHWA approval obtained? This procedure is only limited to the following situations:
 - a. The service is only available from a single source, or
 - b. there is an emergency which will not permit the time necessary to conduct competitive negotiations, or
 - c. after solicitation of a number of sources, competition is determined to be inadequate.
11. Why aren't either of the above 2 types of procedures identified in the consultant manual?
12. Are the rules for selecting a consultant on Federal-aid projects any different from those using other funds?
13. Who determines the DBE goals and how are they determined?
14. Are the STA DBE goals equal to or higher than the FHWA DBE goals?

15. Did STA meet their DBE goals last year?
16. Were any consultants rejected because they did not meet their goals and did not make a good faith effort?
17. Were any of the prime consultants a DBE? How is this counted toward the goals?
18. Are the consultant contracts advertised at all times?
19. How are consultant contracts advertised? Are they always by set procedures?
20. How are the consultant, selection committee members selected and is this activity rotated?
21. Was the initial evaluation and ranking by each committee member done independently and without prior consultation? Was the STA Civil Rights Section involved on a routine basis?
22. How does one manage to avoid selecting the same 3 most qualified consultants on each project for the same area?
23. How often is a consultant awarded more than one contract concurrently?
24. How many selected consultants with exState employees are there, compared to the total number of selected consultants?
25. Of the positive replies to the RFQs, how many of them are firms with exState employees?
26. Have you received any complaints concerning bias in selection of consultants?
27. Have you received any appeals resulting from the selection of a Consultant?
28. Are pre-award audits being done on all consultant contracts over \$50,000? This amount is soon to be increased to \$250,000 per proposed rules by U.S. DOT in the Federal Register.
29. Are pre-award audits being done on all consultant contracts under \$50,000 where:
 - a. there is insufficient knowledge of the consultant's accounting system, or
 - b. there is previous unfavorable experience regarding the reliability of the consultant's accounting system, or
 - c. the contract involves procurement of new equipment or supplies for which cost experience is lacking?
30. Why does the consultant manual indicate that all contracts must undergo a pre-audit when this is not necessary for those contracts under \$50,000 as defined above?
31. Where is the Notice of Intent to Award posted? Does this provide adequate coverage? Is the 5-day limit for appeals adequate?
32. Are you aware that Federal authorization for PE, ROW, or CONST is necessary before the consultant work in that stage may proceed? How do you know when this has been done?
33. When are scoping meetings held with the consultant?
34. Does the contract have provisions for STA and FHWA monitor and review?
35. Is there a qualified person in STA that is solely responsible for each consultant contract from start to finish? This includes: scheduling and attending meetings, making decisions, familiarity with qualifications and responsibilities of the contractor's staff, visiting projects or consultant's office at reasonable frequencies, awareness of contract status, assuring that billing is consistent with consultant's work, and preparing the final performance evaluation.
36. How often is the consultant's product being reviewed?
37. Are contract completion dates set for environmental or design work?

38. Are subcontracts over a certain amount required to include all provisions that were in the prime contract?
39. How are overruns in contract time handled when:
 - a. caused by the consultant, or,
 - b. caused by STA, such as design changes, or
 - c. caused by uncontrollable factors such as environmental controversy?
40. How often do overruns in contract time occur? Could they be avoided through corrective measures?
41. Are any of the time overruns possibly due to lack of communication or lack of control?
42. Are contract amendments submitted to FHWA for approval? This requirement is included in the proposed rulemaking by U.S. DOT.
43. How often do you encounter claims? What kind are they?
44. Are there certain types of claims that are reoccurring?
45. Has there been any corrective measures to eliminate or reduce the number of claims or certain types of claims?
46. Are consultant claims treated like construction claims?
47. What is the State's policy on costs resulting from a consultant's error or omission? This was not described in the consultant services manual and is part of the proposed rulemaking by U. S. DOT.
48. Are monthly status reports and final progress reports being sent to FHWA? This is also part of the proposed rulemaking by U. S. DOT.

**PROJECT RECORDS REVIEW:
(A separate set guidelines will be used for each contract.)**

1. Did this project undergo the consultant selection process?
2. Was the project initiated by:
 - a. preparation of a contracting out report,
 - b. determination of DBE goals, and
 - c. submitting a request for contract services to the contract office (HQ)?
3. Was there evidence of advertisement for RFQs in all the following methods?
 - a. Professional Publications/Newsletters
 - b. (State) State Contracts Register
 - c. Direct Mailing Notices from a register of consultants
 - d. Direct Mailing Notices to recognized DBE organizations
4. Did the ads for RFQs include the following information?
 - a. Type of service solicited
 - b. Description of project

- c. Deadline for receiving reply
 - d. Address and telephone number
 - e. Name of contact for information
 - f. A non-discrimination statement
 - g. D&E goals
 - h. Evaluation criteria
 - i. A description of information that must be submitted
5. Did the evaluation criteria include the following?
 - a. Professional excellence, demonstrated competence specialized experience of the firm
 - b. Staffing capability, workload and ability to meet schedules
 - c. Principals to be assigned and education and experience of key personnel
 - d. Nature and quality of completed work for STA and for other clients
 - e. Reliability and continuity of firm
 - f. Present level of minority utilization and an acceptable affirmative action plan
 - g. Other factors deemed relevant to the contract effort
 6. Did the evaluation and ranking for this contract appear reasonable based on retards filed?
 7. Was a short list of at least 3 prospective consultants developed from all of the top ranked firms?
 8. Were there any unusual changes in the final ranking from the "short" list? If so, what was the reason(s)?
 9. Was the top ranked consultant selected? If not, what was the basis?
 10. Were there any protests regarding the ranking or selection?
 11. Was the negotiated contract amount reasonable compared to the STA estimate?
 12. Was there evidence of a pre-award audit?
 13. Did the consultant meet the DBE goals?
 14. Is the prime consultant a DBE?
 15. Was one of the 4 methods of payment specified in the contract?
 - a. Lump Sum
 - b. Actual Cost plus fixed fee
 - c. Cost per unit of work
 - d. Specific rates of compensation
 16. Was a Notice of Intent to Award posted in order to allow 5 days for dissatisfied competing firms to file a protest?

17. Did the consultant work begin after FHWA authorization for preliminary engineering?
18. Was a scoping meeting held with the selected consultant and documented?
19. Was there a Project Coordinator for this contract? Who?
20. What is the-type of work to be done by this consultant?
21. Is there a record of periodic review of the consultant's work?
22. Was the FHWA Area Engineer given the opportunity to review this project?
23. Were progress reports submitted regularly by the consultant?
24. Is this contract progressing satisfactorily?
25. What was the quality of the work?
26. Were there any cost overruns to date on this contract?
27. Were there any minor or major changes in the contract that may require a contract amendment? If so, was FHWA approval requested?
28. Were there any anticipated claims from the consultant? If so, what kind were they?
29. Was a copy of the final report submitted to FHWA?
30. Was a performance evaluation of the consultant's work prepared after completion of the contract?
31. Did STA obtain reimbursement for costs resulting from the contractor's error or omission?