

Title		Policy No.
Negotiated Contracts for Architectural, Engineering, and Related Professional and Technical Services		300.12
Responsible Office		Related Policies and Procedures
Engineering Bureau		140.01, 300.02, 300.04, 300.18
Effective/Revision Dates	Approval(s)	
10-26-78/ 1-17-07	N.J. Richardson	

Authority: Director of Transportation.

Contents: This policy applies to the negotiated procurement of architectural, landscape architectural, engineering and related professional and technical services; i.e., the types of work for which prequalification is required under Policy No. 300.04. A table of contents follows:

I. Policy	2	G. Staff Action & Other Approvals	13
II. Summary of Responsibilities	3	H. Contract Distribution	14
III. Request for Outside Services	4	VI. Contract Administration	14
IV. Selection Processes	5	A. Generally	14
A. Types of Selection Processes	5	B. Extra Work Orders	14
B. Complete Selection	6	C. Progress Payments	15
C. Small Contract Selection	10	D. Errors and Omissions	15
D. Sole Source or Emergency Selection	10	E. Final Audit & Payment	16
V. Negotiation and Development of Contract	11	F. Exit Interview	17
A. Introduction	11	VII. Consultant Evaluation	17
B. Unsuccessful Negotiations	12	Appendix A Flowchart, Complete Consultant Contract Selection Process	
C. Contract Costs	12	Appendix B Contract Types, Contract Clauses, Payment Methods & Retention	
D. Preaudit	12	Appendix C Sample Contract for Professional Services	
E. Preparation of Contract	13		
F. Legal Review	13		

Affected Offices: All

Who to Contact for Policy Questions: Consultant contract coordinator in the Engineering Bureau.

Definitions:

Administering office - The office responsible for administering a consultant contract.

Consultant - A firm providing outside professional or technical services.

Consultant contract - A negotiated contract for outside professional or technical services.

Consultant contract coordinator - The person responsible for coordinating Departmental work with consultants.

Consultant steering committee - A committee used in the complete selection process that ranks consultants selected by a selection committee in order of preference for contract negotiations.

Disadvantaged business enterprise (DBE) - A small business that is both owned and controlled by socially and economically disadvantaged individuals. [See Policy No. 300.18]

Firm - Any bona fide contracting entity including individuals and educational institutions. Except for educational institutions, the term does not include government agencies or political subdivisions. [See 761 IAC 20.2(307)]

Negotiated contract - A contract that is not awarded through a competitive bidding procedure.

Negotiated work - For the purpose of preaudits and final audits performed by the External Audits Section of the Office of Finance, "negotiated work" performed under a contract is work performed by others that is not competitively bid. This includes lump sum contracts.

RFP - Request for proposal.

Selection committee - A committee that selects consultants with which to initiate negotiations.

Subconsultant - A subcontractor on a consultant contract.

Targeted small business (TSB) - A small business that is 51 percent or more owned, operated, and actively managed by one or more women, minority persons, or persons with a disability. [See Iowa Code section 15.102]

References:

Iowa Code sections 73.15 to 73.21 - *Iowa Targeted Small Business Procurement Act*

DOT Rule 761 IAC 20.8(307) - Negotiation--architectural, landscape architectural, engineering, and related professional and technical services

Preaudit Procedure No. 240.102 (Dept. of Administrative Services) - *Services Contracting*

Policy No. 300.02 - *Approval of Items of Departmental Business* (Staff Actions)

Policy No. 300.04 - *Prequalification of Architectural, Engineering, and Related Professional and Technical Firms*

Policy No. 300.18 - *Disadvantaged Business Enterprise Participation*

Forms: None.

Policy and Procedure:

I. Policy

It is the policy of the Department to contract for professional services when one or both of the following conditions exist: (1) the inability to complete the required work within the desired

time frame with available resources; (2) the work requires specialized experience or expertise that is not available within the Department.

When procuring architectural, landscape architectural, engineering or related professional or technical services by negotiation, the Department shall consider for contract award only those firms that are prequalified with the Department in the category or categories of work to be contracted. Policy No. 300.04 lists the work categories that require prequalification. Prequalification of subconsultants is also required if a work category exists for the services to be provided by the subconsultant. If no category exists, normal methods of acceptance shall be used, such as experience, typical licensure, certification or registration, or seals of approval by others.

II. Summary of Responsibilities

A. The **administering office** shall:

1. Prepare a request for outside services. (See **Section III.A.**)
2. Appoint selection committee members for the complete and small contract selection processes. (See **Sections IV.B.1.** and **IV.C.1.**)
3. Negotiate and prepare a contract following completion of the selection process, obtain all necessary internal and external reviews and approvals, and distribute the executed contract. (See **Section V.**)
4. Administer the contract. (See **Section VI.**)
5. Prepare an evaluation of the contract upon its completion. (See **Section VII.**)
6. Maintain a contract file documenting communications, actions taken and decisions made during all phases of the contracting process.

B. The **office director of the administering office** shall:

1. Serve as a member of the consultant steering committee. (See **Section IV.B.7.**)
2. For the small contract selection process, review the consultant selection committee's recommendation and determine whether negotiations may begin. (See **Section IV.C.3.**)

C. The **consultant contract coordinator** shall:

1. Coordinate prequalification of architectural, landscape architectural, engineering, and related professional and technical firms under Policy No. 300.04.
2. Contact the FHWA for projects where the FHWA has full oversight. (See **Section III.B.**)
3. Coordinate the selection process and serve as a nonvoting member of the selection committee. Ensure the selection committee follows appropriate procedures and provide the committee with the information it needs to perform its duties. (See **Section IV.**)
4. If requested, assist the administering office in preparing the contract. (See **Section V.E.**)
5. Provide direction in the errors and omissions process. (See **Section VI.D.**)
6. Perform contract exit interviews. (See **Section VI.F.**)
7. Maintain consultant evaluation files. (See **Section VII.**)

- D. The **division director of the administering office** shall:
1. Review and approve or disapprove the request for outside services. For the Highway Division, this function is delegated to the bureau director. (See **Section III.B.**)
 2. Appoint the team leader for the consultant steering committee. (See **Section IV.B.7.**)
 3. Review the consultant steering committee's recommendation and determine whether negotiations may begin. (See **Section IV.B.9.**)
 4. Review the justification and selected consultant for sole source and emergency selections and determine whether negotiations may begin. (See **Section IV.D.2.**)
- E. (**Highway Division**) The **bureau director** shall:
1. Review and approve or disapprove requests for outside services for the Highway Division. (See **Section III.B.**)
 2. Engineering Bureau Director: Serve as team leader for the consultant steering committee. (See **Section IV.B.7.**)
- F. The **External Audits Section** of the Office of Finance shall provide preaudits and final audits. (See **Sections V.D.** and **VI.E.**)
- G. **General Counsel** shall assist in developing contract language when requested and shall review proposed contracts for form and legality of content. (See **Sections V.E.** and **V.F.**)
- H. The **selection committee** shall:
1. Determine evaluation criteria for evaluating consultants. (See **Section IV.B.3.**)
 2. Prepare the RFP. (See **Section IV.B.4.**)
 3. (Team leader): Answer questions from consultants regarding the RFP. (See **Section IV.B.5.**)
 4. Review proposals and determine the top consultants in the complete selection process. (See **Section IV.B.6.**)
 5. Review prequalified consultants and select a consultant in the small contract selection process. (See **Section IV.C.2.**)
- I. The **consultant steering committee**, under the complete selection process, shall review the consultants selected by the selection committee and rank the consultants in order of preference. (See **Section IV.B.8.**)

III. Request for Outside Services

- A. **Request.** When the use of outside services is considered necessary, the administering office shall prepare a request for outside services and submit the request to its division director (or for the Highway Division, to its bureau director) for approval. The request shall contain the following information:
1. A statement of necessity supporting the determination to use outside services.
 2. A description of the project, problem to be solved, services required or proposed work including its purpose and objectives.
 3. The time frame within which the contracted services or work must be performed.

4. An estimate of the total contract amount.
5. The source of funds for the contract. Typical sources of funding include: five-year program, office budget, division budget, and federal funds or other external sources.
 - ☞ Authorization to obligate federal funds for a consultant contract must be obtained prior to beginning the consultant selection process.
6. The DBE/TSB goal. In coordination with the Office of Contracts, the administering office shall: a) establish a DBE involvement goal if the contract will be funded in whole or in part by federal-aid transportation funds (see Policy No. 300.18); b) consider establishing an appropriate TSB involvement goal if the contract will not use federal-aid funds.
7. The method of selection recommended: complete process (see **Section IV.B.**), small contract process (see **Section IV.C.**), or sole source or emergency selection (see **Section IV.D.**). Justification must be included for sole source or emergency selection.

B. Approval of Request. The division director (or for the Highway Division, the bureau director) shall review and approve or disapprove the request for outside services, including the DBE/TSB involvement goal and the method of selection to be used, and, if the request is approved, notify the consultant contract coordinator. The consultant contract coordinator will contact the FHWA for projects where the FHWA has full oversight.

IV. Selection Processes

A. Types of Selection Processes

1. Complete Selection. This method of selection should normally be used unless one of the other selection methods is justified. See **Appendix A** for a flowchart of this process.
2. Small Contract Selection. The small contract process is an abbreviated selection process. It may be used to identify a single consultant with which to negotiate when the estimated work under the consultant contract can normally be completed within a 12-month period and the estimated cost of the consultant contract will not exceed \$100,000. Unlike the complete selection process, the consultant steering committee is not used.
3. Sole Source Selection. The Department may select a single, prequalified consultant with which to negotiate when one of the following conditions exists:
 - Only a single consultant is determined qualified or eligible to perform the contemplated services.
 - The services involve work that is of such a specialized character or related to a specific geographical location that only a single consultant, by virtue of experience, expertise, proximity to or familiarity with the project or ownership of intellectual property rights, could most satisfactorily complete the work.

☞ Concurrence by the FHWA must be obtained prior to utilizing sole source selection for contracts that use federal-aid highway funds.

4. Emergency Selection. The Department may select a single, prequalified consultant with which to negotiate when there is an emergency that will not permit the time necessary to use normal selection procedures. An emergency includes, but is not limited to, one of the following:
- A condition that threatens the public health, welfare or safety.
 - A need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement.
 - A situation in which the Department must act to preserve critical services or programs.

☞ Concurrence by the FHWA must be obtained prior to utilizing emergency selection for contracts that use federal-aid highway funds.

B. Complete Selection

1. Appointment of Selection Committee. Once the request for outside services is approved, the administering office shall appoint a selection committee and furnish the names of the selection committee members to the consultant contract coordinator along with information concerning the request for outside services. Normally, the committee shall consist of three or five voting members, with no more than one member from the office that will administer the contract.
- a. The committee shall include one individual from the administering office who has technical expertise in the work to be contracted. If more than one office will be using the contracted services, each should be represented.
 - b. The committee shall include one individual from district office staff or from a division other than the division requesting the selection. This person should be familiar with the scope of work being requested and be familiar with procedures for selecting consultants.
 - c. The committee may include one or more individuals from other offices within the division. These individuals should be familiar with the scope of work being requested and be familiar with procedures for selecting consultants.
 - d. The committee shall include the consultant contract coordinator to serve as a nonvoting member.
2. Selection Committee Meeting. Upon receiving the names of the selection committee, the consultant contract coordinator shall schedule the first selection committee meeting. At this meeting, the selection committee shall:
- a. Select a team leader to lead the committee.
 - b. Add nonvoting members to the committee to act as resources as deemed appropriate.
 - c. Obtain a list of prequalified consultants from the consultant contract coordinator and review the credentials of consultants prequalified to perform the services needed.
 - d. Determine the interest of prequalified consultants in performing the needed services and determine which consultants will be sent a Request for Proposal

- (RFP). While ideally all prequalified consultants should be considered, the committee may limit the number of consultants sent an RFP. A minimum of three consultants must be considered to ensure fair selection practices.
- e. Establish weighted criteria for evaluating consultants submitting proposals. See **Section IV.B.3.** for a list of typical evaluation criteria.
 - f. Prepare an RFP and send it to the consultants identified in paragraph 2.d. above and to the consultant contract coordinator for advertisement. See **Section IV.B.4.** for a list of items that should be included in the RFP.
3. Evaluation Criteria. The selection committee is responsible for establishing criteria for evaluating each consultant submitting a proposal, assigning weighted values to the criteria, and rating each consultant on each criterion. Evaluation criteria shall be tailored to the needed services. Typical evaluation criteria are listed below. The list is not exhaustive, nor is each item mandatory.
- a. Staffing expertise consistent with special project needs.
 - b. Experience with similar types of work.
 - c. Performance evaluations by the Department and other government agencies if completed after October 1998, and references included in the consultant's proposal.
 - d. Proximity to the project area when a need for proximity can be established. Any consultant outside the project area that specifies that it will place a project office within the project area meets this criterion. Proximity may be used as a criterion only if it allows for three or more consultants to be considered and other evaluation criteria are also met.
 - e. Current workload and commitment of key staff personnel as they pertain to the ability of the consultant to perform the services within the required time.
 - f. Specific qualifications of key staff who will be forming the consultant's project team.
 - g. If applicable, willingness and ability to meet or exceed the established DBE/TSB involvement goal.
 - h. Resources the consultant has available and proposes to use on the project, including the consultant's use of equipment and automated technology and compatibility with equipment and technology used by the Department.
 - i. Identification of proposed subconsultants and the work they will perform.
4. Request for Proposal (RFP) The selection committee is responsible for preparing an RFP. An RFP should include:
- a. A description of the project including details of the work to be contracted.
 - b. The anticipated starting date of the contract.
 - c. The estimated duration of the contract or proposed completion date of the contract.
 - d. A request for the name and office address of the project manager who will direct the work of the consultant, and the names of key staff who will be working on the contract.
 - e. A request for the location of the consultant's office where the majority of the work will be performed.
 - f. A request for a list of subconsultants to be used and the work they will perform.
 - g. A statement of the proposed DBE or TSB goal for the work to be contracted, including the address of the Web site containing the names of prequalified,

certified DBE/TSB consulting firms that could be involved as subconsultants. If a DBE or TSB goal is established, the RFP should request the consultant to provide the percentage of the contract it plans to subcontract to DBEs or TSBs.

- h. A statement that costs should not be submitted as a part of the consultant's proposal, and if submitted, will not be considered.
- i. The criteria that will be used to evaluate consultants submitting proposals and the weighted value assigned to each criterion.
- j. An indication of whether oral interviews will be conducted. Normally, oral interviews will be conducted only for very complex and critical projects and should be limited to the top two or three consultants based on the written proposals.
- k. The limit on a proposal's length (if any). A limit of ten pages, double sided, between proposal covers, not including blank dividers, is required unless otherwise specified. Proposals exceeding the specified limits shall not be accepted.
- l. A request for the consultant to disclose any of its work for other clients that may be affected by work on the proposed contract, to avoid a potential conflict of interest.
- m. The name of the DOT contact person who will answer technical questions, if other than the team leader.
- n. A statement indicating that technical questions should be submitted in writing, preferably by E-mail.
- o. A statement indicating that contacting individual selection team members (other than the team leader) is considered inappropriate.
- p. The deadline (date and time) for submission of proposals, the number of copies of the proposal to be submitted, and the person to whom proposals should be submitted.
- q. A statement that all submitted proposals are subject to Iowa's public record laws.

Example: The Iowa DOT will treat all information submitted by a consultant as open records following the conclusion of the selection process unless the consultant requests that information be treated as confidential at the time of submitting the proposal and provides adequate legal justification for the request. Open records are public records that are open for public examination and copying. The Iowa DOT's release of records is governed by Iowa Code Chapter 22 and 761 IAC Chapter 4. Consultants are encouraged to familiarize themselves with these laws before submitting a proposal.

5. Advertisement of RFP. When the RFP is issued, the consultant contract coordinator shall notify all prequalified consultants that an RFP has been issued and post the RFP on the Department's Web site for public viewing.
 - a. Questions on the RFP will be answered in writing by the selection committee team leader.
 - b. The team leader will copy all responses to the consultant contract coordinator for posting with the RFP on the Department's Web site.
6. Review of Proposals. The selection committee shall review the submitted proposals and determine the top consultants. Determination of the top consultants shall be done by:

- a. Evaluating the submitted proposals based on the evaluation criteria.
- b. Scoring each proposal on a matrix.
- c. Giving full consideration to the use of prequalified, certified DBE/TSBs as prime consultants and ensuring that a good faith effort is made in meeting a DBE/TSB involvement goal.
- d. Interviewing consultants (if needed to distinguish the top consultants).
- e. Documenting the committee's decision-making process.

The selection committee shall select the top three consultants and provide their names to the consultant contract coordinator. If consultants are being selected for more than one contract, one additional name shall be provided for each additional contract. The committee shall document its reasoning when the number of selected consultants is less than the minimum requirement.

☞ Concurrence by the FHWA must be obtained for contracts that use federal-aid highway funds if the number of selected consultants is less than the minimum requirement.

7. Appointment of Consultant Steering Committee. The team leader for this committee shall be designated by the division director for the administering office. For the Highway Division, the team leader shall be the Director of the Engineering Bureau. Other members of this committee include the office director from the administering office and, for a specific project within a district, the district engineer. Additional members may be designated by the team leader if deemed appropriate.
8. Consultant Steering Committee Meeting. Upon being provided the names of the selected consultants from the selection committee, the consultant contract coordinator shall forward the names to the consultant steering committee. The consultant steering committee is responsible for reviewing the top consultants selected by the selection committee, ranking the consultants in order of preference, providing the ranked list to the consultant contract coordinator, and documenting its decision-making process. In carrying out these duties, the steering committee shall consider not only the selection committee's scoring but other factors such as:
 - a. A consultant's ability to accomplish the work in the required time.
 - b. The volume of work a consultant has with the Department, both existing and potential.
 - c. The Department's goal of having an expanse of experienced consultants capable of providing quality services to the Department.
 - d. Other items unique to the particular contract.
9. Approval to Initiate Negotiations. Upon being provided the ranked list of selected consultants from the consultant steering committee, the consultant contract coordinator shall provide the ranked list to the division director of the administering office. The division director shall determine whether negotiations may begin, and so advise the consultant contract coordinator.
10. Notification of Selection. After approval to initiate negotiations is received, the consultant contract coordinator shall inform the administering office that negotiations may begin with the consultants selected, in order of preference. The consultant

contract coordinator shall also notify those consultants submitting proposals of the names of the top consultants selected and the order of negotiations. Along with the notification, the consultant contract coordinator shall provide each consultant other than the top consultant a matrix showing the high, low and average scores for each item evaluated and that consultant's score for each item.

C. **Small Contract Selection**

1. Appointment of Selection Committee. Once the request for outside services is approved, the administering office shall appoint a selection committee, the same as the complete process. (See **Section IV.B.1.**)
2. Selection Committee Meeting. Upon receiving the names of the selection committee, the consultant contract coordinator shall schedule the first selection committee meeting. At this meeting, the selection committee shall:
 - a. Select a team leader to lead the committee.
 - b. Add nonvoting members to the committee to act as resources as deemed appropriate.
 - c. Obtain a list of prequalified consultants from the consultant contract coordinator and review the credentials of consultants prequalified to perform the services needed.
 - d. Determine the interest of prequalified consultants in performing the needed services. While ideally all prequalified consultants should be considered, the committee may limit the number of consultants considered. A minimum of three consultants must be considered to ensure fair selection practices. The committee shall document its reasoning when less than three consultants are considered.
 - ☞ Concurrence by the FHWA must be obtained for contracts that use federal-aid highway funds if the number of consultants considered is less than the minimum requirement.
 - e. If necessary, interview consultants.
 - f. Select a well-qualified consultant with which to initiate negotiations and provide the consultant's name and an overview of the contract to the consultant contract coordinator.
 - g. Document the committee's decision-making process.

Unlike the complete selection process, the committee need not solicit proposals or use an evaluation matrix.

3. Approval to Initiate Negotiations. Once the committee selects a consultant, the consultant contract coordinator shall provide the name of the selected consultant to the office director of the administering office. The office director shall determine whether negotiations may begin, and so advise the consultant contract coordinator.

D. **Sole Source or Emergency Selection**

1. Selection of Consultant. Once the request for outside services is approved, the consultant contract coordinator shall meet with the administering office to select the

sole source or emergency consultant. The justification for use of sole source or emergency selection and the basis on which a particular consultant is selected shall be fully documented and made a part of the contract file.

2. Approval to Initiate Negotiations. The consultant contract coordinator shall provide the name of the selected consultant and the justification for sole source or emergency selection to the division director of the administering office. The division director shall determine whether negotiations may begin, and so advise the consultant contract coordinator.
 - ☞ If federal-aid highway funds will be used in the sole source or emergency contract, the division director shall submit the justification for the contract to the Federal Highway Administration. FHWA approval must be received before negotiations may begin.
3. Notification of Selection. After approval to initiate negotiations is received, the consultant contract coordinator shall inform the administering office that negotiations may begin with the consultant selected.

V. Negotiation and Development of Contract

- A. **Introduction.** After the selection process is complete, the administering office shall initiate negotiations. Negotiations shall begin with the consultant given first preference. The administering office shall provide the consultant with necessary information and request the consultant to submit its proposal with supporting cost and pricing data. The administering office shall use the services of technical, legal, auditing, and other specialists in the Department to the extent deemed appropriate.

Negotiations are intended to lead to the development of a contract mutually satisfactory to the Department and the selected consultant. The goals of the negotiation process are to:

1. Make certain that the consultant has a clear understanding of the scope of services.
2. Determine that the consultant will make available the necessary personnel and facilities to accomplish the scope of services within the required time.
3. Ensure that the DBE/TSB involvement goal will be met or that a good faith effort has been provided.
4. Reach agreement with the consultant on the provisions of the contract, including equitable compensation for the required services and the most suitable and appropriate method of payment.
5. Determine, where applicable, whether the consultant can provide a design that will permit construction within established project costs.
6. Verify that the project manager and the project team are the same as those in the proposal submitted to the selection committee.

B. Unsuccessful Negotiations.

1. Negotiations shall be conducted initially with the consultant given first preference by the steering committee. If a mutually satisfactory contract cannot be negotiated upon receiving a best and final offer in writing, the administering office shall formally terminate the negotiations and notify the consultant in writing. Termination of negotiations shall be made without prejudice. The substance of terminated negotiations is confidential. The administering office shall then initiate negotiations with the consultant given second preference, and this procedure shall be continued until a mutually satisfactory contract has been negotiated.
2. If a satisfactory contract cannot be negotiated with any of the selected consultants, the division director (or for the Highway Division, the bureau director) shall either:
 - a. Advise the consultant contract coordinator and request the selection of one or more consultants with which to continue negotiations, or
 - b. Direct the administering office to redefine the scope of the project or work and submit a new request for outside services. All prequalified consultants (including those with which negotiations were previously conducted) shall be considered for selection.

C. Contract Costs. The administering office shall negotiate a fair and reasonable fee and method of payment under the contract based on a comparative study of an independent estimate prepared by the administering office and the cost proposal of the consultant. [See **Appendix B, Payment Methods**] If federal-aid funds are involved, the applicable federal agency should be consulted when developing contract costs.

1. The consultant must submit a detailed cost proposal, including a detailed cost proposal for each proposed subconsultant contract.
2. The administering office shall prepare an independent estimate of the cost of the proposed services, including a detailed estimate of the consultant staff hours needed to complete the contract.
3. Significant differences shall be evaluated and resolved to the satisfaction of both parties. If it is impractical to make an independent estimate, the administering office shall evaluate the acceptability of the consultant's cost proposal on the basis of reasonableness of the individual elements of price proposed.

D. Preaudit. A preaudit by the External Audits Section of the Office of Finance is required if the proposed contract will exceed \$50,000, regardless of the type of payment method to be used. A preaudit may be requested on contracts that are \$50,000 or less when:

- Knowledge of the consultant's accounting system is insufficient,
- Experience regarding the reliability of the consultant's accounting system is unfavorable,
- Cost experience for the specific procurement is lacking, or
- The administering office feels uncomfortable with any item in the cost estimate.

External Audits may waive the need to perform the preaudit based on its knowledge of the consultant and past audit history of the consultant.

A preaudit typically includes:

- An analysis of the consultant's cost proposal and financial records for the method of accounting in place to assure that the consultant has the ability to adequately segregate and accumulate reasonable and allowable costs to be charged against the contract.
- An analysis of the consultant's proposed direct costing rates and indirect overhead factors to assure their propriety and allowability.

1. To obtain a preaudit, the administering office shall submit to External Audits a written request for preaudit along with a copy of the proposed contract and consultant's cost proposal. The consultant should submit its most current fiscal year overhead rate information and the most current payroll rates on the same basis as labor is being estimated.
2. External Audits shall complete a preaudit report and forward it to the administering office and to the federal funding agency if applicable.
3. The administering office shall include a copy of the preaudit report in the contract file. If the preaudit report recommends a reduction in cost that has not been accepted, the administering office shall also include in the contract file and send to External Audits a written explanation of the report's effect on the final contract terms.

E. **Preparation of Contract.** Following successful negotiations and having received a satisfactory preaudit, the administering office shall prepare a final contract and may request the assistance of the consultant contract coordinator and General Counsel as needed. The contract shall clearly define the work or design required, services to be performed, method, time and amount of payment, completion schedules, the established DBE/TSB involvement goal, and other requirements and conditions unique to the particular project. The contract shall also address subconsultant contracts when applicable. [See **Appendix B** for required and suggested contract clauses and **Appendix C** for a sample consultant contract]

F. **Legal Review.** The administering office shall submit the proposed contract to General Counsel for approval of form and legality of content. However, if a standard contract form is used, the form need be submitted for approval only when it is created or revised.

G. **Staff Action and Other Approvals.** When contract development activities are complete (negotiations, preaudit, legal review, final contract language), the administering office shall secure the Department and consultant approvals and signatures necessary to place the contract into effect. Federal funding agency approval and signature may also be required.

1. Before the contract is executed, the administering office shall, if required, prepare a Staff Action requesting approval to enter into the contract (see Policy No. 300.02) and submit it for approval. The Staff Action shall identify the consultant, funding source, and amount of the contract.

2. The administering office shall provide a copy of the final contract to the FHWA and request FHWA authorization for projects where the FHWA has full oversight. All costs incurred prior to FHWA authorization will not be reimbursed by the FHWA.
3. After Staff Action (and FHWA, if applicable) approval is received, the administering office shall forward the final contract to the consultant for signature.
4. After the signed contract is received from the consultant, the office director of the administering office shall sign the contract on behalf of the agency.

H. **Contract Distribution.** The administering office shall distribute copies of the fully executed contract to:

- Administering office
- Consultant
- Office of Finance, Project Accounting and Payables Section (submit to the federal-aid staff within this section if the contract is federally participating)
- Office of Finance, External Audits Section
- Consultant contract coordinator
- Federal funding agency (if applicable)

☞ The contract or a cover letter/notice to proceed sent with the consultant's copy of the fully executed contract should address when work on the contract may begin. Without prior approval, work should not begin until the contract has been fully executed and distributed.

VI. Contract Administration

A. **Generally.** The administering office shall:

1. Monitor the consultant's work progress and quality.
2. Maintain contract and project documentation, preferably through use of a project notebook. Samples are available from the consultant contract coordinator.
3. Review all consultant billings for conformity to the contract and current billing requirements (See **Appendix C, Attachment G**), prepare and approve payment vouchers, and submit the vouchers, billings and any other supporting documentation required by the contract to the Office of Finance, Project Accounting and Payables Section, for payment. (The paperwork shall be routed through the federal-aid staff of Project Accounting and Payables if federal funds are involved.)

An on-line contract must be set up within the Accounts Payable System. Vouchers shall then be initiated from the contract screen.

B. **Extra Work Orders/Supplemental Agreements.** The contract, where appropriate, shall specify the process by which extra work orders or supplemental agreements are negotiated.

1. In general, a process similar to that used to negotiate contracts should be used, including Staff Action approval. FHWA approval will be needed only for projects where the FHWA has full oversight.
 2. Any change in the contract requiring additional work must be authorized in writing by the administering office prior to the consultant starting the additional work. The written authorization may take the form of a letter as long as the following items are covered and agreed to:
 - A description of the change to be made.
 - An explanation of the reasons for the change in sufficient detail so that another individual can understand them.
 - The basis for the cost of the change.
 3. The process described above is necessary so that contingency funds may be used only for the original contract items and terms instead of being used for extra work.
- C. **Progress Payments.** The contract may provide for progressive billings and payments as phases of the work are completed. If it does, the administering office shall submit copies of the progressive billings and other required supporting documentation to the Office of Finance, External Audits Section, as progress payments are made.
- D. **Errors and Omissions.** The contract shall specify that the consultant is responsible for damages incurred by the Department due to an error or omission made by the consultant. The consultant contract coordinator shall be notified upon discovery of an alleged consultant error or omission with the potential to result in damages. Following are the steps in the recovery process:
1. The consultant contract coordinator shall:
 - a. Assess the preliminary information to determine whether the consultant may have some responsibility for the error or omission.
 - b. If the potential for consultant liability is found, notify the division director of the administering office and copy the Engineering Bureau (if the Highway Division is involved), the office director of the administering office, and the appropriate district engineer.
 - c. If federal-aid highway funds are involved, notify the FHWA.
 2. The consultant contract coordinator shall notify the consultant either by telephone or in writing of the error or omission as soon as possible after discovery of the problem, and document all telephone conversations with a follow-up letter or E-mail. When notifying the consultant:
 - a. Allow the consultant to respond to the claim of error or omission.
 - b. Discuss with the consultant any conditions that must be met to reach a resolution that is acceptable to the DOT.
 - c. Inform the consultant that the DOT may take action to correct the issue without consultant assistance for any of the following reasons:
 - (1) Notification by telephone or in writing to the consultant is not successful.
 - (2) Conditions created by the error or omission require an immediate response to avoid additional damages or construction costs.
 - (3) Other means of resolution with the consultant have been unsuccessful.
 - d. Establish deadlines for the consultant to provide a response.

- e. Inform the consultant that it needs to track all time spent resolving the issue separately.
At this stage, do not negotiate, reach agreement or sign any document relative to the consultant's responsibility.
 3. The consultant contract coordinator shall review the consultant's resolution and implement it if acceptable.
 4. If the DOT and the consultant either disagree on the extent of any negligence or are unable to come to a mutual agreement on the resolution, then mediation or arbitration as set forth in the contract should be used to resolve the disagreement.
 5. Upon implementation of the resolution, the consultant contract coordinator shall review the financial information and:
 - a. Calculate the expected costs based upon a product without errors.
 - b. Determine the consultant's liability by subtracting the expected costs from the actual costs incurred.
 6. Should there be a need for the consultant to pay for any costs to correct its negligence, the consultant contract coordinator shall send a letter to the consultant requesting payment.
 - a. The consultant may either send a check for the amount or credit the dollar amount to a subsequent invoice.
 - b. If the amount will be credited to an invoice, the contract maximum should be evaluated and may be lowered accordingly.
 - c. The consultant shall not be allowed to make payment directly to a third party to remedy any claimed negligence because of the difficulty in verifying and recording these payments.
 7. The consultant contract coordinator shall evaluate whether any third party, such as the FHWA, local governments, or local or regional planning authorities, originally paid any portion of the recovered costs and, if so, reimburse those parties accordingly.
 8. If it is later determined that the consultant was not negligent, it shall be compensated accordingly.
 9. The consultant contract coordinator shall prepare a memorandum summarizing the negligence and all costs recovered.
 - a. Attached to the memorandum shall be all appropriate information including the letter requesting payment, copies of any payments received, and the consultant's summary of unbilled hours.
 - b. The summary of unbilled hours must list employee names, the number of hours for each employee, the dates worked and the accounting code numbers to which the hours were charged.
 - c. The consultant contract coordinator shall send this memorandum and the attachments to the External Audits Supervisor in the Office of Finance.
 - d. Failure to provide this documentation could inadvertently result in improper overpayment to the consultant in the final audit and payment process.
- E. **Final Audit and Payment.** Prior to final payment, a final audit by the Office of Finance, External Audits Section, is required for negotiated work performed under the contract (see

page 2 for the definition of "negotiated work"). External Audits may waive final audit requirements on certain types of contracts that are less than \$25,000.

1. To obtain a final audit, the administering office shall submit to External Audits:
 - A written request for final contract audit.
 - A copy of the form or letter to the consultant accepting the contract work.
 - A copy of the final bill from the consultant, plus any other required supporting documentation not previously submitted to External Audits.

2. External Audits shall perform a final audit of the contract, reviewing all invoiced charges to assure that the charges are adequately supported and are eligible for reimbursement. Upon completion of the final audit, External Audits shall prepare an audit certificate and forward it:
 - To the administering office.
 - If there is an overpayment, to the Office of Finance, Financial Management and Reporting Section.
 - If federally participating, to the Office of Finance, federal-aid staff within the Project Accounting and Payables Section, and to the federal funding agency.
 - ☞ Waiver of an audit exception that exceeds \$1,000 must be approved by the Audit Committee (see Policy Nos. 140.01 and 300.02). Waiver of a lesser amount may be approved by the administering office's division director. In such cases, the administering office should forward a copy of the waiver to External Audits.

3. If there is a balance owing on the contract, the administering office shall forward to the Office of Finance, Project Accounting and Payables Section, the final payment voucher, the audit certificate, the final bill from the consultant, and any other supporting documentation required by the contract. (The paperwork shall be routed through the federal-aid staff of Project Accounting and Payables if federal funds are involved.)
 - ☞ The Office of Finance shall not approve/make a final payment unless there is a final audit certificate or waiver from External Audits.

4. If there is an overpayment, the administering office shall send a memo to the Office of Finance, Financial Management and Reporting Section, requesting that the consultant be billed.
 - A copy of the memo shall be sent to External Audits and, if applicable, to the federal-aid staff within Project Accounting and Payables.
 - The Office of Finance shall not invoice the consultant until it receives the memo.

- F. **Exit Interview.** The consultant contract coordinator shall provide the consultant with an opportunity to participate in an exit interview upon completion of the contract and shall provide feedback as a result of the interview.

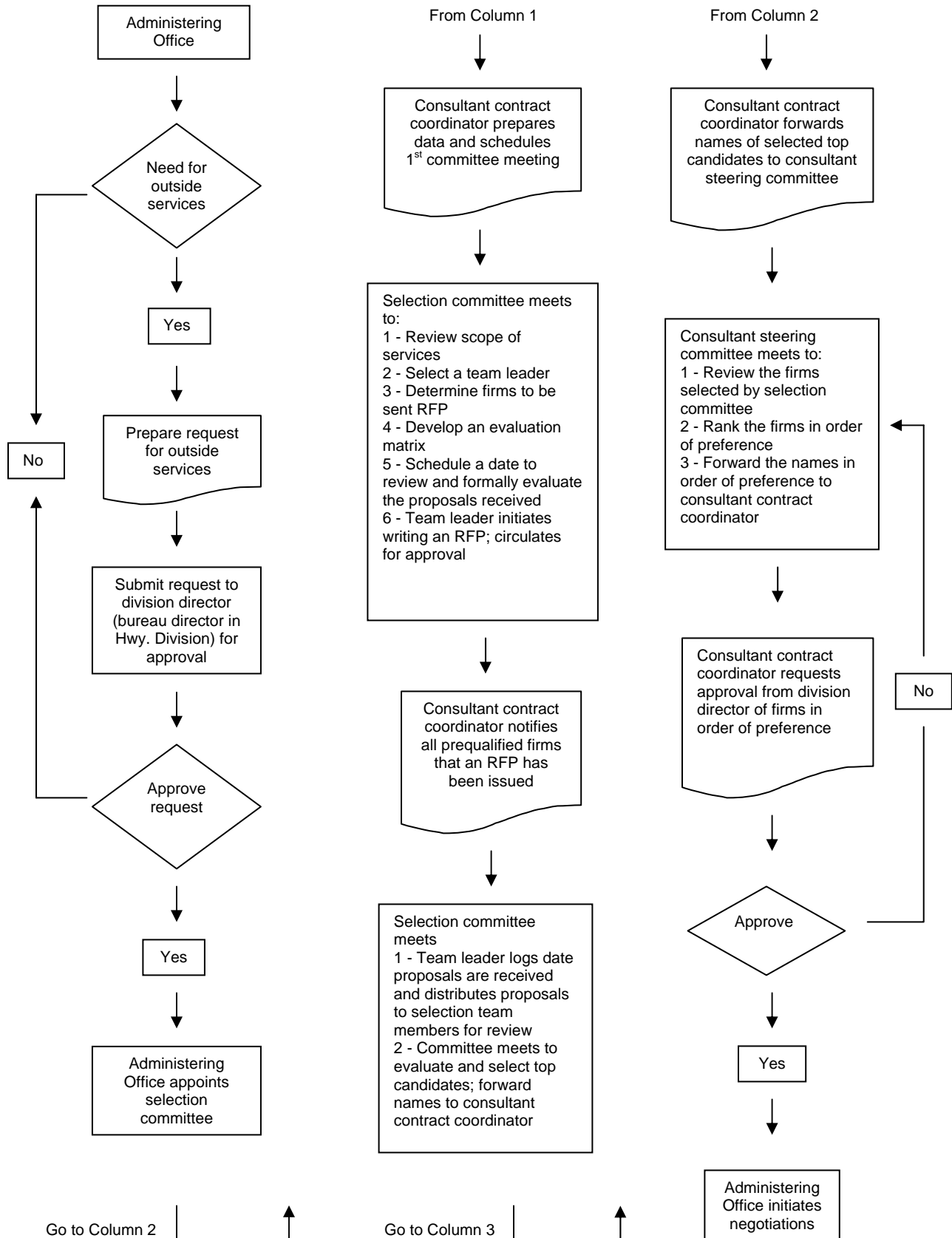
VII. Consultant Evaluation

- A. The purpose of a consultant evaluation is to improve two-way communication, working relations, work product and consultant selection. All consultant contracts shall be

evaluated after completion of the work. Those contracts which exceed one year in duration shall also be evaluated annually. Both consultant performance and quality of the final product shall be evaluated. The evaluation shall consider:

1. The quality and adequacy of work performed.
 2. The ability to meet established schedules and budgets.
 3. General administration of the contract, including substantiation of cost billings, payments to subconsultants, and documentation of claims.
 4. Cooperation shown by the consultant in responding to requests for information and in revising procedures and products according to directions.
 5. Coordination exhibited by the consultant in communicating with the Department, subconsultants, agencies and others to accomplish tasks and resolve problems.
 6. Ingenuity displayed in solving unique and unusual design problems encountered during performance of contract objectives.
 7. The ability to obtain an acceptable end product with appropriate Department staff guidance.
- B. The administering office and the project engineer (if applicable) shall complete the evaluation on standard forms available from the consultant contract coordinator. The evaluation may include a recommendation that the consultant's prequalification for a particular category of work be cancelled. The consultant shall be given an opportunity to review, comment on and sign the evaluation. After completion of the evaluation, the administering office shall send the evaluation to the consultant contract coordinator to become a part of the consultant's record.
- C. The consultant contract coordinator shall maintain a file of evaluations.
- D. The evaluation is confidential; however, summaries of the consultant's past performance will be made available to consultant selection committees.

Appendix A Complete Consultant Contract Selection Process



Appendix B

Contract Types, Contract Clauses, Payment Methods and Retention

Contract Types

1. Project-Specific. A project-specific contract provides for all work to be placed under contract with the consultant at the same time, depending on availability of funds.
2. Multi-Phase. A multi-phase contract is similar to project-specific except the work is divided into phases such as survey, design, right-of-way, and construction engineering.
 - Each phase may be negotiated at the beginning, or
 - Initial phases are negotiated and work is authorized. The need for future phases is identified initially, but negotiation for future phases is postponed until later in the contract period.
3. On-Call. An on-call contract covers basic contractual requirements without defining specific projects. On-call contracts are designed to handle a number of projects or specialized services which may be needed during the contract period. The contract may run for a period of several years. The base contract sets up the general scope of services to be provided, contract language, and provisional labor and overhead rates. As specific project needs arise, a work order is issued for that specific need under the base contract's framework. Occasionally, the Department may utilize multiple on-call contracts with several consultants when there is a large volume of similar services to be performed in the same timeframe. The Department will determine which consultant will perform the services based on availability of key staff to perform the work in the required time, qualifications unique to a particular project, proximity to the project area, and the Department's goal of having an expanse of experienced consultants capable of providing quality services.
4. Third Party. A contract wherein the Department recommends approval of, but is not a party to, the contract.

Contract Clauses

The following summarizes required and suggested clauses for a consultant contract. Cross references are to the sample contract set out in **Appendix C**.

Typically, a consultant contract:

1. Shall clearly define the parties to the contract. (See page 1 and 1.3)
2. Shall clearly state the date to proceed with work, completion schedules for the services to be performed, and the time period covered by the contract, normally no longer than 3 years. (See 1.4)
3. Shall include an integration clause stating that the entire agreement between the parties is contained in the contract, and that any representations made prior to signing are void. (See 2.1)
4. Shall clearly define the scope of services to be provided. (See 2.1.1 and Attachment A)
5. Shall clearly define the specifications for the work (See 2.1.2 and Attachment B)

6. Shall contain payment terms. These terms address items such as invoicing, progress reports, allowable costs, retainage, auditing, and overpayments. The contract must specify a maximum amount payable under the contract. (See Article 3 and Attachment C and match the payment provisions with the agreed-to method of payment)
7. Shall clearly state whether or not the contract is assignable to another party and whether or not a portion of the work may be subcontracted. All subcontracts should be submitted to the Department for review prior to execution. The contract shall provide that cost underruns associated with the subcontract are not available for use by the prime consultant without Department approval. (See 3.2 and 4.14)
8. Shall, as applicable, address the ownership of documents, data, proprietary rights, patent costs, royalties, etc. (See 4.1)
9. Shall provide for inspection and acceptance of the consultant's work. (See 4.2, 4.4 and 4.5)
10. Shall, where appropriate, specify the process by which extra work orders or supplemental agreements are negotiated and state that work not clearly required by the contract shall not be undertaken without prior approval of the Department. (See 4.3 and Attachment C)
11. Shall provide that the Department may terminate or suspend the contract prior to its completion. (See 4.6)
12. Shall allow for extension of time due to unavoidable delays caused by an act of God, war, government actions or similar causes beyond reasonable control of the consultant. (See 4.7)
13. Shall include mediation and arbitration clauses describing the process by which disputes will be settled. (See 4.8 and 4.9)
14. Shall contain an indemnification clause which protects the state from any liability that might result from failure of the consultant to fulfill the terms and duties of the contract. (See 4.10)
15. Shall include a non-raiding clause. (See 4.12)
16. Shall include appropriate references to governing statutes, administrative rules, federal regulations, etc. and that the laws of the State of Iowa will apply. (See 4.13 and 4.21)
17. Shall contain a clause forbidding the use of outside agents. (See 4.15)
18. Shall explicitly contain all applicable Equal Employment Opportunity (EEO) provisions if the contract will be funded in whole or in part by federal-aid transportation funds. (See 4.17)
19. Shall clearly define the DBE/TSB involvement goal if applicable. (See 4.17)
20. Shall require the consultant to retain all records pertaining to the contract for 3 years from the date of final payment for inspection and audit by local, state or federal officials (as applicable) or their authorized representatives. (See 4.18)
21. Shall address severability of contract provisions in the event a portion of the contract is found to be invalid or unenforceable. (See 4.20)
22. Shall contain a signature block identifying the name and title of each person signing the contract with corresponding space for each person's signature and date of signature. (See page 11)

23. May provide for liquidated damages for late performance or nonperformance of contract obligations.
24. Attachment D - Certification Regarding Debarment, Suspension, and other Responsibility Matters -- Primary Covered Transactions.
25. Attachment E - Certification of Consultant.
26. Attachment F - Certification of State Department of Transportation.

Payment Methods

Several types of payment methods are available for use in consultant contracts. All payment methods must be based on supportable and reasonable costs within the consultant's accounting system. A reasonable cost is one that does not exceed that which would be incurred by a prudent person in the conduct of a competitive business. External Audits should be consulted during negotiations so that a payment method compatible with the consultant's accounting practices is used. See **Attachment C** of **Appendix C** for sample contract language.

1. Cost-plus-Fixed-Fee. The consultant is reimbursed for actual documented costs incurred and, in addition, receives a predetermined fixed fee. This method of payment is appropriate when the scope, complexity, character, and duration is indeterminable at the time of negotiations, or where the work is of a nature that the contracting authority does not have experience or knowledge to permit an evaluation of the consultant's proposal on any other basis. This method requires, as a prerequisite to equitable negotiations, that the contracting authority and consultant define as fully and completely as possible and agree upon the scope of services.

By definition, cost-plus-fixed-fee includes payment of:

- a. Direct costs incurred, including:
 - Direct labor.
 - Direct non-salary costs incurred, such as the cost of materials incorporated into the contract work, travel expenses, computer charges, printing costs, expendable supplies, and payments to subconsultants.
- b. Indirect cost: Salary-related expenses and general overhead costs, which are calculated as percentages of direct labor.
- c. Fixed fee: A fixed amount (fixed fee) over and above direct and indirect costs. The determination of the amount of fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The establishment of the fixed fee shall be project-specific. As a guide, a fixed fee can range from 6 to 15 percent of the total direct and indirect costs. When determining a fixed fee, exclude travel expenses, printing costs, miscellaneous expenses, contingency, and the consultant fee for work done by subcontract.
- d. Contingency: An amount established to provide for reimbursement of unforeseen costs associated with the original contract items. The amount is normally 10% of direct and indirect costs, excluding subconsultant cost. Contingency is not to be used without the prior approval of the contracting office, unless it is for overhead increases.

The cost proposal prepared by the consultant showing estimated direct and indirect costs the consultant expects to incur and the expected fixed fee must be attached to the contract.

2. Lump Sum. The consultant performs the services for an agreed amount as full compensation. This method of payment is appropriate only if the contracting authority has established the scope, complexity, and duration of the work required to a degree that just compensation can be determined and evaluated by all parties at the time of negotiations. This method would be most appropriate for use on small and repetitious items of work of no more than 18 months in duration.

The cost proposal prepared by the consultant showing estimated direct and indirect costs the consultant expects to incur and the expected fixed fee must be attached to the contract.

3. Specific Rates of Compensation. The consultant is paid an agreed and supported specific fixed hourly or daily rate for each class of employee directly engaged in the work. This method of payment should be considered only for relatively minor items of work of indeterminable extent over which the contracting authority maintains control of the class of employee to be used and the extent of such use.

When negotiating the contract, the specific rates of compensation should be supported by documentation identifying the direct and indirect costs the consultant expects to incur and the expected fixed fee. Direct non-salary costs may be either set forth as an element of the specific rate or included in the contract as independent cost items.

4. Unit Prices. The consultant is paid on the basis of work performed. A unit of work may be defined as a measurement of work, such as linear feet of borings, number of right-of-way plats, tons of structural steel, or pounds of reinforcing steel. This method is appropriate when the unit cost of the work can be determined in advance with reasonable accuracy, but the extent of the work is indefinite.

When negotiating the contract, the unit prices should be supported by documentation identifying the direct and indirect costs the consultant expects to incur and the expected fixed fee.

Retention

A consultant contract may provide that a percentage of monthly payments—not to exceed 3% of the amount payable—be retained until final payment is made or until final audit. This is termed "retention" or "retainage." Normally, consultant contracts negotiated under this policy will not require retention. However, situations in which a contract may require retention include, but are not limited to, the following:

- The Department has no prior experience with the consultant.
- The consultant's prior contracts have included large fluctuations in overhead rates.

Appendix C
Sample Consultant Contract