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**NORTH DAKOTA DEPARTMENT OF
TRANSPORTATION**

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CONSULTANT ADMINISTRATION SECTION

Procedures Manual

INTRODUCTION

The North Dakota Department of Transportation (NDDOT) regularly solicits and enters into contracts for Professional Services with the Engineering Consulting Community. This manual is intended to help describe and define the processes and procedures used for procuring consulting services and administering consultant contracts. These processes and procedures shall explain how each procurement is completed in addition to defining the responsibilities of the Consultant Administration Section (CAS) and the responsibilities of the procuring divisions and their sections.

All consultant procurements shall comply with applicable North Dakota State Laws and specifically to the following sections, 54-44.7, 24-02-07.3, & 43-19.1, Federal requirements, and Federal Highway Administration (FHWA) guidelines.

PREQUALIFICATION

The State of North Dakota allows Consultants to become prequalified with the NDDOT. Prequalification may be done in several areas and can be accomplished by sending in the proper Federal Form 330 to the CAS. In addition, they must also submit a statement of qualifications, a brochure describing past experience and firm capabilities, and a cover letter describing the area(s) in which the consultant is requesting to become prequalified. The submitted information shall also contain a list of the people in the firm qualified to sign contracts. The consultant must notify CAS in writing of any change in the list prior to any additional document signatures. Upon receiving and reviewing all the required information the consultant shall be notified by CAS of the prequalification and placed on the prequalification list, which is available on the NDDOT website.

The prequalification list is used to assist the NDDOT in finding interested, qualified consultants for potential projects. The list is maintained in the following areas of work:

- A. Preliminary Engineering
 - 1. Surveying
 - 2. Structural Design
 - 3. Road Design
 - 4. Traffic Engineering
 - 5. Environmental
 - 6. Wetlands Delineation

- B. Construction Engineering
 - 1. Inspection
 - 2. Materials Testing
 - 3. Surveying

- C. Geotechnical Investigations
- D. Steel Fabrication Inspections
- E. Soil Contamination Studies
- F. Partnering Facilitation
- G. Bridge Inspection

Upon prequalification, the consulting firm will receive Request for Proposals (RFPs) by email when the NDDOT is soliciting for work in the category a consultant is prequalified. Information provided for prequalification is confidential and not available to the public.

All project proposals submitted during any solicitation shall remain confidential until a contract has been executed with the NDDOT for each project.

Services not on the prequalification list

Services required for tasks not included in the prequalification list, and solicited by CAS, i.e. Public Information Coordination, are procured according to NDCC section 54-44.7-03. An RFP is prepared and an advertisement is placed in the ten major newspapers in the state and any national publication deemed appropriate. A minimum of twenty-one days are required from the date of the first publication to the time the proposals are due.

The proposals are evaluated by a selection team and a minimum of three firms are selected to interview for the project. The selection committee selects a firm and makes a recommendation to the Director of NDDOT. The Director reviews and approves the selection. If less than three firms respond, reference NDCC section 54-44.7-03.

Consultant Annual Audit Information for Indirect Cost

Consulting firms proposing to do work for the NDDOT must have a current audit rate no older than 15 months from the close of the firm's Fiscal Year. Firms that do not meet this requirement will not qualify to propose or contract for NDDOT projects until the requirement is met. Firms that have submitted all the necessary information to the NDDOT and are waiting for the completion of the audit, will be qualified to submit proposals for work. Information submitted by a firm that is incomplete will not qualify.

DESIGN DIVISION

Project Concept Report, Environmental Documentation, Roadway Design, & Survey

CAS will perform solicitation for Project Concept Reports, Environmental Documentation, Roadway Design, & Survey on behalf of the Design Division. These will, in most cases, be Preliminary Engineering activities.

The solicitation shall begin with the identification of a project by Design Division and written communication including the "Solicitation Checklist" to CAS. The written communication to CAS shall consist of the project number(s), scope of work, schedule, activities to be performed by the consultant, and the name of the Design Division Representative (DDR) for each project.

Upon receipt of this information the DDR shall meet with CAS to discuss the solicitation and establish time frames associated with the solicitation. At this time CAS and the DDR shall establish the proposal Agency Selection Committee. This committee shall be agreed upon by the DDR and CAS and shall include the DDR, CAS representative, and any other individuals deemed pertinent to the project including but not limited to, District representatives, City representatives, County representatives, Civil Rights, etc.

CAS is responsible for producing the RFP and mailing/advertising the RFP to the consulting community. The DDR shall review the RFP prior to the RFP being issued. CAS shall take receipt of the project proposals and distribute them to the Agency Selection Committee. Each member of the Agency Selection Committee shall be responsible for reviewing and ranking the proposals in the time frame established prior to the solicitation. All inquiries from the consulting community pertaining to the solicitation shall be directed to CAS.

The Agency Selection Committee shall meet and establish a short list of firms to be interviewed. This short list shall include a minimum of three firms based on the information in the proposal and compliance with the criteria in the RFP. Once the short list has been established, CAS shall schedule the consultant interviews and email the appropriate correspondence to the proposing firms identifying interview schedules. The interviews may be in person or via telephone. CAS will also notify, in writing, those firms not chosen for interviews. The CAS representative shall also compile and distribute a series of questions to the Agency Selection Committee which will be asked during the interview. If less than three firms respond, reference NDCC section 54-44.7-03.

The CAS representative shall facilitate the interviews. Upon completion of the interviews the members of the Agency Selection Committee shall rank the consultants and identify the top ranked firm. The CAS representative shall submit a memo to the Office of Project Development Director who will then submit the memo to the Director for signature, authorizing the NDDOT to enter into negotiations with that firm. Upon signature by the Director CAS will notify the successful firm by telephone. The CAS representative will also notify in writing the unsuccessful firms. Upon notification, the CAS representative shall begin negotiations with the firm to refine a scope of work and establish a fee for the project. Negotiations are done with the consultant by having the consultant submit a scope of work for review by the NDDOT. CAS distributes the scope of work to the DDR of the project. CAS and the DDR review the scope to insure that the necessary work items are in the scope. CAS then negotiates the fees, drafts the contract, and

processes the contract.

Once the scope of work and the fee are agreed upon, the CAS representative will draft a contract for signature by the consulting firm and the NDDOT. This process involves communicating with Information Processing (IP) via a memorandum that contains all the necessary information to fill out one of the Preliminary Engineering Contracts, NDDOT contract number-1002 or NDDOT contract number-51812. IP is then responsible for creating the "original" contract and notifying the Bridge Division upon completion. CAS will then review the contract and distribute to the consultant for signature. Upon receipt from the consultant with appropriate signatures, CAS sends the contract to the Legal Division for review. Legal Division then forwards the agreement to the NDDOT Director for signature. Upon signature by the Director, CAS receives the contract and places the "original" in Central File, a copy in the CAS file, and mails a copy to the consultant.

Upon signature by the Director or a Notice to Proceed, the DDR shall manage the day to day activities of the project and coordinate all submittals. The CAS representative shall receive a biweekly update from the consultant and process all progress payments and supplements.

Rankings from each member of the Agency Selection Committee, the signed memo from the Director, a copy of the RFP, the Short Listed proposals, the contract, pertinent correspondence during negotiations, correspondence pertaining to the contract during the project, final consultant proposal, Notice to Proceed (if applicable), biweekly updates, contract supplements, and progress billings shall be saved and placed in the CAS project file.

LOCAL GOVERNMENT

Project Concept Reports, Environmental Documentation, Planning Studies, Roadway Design, Municipal Design, & Survey

CAS will perform solicitation for the above listed activities on behalf of Local Government. These will, in most cases, be Preliminary Engineering activities.

The solicitation shall begin with the identification of a project by Local Government and communicating in writing to CAS of the need for a solicitation. The written communication to CAS shall consist of the "Solicitation Checklist" including project number(s), a scope of work, schedule, activities to be performed by the consultant and the name of the Local Government Representative (LGR) for each project.

Upon receipt of this information the LGR shall meet with CAS to discuss the solicitation and time frames associated with the solicitation. At this time CAS and the LGR shall establish the proposal Agency Selection Committee. This board shall be agreed upon by the LGR and CAS and shall include the LGR, CAS representative, and any other individuals deemed pertinent to the project including but not limited to, District representatives, City representatives, County representatives, Civil Rights, etc.

CAS is responsible for producing the RFP and email/ mailing/ advertising the RFP to the consulting community. The LGR shall review the RFP prior to the RFP being issued. CAS shall take receipt of the project proposals and distribute them to the Agency Selection Committee.

Each member of the Agency Selection Committee shall be responsible for reviewing and ranking the proposals in the time frame established prior to the solicitation. All inquiries from the consulting community pertaining to the solicitation shall be directed to CAS.

The Agency Selection Committee shall meet and establish a short list of firms to be interviewed. This short list shall have a minimum of three firms and be based on the information in the proposal and compliance with the criteria in the RFP. Once the short list has been established, CAS shall schedule the consultant interviews and email the appropriate correspondence to the proposing firms identifying interview schedules. The interviews may be in person or via telephone. CAS will also notify, in writing, those firms not chosen for interviews. The CAS representative shall also compile and distribute a series of questions to the Agency Selection Committee which will be asked during the interview. If less than three firms respond, reference NDCC section 54-44.7-03.

The CAS representative shall facilitate the interviews. Upon completion of the interviews the members of the Agency Selection Committee shall rank the consultants and identify the top ranked firm. The CAS representative shall submit a memo to the Office of Project Development Director who will then submit the memo to the Director for signature, authorizing the NDDOT to enter into negotiations with that firm. Upon signature by the Director, CAS or the LGR will notify the successful firm by telephone. The CAS representative will also notify in writing the unsuccessful firms. Upon notification, CAS and LGR shall work with the consultant to refine a scope of work for the project. Correspondence for this process shall be facilitated by the LGR and pass through CAS for review. When the LGR has agreed upon the scope of work, CAS shall negotiate and finalize a contract for the project. Upon completion of the negotiations, terms, and fee for the contract, CAS shall process the contract.

When both the scope of work and the fee are agreed upon, the CAS representative shall develop a contract for signature by the consulting firm and the NDDOT. This process involves communicating with Information Processing (IP) via a memorandum that contains all the necessary information to fill out one of the Preliminary Engineering Contracts, NDDOT contract number-1002 or NDDOT contract number-51812. IP is then responsible for creating the "original" contract and notifying the Bridge Division upon completion. CAS will then review the contract and distribute to the consultant for signature. Upon receipt from the consultant with appropriate signatures, CAS sends the contract to the Legal Division for review. Legal Division then distributes to the NDDOT Director for signature.

Upon signature by the Director, CAS will distribute the "original" to Local Government, place a copy in the CAS file, and mail a copy to the consultant. Upon the completion of signatures the LGR shall manage the day-to-day activities of the project, process all progress payments, and coordinate all submittals. The CAS representative shall be available to draft, negotiate, and process any supplements to the contract.

Rankings from each member of the Agency Selection Committee, the signed memo from the Director, a copy of the RFP, the Short Listed proposals, a copy of the contract, pertinent correspondence during negotiations, final consultant proposal, Notice to Proceed (if applicable), and contract supplements, shall be saved and placed in the CAS project file. CAS will retain copies of the contract documents and Local Government shall retain the originals.

BRIDGE DIVISION

Concept Report, Environmental Documentation, Structural Design/Inspections, & Survey

CAS will perform solicitation for Project Concept Reports, Environmental Documentation, Roadway Design, & Survey on behalf of the Bridge Division. These will, in most cases, be Preliminary Engineering activities.

The solicitation shall begin with the identification of a project by Bridge Division and written communication including the "Solicitation Checklist" to CAS. The written communication to CAS shall consist of the project number(s), scope of work, schedule, and activities to be performed by the consultant, and the name of the Bridge Division Representative (BDR) for each project.

Upon receipt of this information, the BDR shall meet with CAS to discuss the solicitation and establish time frames associated with the solicitation. At this time, CAS and the BDR shall establish the proposal Agency Selection Committee. This committee shall be agreed upon by the BDR and CAS and shall include the BDR, CAS representative, and any other individuals deemed pertinent to the project including but not limited to, District representatives, City representatives, County representatives, Civil Rights, etc.

CAS is responsible for producing the RFP and email/ mailing/ advertising the RFP to the consulting community. The BDR shall review the RFP prior to the RFP being issued. CAS shall take receipt of the project proposals and distribute them to the Agency Selection Committee. Each member of the Agency Selection Committee shall be responsible for reviewing and ranking the proposals in the time frame established prior to the solicitation. All inquiries from the consulting community pertaining to the solicitation shall be directed to CAS.

The Agency Selection Committee shall meet and establish a short list of firms to be interviewed. This short list shall include a minimum of three firms based on the information in the proposal and compliance with the criteria in the RFP. Once the short list has been established, CAS shall schedule the consultant interviews and email the appropriate correspondence to the proposing firms identifying interview schedules. The interviews may be in person or via telephone. CAS will also notify, in writing, those firms not chosen for interviews. The CAS representative shall also compile and distribute a series of questions to the Agency Selection Committee which will be asked during the interview. If less than three firms respond, reference NDCC section 54-44.7-03.

The CAS representative shall facilitate the interviews. Upon completion of the interviews, the members of the Agency Selection Committee shall rank the consultants and identify the top ranked firm. The CAS representative shall submit a memo to the Office of Project Development Director who will then submit the memo to the Director for signature, authorizing the NDDOT to enter into negotiations with that firm. Upon signature by the Director, CAS, Bridge, or the LGR will notify the successful firm by telephone. The CAS representative will also notify in writing the unsuccessful firms. Upon notification, the CAS representative and BDR shall work with the consultant to establish a scope of work for the project. The CAS representative shall then begin negotiations with the firm to refine a scope of work and establish a fee for the project.

Negotiations are done with the consultant by having the consultant submit a scope of work for review by the NDDOT. CAS distributes the scope of work to the BDR of the project. CAS and the BDR review the scope to insure that the necessary work items are in the scope. CAS then negotiates the fees, drafts the contract, and processes the contract.

Once the scope of work and the fee are agreed upon, the CAS representative will develop a contract for signature by the consulting firm and the NDDOT. This process involves communicating with Information Processing (IP) via a memorandum that contains all the necessary information to fill out one of the Preliminary Engineering Contracts, NDDOT contract number-1002 or NDDOT contract number-51812. IP is then responsible for creating the "original" contract and notifying the Bridge Division upon completion. CAS will then review the contract and distribute to the consultant for signature. Upon receipt from the consultant with appropriate signatures, CAS sends the contract to the Legal Division for review. Legal Division then forwards the agreement to the NDDOT Director for signature. Upon signature by the Director, CAS receives the contract and places the "original" in Central File, a copy in the CAS file, and mails a copy to the consultant.

Upon signature by the Director or a Notice to Proceed, the BDR shall manage the day-to-day activities of the project and coordinate all submittals. The CAS representative shall receive a biweekly update from the consultant and process all progress payments and supplements.

Rankings from each member of the Agency Selection Committee, the signed memo from the Director, a copy of the RFP, the Short Listed proposals, the contract, pertinent correspondence during negotiations, correspondence pertaining to the contract during the project, final consultant proposal, Notice to Proceed (if applicable), biweekly updates, contract supplements, and progress billings shall be saved and placed in the CAS project file.

PROJECT SUBMITTALS/DELIVERABLES

Design Division, Bridge Division, Local Government, and Districts

Project submittals shall be submitted directly to the DDR or BDR by the consultant. CAS shall be copied on the correspondence of the submittal from the consultant to the NDDOT. It is the responsibility of the DDR or BDR to determine the completeness of the submittal. If the submittal is deemed adequate, CAS shall be notified by the DDR or BDR that the submittal has been accepted. CAS shall also be notified if the submittal is not acceptable. This will enable the correct processing of payments for the project and any issues associated with the project schedule. District submittals will be received by CAS and submittals for Municipal projects will be received by Local Government.

DISTRICT PROJECTS

Currently the management of all District preliminary engineering projects is performed by CAS. This includes coordinating submittals, monitoring milestone, distributing documents for approval, and receiving all submittals. Design Division is responsible for reviewing all District submittals for content and conformance with NDDOT criteria. Design Division is also responsible for communicating submittal comments to the District and CAS. Upon final submittal and signature by the Office of Project Development Director, CAS will submit the

final plans to Planning and Programming Division for bid processing.

CONSTRUCTION SERVICES

Inspection, Construction Administration, Testing, & Surveying

Spring Solicitation

Construction Services will provide a list of projects and a corresponding scope of work from each District for solicitation to CAS by February 15th annually. CAS will then prepare the RFP and email the RFP to the consulting firms prequalified for construction services. CAS will facilitate and conduct the interviews with an Agency Selection Committee consisting of a representative from the Construction Services Division, Civil Rights Division, and a representative from one or more of the Districts. CAS and Construction Services will concur on the selection of representatives from the Districts. All inquiries from the consulting community pertaining to the solicitation shall be directed to CAS.

Upon completion of the interviews, the firms will be ranked and the projects distributed to the individual firms. The CAS representative shall submit a memo to the Office of Operations Director who will then submit the memo to the Director for signature, authorizing the NDDOT to enter into negotiations with that firm. Upon signature by the Director, CAS will notify in writing the successful and unsuccessful firms. The consultant shall submit a proposal of hours and scope of work to CAS and the appropriate District for their review and comment. The District shall perform preliminary negotiations with the consulting firm pertaining to scope and hours. Upon completion of these negotiations the scope and hours shall be forwarded to CAS by the District. Upon agreement, the District shall send written correspondence to CAS expressing their agreement.

CAS will complete negotiations regarding the fee for the project. CAS will then draft a contract for the construction services of the project. This process involves communicating with Information Processing (IP) via a memorandum that contains the necessary information to fill out the Construction Engineering Contract, NDDOT contract number-17692. IP is then responsible for creating the "original" contract and notifying the Bridge Division upon completion. CAS will then review the contract and distribute to the consultant for signature. Upon receipt from the consultant with appropriate signatures, CAS sends the contract to the Legal Division for review. Legal Division then distributes to the NDDOT Director for signature. Upon signature by the Director, CAS receives the contract and will distribute the "original" to the Construction Services Division, place a copy in the CAS file, and mail a copy to the consultant.

Upon completion of the signatures, the District shall manage the project, verify all progress payments, and forward all appropriate pay requests to Construction Services Division for payment. CAS shall process any future supplements after written notification from the District including the scope and hours necessary for the additional work.

Rankings from each member of the Agency Selection Committee, the signed memo from the Director, a copy of the RFP, and the list of allocated projects, shall be saved and placed in the CAS Spring Solicitation file. A copy of the contract, pertinent correspondence during

negotiations, final consultant proposal, Notice to Proceed (if applicable), District approval of scope and hours, and contract supplements, shall be saved and placed in the CAS project file.

Construction Services not identified in the Spring Solicitation

Requests for construction services outside the annual Spring Solicitation shall begin with formal written correspondence from the District requesting the services. This correspondence shall contain a detailed scope of work, the reason for the solicitation, and the name of the District Representative for the project.

Upon receipt of the listed information, CAS shall send an RFP to each firm on the Prequalification List, according to the work identified in the correspondence from the District. The Agency Selection Committee consisting of a CAS representative, a Civil Rights representative, a representative from Construction Services, and the contact person identified in the correspondence from the District, shall review the proposals, interview, and identify the consulting firm to enter into negotiations. The CAS representative shall submit a memo to the Office of Operations Director who will then submit the memo to the Director for signature, authorizing the NDDOT to enter into negotiations with that firm. Upon receiving the signed memorandum, CAS will notify the consulting firm selected for negotiations and the other firms not chosen.

The consultant shall submit a proposal of hours and scope of work to CAS and the appropriate District for their review and comment. The District shall perform preliminary negotiations with the consulting firm pertaining to scope and hours. Upon completion of these negotiations a notice of approval and the proposal with scope and hours shall be forwarded to CAS by the District.

CAS will complete negotiations regarding the fee for the project. CAS will then draft a contract for the construction services of the project. This process involves communicating with Information Processing (IP) via a memorandum that contains the necessary information to fill out the Construction Engineering Contract, NDDOT contract number-17692. IP is then responsible for creating the "original" contract and notifying the Bridge Division upon completion. CAS will then review the contract and distribute to the consultant for signature. Upon receipt from the consultant with appropriate signatures, CAS sends the contract to the Legal Division for review. Legal Division then distributes to the NDDOT Director for signature. Upon signature by the Director, CAS receives the contract and will distribute the "original" to the Construction Services Division, place a copy in the CAS file, and mail a copy to the consultant.

Upon completion of the signatures, the District shall manage the project, verify all progress payments, and forward all appropriate pay requests to Construction Services Division for payment.

Rankings from each member of the Agency Selection Committee, the signed memo from the Director and a copy of the RFP a copy of the contract, pertinent correspondence during negotiations, final consultant proposal, Notice to Proceed (if applicable), and contract supplements, shall be saved and placed in the CAS project file.

OTHER DIVISION SOLICITATIONS

Other Divisions requiring solicitations shall notify CAS in writing. This written notification shall include a Project Number and name of the Division Representative (DR). The DR shall submit a newspaper advertisement and/or list of firms for RFP distribution. The DR shall notify the appropriate newspapers for public advertisement. The DR and CAS Representative shall establish a schedule and scope of work for the solicitation and identify the members of the Agency Selection Committee. The Agency Selection Committee will then review the proposals and “short list” a group of firms for interview. All inquiries from the consulting community pertaining to the solicitation shall be directed to CAS. The short list shall include a minimum of three firms based on the information in the proposal and compliance with the criteria in the RFP. CAS shall schedule the consultant interviews and email the appropriate correspondence to the proposing firms. The interviews may be in person or via telephone. CAS will also notify those firms not chosen for interviews. The CAS representative shall also compile and distribute a series of questions to the Agency Selection Committee to be asked during the interview. If less than three firms respond, reference NDCC section 54-44.7-03.

The CAS representative shall facilitate the interviews. Upon completion of the interviews the members of the Agency Selection Committee shall rank the consultants and identify the top ranked firm. The CAS representative shall submit a memo to the applicable Division Director who will then submit the memo to the Director for signature, authorizing the NDDOT to enter into negotiations with that firm. Upon signature by the Director, CAS will notify the successful firm by telephone. The CAS representative will also notify in writing the unsuccessful firms. Upon notification the CAS representative and DR shall work with the consultant to refine a scope of work for the project. The CAS representative shall then begin negotiations with the firm to establish a fee for the project. Negotiations are done with the consultant by having the consultant submit a scope of work for review by the NDDOT. CAS distributes the scope of work to the DR and the District. CAS, the District, and the DR review the scope to insure that the necessary work items are in the scope. CAS then negotiates the fees for the project, drafts the contract, and then processes the contract.

Once the scope of work and the fee are agreed upon, the CAS representative will develop a contract for signature by the consulting firm and the NDDOT. This process involves communicating with Information Processing (IP) via a memorandum that contains all the necessary information to fill out the Contract Forms that pertain to that specific solicitation. IP is then responsible for creating the “original” contract and notifying the Bridge Division upon completion. CAS will then review the contract and distribute to the consultant for signature. Upon receipt from the consultant with appropriate signatures, CAS sends the contract to the Legal Division for review. Legal Division then forwards the agreement to the NDDOT Director for signature. Upon signature by the Director, CAS receives the contract and distributes the “original” to the Managing Entity, a copy in the CAS file, and mails a copy to the consultant. Upon signature by the Director or a Notice to Proceed, the appropriate entity shall manage the day-to-day activities of the project, process all payments, and coordinate all submittals.

Rankings from each member of the Agency Selection Committee, the signed memo from the Director, a copy of the RFP, the Short Listed proposals, the contract, pertinent correspondence

during negotiations, final consultant proposal, Notice to Proceed (if applicable), and contract supplements shall be saved and placed in the CAS project file.

Solicitations for Public Information Coordinator

CAS shall be notified of the need for a Public Information Coordinator (PIC) in the project PCR, EA, or EIS. Upon notification, CAS will contact the Communication Director for a general scope of work for the project. Upon receipt of the general scope, CAS will facilitate the solicitation by completing the RFP and mailing to a list of perspective consultants supplied by the Communications Director. If a statewide advertisement is needed, the Communications Director shall compile the ad and distribute to the newspapers.

CAS will put together an Agency Selection Committee with a representative of Communications, a representative of Civil Rights, the applicable City, the District, and CAS. This Agency Selection Committee will compile a shortlist and interview the prospective consultants. The Agency Selection Committee will select a consultant to enter into negotiations and process the recommendation through the NDDOT Director's Office.

Upon signature by the Director, CAS will notify the successful firm by telephone. The CAS representative will also notify in writing the unsuccessful firms. Upon notification, the District and the Communications Director shall meet with the consultant and refine a scope of work for the project. Upon approval by the District Engineer the scope of work will be forwarded to CAS. CAS will then negotiate the fee for the project and process the contract.

Upon completion of the signatures, the original of the contract will be forwarded to Construction Services. A copy of the contract will be sent to the District and retained by CAS. The District shall manage the project, verify all progress payments, and forward all appropriate pay requests to Construction Services Division for payment. CAS shall process any future supplements after written notification from the District including the scope and hours necessary for the additional work.

Rankings from each member of the Agency Selection Committee, the signed memo from the Director, a copy of the RFP, the list of allocated projects, and the Short Listed proposals shall be saved and placed in the CAS project file. A copy of the contract, pertinent correspondence during negotiations, final consultant proposal, Notice to Proceed (if applicable), and contract supplements, shall be saved and placed in the CAS project file.

SUPPLEMENTS

Design, Bridge, Local Government, and Communication Divisions

CAS shall be notified in writing by the DDR, BDR, LGR, or DR of the need for a supplement to a preliminary engineering contract. This correspondence shall contain the reason for the supplement and a scope of work for the activities to be performed in conjunction with the supplement. Upon receipt of the notification, CAS will contact the consultant and request a proposal for the work to be performed. The CAS representative along with the applicable DDR, BDR, LGR, or DR shall then begin negotiations with the firm to establish the final scope of work and a fee for the project.

Negotiations are performed with the consultant by having the consultant submit the preliminary scope of work, previously discussed with the DDR, BDR, LGR, or DR, for review by the CAS. CAS and the applicable DDR, BDR, LGR, or DR will review the final scope to confirm the necessary work items are in the scope. CAS will then draft and process the supplement.

Processing the supplement involves communicating with Information Processing (IP) via a memorandum that contains all the necessary information to fill out the appropriate Contract Supplement NDDOT contract number-52445. IP is then responsible for creating the "original" supplement and notifying the Bridge Division upon completion. CAS will then review the supplement and distribute to the consultant for signature. Upon receipt from the consultant with appropriate signatures, CAS sends the supplement to the Legal Division for review. Legal Division then distributes to the NDDOT Director for signature. Upon signature by the Director CAS receives the supplement and places the "original" in Central File, a copy in the CAS file, and mail a copy to the consultant.

Upon signature by the Director or a Notice to Proceed, whichever becomes the effective date of the contract, the DDR, BDR, LGR, or DR shall continue to manage the day-to-day activities of the project including the supplemented activities. The CAS representative shall continue to receive a biweekly update from the consultant and process all progress payments associated with the contract and supplements with the exception of district projects and Local Government projects.

The supplement, pertinent correspondence during negotiations, final consultant proposal, Notice to Proceed (if applicable), biweekly updates, and progress billings shall be saved and placed in the CAS project file.

Construction and Public Information Coordination Services

CAS shall be notified in writing, by the DR, that a supplement is being requested for a project. This correspondence shall contain the reason for the supplement and a scope of work for the activities to be performed in conjunction with the supplement. The District shall discuss with CAS whether the work items to be added are pertinent to the current contract, prior to the formal written correspondence. The consultant shall then submit a proposal of hours and scope of work to the District in which the project is located, for their review and comment. The District shall do preliminary negotiations with the consulting firm pertaining to scope of work and hours. Upon completion of these negotiations the proposal shall be forwarded to CAS by the District. CAS shall complete the negotiations for a Supplement fee and process the Supplement.

The processing of supplements involves communicating with Information Processing (IP) via a memorandum that contains all the necessary information to fill out the Construction Services Contract Supplement NDDOT contract number-52445. IP is then responsible for creating the "original" supplement and notifying the Bridge Division upon completion. CAS will then review the supplement and distribute to the consultant for signature. Upon receipt from the consultant CAS sends the supplement to the Legal Division for review. Legal Division then distributes to the NDDOT Director for signature. Upon signature by the Director, CAS will send the "original" to Construction Services, a copy in the CAS file, and mail a copy to the consultant.

Upon signature by the Director or a Notice to Proceed, whichever becomes the effective date of the contract, the District Representative shall continue to manage the day-to-day activities of the project including the supplemented activities. The payments shall be processed in the same manner as contract payments, through the District and Construction Services.

CONTRACTS UNDER \$100,000

All contracts over \$100,000 shall go through formal solicitation process identified previously in this manual with the exception of some Emergency Relief projects.

Projects with consultant costs estimated to be greater than \$25,000 but not more than \$100,000 may be solicited by notifying all prequalified firms in the specific area of need, allowing a minimum of seven calendar days to respond, and following the remaining process identified previously in this manual. A minimum of three firms shall be notified.

For projects under \$25,000 the NDDOT may hire a consultant without going through the formal solicitation process. Price and rate quotations shall be obtained from at least three sources. The selection may be based on efficiency, location, experience, availability, or any of a variety of reasons that are deemed to be in the NDDOT's best interest. In accordance with State Law, no consultant may be awarded contracts of this type that exceed \$50,000 annually. Divisions seeking professional services under this section shall furnish CAS a list of professional services previously provided to the department, including the fees paid during the twelve months immediately preceding the contract being negotiated.

Design, Bridge, Local Government, and Construction Service Divisions may enter into these contracts by producing a scope of work and notifying CAS in writing. CAS will contact the consultant, negotiate the fee, and process the contract with IP, the consultant, and the Director as noted previously in the manual.

SINGLE SOURCE, NON-COMPETITIVE, & EMERGENCY

These solicitations shall comply with United States Code of Regulations (CFR) Title 23.

DATA BASES

Preliminary Engineering & Construction Services

CAS will maintain two sets of data on consultant contracts. The first will be for Preliminary Engineering costs. A spreadsheet will contain information including project number, type of work, consultant contracted for the work, initial consultant contract cost, supplements and costs, fiscal year expenditures, contract date, amount paid on the contract, and remaining amount of contract.

The second will be for Construction Service contracts. A spreadsheet will contain information including project number, type of work, consultant contracted for the work, bid cost for construction, initial consultant contract cost, any supplement costs, consultant percentages as they relate to cost of construction, completion dates, etc. All the data bases shall be updated

regularly.

LEGAL REVIEW

When developing a contract or supplement, the CAS representative shall identify whether the contract form needs modifications. If language modifications are needed, a hard copy of the contract form with the language modifications “redlined” shall be submitted to the Legal Division for review. The entire contract or supplement shall be submitted at this time including any appendices. The Legal Division is responsible for authorizing the language modifications and/or recommending other applicable language that applies to that specific project. Legal Division will then return the “redlined” hardcopy to Bridge Division with their approval and/or comments. This activity will take place prior to the memorandum being sent to IP for processing. This process applies to all contracts regardless of which Division is requesting the contract or supplement.

PROGRESS PAYMENTS

Progress payments for Design and Bridge Division projects will be processed through CAS. The consultant shall submit the request for payment to Design, Bridge, or CAS. The pay requests must have all the necessary information in order for CAS to process the payment. The information shall include original contract cost, supplement costs, amount previously paid, amount requested, a breakdown of the requested payment, ie - design, right-of-way, environmental, survey, etc. Any progress payment that does not have the necessary information outlined in the contract will be rejected and the consultant will be required to resubmit the billing. CAS shall contact the DDR and/or BDR for verification of noted submittals and/or project progress.

Processing the payment involves validating the numbers on the pay request with the past payments and contract amount. Payment amounts are to be verified with contract amount and all signed supplements. This information is contained in the CAS Payment Files. The payment is broken down into amount billed per activity and then assigned a Sub and Phase. If any right-of-way costs are included, verification of right-of-way authorization from FHWA is necessary. CAS will then produce the Claim for Payment and acquire the Bridge Division Director's signature. Upon attaining the Bridge Division Director signature, the Claim for Payment is sent to Financial Management for processing. Final payments for Cost Plus Fixed Fee contracts require the verification that all profit has been paid. Final payment for all contracts requires verification from the DDR or BDR that all “Deliverables” have been received and accepted. At the time each of the progress payments are made the Preliminary Engineering data base (spreadsheet) shall be updated.

CONSULTANT EVALUATIONS

Upon completion of a Preliminary Engineering contract the DDR, BDR, LGR, or DR shall complete the Consultant Evaluation Form, State Form Number-51727. Upon completion of the form, a meeting may be held with the consultant's Project Manager and any other representatives from the consultant deemed necessary.

The DDR/BDR/LGR or DR, and the consultant will discuss each of the items in the evaluation as a tool to improve performance on future projects by both entities. The NDDOT may also use the results of the evaluation as a tool in the selection of a consultant for a future project. At the end of the Evaluation Meeting, the Consultant Representative, Division Director, and DDR, BDR, LGR, or DR will sign the Evaluation Form. A copy of the form will be given to the consultant and the original will be placed in the CAS Consultant File.

Upon completion of a construction service contract the District shall complete the Consultant Evaluation Form, State Form Number-51242. Upon completion of the form, a meeting may be held with the consultant's Project Manager and any other representatives from the consultant deemed necessary. Construction Engineering evaluations done by the Districts may also be used as a tool for selection on future projects. At the completion of the meeting the District Representative, District Engineer, and the Consultant Representative will sign the document. A copy of the form will be given to the consultant and the original will be placed in the CAS Consultant File. The District will retain a copy of the evaluation.

DISADVANTAGED BUSINESS ENTERPRISE - (DBE)

The requirements of the Disadvantaged Business Program (DBE), 49 CFR Part 26, apply in the consultant selection process. Details on how it is administered can be found by contacting the CAS or the Civil Rights Office. The current NDDOT DBE Program Administration Manual is also available from the Civil Rights Office or on the Internet at:

<http://www.state.nd.us/dot/docs/civilrights/DBEProgram9-21-05TAG.pdf>

AUDIT REPORTS

Audit reports are issued by the Audit section of Financial Services. These reports are received by CAS periodically. The distribution of audit reports will be done in a discrete manner. Local Government and the Consultant (the person listed in the report) will be sent a copy of the audit report. The original will be kept by CAS and filed in the "Consultant File". This information is confidential and is not classified as a "Public Record".

RECORD RETENTION

CAS has implemented a record retention schedule. The following identifies the type of records retained, generally what will be contained in the file, and length of time to be retained.

Consultant Files – 25 Years

Audits

Any other info not pertinent to a specific project

Prequalification Files - Three Years

Design/Bridge/Local Government Contracts – Six years After Final Payment

RFP

Proposals

Questions

Rankings
Correspondence (memo's, e-mails, director sign-off, letters, interview schedules, etc.)
Final Fee Proposal
Contract
Supplements
Payments
Evaluation
Project Updates

Construction Services (Spring Solicitation) File – Six Years

RFP
Proposals (Consultant)
Correspondence (memo's, e-mails, director sign-off, letters, interview schedules, etc.)
Questions
Rankings
Final list of assigned projects
Notifications
Anything pertinent to the solicitation

Construction Services (contract) Files – Six Years After Final Payment

Final Fee Proposal
IP memo
Copy of contract (signed)
CAS acceptable written request for supplement from district
Scope of work
IP memo (supplement)
Copy of signed supplements

APPENDIX A

EVALUATION FORMS

CONSULTANTEEVALUATION - CONSTRUCTION SERVICES

North Dakota Department of Transportation, Bridge Division
 SFN 51242 (Rev. 10-2007)

PCN

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Project Number	
Project Description	
Consultant Project Manager	Consulting Firm and Address
NDDOT Technical Advisor	
Consultant Fee	
Original Contract Fee \$	Final Contract Fee \$

INSTRUCTIONS: Review the consultant's performance on this project. Rate the following items on a scale of 1to5 (1=Exceptional, 2=Exceeds Standards, 3=Satisfactory, 4=Marginal, 5=Unsatisfactory, NA= Not Applicable). Add comments if rating is Exceptional or Unsatisfactory.

Rating	
_____	<p>1. Preconstruction Conference</p> <p>Did the consultant take charge of scheduling and conducting the prejob conference? Were all necessary items covered? Are meeting minutes accurate? Etc.:</p>
_____	<p>2. Supervision and Problem Resolution</p> <p>Did the consultant have the proper level of management on the project? Did the consultant's employees assigned to the project have adequate experience and training? When possible, were issues resolved at the project level? Etc.:</p>
_____	<p>3. Communication</p> <p>Did the consultant communicate well with the DOT and the contractor? Was there adequate communication with other agencies concerned with the project? Was the consultant courteous and helpful in dealing with the general public? Etc.:</p>

Rating	
_____	<p>4. Sampling and Testing Were all samples taken and tests run that were specified? Was testing performed correctly? Did the consultant follow through with failing test results? Etc.:</p>
_____	<p>5. Records and Estimates Were records thorough and complete? Were the pay estimates correct? Were estimates and records submitted in a timely manner? Etc.:</p>
_____	<p>6. Compliance with Plans and Specifications Was the project built according to the plans and specifications? Did the consultant use good engineering judgement in interpreting the plans and specifications? Etc.:</p>
_____	<p>7. Timely Completion of the Project Was the project final submitted in a timely manner? Etc.:</p>
_____	<p>8. Overall Project Rating Rate the overall performance on the project, based on the above questions and subjective scrutiny? Etc.:</p>

 X
Division/District Representative

_____ Date

 X
Division/District Engineer

_____ Date

 X
City/County Representative

_____ Date

Comments

Reviewed by:

X _____ Date _____
Division/District Representative

X _____ Date _____
City/County Representative

CONSULTANTEEVALUATION - PRELIMINARY ENGINEERING

North Dakota Department of Transportation, Bridge Division
 SFN 51727 (Rev. 10-2007)

PCN

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Project Number	
Project Description	
Consultant Project Manager	Consulting Firm and Address
NDDOT Technical Advisor	
Consultant Fee	
Original Contract Fee \$	Final Contract Fee \$

INSTRUCTIONS: Review the consultant's performance on this project. Rate the following items on a scale of 1to5 (1=Exceptional, 2=Exceeds Standards, 3=Satisfactory, 4=Marginal, 5=Unsatisfactory, NA=Not Applicable). Add comments if rating is Exceptional or Unsatisfactory.

Rating	
<div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div>	<p>1. Environmental Documents Were all issues addressed in the Project Concept Report (PCR)? Was the Environmental Assessment and/or Environmental Impact Statement completed to NDDOT satisfaction? Etc.:</p>
<div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div>	<p>2. Environmental Documentation and Coordination Were environmental issues properly documented, cultural resources clearance properly obtained, and necessary permits obtained? Etc. Was proper documentation and timely coordination performed with the environmental section of the NDDOT?</p>
<div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div>	<p>3. Project Survey Was the Survey submitted in a timely manner? Was the submitted survey complete and in compliance with chapter 19? Etc.:</p>

Rating	
_____	<p>4. Pay Items Are all required pay items shown? Were incidental items clearly identified? Did pay items use proper spec and codes? Etc.:</p>
_____	<p>5. Plan Notes Are plan notes clear, concise, and complete? Were plan notes provided for pay items not covered by specifications? Etc.:</p>
_____	<p>6. Basis of Estimate and Tabulations Is there an orderly arrangement of tables of items and are tabulations provided for all items? Etc.:</p>
_____	<p>7. Traffic Control Does the traffic control cover all potential traffic situations and meet NDDOT standards? Etc.:</p>
_____	<p>8. Milestone Activities Was the Engineering Estimate within Budget? Were all milestone activities met? Etc.:</p>
_____	<p>9. Plan and Profile, Plan Details, and Typical Are the plan and profile sheets, plan details, and typical sections complete and of sufficient detail to accomplish the intent of the plan? Etc.:</p>

Rating	
_____	<p>10. Design Standards Is there conformance with NDDOT standards?</p>
_____	<p>11. Legibility Can the plans be printed with clarity?</p>
_____	<p>12. Overall Project Rating What is the overall acceptability of the submittals, based on the above questions and subjective scrutiny? Etc.:</p>

 X _____ Date _____
Division/District Representative

 X _____ Date _____
Division/District Engineer

 X _____ Date _____
City/County Representative

Comments

Reviewed by:

 X
Division/District Representative

Date

 X
City/County Representative

Date

APPENDIX B

ERRORS & OMISSIONS PROCEDURES

North Dakota Department of Transportation Consultant Administration Section

August 2007

Errors and Omissions Procedures

PROCEDURES FOR PURSUING REIMBURSEMENT FROM DESIGN/CONSTRUCTION ENGINEERING CONSULTANTS RESULTING FROM DESIGN/CONSTRUCTION ENGINEERING ERRORS AND/OR OMISSIONS

INTRODUCTION

- 1) It is the goal of the North Dakota Department of Transportation (NDDOT) to develop engineering documents that are complete, accurate, and are of the highest standards. However, despite this conscious effort, circumstances can and do arise concerning the quality of design/construction engineering consultant services. The NDDOT recognizes that professional services are based on reasoned judgment and that there is no one correct course of action. The NDDOT also recognizes that exactness is not possible because of the unique characteristics of each project and the latitude allowed for the application of professional skill and experience to each project. Due to the recognized uncertainty associated with these services using a known standard of care is required to provide an objective measurement of the professional's services. The NDDOT may seek to recover costs that are a result of a consultant performing services that do not meet the established standard of care.
- 2) To address those circumstances, the NDDOT has developed procedures for the evaluation of alleged errors and omissions and pursuing reimbursement of costs from design/construction engineering consultants.
- 3) NDDOT managers will investigate any alleged error and/or omission. If a design/construction engineering error and/or omission occurred, NDDOT will make every reasonable effort to recover the associated costs from the design/construction engineering consultant. It is the desire and intent that many of these circumstances can and will be resolved through informal actions.

DEFINITIONS

- 1) Errors and/or omissions are defined as "Deficiencies from the standard of care on the part of a design/construction engineering consultant in the performance of professional services under contract with NDDOT".
- 2) The "standard of care", applied to the performance of consultant services for the NDDOT, shall be the "*duty to exercise the degree of learning and skill ordinarily possessed by a reputable design professional practicing in the same or similar locality and under similar circumstances.*"

- 3) An alleged error or omission will be considered “alleged” until either the consultant acknowledges, or the Errors and Omissions Review Board determines, that it is an error or omission.

DISCOVERY

- 1) **Prior to Advertisement** - If an alleged error and/or omission is found prior to advertisement of a specific contract, the technical representative will immediately notify the division engineer. If the division engineer’s determination warrants further evaluation, he will contact the appropriate office director who will form a team to further evaluate the alleged error and/or omission. The office director will notify the Deputy Director for Engineering (DDE), the consultant and the Consultant Administration Section of the alleged error and/or omission.

The consultant shall correct such errors and/or omissions, at no cost to NDDOT. Consultant liability may include all NDDOT and consultant costs to prepare revisions.

- 2) **After Advertisement, Prior to Bid** - If an alleged error and/or omission is found after advertisement, but prior to bid opening, the technical representative will immediately notify the division engineer. If the division engineer’s determination warrants further evaluation, he will contact the appropriate office director who will form a team to further evaluate the alleged error and/or omission. The office director will notify the DDE, the consultant and the Consultant Administration Section of the alleged error and/or omission.

The consultant may be responsible for the associated cost of preparing the addendum. Consultant liability may include all NDDOT and consultant costs to prepare revisions.

- 3) **After Bid, Prior to Construction Contract Award** - If an alleged error and/or omission is found after the bid opening, but prior to contract award, the technical representative will immediately notify the division engineer. If the division engineer’s determination warrants further evaluation, he will contact the appropriate office director who will form a team to further evaluate the alleged error and/or omission. The office director will notify the DDE, the consultant and the Consultant Administration Section of the alleged error and/or omission.

The error and/or omission may be reviewed for consultant liability. Consultant liability may include:

- a) Fiscal Impact (all costs incurred above that expected had the original plans been correct);
- b) Cost of preparing the revision; and,
- c) Delay costs determined to be caused directly by an error or omission of the design engineering consultant.

- 4) **After Construction Contract is Awarded** - If an alleged error and/or omission (design or construction engineering) is found during construction, the project manager will immediately notify the district engineer.
- a) If the district engineer's determination warrants further evaluation, he will contact the appropriate office director who will form a team to further evaluate the alleged error and/or omission.
 - b) The office director will notify the DDE, the consultant and the Consultant Administration Section of the alleged error and/or omission.
 - i) The consultant will be given the opportunity to participate in the determination of the solution. Consultant participation in this process is not an admission of any liability.
 - ii) The consultant shall make every effort to resolve the alleged error and/or omission and make the revisions in a timely fashion.

RESOLUTION OF ERROR

- 1) **Resolution of Cost Process** - If the alleged error and/or omission results in additional costs, the District Engineer will transmit a copy of the change order (CO) to the construction division along with notification of the apparent error or omission.
- a) Any necessary CO will be processed under normal procedures, regardless of the status of any claim against the consultant.
 - b) The appropriate division will prepare a letter to the consultant for signature by the Director of the Office of Project Development. This letter will detail the alleged error and/or omission and associated costs and specify a response date of thirty (30) days after receipt of same. The Director of the Office of Project Development (or his designee) will coordinate the review of the response from the consulting firm.
 - i) **Concurrence** - If the consultant accepts responsibility, the Director of the Office of Project Development will request payment and coordinate the appropriate method of payment with the Finance Division.
 - ii) **Non-Concurrence** - If the consultant disputes or denies responsibility for the alleged error and/or omission, the appropriate division will re-evaluate the consultant's liability in light of the response received. The appropriate office director shall make a recommendation to the DDE on the validity of the response, using the following procedures:
 - 1) If the consultant response is accepted, payment, if any, will be requested.
 - 2) If the consultant's response is not accepted the consultant will be notified in writing.

The appropriate division will prepare the notification letter for the signature of the Director of the Office of Project Development.

The consultant will be required to respond within thirty (30) days of receipt of this determination. The consultant's failure to respond will result in a claim for payment being issued.

The consultant's response can be an admission of liability or a request that the matter be forwarded to the Errors and Omissions Review Board (EORB).

- 3) If the consultant requests that the matter be forwarded to the EORB:
 - (a) The Director of the Office of Project Development will convene a meeting of the board. Both the consultant and the NDDOT will present all issues regarding the matter.
 - (b) The EORB will issue an opinion report to all concerned parties. The opinion report of the EORB, while not binding, will be evidenced in any subsequent proceedings between NDDOT and the consultant.
 - (c) If the parties agree with the opinion reached by the EORB, the Director of the Office of Project Development will proceed in collecting the appropriate funds from the consultant, or consider the matter closed with no funds due.
 - (d) If the parties do not agree with the opinion of the EORB, the Director of the Office of Project Development will prepare a notice of claim against the consultant. This notice of claim requires DDE concurrence. The Legal Division shall be consulted as necessary concerning the content of the notice of claim prior to concurrence by the DDE. The notice will include a request that the consultant reimburse the State within thirty (30) days.

If the consultant fails to respond or refuses to comply with the notice of claim, the Director of the Office of Project Development will coordinate the issuance by the Director of a final decision. The final decision will identify methods by which NDDOT will recover associated costs from the consultant.

ERRORS AND OMISSIONS REVIEW BOARD (EORB)

- 1) The EORB will be comprised of four (4) members and a committee chair:
 - a) All of the board will be professional engineers.
 - b) The Director of the Office of Project Development shall chair the committee.
 - c) Two (2) members shall be from the NDDOT.
 - d) Two (2) members shall be from the American Council of Engineering Companies (ACEC).

- 2) The two NDDOT committee members shall be appointed by the DDE. These two members will not include NDDOT employees with direct involvement in the project or the chain of review preceding the EORB referral.
- 3) The two ACEC committee members shall be appointed by the ACEC Transportation committee chair and co-chair, after receiving appropriate notification from the Director of the Office of Project Development. These two members will not include employees from the firm being reviewed or anyone with direct involvement in the project or the chain of review preceding the EORB