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## **300 - Procurement of Professional Services**

### **General**

This section provides summary guidance to airport Sponsors and Consultants to assist them procurement of professional services under the FAA Airport Improvement Program (AIP). Failure to adhere to AIP eligibility requirements can result in the disallowance of costs associated with engineering services.

### **Limitations of Use**

Users of this guide shall note the obligation for any required action addressed within this guidance originates within applicable Federal directives such as United States Code (USC), Public Law (PL), Code of Federal Regulations (CFR) and official FAA policies. The supplemental information provided in this guidance does not establish additional requirements for participation in the AIP. In the event there is a discrepancy between this guidance and current AIP policy, AIP policy shall always take precedence.

### **In This Section**

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## **310 - Procurement Requirements and Standards for A/E Services**

### **Federal Requirements**

Federal Statute 49 USC 47107(a) and Title IX of the Federal Property and Administrative Services Act of 1949 serve as the enabling statute that establishes the authority for requirements associated with procurement of professional services for Federal contracts and Federally assisted grants. Federal Regulation 49 CFR Part 18 (Uniform Administrative Requirements for Grants and Cooperative Agreements) establishes the rules and requirements Sponsors must comply with in order to allow AIP participation in costs associated with the procurement of professional services.

### **AIP Procurement Standards**

FAA Advisory Circular 150/5100-14d established the official FAA standards for Sponsor procurement of professional services. Sponsor compliance with this Advisory Circular assures conformance with 49 CFR Part 18, 49 USC 47107 and Title IX. References noted in parenthesis refer to applicable section of Advisory Circular 150/5100-14d.

### **Sponsor Procurement System**

Per 49 CFR Part 18.36(B), sponsors shall use their own established procurement procedures, which reflect applicable state and local laws/regulations. However, as a condition of AIP eligibility, Sponsors must also comply with applicable Federal laws and regulations as established by 49 CFR Part 18.36. This includes but is not limited to the following:

- Grantees must maintain a contract administration system that will ensure performance in accordance with the terms and conditions of their contract(s).
- Grantees remain solely responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues that arise from their procurement action.
- Federal agencies may not substitute their judgment for that of a grantee unless the matter is primarily a Federal concern.
- Grantees shall have an established written procedures that address protest and disputes that arise from their procurement action and contract agreements.
- Grantees shall conduct a fee analysis for all procurement actions.

### **Consultant Selection (Ref. Chapter 2)**

To remain eligible under the AIP, Sponsors must base their selection upon qualifications and experience. AIP requirements prohibit selections based on cost information or cost proposals. A selection based upon costs is not eligible for AIP participation. Sponsors should not address the fee for services until they complete the selection process.

Grantees must conduct the selection process in manner that ensures fair and open competition. The process must be void of any unfair or unethical conduct. We urge Sponsors not to enter into the selection process with a pre-selection mentality.

The FAA will not offer any endorsement or judgment of any firm.

### **AIP Eligibility**

Conformance with the requirements of AC 150/5100-14 is a condition of AIP eligibility. Sponsors that fail to adhere to the applicable requirements jeopardize AIP participation in the costs associated with engineering services.

We strongly encourage Sponsors to contact the FAA **prior to soliciting** for professional services. This coordination hopefully will limit actions that may lead to a subsequent ineligible determination. We also encourage Sponsors to seek FAA review and approval of an engineering agreement prior to execution.



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## RESOURCES

### Advisory Circulars

- [AC 150/5100-14](#): Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects

### Regulations/Policy

- [49 CFR Part 18](#): Uniform Administrative Requirements for Grants and Cooperative agreements.
- [40 USC Chapter 11](#): Federal Statute for Selection of A/E Service as established by the Brooks Law (PL 92-582)
- [49 USC 47107](#): Federal Statute for Project grant application approval conditioned on assurances about airport operations
- [FAA ORDER 5100.38C](#): AIP Handbook (Refer to Chapter 9)

### Forms

- Sponsor Certification For Selection of Consultants: [MS Word](#) | [pdf](#)



## **320 - Roles and Responsibilities**

### **Professional Services**

The process of selecting a professional consultant and establishing an agreement for services typically involves four entities;

1. Sponsor
2. Prospective consultants
3. Independent estimator
4. FAA project manager

Of these entities, the sponsor maintains the most prominent role. The sponsor is the contractual authority for establishing and administering contract agreements and is responsible for all contractual matters, including evaluation and award of contract, resolution of claims and disputes, and settlement of litigation issues.

Sponsors should note that Federal Regulation 49 CFR Part 18.36 prohibits Federal Agencies from substituting their judgment for that of the grantee. **The FAA will not provide a judgment or endorsement of any consultant.**

The FAA will not act on the behalf of the Sponsor by conducting a cost analysis for the purpose of determining a fair and reasonable fee. The FAA's role in a Sponsor's consultant selection is essentially limited to reviewing the sponsor's procurement action for the purpose of determining AIP eligibility.

### **Roles and Responsibilities**

The typical roles and responsibilities for each entity are as follows:

#### **Sponsor's Roles and Responsibilities**

- The sponsor is the contractual authority for establishing and administering contract agreements and is responsible for all contractual matters including:
  - Evaluation and award of contract,
  - Resolution of claims and disputes,
  - Settlement of litigation issues
- The Sponsor must conduct all procurement actions in a fair and reasonable manner, conforming to professionally accepted selection procedures that ensure free and open competition in a manner that is void of unfair or unethical conduct.
- The sponsor shall review and update their DBE program to reflect the reasonable availability of qualified DBE firms for the intended professional services.
- The sponsor shall specifically identify all projects they intend to address under the agreement are within the solicitation.
  - Sponsors should only identify projects that they can reasonably construct within five years of the initial date of the contract.
  - The solicitation must adequately define the proposed project as opposed to using a general scope of services (e.g. "Re-construct Taxiways Bravo and Delta" instead of "all future airfield paving projects").
- The sponsor shall publicly solicit requests for qualifications using public announcements, newspaper advertisements and direct mailings for the purpose of generating the highest interest.
- The sponsor shall assure that they base the selection process solely on qualifications and capabilities. The selection process shall be void of fee/cost information.
- Prior to receipt of qualifications from prospective consultants, the Sponsor must establish an objective selection board that subsequently develops appropriate rating criteria.



- The sponsor shall make a determination of the most qualified firm using the results of their established rating criteria and any interviews that they conducted.
- The Sponsor must fully document the selection process by preparing a report that details the extent of the review, selection considerations and final recommendation.
- The Sponsor and the selected firm shall establish a detailed scope of work that clearly defines the required services.
- Using the detailed scope of work, the Sponsor shall determine a fair and reasonable cost for the services (49 CFR Part 18.36).
  - a. For contracts expected to exceed \$100,000, Sponsor must obtain an independent estimate to serve as an aide in their fee analysis for the purpose of determining fair and reasonable fee. (Refer to appendix “F” of AC 150/5100-14D for a sample fee estimate format)
  - b. For contracts less than \$100,000, the Sponsor may accomplish the fee evaluation by one or more of the following
    - Written determination of fair and reasonable fee based on a review by a knowledgeable person and based upon previous business experience.
    - Comparison with a Sponsor prepared fee estimate
    - Written comparison with previous contracts of similar nature
- The Sponsor must prepare a record of negotiations that sufficiently documents the entire selection process, negotiation phase and fee analysis. This Sponsor must make this document readily available for a third party audit.
- The sponsor shall submit the agreement, the sponsor certification, record of negotiations and the fee analysis to the FAA for review. The purpose of the FAA review is to determine AIP eligibility and is not a review for legal sufficiency.

#### **Prospective Consultant**

- Respond to Sponsor's RFQ with understanding that fee information is not a consideration in the selection process.
- Make good faith efforts to seek participation of DBE firms.
- Negotiate a detailed scope of services
- Negotiate a fair and reasonable fee for services. Consultant must provide a derivation of the fees as an attachment
- Assist with preparation of contract documents that incorporate all required Federal provisions. The contract must also specify acceptable methods of payment such cost plus fixed fee or fixed lump sum. (Note: AIP strictly prohibits cost-plus-percentage-of-costs agreements).
- Provide evidence that charged labor and general administrative overhead expenses are certified by an audit and comply with provisions of [48 CFR PART 31](#), *Contract Cost Principles and Procedures*
- Provide the services required in the contract



### **Independent Estimator's Role**

- Review detailed scope of services. Request clarification of uncertain work items as needed.
- Prepare an independent estimate in the recommended format that exhibits a fair and impartial assessment of your opinion of reasonable fees.
- Furnish to the Sponsor your estimate along with a copy of derivation of estimate.
- **SIGN** and **DATE** the independent cost estimate
- **Refrain** from discussing man-hours or fee information with the selected consultant.
- Refrain from entering into negotiations phase.

### **FAA's Role**

- Review proposed agreement for a determination of AIP eligibility.
- Review Sponsors selection process and agreement for conformance to AIP requirements. (NOTE: The basis for FAA is a combination of Sponsor Certification and a cursory review of sponsor documentation)
- Advise the Sponsor of FAA's determination. (NOTE: The FAA is not a party to the Sponsor's contract. Any review and approval action by the FAA is a determination for AIP eligibility and is not a review for legal sufficiency.)

## **RESOURCES**

### **Advisory Circulars**

- [AC 150/5100-14](#): Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects

### **Regulations/Policy**

- [48 CFR Part 31](#): Contract Cost Principles and Procedures
- [49 CFR Part 18](#): Uniform Administrative Requirements for Grants and Cooperative agreements.

### **Forms**

Sponsor Certification For Selection of Consultants: [MS Word](#) | [pdf](#)



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## 330 - Selection Guide

### Professional Services

This guide summarizes the typical steps required in a selection process for professional consultants for project funded under the AIP. Advisory Circular 150/5100-14d serves as the official FAA guidance on the selection process. The information provided herein supplements guidance provided in the Advisory Circular. In the event there is a discrepancy between this guidance and current AIP policy, AIP policy shall take precedence.

#### **Qualification Based Selection** (*ref. Para. 2-1*)

Sponsors must base their selection of a professional consultant on experience and qualifications. Cost information must not be a factor in the selection process, thus Sponsors should not request cost information in the solicitation request. This requirement applies to both the informal and formal processes.

Sponsors shall advertise through various means to solicit sufficient interest from qualified firms. Obtain statements of qualifications from all interested firms. The Sponsor evaluates the submitted statements of qualifications, ultimately resulting in the selection of the best-qualified firm. Identification of the detailed scope of work and the negotiation of fair and reasonable fee may only proceed after the sponsor has made a final selection.

#### **Selection Types**

In general, there are types of selection processes available for use by a Sponsor.

1. Non-competitive (less than \$10,000)
2. Informal (up to \$100,000)
3. Formal (over \$100,000)

Each of these types of selection has use limitations. Please consult with your project manager if you have questions regarding what selection type is appropriate for your situation.

#### **Non-Competitive Selection** (*ref. Para. 2-9c*)

Sponsors may use a non-competitive selection process for incidental professional services only if the resulting contact does not exceed \$10,000. Sponsors may use this type of selection for such services as:

- Appraisal Services
- Surveys
- Legal Services
- Independent Cost Estimates

Sponsors may not use the non-competitive process for project design services.

#### **Informal Procedures** (*ref. Para. 2-9*)

Projects in which the consultant fee is **not** likely to exceed \$100,000, the Sponsor may use an informal procedure to select a firm. This type of selection is best suited for small scale, single project selections.

Under the informal procedure, the sponsor may simply contact a minimum of three firms to ascertain qualifications and capabilities. Following a comparative analysis, the Sponsor may proceed with negotiations with the best-qualified firm.

Sponsors should refrain from actions that prospective firms may construe as exclusionary. This includes limiting the three firms to one firm with known airport experience and two firms with no known airport design experience or purposely excluding a firm that has shown interest.

Sponsors must fully document the informal selection process, including the basis for final selection, and their fee analysis. Please consult with the FAA prior to utilizing the informal selection process.



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## **Formal Solicitation**

Sponsors must use the formal selection procedures when:

1. Engineering fees are expected to exceed \$100,000 (includes both design and construction service)
2. When the selection addresses multiple projects.
3. Whenever the FAA project manager requests the formal process.

The focus for the remainder of this supplemental regional guidance is the formal procedure.

### **1. Identification of Work** (*ref. Para. 2-6.b*)

The Sponsor shall first identify the project or projects for which professional services are required. Sponsors should keep the following in mind:

- a. The FAA does not typically guarantee the availability of Federal funds at this stage. The official notice of the receipt of Federal funds is the Congressional Release. The sponsor should make all prospective consultants aware that the initiation of a work authorization is contingent upon receipt of Federal funds.
  - b. Because of the current FAA requirement to base grants on defined costs as opposed to estimates, we expect Sponsors to incur preliminary costs such as engineering expenses until a grant is in place. This may result in the sponsor carry such costs for several months before reimbursement is possible. We strongly encourage early coordination with the FAA at this point in order to avoid misdirected work that the FAA subsequently declares ineligible for AIP participation.
  - c. We strongly encourage Sponsors to separate the solicitation of a planning/environmental consultant from that of a development type consultant. This is mainly due to the inherent differences between the services required of a planning/environmental project versus that of a development project and the potential for excluding firms that do not offer both planning and design services.
  - d. The scope of work is by necessity, broadly defined at this point. Detailed refinement of the scope of services typically occurs after completion of the selection process. However, the scope of the project should be specific as opposed to generic. (e.g. "Rehabilitate taxiway Bravo" as opposed to "Rehabilitate Taxiways".
  - e. Sponsors may incorporate other non-eligible work items within the same solicitation. However, you must identify all such work as non-Federal participation. The consultant must identify the cost of services for ineligible work separately from that of eligible work.
  - f. Sponsors may identify multiple projects in one solicitation with the intent of issuing future work authorizations as funding becomes available. Sponsor must specifically identify all such work in the original solicitation. General project descriptions may not be used.
  - g. If a master agreement is established, the Sponsor must reasonably be able to accomplish the identified work within five years of the date of the base contract; otherwise a new selection process will be necessary. (*Ref. para. 2-6.d*)
- ### **2. Establishment of Selection Board** (*ref. Para. 2-5*)

The Sponsor shall assemble a selection board consisting of a minimum of three persons who are knowledgeable of the project(s) and the type of services that are required. The selection board is responsible for reviewing all submitted statements of qualifications. The board subsequently evaluates and rates each firm.

We recommend that one or more members have a technical background in the type of development work you are considering. Complex and intricate projects may require additional selection board members who are knowledgeable in specific areas. To maintain the integrity of the board, persons who may have an expressed or implied conflict of interest should not be





included on the selection board. Board members must approach this duty in a clear and objective manner that is free of pre-selection mentality and any conflict of interest.

**3. Selection Criteria** (*ref. Para. 2-7*)

**Prior** to soliciting for prospective consultants, the selection board shall develop applicable criteria that is later used comparatively rate all interested firms. The board should develop a numerical rating system for each criterion.

The numeric rating assigned to a particular criterion should be proportional to the importance of that criterion in accomplishing the intended project. Sponsors should avoid assigning high emphasis on a particular criterion that would have little impact (compared to other criteria) on the project. The criteria should include but not be limited to the following:

- a. Firm's capability to perform
- b. Firm's Experience in similar projects
- c. Professional qualifications of key personnel
- d. Implementation of Affirmative Action Plan
- e. Personnel Capabilities
- f. Current Workload
- g. Ability to meet schedules
- h. Ability to meet budgets
- i. Past projects of similar nature
- j. Knowledge of FAA Standards & Policies
- k. Demonstration of understanding of the project(s)
- l. Capability to furnish qualified inspectors
- m. Participation by DBE firms

**4. Solicitation** (*ref. Para. 2-2 and 2-8.c.*)

Sponsors shall solicit in a manner that promotes fair and open competition. Sponsors shall avoid exclusionary practices that interested parties may construe as compromising fair and open competition.

Sponsors should take measures to assure broad circulation of their intent to hire a professional consultant. Acceptable measures include utilizing public announcements, local and regional advertisements, and trade journal announcements. Sponsor may also send solicitations directly to firms known to have expertise in the area of the proposed project. Sponsors may not purposely exclude firms that have known experience in similar work.

Sponsor should take affirmative steps to notify small and minority owned businesses of the potential federally funded work. The RFQ must not solicit cost information nor should the consultant include such information in their submittal.

The request for qualifications (RFQ) should include as a minimum the information listed below.

- a. Description of the services that are required;
- b. Description of the specific proposed project(s);
- c. Location of the proposed project(s);
- d. Estimate of how long services will be required;
- e. Estimated range of cost for the proposed construction development work;
- f. Request for experience and qualifications;
- g. Description of how the selection will be made;
- h. Notification that the contract will be subject to applicable Federal Provisions



**\*SAMPLE ADVERTISEMENT\***

*The following is a suggested format a Sponsor may use as a starting point when developing their solicitation for engineering consultants. This format is provided primarily for illustrative purpose and its use is not mandatory. Sponsors remain responsible for all aspects of their procurement action.*

**NOTICE TO AIRPORT CONSULTANTS**

The City of **< Name of Sponsor >** is hereby soliciting statements of qualifications and experience from airport consultants for projects at **<Name of Airport >**. Subject to receipt of Federal funding, these projects may include the following:

1. Rehabilitate runway 12/30 (6,000' X 150'), reconstruct and extend parallel taxiway system, including lighting and signage.  
Estimated cost of development: \$1,900,000
2. Extend runway 18/36 (1000' X 150') including parallel taxiway system and safety area grading.  
Estimated Cost of development \$800,000

The required services include, but are not limited to; engineering services for preliminary, design, bidding and construction phases, including incidental special services, for the above listed projects as funded under the FAA Airport Improvement Program.

A qualification based selection process conforming to FAA Advisory Circular 150/5100-14d will be utilized to select the most qualified firm. Fee information will not be considered in the selection process and must not be submitted with the statement of qualifications.

Selection Criteria will include: Recent experience in airport projects, capability to perform all aspects of project, reputation, ability to meet schedules within budget, quality of previous airport projects undertaken, interest shown, and consultant qualifications.

Fees will be negotiated for projects as federal funds become available.

Prospective Consultants are advised that applied overhead rates must be in accordance with the cost principals established within Federal Regulation 48 CFR Part 31, *Contract Cost Principles and Procedures*. The successful firm will be required to submit a copy of their current overhead rate audit certification.

This contract is subject but not limited to the following federal provisions:

- Title VI of the Civil Rights Act of 1964
- Section 520 of the Airport and Airway Improvement Act of 1982
- DOT Regulation 49 CFR Part 18.36(i) - Access to Records
- DOT Regulation 49 CFR Part 20 - Lobbying and Influencing Federal Employees
- DOT Regulation 49 CFR Part 26 -Disadvantage Business Enterprises Participation
- DOT Regulation 49 CFR Part 29 – Government-wide Debarment and Suspension
- DOT Regulation 49 CFR Part 30 - Federal Trade Restriction Clause

Interested firms should submit three copies of their statement of qualifications and experience along with references to the following address, no later than **< Time and Date >< Point of Contact and Address >**



**5. Selection** (*ref. Para. 2-8*)

After receiving the Statements of Qualifications, the selection committee proceeds with evaluating and rating each submittal. The committee tabulates the combined results of each firm's ratings. At this point, the committee should establish a short list consisting of the top three rated firms. The Sponsor then notifies the unsuccessful firms of their non-selection.

The sponsor should now request detailed information related to qualifications, capabilities, and performance from each short-listed firm. The magnitude and complexity of a project will dictate the extent of this phase.

Sponsors typically conduct personal interviews at this point. For relatively small and simple projects, a telephone conference call may be sufficient. If conducting formal interviews, we recommend that each firm prepare a detailed proposal identifying key personnel, proposed typical schedule, technical design approaches, and construction budget cost controls. The proposal may serve as the basis for the actual interview.

During this phase, Sponsors should keep in mind the following:

- The FAA will not offer nor render any judgment or endorsement of any firm's past performance or capabilities.
- The FAA will not participate in the selection process.
- Sponsors must strictly avoid reviews or discussions of cost/pricing information. This includes hourly rates and overhead rates.
- Sponsors may contact past clients of the firms to establish or confirm the quality of past performance.

Using the combined information obtained in the evaluations, the firm's proposals and the respective interviews, the selection board should reach a consensus on which firm is best qualified to accomplish the intended work.

**6. Documentation** (*ref. Para. 2-8.n*)

The Sponsor must document the entire selection process to provide a clear and concise record that affirms the process was conducted in a fair and open manner and that Federal requirements were met. The report shall contain sufficient detail to indicate the extent of the review and selection considerations.

### **Impermissible Practices**

To maintain eligibility of engineering costs; the sponsor must avoid practices the AIP does not allow. These include the following:

- Only notifying select firms of the sponsor's interest in procuring an engineering consultant. This is an exclusionary practice.
- Permitting an interested consulting firm to assist the sponsor in establishing the selection documentation. This practice is a conflict of interest.
- Requesting or receiving cost information with the solicitation request.
- Requiring regional preferences. (Note: Geographical considerations may be a rating criterion. However, the Sponsor cannot use this to exclude prospective firms).
- Indefinite delivery and generic project selections. The RFP must identify specific projects that the Sponsor can reasonably accomplish within 5 years.
- Sharing of cost information between independent estimator and consultant.
- Allowing independent estimator to participate in negotiations.
- Pressuring the independent estimator to adjust their estimate to within 10% of the consultant's proposal.



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## **340 - Contract Establishment**

### **Professional Services**

After a consensus selection of the most qualified consulting firm, the sponsor should initiate the process to prepare and execute a written contract agreement. The agreement must be legally sufficient and clearly define all terms and obligations of the agreement including but not limited to:

- Parties to the contract,
- Clear definition of services,
- Payment provisions,
- Duration of services,
- Required Federal contract provisions

### **Responsibilities (Ref 49 CFR Part 18.36)**

Sponsors are the contractual authority for establishing and administering the agreement. The Sponsor is responsible for all contractual matters, including evaluation and award of contract, resolution of claims and disputes, and settlement of litigation issues. The FAA is not a party to a Sponsor's contract.

The Sponsor must not construe the FAA's review of a contract agreement as a review for legal sufficiency. The FAA's role in reviewing such agreements is limited to a determination of AIP eligibility.

### **Initiating the Contract Agreement**

The establishment of a contract agreement requires a systematic approach that results in a mutual agreement between the two parties. The typical steps required for the establishment of a professional agreement are described follows:

- a. Establish type of contract
- b. Define detailed scope of services
- c. Sponsor develops independent cost estimate
- d. Consultant prepares proposal
- e. Sponsor conducts fee analysis
- f. Sponsor enters into negotiations
- g. Prepare final agreement
- h. Submit to FAA for determination of AIP eligibility

### **Type of Contract**

The two most common types of contracts used for AIP development projects are the lump sum contract and the cost-plus-fixed fee contract. 49 CFR Part 18.36 prohibits use of the Cost-plus-percentage Costs contract type.

#### **Lump Sum:**

The lump sum agreement is permissible when the Sponsor can clearly establish the extent, scope, complexity, character and duration of the work. Under this type of agreement, there is very little to no variation or uncertainty regarding the level of effort and expense necessary to complete the required services. This type of contract is best suited for the following:

- Design Services (when required services are well defined)
- Bidding Services
- Survey Services (when extent of work is well defined)
- Project Closeout Services
- Geotechnical Services (if extent of work is well defined)



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### **Cost-Plus-Fixed-Fee:**

Use of the cost-plus-fixed fee method is appropriate for situations where there are variations and uncertainty regarding the level of effort necessary to perform the services. This includes situations where the Sponsor cannot accurately define the duration of services. This type of contract is best suited for the following services:

- Construction Services (Construction Management, Inspection, acceptance testing)
- Design Services for complex projects
- Survey Services (when extent and duration may vary)

The Sponsors contract may include a combination of the lump sum and cost-plus-fix-fee. For example, a construction services contract with elements that have a clearly defined scope and duration (i.e. project administration or project closeout) may use the lump sum method for these contract elements. The cost-plus-fixed fee would apply to the contract element that addresses inspection services since the required level of effort is dependent upon the contractor's performance.

### **Scope of Services (Ref. Para. 2-11 and Appendix E)**

Upon selection of the most qualified firm, the Sponsor and the selected consultant shall meet to develop a detailed scope of services. The sponsor's independent estimator may attend the scope-of-services meeting provided there is not discussion or dissemination of fee information.

We strongly recommend the Sponsor engage the FAA project manager at the pre-design phase. This advance coordination will help avoid misdirected design efforts and limit misunderstandings pertaining to eligibility of the project work elements. We caution Sponsors that the FAA bases AIP participation with engineering costs on the condition they are necessary and reasonable. Costs not required to complete a project are not allowable.

The FAA does not consider engineering costs to correct errors or omissions, misdirected work or unsubstantiated project changes as being necessary and thus are not eligible under the AIP.

Sponsors and consultants should keep the following in mind when establishing the scope of services:

- Costs and fees may not be a consideration at this time.
- With respect to AIP eligibility, the scope of services should only address work elements identified in the FAA project initiation letter.
- The scope of services must clearly define all responsibilities expected of the selected consultant as well as the Sponsor. Refer to Appendix E of AC 150/5100-14d.
- To ensure AIP eligibility, design work performed prior to receipt of a Grant must conform with all applicable AIP standards.
- Design elements that do not meet AIP requirements or unjustifiably exceed AIP requirements will not be ineligible for AIP participation.
- For proposed contracts that include multiple work elements (e.g. Reconstruct Runway 3-21 and Terminal Apron), the scope of services should break out the cost of each major work element rather than combine the costs into one sum.
- Note: AIP will not participate in costs associated with additional design efforts required to correct previous misdirected work or misunderstandings regarding AIP eligibility.

### **Independent Fee Estimate (Ref. Para. 2-12 and Appendices F & G)**

The Sponsor must prepare an independent fee estimate **prior** to receiving the consultant's proposal. Although the independent estimate is a requirement for all contracts expected to exceed \$100,000, the FAA project manager does reserve the right to request an independent estimate for contracts less the \$100,000.



The purpose of the independent estimate is to assist the sponsor in negotiating a fair and reasonable price with the selected consultant. The independent estimate must address direct labor work hours, rates and overhead as well as non-salary expenses and a reasonable fee. Note that 49 CFR Part 18.36 requires grantees to negotiate profit as a separate element of price. Refer to Appendix F of AC 150/5100-14D for a recommended format.

Sponsors may use qualified in-house personnel to accomplish this or they may hire a separate firm to conduct the independent estimate. The independent estimate shall reflect the preparer's objective opinion of the level of effort and cost necessary to complete the intended services. The person or firm preparing the independent cost analysis may not have access to the selected consultants cost information. Sponsors that use a firm to prepare the independent estimate shall make sure they are not using a firm included on the original selection short list.

The cost for preparing an independent estimate should be nominal in amount and is eligible for reimbursement under the AIP.

### **Consultant's Proposal (Ref Para 4-4 and 4-5 and Appendices F)**

Once there is mutual agreement with the type of contract and the detailed scope of work, the consultant shall proceed with preparing their proposal. This may occur simultaneously with the Sponsor's preparation of the independent estimate.

The consultant should also prepare and submit to the Sponsor their derivation of fee. This document should clearly details how the consultant arrived at their proposed fee. Appendix F of AC 150/5100-14D contains a suggested format for addressing the derivation of fee estimate. If the consultant uses their own customized spreadsheet, it must adequately detail the following elements:

- Direct labor costs by employee category,
- Work hours,
- Hourly rates,
- Authorized overhead rate
- Direct non-salary expenses.
- Reasonable Profit (lump sum Agreements)
- Fixed Fee Amount (cost-plus-fixed fee agreements)

### **Cost/Price Analysis (Ref. Para. 2-12 and Appendices F & G)**

Per 49 CFR Part 18.36, **all procurement actions** require the Sponsor to conduct some form of fee analysis in order to assure reasonableness of costs. The responsibility for this analysis remains with the sponsor. The sponsor **cannot** pass this responsibility onto the FAA.

**Agreements less than \$ 100,000** - For agreements expected to be \$100,000 or less, the sponsor is required to conduct a fee analysis to determine reasonableness of fees. You must document your determination of a reasonable fee under date and signature by the reviewer. You must also identify the basis for your determination, which may include the followings:

- A knowledgeable individual's comparative review of the consultant's proposed fee based upon prevailing industry fees.
- Comparison with previous contracts of similar nature
- Sponsors may also elect to conduct an independent estimate for fee proposals expected to be less than \$100,000. (Note: FAA reserves the right to require an independent estimate)

**Agreements greater than \$ 100,000** - For agreements where the fees are likely to exceed \$100,000, the Sponsor must obtain an independent estimate. Upon receipt of the consultant's proposal, the sponsor shall analyze and evaluate the proposed fee using the independent cost estimate **as an aide**. The sponsor should compare the consultant's fee estimate with that of the independent estimate to identify red flags such as areas of significant differences in cost and effort.



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Sponsors should not focus simply on the bottom line cost when comparing the two fees. The Sponsor should give attention to the level of effort proposed by the selected consultant versus the independent estimate. Sponsors should look for discrepancies in resource allocation (labor hours), which may be an indication that a particular work item is either being overlooked or over-emphasized.

### **Negotiations (Ref. Para. 2-13 and Appendix H)**

The sponsor should enter into negotiations with the selected firm to resolve any discrepancies or concerns identified during their fee analysis. Sponsors should note that the FAA does not participate in negotiations and is not a party to the contract. The FAA role is to verify Sponsor conformance with Federal requirements and to verify their cost analysis supports a determination of a fair and reasonable fee.

Once the negotiations result in a mutually acceptable agreement, the Sponsor **must prepare** a record of negotiations. This record should document all resolution of cost and labor hour discrepancies as well as document any changes to the scope of work. The record of negotiations is a sponsor responsibility. The Sponsor should not task the consultant with preparing and submitting the record of negotiations on the behalf of the sponsor. Appendix H of AC 150/5100-14d contains a sample record of negotiations. The Sponsor shall retain this record as part of their contract documentation. Sponsor must make this record available to the FAA or a third party auditor upon request.

### **Preparation of Final Agreement (Chapter 3)**

Upon completion of the negotiations, a preliminary agreement should be prepared. The contract agreement shall conform to all applicable State and local laws and must legally bind the two parties to the terms and conditions of the agreement. To remain eligible under the AIP, the agreement must also incorporate all required Federal provisions.

The sponsor and consultant are solely responsible for the legal sufficiency of the agreement. The FAA is not a party to the contract. Sponsor must not construe any review or approval action by the FAA as confirmation of legal sufficiency.

### **Contract Checklist (Ref. Para. 3-7)**

As a minimum, the contract agreement for professional services shall include but not be limited to the following listed items:

- Effective date of the agreement
- Name and description of the parties to the agreement
- Description of work
- Definition of services
- Delineation of ineligible work from eligible work (if applicable)
- Identification of delivery schedule
- Delineation of responsibilities between consultant and sponsor
- Incorporation of mandatory Federal provisions
- Provisions for re-negotiation in the event of a change in the scope of work
- Provisions for deliverable items such as reproducible copies of plans and specifications and engineering reports.
- Compensation provisions
- Provision for termination of services





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## Federal Provisions

Contracts funded in whole or in part by the Airport Improvement Program shall incorporate the following Federal provisions:

### Provisions for all A/E Contracts

- Civil Rights Act of 1964, Title VI - Contractor Contractual Requirements - 49 CFR Part 21
- Airport and Airway Improvement Act of 1982, Section 520 - Title 49 U.S.C. 47123
- Disadvantaged Business Enterprise - 49 CFR Part 26
- Lobbying and Influencing Federal Employees - 49 CFR Part 20
- Access to Records and Reports - 49 CFR Part 18.36
- Rights to Inventions - 49 CFR Part 18.36
- Trade Restriction Clause - 49 CFR Part 30

### Additional Provisions for A/E Contracts exceeding \$10,000

- Termination of Contract - 49 CFR Part 18.36

### Additional Provisions for A/E Contracts exceeding \$25,000

- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - 49 CFR Part 29

### Additional Provisions for A/E Contracts exceeding \$100,000

- Breach of Contract Terms - 49 CFR Part 18.36

>> [Download All Required A/E Federal Provisions \(rtf\)](#)

## Submittal Requirements for FAA Review

The Sponsor shall assemble and submit the following documentation for FAA review.

- One copy of the Engineering Agreement
- Consultant's derivation of fees (*Ref. Appendix F and G*)
- Sponsor's fee analysis that result in a determination of a fair and reasonable fee.
  - **Agreements exceeding \$100,000:** Sponsor determination of a fair and reasonable fee along with a **signed** copy of the independent cost estimate
  - **Agreements less than \$100,000:** Sponsor determination of a fair and reasonable fee
- Selection report documenting processes used by Sponsor
- Record of Negotiations (*Ref. Appendix H*)
- Verification that applied overhead rates have been certified by audit and comply with Federal Regulation 48 CFR PART 31, *Contract Cost Principles and Procedures*
- Sponsor written recommendation of award (May be incorporated into record of negotiations).
- Sponsor Certification for Selection of Consultants

## AIP Review

The purpose of the FAA review is essentially limited to a determination of AIP eligibility. FAA review and concurrence **does not** imply a determination of legal sufficiency.

The FAA project manager generally bases their concurrence with a consultant's agreement upon a cursory review of the submitted documents and their Sponsor's certification. This checklist certification identifies critical grant obligations that you as the Sponsor must fulfill in order to comply with AIP eligibility requirements.





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## **350 – Acquiring a Surveyor for AGIS**

### **Professional Services**

#### **AGIS**

The Federal Aviation Administration (FAA) has begun a groundbreaking initiative to streamline the airport survey process and centralize airport data storage into one integrated web-based Geographic Information System (GIS) appropriately called “Airports-GIS (AGIS).” The AGIS program defines the FAA process for the collection and maintenance of airport and aeronautical data. The FAA has established these new processes to meet the demands of the next generation National Airspace System (NAS) which requires accurate survey data.

The FAA designed the AGIS system to be a complete “one-stop-shopping” site for obtaining and maintaining airport data. The FAA’s initiative to centralize data storage through AGIS, combined with the new Advisory Circular (AC) requirements for geospatial and aeronautical data formulation creates a paradigm shift in the way we gather and process airport survey data.

#### **AGIS SOW**

The submittal of survey data to the FAA for validation is a multistep process that proponents may track online at the [FAA AGIS Website](#). One of these critical steps is the submittal of a statement of work for FAA review and approval. In order to provide assurance that the proponent is addressing all FAA survey and project requirements, airport sponsors should utilize the SOW template (form) available on the AGIS website. If a proponent does not fully meet all survey requirements, the SOW will likely face rejection in AGIS.

#### **Suggested Forms**

For the convenience of the Sponsor, the FAA has prepared several suggested documents that will assist a Sponsor in acquiring a qualified surveyor and establishing an acceptable statement of work.

- [Request for Proposals](#) (pdf)
- Statement of Work Templates
  - [Aeronautical Survey and Airport Airspace Analysis](#) – For procedure development
  - [General Airfield Construction](#) – Does not involve runway data
  - [Supplemental Services](#) – Additional incidental services
- [Selection Criteria](#)

#### **RESOURCES**

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| <ul style="list-style-type: none"><li>• <a href="#">FAA AGIS Website</a></li><li>• <a href="#">A Guide to Airport Surveys</a> (pdf)</li></ul> |
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