

Appendix A Vacated

Appendix B Vacated

Appendix C Vacated

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Appendix F **Consultant Performance Evaluation Procedures**

F.1 Introduction

The following information is provided to guide both WSDOT and consultants through the preparation of the Consultant Performance Evaluation Report (see the CSO's public website: [Contract services | WSDOT \(wa.gov\)](https://www.wa.gov)). This report is an important part of the feedback process. It is also the primary means for developing communication standards and establishing expectations for performance at the onset of a project. Performance expectations must be addressed as part of the consultant selection process, to the development of the statements of work (SOWs), the negotiations, and through to the end of the consultant's involvement in the project.

The completion of the performance reports by WSDOT is required by both federal and state statute and is mandatory for all consultant contracts in excess of \$30,000. The performance reports are also required from individual WSDOT offices when they administer single or multiple task orders using Task Order contracts if the task order(s) equal or exceed(s) \$30,000.

Note: The Consultant Performance Evaluation Report is not a comparison of consultants. It is an evaluation of the performance of a specific consultant on a specific project statement of work. The report records whether the consultant did or did not meet those performance standards established in the contract and generally accepted by the industry for the execution and management of the contract.

Diligence and objectivity in preparing the performance report is imperative to ensure the report is an effective tool for measuring, recording, and communicating performance. The performance feedback is to be submitted according to the intervals established herein.

F.1.1 Preparing the Report

For each contract of more than \$30,000, Consultant Performance Evaluation Reports will be prepared by the project manager. Performance reports may also be prepared for contracts of \$30,000 or less. Preparation guidelines are as follows:

1. A report will be prepared after final acceptance of the architectural and engineering contract work or after contract termination. Ordinarily, the person who prepares this report is the person responsible for monitoring contract performance.
2. A report may also be prepared after construction of the project is completed.
3. In addition to the reports in this section, interim reports may be prepared at any time.
4. If the project manager concludes that a consultant's overall performance was unsatisfactory, the consultant will be advised in writing that a report of unsatisfactory performance is being prepared that will include the basis for the report. If the consultant submits any written comments, the project manager will include them in the report, resolve any alleged discrepancies, and make appropriate changes in the report.
5. The CSO manager will establish procedures that ensure fully qualified personnel prepare and review performance reports.

F.1.2 Reviewing the Report

Each performance report will be reviewed to ensure it is accurate and fair. The reviewing official should have knowledge of the consultant's performance and should normally be at an organizational level above that of the project manager.

F.1.3 Distributing the Report

Each performance report will be distributed in accordance with agency procedures. The report is to be included in the contract file, and copies will be sent to the CSO for filing with the firm's qualifications data. The CSO will retain the report for at least six years after the date of the report.

F.2 Consultant Performance Evaluation Rating Scale

F.2.1 Measures of Performance

The following ratings are used to measure consultant performance:

1. Above Standard

Consultant helps define work direction with timely questions and recommendations. Consultant requires little monitoring, relative to size and complexity of work, and demonstrates proactive project management. Performance often exceeds requirements or expectations in most work elements, with very little need for review comments on plans. Plans and other deliverables meet WSDOT expectations the first time with few comments or revisions. Consultant always responds well to feedback.

Work product quality exceeds expectations. Agency coordination and public involvement are timely and well done. Overall work is under budget and/or ahead of schedule. Quality leadership principles and sound engineering judgment are used. Evaluation of alternatives and trial solutions is often innovative.

2. Standard

Consultant almost always follows direction. Consultant requires routine monitoring relative to size and complexity of work. Performance meets requirements and expectations in most work elements, incorporating review comments into plans without additional iterations. Consultant accepts feedback well.

Work product quality routinely meets expectations, given minor revisions and monitoring. Agency coordination and public involvement are adequate. Work is generally completed on time and on budget. Good engineering practices and management are used. Evaluation of alternatives and trial solutions is adequate.

3. Below Standard

Consultant has difficulty following direction. Consultant may require close monitoring relative to size and complexity of work. Performance fails to meet requirements or expectations in several work elements, such as not fully addressing review comments. Consultant may not accept feedback well.

Work product may have errors or omissions. Consultant may require a high degree of monitoring to complete work. Consultant needs a plan for improvement, to be selected for additional projects.

F.2.2 Corrective Action Plan

When the rating for any criteria on the Consultant Performance Evaluation Report receives a below-standard rating, the consultant will work with the WSDOT project manager and area consultant liaison (ACL) to develop a corrective action plan to address the below-standard rating. The corrective action plan must address the deficiency and what measures lead to the rating; what steps the consultant will take, or has already taken, to resolve the deficiency and improve performance; and how performance will be monitored on future WSDOT contracts.

Performance compliance will be measured as followed:

1. Pass

Rating used by the project manager and the ACL to indicate that the consultant has met or exceeded the performance expectation of the consultant services contract and is recommended to continue receiving contracts from WSDOT.

2. Fail

Rating used by the project manager and the ACL to indicate that the consultant has not met the performance expectation of the consultant services contract and is not recommended to continue receiving contracts from WSDOT until additional action is taken. This is usually in the form of a corrective action plan. Two successive "Fails" on performance evaluations will constitute a "Poor Past Performance" rating in the CSO's database and will lead to removal of the consultant from further consideration for WSDOT contracts for at least one year from the date of determination.

F.3 Instructions

Consultant Performance Evaluation Reports are an integral part of the contract process. This means that the WSDOT management team, including the ACL, needs to meet with the consultant management team as soon as possible after consultant selection, to discuss the requirements and responsibilities of the evaluation process.

When WSDOT provides a detailed statement of work (SOW) to the consultant so the consultant firm may prepare its cost proposal, the SOW includes a section referring to the evaluation process, which will be covered with the consultant prior to the beginning of negotiations. If WSDOT does not have a detailed SOW from which the consultant can prepare the cost proposal, the CSO process for joint development of the SOW will be followed, and the performance evaluation process will be covered during the first meeting.

Where task orders are referenced, they refer to the formal task order documents (TODs) used for work assignments under Task Order contracts or one of the category specific contracts if TODs are used to authorize unrelated work efforts within the contract category. Project specific or GEC-type contracts, managed through task order assignments, are not to have their tasks treated separately for the purposes of evaluation. The overall work of the contract is to be evaluated.

F.4 Types of Performance Evaluation Reports

The following types of evaluation reports are used when the evaluation is performed during the life of the contract.

F.4.1 Final Consultant Performance Evaluation Report

A final Consultant Performance Evaluation Report must be prepared immediately following the project completion or when a contract is terminated. Where the consultant is retained for design support during construction, a final performance report is to be written at the time the work is accepted for advertisement. The “design support during construction” portion, whether it is a part of the original contract or a separate contract, is to be evaluated as a separate item of work if any work was assigned after construction began. (See F.4.3 for information about a potential follow up report after construction is complete.) If no actual work is done by the consultant during the design support phase, then no evaluation of this phase is needed. However, this should not preclude a postconstruction evaluation of the design firm.

The final performance report is part of the closing documents and will be completed following the contract or task order close-out process. The final report will be sent to the CSO, the area consultant liaison, and the Regional Administrator. The final performance report evaluates performance for the duration of the project even though interim reports have been prepared.

Interim performance reports are prepared throughout the life of the project. An overall summary of the total performance, which includes consideration of interim reports and current data, will be included in the final report.

F.4.2 Interim Consultant Performance Evaluation Report

The frequency of interim performance reports is to be set during the initial project scoping/negotiation phase. Best management practices necessitate that the best performance feedback happens as the project progresses for both positive action and corrective action. Communication on performance as it occurs will allow the final evaluation to reflect an accurate performance assessment throughout the project life cycle.

Interim performance reports are to be prepared as follows:

1. If the contract or IDC task order is less than 18 months in duration, a final evaluation is all that is needed. For those contracts and IDC task orders with a duration beyond 18 months, the first interim report is to be prepared between 9 months and 12 months after notice to proceed, typically after the completion of negotiation of the contract or task order. (If a task order, that is not expected to go beyond 18 months, is subsequently amended to extend the duration beyond 18 months with an extension of 6 months or more, an interim evaluation is to be performed at the time of the amendment.)
2. At a minimum, prepare annually on the anniversary of the work starting date for all projects exceeding a duration of two years.

3. Prepare when the current project engineer or consultant manager will no longer be involved with the project, providing the project has been in progress for more than 25% of the assigned work duration.
4. Include all work from the start of the project, or from the date of the last interim report.
5. Prepare when a consultant's total overall work has become less than standard. A corrective action plan may be necessary to ensure the required project performance is reestablished.
6. Identify the intervals in the project schedule.

An interim report is not to cover a period of more than one year, except as covered in item 1, above.

F.4.3 Special Consultant Performance Evaluation Report

A special report is prepared when a nonscheduled evaluation is needed, when a report is needed to facilitate a counseling session, or at the request of the consultant or WSDOT. Such a report will not be referenced in the final report.

A separate evaluation report may be performed, if deemed warranted by the Regional Administrator, State Design Engineer, and/or the State Construction Engineer, at the completion of construction of the consultant's design. The consultant may also request an evaluation under this section. These evaluation reports are to be attached as addenda to the final evaluation performed as part of the design contract closeout.

F.5 Authentication and Review

This section documents the process for the review, verification of accuracy, and completeness of the Consultant Performance Evaluation Report by the rater, the ACL, and the executive reviewer. It also gives assurance that the report has been reviewed during its preparation for objectivity and the elimination of personal bias. The report will be prepared, reviewed, and endorsed as follows:

F.5.1 Project Manager

1. Prepare a draft of the Consultant Performance Evaluation Report based on data in project records for the type of performance report: final, interim, or special.
2. Schedule a meeting to review the draft report with the consultant. The review should have open, forthright, and courteous discussions concerning the rating areas. The consultant should be encouraged to call any performance considered exemplary to the project manager's attention, so that it may be verified, recorded, and if appropriate, entered the report.
3. After the review, finalize and sign the report, recommend a "Pass" or "Fail" for the contract, and forward the report to the area consultant liaison. (For the explanation and purpose of a "Pass" or "Fail" mark, see F.2.2.)

F.5.2 Area Consultant Liaison

1. Review the Consultant Performance Evaluation Report for objectivity, correctness, and documentation. Documentation will be essential in the event of an appeal or litigation. Sign the document and recommend a “Pass” or “Fail” for the contract.
2. Provide a copy of the report to the consultant, with an appropriate cover letter. The report may be delivered in person or by certified mail with return receipt.
3. Inform the consultant that an appeal of the rating to the ACL may be made in writing within 20 calendar days from the receipt of the report. Appeals received after 20 days have elapsed will not be considered.

F.5.3 Regional Administrator

1. Review the Consultant Performance Evaluation Report after the 20-day appeal period.
2. Modify the rating, if appropriate, on the form and/or on additional sheets. Advise the consultant of any changes made.
3. Submit performance reports completed at the region level to the HQ Consultant Services Office (CSO). (Refer to the additional instructions attached to the Consultant Performance Evaluation Report.)

F.5.4 Consultant Services Office

1. Establish an internal performance review panel to review all Consultant Performance Evaluation Reports. The review will focus on the objectivity, correctness, fairness, and overall consistency of the reports.
2. Provide necessary feedback to the ACL and the project manager regarding the report.

F.6 Appeal of the Performance Report

If the consultant disagrees with the outcome of the evaluation and performance review, the consultant may appeal the outcome. The process includes the following:

1. The consultant is to appeal in writing and clearly explain the disagreement with the rating received on the performance report. The appeal is to be sent to the CSO manager within 20 calendar days of receipt of the evaluation. An appeal must state the specific basis for the appeal.
2. The CSO manager will investigate the appeal to determine whether the facts substantiate the consultant’s basis for the appeal. If the basis for the appeal is justified, the report may be modified by striking those portions of the originally prepared report, modifying the relevant element, and changing the narrative (as appropriate) on separate sheets. The CSO manager’s response to the consultant will be made by certified mail, return receipt requested, within 20 days of the receipt of the appeal. The manager will forward a copy of the appeal and response, including copies of all data used to substantiate any action taken with regard to the consultant’s appeal, to the Regional Administrator and the State Design Engineer.

3. A Consultant Performance Evaluation Report is to be considered preliminary until all reviews and appeals have been accomplished and the report has been reviewed by the internal review panel. The panel will then approve the report as final.
4. Consultant Performance Evaluation Reports are to be kept on file by the CSO for a period of six years from the date of completion.

F.7 Conditional Qualification

Conditional qualification of a consultant may be affected when the overall performance of that consultant has become “below standard,” and upon recommendation of the Regional Administrator to the WSDOT Secretary. A consultant placed in “conditional qualification” status may be restricted in receiving additional contracts for highway projects, or other sanctions may be placed in effect (see the “Fail” definition in F.2.2).

A consultant may be placed in conditional qualification status when:

1. An **overall** total performance rating of “below standard” has been given on a final performance report.
2. A firm’s performance is reported as below standard in either “schedule,” “technical quality,” or “cost/budget” on an interim report for a current project, and the Regional Administrator has requested that the CSO manager place the firm in conditional qualification status.

After evaluation of the circumstances, the CSO manager will advise the consultant firm of its having been placed in conditional status and explain the consequences of such action. The consultant will be advised of the CSO’s preparation of interim performance reports while in that status.

Interim performance reports will be prepared by the project manager at 30-day calendar intervals to record a consultant’s performance while in conditional qualification status. If overall performance has been brought to standard after two consecutive 30-day interim reports have been prepared, no further interim reports need be prepared, unless specifically requested by the consultant or other circumstances require their preparation. In the event the consultant requests completion of an interim report, the date of the report will be the date of the consultant’s request.

F.8 Public Disclosure of Performance Reports

A Consultant Performance Evaluation Report is to be considered a preliminary draft until all reviews and appeals have been accomplished and the report has been reviewed by the internal review panel. After the report is finalized in this manner, the report, appeals, correspondence, and other related data may be subject to public disclosure. Performance reports and related data will be released to individuals, other than the rated consultant, only through proper requests made to the Public Disclosure Office at WSDOT Headquarters.

F.9 Consultant Evaluations

Following are the federal and state laws and regulations upon which consultant evaluations are based.

F.9.1 Federal Regulations

40 USC 11, 1101-1104, Selection criteria

23 CFR 172.9(d)(2) Performance Evaluation

F.9.2 Washington State Law

[RCW 39.80.040](#) states that, in the procurement of architectural and engineering services, the agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency in the process of selecting the most qualified firms for award of contracts.

Appendix G **Consultant Contract Claims and Claims Procedures**

G.1 Introduction

Claims by the consultant occur because of poor communication between the WSDOT project office, the consultant's team, and the contract officer. Too often, the contract officer, usually the area consultant liaison (ACL), has not been included in any early discussions in which issues have been raised to the project office by the consultant.

Most contract claims are based on requests for additional payment above that covered by the contract. There are two circumstances that usually lead to this request:

- The first is when the consultant's understanding of the contract expectations turns out to be different than that of the state.
- The second is when the consultant has been asked, or believes they have been asked, to perform work outside the statement of work (SOW).

The request turns into a claim when the WSDOT project manager initially disagrees with the request, or sufficient time has passed to preclude the project manager from following the normal change management plan.

If possible, claims should be avoided. Suggested avoidance measures include:

- Taking sufficient time during the SOW development and negotiations phase to ensure both sides understand the details of the work plan and are clear about project expectations.
- Consultants have an obligation to contact the project manager and the ACL whenever they feel they have been asked to do something outside the work plan as negotiated and reach agreement with WSDOT regarding whether the work is needed, and whether it requires additional payment.
- WSDOT project management has an obligation to be clear and concise regarding instructions to consultants. When asking a consultant to redo work, or when returning work as incomplete or needing improvements, the WSDOT project manager needs to be clear to the consultant about whether they believe this is covered under the contract or is a change to the SOW. Whenever there is a question regarding the contractual obligations, the ACL, or the HQ Consultant Services Office (CSO) if the ACL is unavailable, should be contacted and brought into the process.

If a claim cannot be avoided, the following outlines procedures based on the size of the claim. Note that all settlements of claims must be included in the agreement with the Consultant by supplement or task amendment, or, if the agreement is expired, in a new agreement specific to the settlement of the claim.

- A claim for additional payment of under \$50,000 is covered in G.2.
- A claim for additional payment above \$50,000 is covered in G.3.

G.2 Consultant Files a Claim of Under \$50,000

For claims under \$50,000, the following process is to be applied:

- For claims under \$50,000, but more than \$5,000, the ACL contacts the CSO manager and discuss the situation. The CSO manager will determine whether the claim warrants CSO involvement. If not, the ACL and the project manager will work with the consultant to negotiate a fair and reasonable settlement.
- For claims under \$50,000, but more than \$5,000, where the project personnel and the consultant cannot reach a fair and reasonable settlement, the ACL and/or consultant can request CSO involvement. If this occurs, the process will then move to that described in G.3.
- Claims under \$5,000 will be negotiated with the consultant for reasonable cost by the ACL and the state's project manager.

G.3 Consultant Files a Claim of \$50,000 or more

G.3.1 Consultant Notifies WSDOT of Claim

If the consultant has determined that they were asked to perform additional work outside the contract SOW, the consultant may initiate a claim for additional compensation. Consultants may also notify WSDOT of issues regarding or requesting a time extension, the end date of the contract, or indefinite-delivery contract task orders.

To initiate the process, the consultant will file a written claim with the WSDOT project manager. The consultant claim must include:

- An explanation regarding why/how the additional work was outside the original project SOW.
- The date(s) of the additional work performed outside the project SOW.
- A summary of all costs for each firm included in the claim.
- Copies of any correspondence that the consultant believes directed them to perform the additional or changed work, together with any negotiation notes or other documentation clearly showing their understanding of the work expectations from the original negotiations.

G.3.2 WSDOT Reviews Consultant Claim

The project manager will review the consultant claim and meet with the ACL. When necessary, they may also meet with the appropriate region or project executive. The ACL will contact the CSO and brief the manager on the circumstances. A determination will be made regarding whether the ACL and the WSDOT project manager are to handle the claim or whether the CSO will be directly involved. The CSO manager will request that all substantive documentation be sent to the CSO. After reviewing the documentation, the manager will proceed with further investigation, accept the claim, schedule negotiation with the consultant, or submit the claim to the Assistant Secretary Engineering & Regional Operations Chief Engineer for determination.

Note: If the project includes federal funding, under certain circumstances the Federal Highway Administration (FHWA) may also need to be notified. The CSO is to be contacted regarding the necessary steps that may be involved.

G.3.3 Project Manager Prepares Supplement or New Contract

If the project manager, ACL (or executive), and FHWA (if applicable) agree with the consultant's claim, or a negotiated settlement is reached, the ACL will prepare a request memo, including backup documentation, and send it to the CSO. If there is still time on the contract, the request will be for a supplement (or task amendment). If the contract time has run out, a new "sole source" contract (see [Chapter 440](#)) will need to be executed. The reason and title need to address "claim resolution" for the project. Depending on the circumstance, a specific claim resolution contract form may be available.

When approved, the ACL will prepare the supplement, task amendment, or new contract and submit it to the consultant for execution. After the supplement, amendment or contract is fully executed, the consultant will submit a final invoice, and the project will prepare a voucher for reimbursement to the consultant for the final agreed-to claim amount. The project manager is to provide a reminder to the consultant that the claim payment is subject to audit.

At this point, no further action is needed regarding the claim procedures. If the new or supplemental contract is for Professional Services, the CSO manager will submit the consultant claim request and support documentation to the Department of Enterprise Services for approval.

If, however, WSDOT disagrees with the consultant's claim, then G.3.4 is the next step.

G.3.4 ACL or Project Manager Prepares Support Documents

At this point, if WSDOT disagrees with the consultant's claim, the ACL will prepare a summary of all factors considered to date for the CSO manager and forward to the CSO all documentation regarding the claim, including:

- A copy of the consultant claim filed with the project manager.
- A summary of overall costs based on the payment method and labor rates approved for the time frame of the actual work, for each firm included in the claim.
- Copies of project correspondence related to the claim.
- A description of why WSDOT disagrees with the consultant claim.
- Recommendations for resolving the claim.
- A summary of lessons learned from the process.

The CSO manager will review all documentation for completeness and then submit it to the WSDOT Assistant Secretary Multimodal Development & Delivery.

G.3.5 WSDOT Assistant Secretary Multimodal Development & Delivery or Designee Reviews Claim

The WSDOT Assistant Secretary Multimodal Development & Delivery will review the support documentation and either approve or deny the consultant claim. If the project includes federal funding, the CSO manager or the Assistant Secretary Multimodal Development & Delivery will forward a copy of the consultant claim, along with the WSDOT recommendation, to FHWA for its consideration and approval prior to finalizing the decision regarding the claim.

The WSDOT Assistant Secretary Multimodal Development & Delivery will advise the Secretary of Transportation in cases where consultant claims are highly publicized, may be of a sensitive nature, or may have significant economic impact.

If the consultant disagrees with the decision of the WSDOT Assistant Secretary Multimodal Development & Delivery, the matter will be referred for determination to the Secretary of Transportation, whose decision in the matter shall be final and binding on the parties. However, if an action is brought challenging the Secretary's decision, that decision shall be subject to *de novo judicial review*.

G.3.6 Manager Informs WSDOT Staff and Consultant of Decision

The CSO manager will prepare a written summary of the outcome of the consultant claim for all involved. The summary will include the basis for the decision and the final claim amount. The project ACL or the CSO manager will notify the consultant in writing regarding the final claim decision, depending on where the resolution occurred. If the decision was in favor of the consultant, then all documentation will be returned to the CSO for preparation of contract documents.

Appendix H Contract Payment Methods

H.1 Payment Methods

For project specific agreements, the selection of a payment method can enhance the ability of the project manager to obtain the best service for the cost. Below are outlined the types of payment methods available for an agreement and how the different payment methods work. It is noted that certain agreements are almost always under a specific type of payment method, as outlined below. Exceptions for those agreements can be made only with the concurrence of the Consultant Services Office. Further information regarding contract management is in [Chapter 500](#).

H.1.1 Lump Sum (LS)

This method of compensation is appropriate for project specific and project support category-specific agreements, provided the scope of work can clearly define the level of completion of all deliverables expected (quantity and type) at the start of the project. These agreements usually are not able to be supplemented except for time, so it is required that a clear scope of work and specific cost be well defined ahead of negotiations. It requires the WSDOT engineer's estimate detailing the hours required for each type of work, as well as the engineer's opinion of a reasonable hourly rate, as part of the documentation justifying the final agreed-to lump sum price. The WSDOT estimate is prepared, signed, and dated by department personnel who are qualified and familiar with the proposed type of work and is provided as part of the negotiation's documentation.

If the project team, including the area consultant liaison (ACL), is reasonably sure that the statement of work (SOW) is complete and sufficiently detailed and that the consultant understands the project, then a lump sum contract represents a good approach for both the consultant and the state. This is especially true if the consultant's proposal is close to or below the WSDOT engineer's estimate of cost.

- The benefit to the consultant for using the lump sum payment contract is that if the consultant performs the work more efficiently and economically, the consultant is paid the full agreement amount and potentially makes a larger percentage of profit.
- The disadvantage to the consultant is if their costs exceed the estimate, the compensation does not change.
- The benefit to the state is reasonable pricing for the work with less administrative expense.
- The disadvantages to the state are the potential for disagreement regarding what was understood about the SOW and, if changes occur during the progress of the work, the effort to determine the actual percentage of completion for fair compensation.

Lump sum contracts are not recommended for long-term work or projects that include phases based on design decisions during project progress. Lump sum agreements will not be allowed for any project that has a relatively high potential for changes in the midst of progress, or where the budget is approved on an intermittent basis.

If the complete project scope can be defined at the beginning, and there is pressure to meet a design deadline, the lump sum payment type can work well, especially as an incentive to the consultant to complete the work in a short time frame.

Lump sum contracts are negotiated to a firmly fixed price and are not subject to audit. The responsible ACL must provide sufficient documentation to the CSO regarding the process used to arrive at a lump sum amount. This will include the department's detailed estimate of costs and the negotiation notes that support the lump sum amount as a reasonable cost to the department.

Progress payments will be made according to percentage of work complete. The percentage of work complete will be outlined in the invoice through a progress report and an earned value chart. Agreement as to how often the consultant will receive payment will be covered in the negotiations and detailed in the agreement.

In accordance with [RCW 39.80.050](#), if the negotiation team is having difficulty reaching a reasonable cost to the state, the team may offer to contract for the services under the lump sum payment method, at the engineer's estimate amount, as part of the team's last and final offer.

Supplements to a lump sum agreement are rare and difficult to justify. Supplements must be initiated through a request memo. The ACL is encouraged to make contact with the CSO manager as soon as possible when the project or the consultant determines a change has occurred or a supplement is requested. Under these circumstances, the risk of a claim is high.

H.1.2 Cost-Plus-Fixed-Fee (CPFF)

The CPFF method of compensation is used when the extent of work and the labor and other expenses required for project completion cannot be fully and accurately estimated for each separate work element at the start of the project. This method offers an incentive through the fixed fee to the consultant to complete the work efficiently, and can be used effectively for projects with multiple phases. It is expected that negotiations will occur in some form whenever the project phase or deliverables or other elements change. These contracts provide the maximum flexibility for managing large multi-year design projects with several significant elements of work at reasonable costs.

The following elements are considerations when using the CPFF method:

- The benefits to the consultant are: (1) the labor costs (including Indirect Cost Rate) are covered at actual rates, even if there are fluctuations in the original anticipated effort required to complete the deliverables, (2) it may potentially take less effort if the consultant is more efficient, and (3) the ratio of profit earned to labor cost may increase without increase to the total cost as efficiencies occur.
- The disadvantage to the consultant is the potential for a "blown estimate," which requires a larger labor effort without additional profit, since the fee portion is fixed for the work scoped and additional labor for the existing work will not increase the fee portion. The CPFF method is an incentive for the consultant to accomplish the work as described efficiently and to manage scope creep.
- The benefit to the state is the ability to develop the project in stages and move the project forward, especially if time is a major issue. Profit is fixed for the scope negotiated, and, if the work requires less labor than anticipated for that scope, the state benefits in lower direct labor and indirect costs. If the work requires more labor than anticipated, the additional labor costs less because no additional profit is involved.

A cost-plus fixed fee agreement is a flexible agreement which allows the costs to be adjusted to actual costs annually. Labor rates for all firms are invoiced at actual cost, and the Indirect Cost Rate for Cost-Plus Fixed Fee agreements is adjusted on an annual basis for all firms on the contract. The applicable approved audited Indirect Cost Rate from the CSO is used to adjust the previous year's indirect charges based on the labor invoiced. The Indirect Cost Rate can move up or down during a given agreement's life span, and discussions during negotiations will cover how these adjustments will be accommodated. The requirement for actual costs for Indirect Cost Rate will also require that the contract remain open a little longer than usual for a project to allow for a final Indirect Cost Rate adjustment. It is mainly for this reason that this type of agreement often has a Management Reserve option.

In negotiations for a CPFF contract, it is important to consider the timeframe of the entire project, and provide an escalation factor (if applicable) for the estimate for a given scope to accommodate changes in indirect costs and direct labor over multiple years. To do this escalation, consideration must be made about which elements of work will need multiple years to complete and how much of the work of those elements is expected to be completed within each year of the multi-year contract. Escalation is expressed in terms of a percentage of total direct labor cost, and is usually slightly under current inflation.

Additional fee (profit) is considered for supplements when new elements are added to the agreement and may be considered for some additional project management element hours (usually only for added time on the project, and subject to further discussion and negotiations; it is not a given that additional project management fee will be allowed). Existing elements that require additional hours to complete above the original negotiated hours, termed a scope and magnitude increase for those elements, will not include added fee, only direct labor and indirect costs. Existing elements that are modified by a supplement may include subtracting already approved fee on work that is changed in such a way that the actual work is reduced. In this case, the percent used to estimate the original fee is used to develop the subtractive amount of fee. It is recommended that the ACL and/or CSO be involved in any additions, changes or subtractions of work to ensure the financial portion of the contract is changed appropriately.

Invoicing a CPFF agreement will require that all elements of the project, including direct labor, indirect costs, fixed fee and direct expenses, be invoiced in separate sections of the invoice, and supported. Direct labor is invoiced at actual cost, and can increase based on raises given to staff over the life of the agreement. Indirect costs are invoiced at the approved indirect cost rate (and adjusted annually to actual cost for the previous year). Fixed fee is invoiced based on percent project complete multiplied against the total approved dollar amount of the fee less fee already paid, which is supported by both detailed progress reports and an earned value chart which outlines the consultant's estimate of the completion of the project (percent complete). Note that the fixed fee paid to the consultant with each monthly progress payment has no relationship to the amount of labor billed for that month, nor to the percent of direct labor used to develop the fee amount. To obtain the full fee, the project must be complete. If a project or certain elements of work are stopped prior to finalization of the deliverables, negotiations must be held to determine the actual percent complete for final invoicing of the project or elements for all firms on the contract.

A final audit will be requested for larger contracts using the Cost-Plus Fixed Fee payment type. Final audits will ensure that the amount of fee paid is appropriate to the level of completion for all firms, will confirm the indirect cost rates (if not already provided on an annual basis through the Audit Office), will confirm the direct salary rates, and ensure direct expenses have been invoiced properly without markup for the prime consultant and at least the subconsultants with larger work efforts on the project. Final audits can result in either WSDOT paying out appropriate costs not previously invoiced, or receiving back overpayments of funds.

H.1.3 Negotiated Hourly Rate (NHR)

Another type of agreement which allows some flexibility for changes during the progress of the work or where work is assigned as the budget is approved, is the Negotiated Hourly Rate payment type. This payment method is used for all Task Order contracts and for those situations such as design support services during AD and construction or other circumstances where a Cost Plus Fixed Fee agreement, or Lump Sum is not appropriate. An all-inclusive hourly Actual Not to Exceed billing rate (based on maximum direct labor) is determined for all classifications within a firm. The billing rate is made up of direct salary, fringe plus Indirect Cost Rate, and profit (fixed fee) and is updated on an annual basis for all firms on the contract.

The ACL or a designee should obtain the most recent applicable approved audited Indirect Cost Rate from the CSO. The negotiated Indirect Cost Rate, acceptable wage rates, and some in-house reimbursable costs are normally established based on recommendations from the WSDOT Internal Audit Office. The CSO reserves the right to negotiate contract costs whenever necessary. The fee percentage is also negotiated. The Actual Not to Exceed hourly rates, when negotiated, are not subject to adjustment during a post-agreement audit. These rates are subject to annual renewal for indirect cost adjustments as indirect cost percentages for the previous year are approved. The adjustments to the billing rates occur 181 days after the consultant's fiscal year end. If the rates are approved prior to the 181 days after fiscal year end, the new rates will not be invoiced until the 181st day. If the rates are approved after the 181 days after fiscal year end, the new rates can be adjusted back to the 181st day and following days invoiced prior to approval of the rates.

With the negotiated hourly rate, there is no incentive for consultants to keep costs down, so WSDOT project management must be diligent to ensure efficient delivery by estimating for the state a reasonable number of staff hours for the work, carefully negotiating the hours to complete the work, managing the work schedule by overseeing the work progress, and not automatically approving time extensions or additional labor hour costs to the project or work effort without negotiations that include the ACL and approval from the CSO.

H.1.4 Task Order Negotiated Hourly Rate (TONHR)

Task Order contracts use the task order document as the project delivery method. Negotiated hourly rates are established in the master agreement for work that is projected to be needed by the state prior to being fully defined. Under normal circumstances, task orders are subject to the Second-Tier Competition Process (see [Appendix Y](#)). When a work assignment has been determined and estimated by WSDOT, this Second-Tier process is used to select the firm for the task. After final selection, negotiations for final costs occur utilizing the approved rates in the master agreement, and a task order document (TOD) is prepared.

The project manager, with the assistance of the ACL and potentially the CSO, negotiates the parameters for the task order in terms of time, scope of work, staffing, hours, and maximum amount payable. Any change to those conditions may necessitate a TOD amendment. Each TOD may be set up for different organizations, work orders, projects, or portions of projects, based on the parameters in the original solicitation and the Second-Tier process. An electronic version of the TOD is available through the CSO and is assigned by request.

Appendix I **Contract Types**

I.1 **Introduction**

This appendix provides descriptions of the various types of contracts used in project or program delivery, including both Professional Services and A&E services. The information below is appropriate for both types of contracts. Specific areas of difference in setting up contracts are in [Chapter 200](#) and [Chapter 400](#). Payment method descriptions for all contracts is in [Appendix H](#).

Covered in this section are the following types of contracts:

- Project/Program-Specific
- Task Order
- Design Support During Ad and Construction
- Disputes Review Board

I.1.1 **Contract Boilerplates**

Most contracts will use the boilerplate contracts already approved by the Attorney General's office (AGO). Any contracts not written on these "boilerplate forms" must be individually reviewed and approved as to form by the AGO.

- WSDOT policy is that no agreement under the purview of the HQ Consultant Services Office (CSO) will be assembled or authored on anything other than CSO-issued boilerplate contracts without the express written permission of the CSO manager.

The CSO manager is responsible for reviewing and updating boilerplate contracts and the necessary terms and clauses required by state and federal regulations. Boilerplates for all contracts are developed in coordination with the Washington State Attorney General's Office (AGO), the Federal Highway Administration, the WSDOT Risk Manager, and, for A&E contracts, the American Council of Engineering Companies of Washington.

Agreement supplements also have boilerplates available which may be helpful to modifying the contract for specific items. These boilerplates are not reviewed by the AGO and are subject to the review and approval of both the CSO and the AGO. The ACL works with the project office to ensure the proper language and document forms are used.

For all contracts, the direct involvement of the CSO and the appropriate area consultant liaison (ACL) is necessary. Approval by the CSO manager is required before any authorization or alteration of work involving any contract can go forward. The only exception occurs under emergency conditions, as specified in [Chapter 600](#).

I.2 **Determination of Contract Type**

The CSO manager will make the final decision on the type of original contract to be used for a project based on information provided by the project, the responsible ACL, and through discussions with project management.

I.3 Project/Program-Specific Contracts

Generally, whenever the resources of a consultant are required in relation to a phase of a project or the delivery of a project ready for construction advertising, the work requirement is project specific. Project specific work includes route development studies, Environmental Impact Statements (EIS) and other environmental work, appraisal and acquisition of real estate for projects, preliminary design or design, full PS&E or any other effort, whether A&E or Professional Services, which lead to a construction or other type of project that involves multiple disciplines. It is noted that, if a project is expected to exceed \$1,500,000 in total project design cost, a project specific contract will be required. Task Order contracts are not available for projects of magnitude greater than \$1,500,000 total project cost. Note that some Task Order Agreement lists have lower thresholds for maximum task order costs, and the project manager needs to check with the list manager for any limits on the list used. There is no lower limit below which a project specific contract is not appropriate, and any project may use a project specific contract. Some larger contracts may cover an entire program, such as a Task Order General Engineering Contract under which multiple projects are authorized over a long period of time are completed for a single highway system or program.

The solicitation/selection processes, development of statements of work (SOWs) and negotiations, and contract awards are covered under Chapters 200 and 400. The importance of understanding that material, as well as the timely involvement of the appropriate ACL and the CSO, can help to prevent future problems with delivery of consultant services on a project.

Changes that occur during the contract that require adjustments to the statement of work (SOW), estimated costs, and/or time of completion will be done by supplementing the contract and must be done through a supplemental contract document process, and must conform to those processes outlined in Chapters 200 and 400.

Project specific contracts will include the detailed SOW as an exhibit to the contract, as agreed to during the negotiations. The contract will also have the budgetary estimate of costs for the prime and all subs as agreed to during the negotiations. In coordination with the AGO, the CSO will determine, and include in the boilerplate contracts, other necessary exhibits, attachments, and inclusions.

Under project specific contracts, there are several methods of contract payment. Depending on the needs of the department, the choices are cost-plus-fixed-fee, lump sum, or negotiated all-inclusive hourly rate. Some program specific contracts will include Task Orders to properly separate out costs for specific projects authorized under the program, and will usually be paid under negotiated hourly rates. The payment method is fixed for the life of the contract and each one has different implications for the state. These payment methods are covered in [Appendix H](#), Contract Payment Methods.

I.4 Task Order Contracts for Project Support

While project specific contracts anticipate contracting for whole phases of work in pursuit of project or programmatic delivery, task order contracts for project support anticipate work efforts in specifically defined categories to fulfill the needs of the department in delivering a project or program. Where project specific usually anticipates multiple disciplines under one contract, task order contracts often are for a single, more specialized work discipline.

On-call contracts do not replace multiple discipline single project contracts. They are specifically to fulfill shorter term specific needs for a project under design by the WSDOT when staffing is short in a particular area. Larger efforts are required to use the project specific contracting procedures.

Each contract will clearly state the limits of the scope of services allowed under the contract in both dollar amounts and time of performance.

Depending on WSDOT's needs, one or more contracts may be awarded for each on call solicitation. Often, the CSO will determine ahead of advertisement the number expected to be awarded.

Support groups overseeing specific disciplines within the WSDOT often identify areas of specific need which are serviced by task order contracts. When identified, the support groups work with the CSO to determine the type of service (A&E or Professional) and process (usually a solicitation process) to obtain a list of qualified consultants for a specified period, not to exceed five (5) years. The number of pre-qualified consultants on each list will vary with the perceived need by the support groups. General engineering contracts will be provided on an approximately three (3) to four (4) year schedule, based on legislative actions and perceived need.

The CSO will work with the project delivery teams to ensure that these lists of task order qualified consultants provide equivalent participation by disadvantaged and smaller firms in accordance with [39.80.040 RCW](#) and 49 CFR 26.

Under task order contracts, contract payment is normally on a Negotiated Hourly Rate basis. This payment method is covered in [Appendix H](#), Contract Payment Methods. Upon occasion, and for a CSO-approved specific purpose, a Task Order may be authorized under the Lump Sum payment method. This payment method must have prior approval from the CSO, and be defended in writing in the files for the Task Order contract.

I.5 Design Support Services During Ad and Construction

Regardless of the type of construction method (design-bid-build, design-build or general contractor- construction methods), if a consultant is part of the process to develop the project, it is strongly recommended that the consultant also continue to be available to answer questions and respond to change orders regarding the consultant's design during the ad period as well as the construction period. These questions may come up any time during the process of acquiring the services of the contractor and construction of the project.

The consultant services during ad and construction do not necessarily have to be for a design for the entire project, but could also apply to availability for category-specific work. The selection of a consultant for services related to a project scheduled to go to construction will need to include language that provides for the consultant to remain part of the project through project completion. This may be accommodated by either a supplement to an existing agreement for the project, an amendment to a task order on the project, or a new agreement or task order. If the agreement payment method needs to change (for example, cost-plus fixed fee to negotiated hourly rate), then a new agreement for these services will be required. A separate agreement specific to the project may be required if the master task order agreement end date will not provide sufficient time for the consultant to remain available throughout the full construction timeline.

Note that these services are for the consultant to be available to answer questions and provide design reviews and are not related to design error issues which are treated differently. For determining and settling design error issues, see [Appendix O](#).

All agreements for these services are on a Negotiated Hourly Rates basis, due to the inability to determine how much or little the services will be required during the advertisement and construction processes. An allowance, against which the project office can draw for the consultant services, is assigned to the agreement and only increased if the project is not complete and the allowance for the consultant is not sufficient to cover the anticipated additional requests for information (RFIs). Invoices for these agreements need to detail the RFIs in status and expenditures.

The process by which the consultant is requested to provide project services under this type of agreement or task order will be outlined in the general scope of work. Negotiations for specific work items under the general scope are appropriate for larger efforts, though they need to be completed quickly to prevent delay. If the amount of work anticipated is small, then written notices to proceed should be authorized by the project office. Larger efforts may also be authorized by the project office, and the ACL needs to be notified of project progress on a regular basis. Should the effort include significant design changes, the CSO and the State Construction Engineer or Assistant Secretary Engineering & Regional Operations Chief Engineer, may need to become involved. Copies of all documents and negotiation notes, discussions regarding potential design errors, and other pertinent contractual exchanges between the consultant and the project office should involve the ACL and be subsequently sent to the CSO for its files.

The length of the design services during the construction contract should be at least as long as the construction contract, and a determination should be made as to whether the support services should involve an administrative role that would require budgetary hours during the contract term.

Note: Consultant designers cannot provide construction oversight and/or inspection services on a project for which they provided designs.

I.6 Disputes Review Board Agreements

I.6.1 Introduction and Legal References

The purpose of this section is to provide procedures for the department to assemble a Disputes Review Board (DRB) for specified construction projects. All DRBs are for architectural and engineering (A&E) services agreements. The establishment of a DRB for a specified construction project is determined by the inclusion of the General Special Provision (GSP) 1-09.11.GR1, "Disputes and Claims," and *Standard Specifications* Section 1-09.11, "Disputes and Claims," into the contract documents.

The DRB agreement process is regulated by [Chapter 39.80 RCW](#), Contracts for architectural and engineering services.

As outlined in the *Standard Specifications*, and unless there is permission given by the CSO, there will be three members on each board: one representative hired by the state, one representative hired by the contractor, and one representative hired jointly. The third board member is selected by the state's representative and the contractor's representative, acting as a selection board and utilizing the CSO database of qualified potential third members.

Advertisements for Dispute Review Board State and Third-Party members will be managed through the CSO. Members selected will have an agreement for whichever services they have been selected. Only one member will be on any agreement. Following the A&E selection procedures covered in [Chapter 400](#), the CSO manager will finalize negotiation for rates and proceed with execution of the contract with the state or third-party member.

I.6.2 Agreement Process

On a regular basis, the HQ Consultant Services Office (CSO) will meet with the HQ Construction Office to review and determine the areas of prospective expertise for DRB services, based on the projected contracts to be let for that year. Task Order Master Agreements specifically developed for DRB members will be used to manage the services. Each list will include enough members that allow for different kinds of projects to be served. A request memo will be developed for each list. The total number of contracts may vary, but it is recommended to have at least 20 State members available, and at least 15 Third-Party members available.

I.6.3 Advertisement, Review, and Selection

In coordination with the HQ Construction Office, the CSO will develop the advertisement and scoring criteria to be used in the selection process following the guidance in [Chapter 410](#), Solicitation/Selection Process.

There are certain limitations to the Disputes Review Board's (DRB's) selection process. For the Statement of Qualifications (SOQs), there will be one submittal per qualifying individual, per firm, per solicitation (for example, one submittal for John Doe of ACME Engineering for the state member; one submittal for John Doe of ACME Engineering for the third member; and one submittal for Jane Doe of ACME Engineering for the third member). Details will be provided in the solicitation. Specific submittals must include an up to date résumé with sufficient pages to determine the expertise of the member as a separate PDF document.

The CSO will assemble a selection board that will follow the process described in [Chapter 400](#) for selection of contract awards. The board members need to be familiar with WSDOT construction procedures, whether design-bid-build (DBB), design-build (DB) or general contractor/construction management (GCCM) methods.

For the third member short list, the CSO will coordinate and assemble the selection board for third members, and the board will review the materials presented by the respondents to the advertisement.

Scores will be provided to the CSO, and a determination of the members to be offered contracts will be made. The Association of General Contractors may be provided a list of the third-party members proposed for contracts, for their review and comment. If objections are made on any members, the CSO will consider those objections prior to issuing final agreements.

I.6.4 Agreements and Task Orders

Contracts will be negotiated and entered into with the top ranked proposed DRB members using a specific State or Third-Party Member Task Order master contract. All agreements will be negotiated hourly rate agreements, and will be managed by the CSO or their delegated representative.

Under most circumstances, the process to select a board will include sending the resumes of the approved members either to the project construction office (state members) or state and contractor's members (third-party members) as the Second-Tier process to select the best member possible for the board.

All task orders will be issued in accordance with task order process (see Chapter 450), with the exception that the task order forms are specific to DRBs. The CSO can be contacted for the appropriate forms. Any DRB task submitted on the standard TOD is not a legal document for this type of work and is in noncompliance with the master agreement.

Appendix J **Qualifications and Past Performance Database**

J.1 Solicitation for Statements of Qualifications

[RCW 39.80.040](#) states that, in the procurement of architectural and engineering (A&E) services, agencies shall encourage consultant firms to submit annual Statements of Qualifications (SOQs) and performance data and evaluate the current Statements of Qualifications and performance data on file.

The Brooks Act, 40 USC 1103(b), also states that agencies shall encourage consultant firms to submit annual statements of qualifications and performance data and maintain that data on file for use in selection of firms for work.

Under the Brooks Act, state DOTs are to keep the qualifications of architectural and engineering firms on file. They should also review these files on an annual basis and update them as necessary. Agencies using the services of A&E firms are expected to actively encourage the firms to update the information they have on file with the agency.

The HQ Consultant Services Office will maintain a database that meets the requirements of the Brooks Act and the Disadvantaged Business Enterprise (DBE) Program Plan approved through the Federal Highway Administration. On an annual basis, the CSO manager will publicly announce, through publications in the *Seattle Daily Journal of Commerce*, the CSO website, and other appropriate media, the anticipated needs for consultant services. The CSO manager will encourage firms to submit their consultant qualifications information and statements of interest in being considered for WSDOT contracts.

Submissions will be in a media format as specified by the CSO and described in the public announcement. Firms already in the database should also be encouraged to update their information (see J.2).

The data to be maintained are more general in nature, addressing the firms' qualifications in the areas in which they practice their professions. The data collected should describe the overall capabilities and different types of projects for which the firm is qualified. Past performance on specific projects is also to be maintained and updated as appropriate. This is both a federal and a state requirement for A&E contracting.

The same data should be collected from firms as part of their response to project specific solicitations if they have not submitted the data previously or their current information is not up to date. It is not the intent for firms' general data, collected at this point, to satisfy solicitation-specific Requests for Qualifications. This information, together with the solicitation-specific information, will be used for screening and determining which firms to hold discussions (interviews) with.

49 CFR 26 requires states to maintain a database of DBE firms that have expressed an interest in contracting with the government. WSDOT is required to maintain: a method capable of tracking and reporting DBE availability based on their North American Industry Classification System (NAICS) codes; contracts or subcontracts awarded to DBE firms where federal funds are involved; DBE goal setting on awarded contracts; and attainment of goals on completed contracts where federal funds are involved.

Under the Brooks Act, the selection process starts with the evaluation of qualifications and past performance data. Keeping this information current is vital to meeting the intent of the Brooks Act and following state and federal regulations. The CSO is responsible for maintaining this database for WSDOT.

Information that should be updated at least annually includes:

- Addresses and contact information for the main and each branch office that may be doing business with WSDOT.
- Ownership and business status.
- Employee qualifying information, categories, number of employees in each category, and location (main or branch).
- Indirect Cost Rate (ICR) and salary rate information. Firms are to provide ICR information within 180 days of fiscal close.
- Any contract awards since the last update.
- Performance evaluation information on completed contracts.

The CSO manager will publish the process for firms to submit their annual SOQs and any other data requirements necessary to meet the obligations of this section on the CSO's public website [Contract services | WSDOT \(wa.gov\)](#).

The CSO will develop separate forms for firms to use in submitting their general qualifications and past performance data, and in submitting applications to be considered for specific projects or categories of work being announced through solicitations.

- One form will provide for submission of a firm's general qualifications and past performance history and will be used to update existing data annually, if applicable.
- Another form will provide for specific qualifications in response to solicitations advertised by the department, covering not only the firm's specific application to the project or category of work announced, but also to allow for the inclusion of potential subconsultants and their applicable qualifications.

Both forms are easily accessible by contacting the CSO staff or accessing the CSO's public website [Contract services | WSDOT \(wa.gov\)](#).

J.2 Annual Qualifications and Past Performance Update

As discussed in [Chapter 410](#), WSDOT is required to encourage firms interested in doing business with the state to submit, or update, their qualifications, performance evaluations, and recent contract awards so the state can update the firm's data in the qualifications database. The CSO manager will establish the process for annual updates and post the process on the CSO's public website [Contract services | WSDOT \(wa.gov\)](#).

Details regarding the needed information will be provided in the instructions and will include updates of a firm's audited or approved indirect cost rates. For firms already in the database, update notices will be sent by email or by a phone call to the firm's designated contact person. As often as possible, notices should coincide with the end of a firm's fiscal year. While the process for notification may be an annual one, the CSO will accept updates throughout the year if they are provided.

J.3 Simplified Acquisition (Small Purchase) Statements of Interest

The CSO manager may publish a request for statements of interest from consultants who want to be considered for small purchase contracts under simplified acquisition. Consultants should provide SOQs, past performance evaluations, and other pertinent information, along with a letter stating their interest in being considered for small purchase contracts.

Consultants who are already in the small purchase database should update their information at this time if they haven't done so on a regular basis.

The public announcement will clearly state that no contracts are being awarded directly because of this request; that there is no guarantee that any contracts will be awarded; and that the information will be maintained in the database until such time as the consultant requests that it be removed, or three years pass without an update to the information by the consultant.

The statement of interest in small purchase contracts should state that the consultant understands the limits of simplified acquisition, as specified in U.1.3 and U.2.7.

As an alternative to the letter-style statement of interest, the CSO manager may create a "fill in the blank" form that allows interested consultants to provide the requested information and acknowledge the limitations of the simplified acquisition process. The public announcement requesting statements of interest will notify consultants that the form will be available on the CSO website if they would like to use it rather than a letter for their statements of interest.

Appendix K Procurement Debriefing and Protest Procedures and Disclosure of Consultant Information

K.1 General Debriefing Procedures

The purpose of debriefing is to provide information to the consultant regarding any apparent weaknesses or shortfalls in the procurement process. In addition, debriefings provide consultants the opportunity to assure themselves that the criteria published in the solicitation or used during the interviews was the basis of the final decision and learn how they might improve for future solicitations.

Debriefings will be done in accordance with the following:

1. Debriefings of unsuccessful firms will be held after final selection has taken place. Debriefings will be conducted in writing, by phone, or in person. The manner of debriefing will be specified in the solicitation announcement.
2. A proposer, upon written request received by the agency within three days after the date on which that proposer has received notification of contract award, will be debriefed and furnished the basis for the selection decision and contract award.
3. Debriefing will occur within five days after the proposer has requested it.
4. The CSO manager, or a designee, will normally chair any debriefing session held. Individuals who conduct the evaluation will provide support upon request.
5. Debriefing information will include:
 - a. The state's evaluation of the strengths and significant weaknesses or deficiencies in the proposer's proposal, if applicable.
 - b. Reasonable responses to relevant questions regarding whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.
6. An official summary of the debriefing will be included in the contract file.

Debriefing will not include point-by-point comparisons of the debriefed offeror's proposal with those of any other offeror. Also, firms will not be provided with copies of scores, proposals, or their rankings in relation to other firms. Debriefing will be consistent with Washington's Public Disclosure Act ([RCW 42.56](#)) and the Freedom of Information Act (5 USC 552). It is noted, however, that WSDOT will post, after all debriefings and protests have been resolved for a solicitation, the submittals of all consultants for that solicitation on their external website.

K.2 Specific Procedures

K.2.1 Debriefing Conferences

To provide the opportunity for unsuccessful proposers responding to either an advertisement for a single project agreement or to a Second-Tier Competition, the consultant may participate in a debriefing conference. The debriefing must be requested in writing within three (3) business days after the notification of the apparently successful consultant is selected.

The debriefing conference is generally performed by the HQ Consultant Services Office (CSO) or their designee. The CSO may contact those individuals who scored the consultant submittals to obtain additional information necessary for the consultant debriefing. In a debriefing, the discussion will be limited to the requesting consultant's proposal only. Feedback is provided to assist the consultant in developing future proposals that may be more effective and competitive. The CSO representative will explain the scoring methodology for the proposal so the consultant fully understands that their proposal received a fair and objective evaluation.

Debriefings may be conducted in person or by telephone and may be time limited.

K.2.2 Debriefing Protests

To allow sufficient response time, all post-debrief protests must be received by CSO no later than 3:00 p.m. Pacific Time (PT) of the fifth (5th) business day following the debrief conference. If the protest is mailed before the post-Debrief protest deadline, the Proposer/protestant shall immediately notify CSO's Manager by telephone, or some other means of rapid communication, that a protest has been made.

The CSO shall consider all the facts available to it, and issue a decision in writing within five (5) business days after receipt of the protest, unless more time is needed. The Proposer/protestant and the Proposer(s) against whom the protest is made will be notified if a longer time is necessary and, if the additional time required affects the Final Proposal Due Date or the selection date, all Proposers shall be notified.

The CSO's decision shall be final and conclusive. Selection of the successful Proposer, if any, will be postponed until after the CSO has issued its decision.

K.2.3 Protests Regarding the Solicitation

A protest regarding the solicitation may be made if the consultant believes that the solicitation unduly constrains competition, or contains inadequate or improper criteria. If the protest is received prior to the due date of the solicitation response, the CSO will consider the protest, reply to the consultant with a proposed solution, and make resulting official changes to the solicitation and process. The solicitation process will continue while the protest is being considered. The solicitation document will include the timeframe and procedures by which a protest regarding the solicitation itself can be filed should the protest be made after the solicitation due date.

For all solicitation protests, the CSO shall consider all the facts available to it, and issue a decision in writing within five (5) business days after receipt of the solicitation protest, unless more time is granted by CSO manager. If the protest is received after the solicitation due date, the Proposer/protestant and the Proposer(s) against whom the protest is made will be notified if a longer time is necessary and, if the additional time required affects the Final Proposal Due Date or the selection date, all Proposers shall be notified.

CSO's decision shall be final and conclusive. Selection of the successful Proposer, if any, will be postponed until after CSO has issued its decision.

K.3 Protest Procedures

All protests regarding any contents or portion of a Request for Qualifications must be submitted to the WSDOT Headquarters Consultant Services Office (CSO) as soon as possible after the Proposer/protestant becomes aware of the reason(s) for the protest. All protests must be in writing and signed by the Proposer/protestant or an authorized agent. Such writing must state all facts and arguments on which the Proposer/protestant is relying as the basis for its action. Such Proposer/protestant shall also attach, or supply on demand by the CSO, any relevant exhibits referenced in the writing. Copies of all protests and exhibits shall be mailed or delivered by the Proposer/protestant to the Proposer against whom the protest is made (if any) at the same time such protest and exhibits are submitted to the CSO. All protests shall be directed to:

Manager, Consultant Services Office
Washington State Department of Transportation
7345 Linderson Way SW
PO Box 47323
Tumwater, WA 98501
Phone: 360-705-7106
Fax: 360-705-6838

In the event of a formal protest, the CSO follows the process established in the Federal Acquisition Regulations, Part 33, Subpart 33.1.

Procedures and timelines for filing a formal protest must be included in the solicitation document, and they must be followed in the event an unsuccessful proposer protests a procurement. The protest must be related to procedural matters and is generally based on an issue of fact concerning bias, discrimination, or conflict of interest on the part of an evaluator; errors in computing the evaluation scores; or lack of compliance with procedures described in the solicitation document or department policy. Protests that are not based on procedural matters will not be considered.

Protests may be made after WSDOT has announced the apparently successful consultant and after the protesting consultant has had a debriefing conference with the CSO. The protest must be submitted in writing, signed by a person authorized to bind the consultant to a contractual relationship, and addressed to the CSO manager, with a copy to the CSO solicitation coordinator. WSDOT must receive the written protest within five (5) business days after the debriefing. Upon receipt, WSDOT must postpone further steps in the acquisition process until the protest has been resolved.

At a minimum, the protest must contain the following information:

1. Contact information for the protester (name, address, phone, and fax).
2. Name of solicitation or contract being protested.
3. Detailed statement of grounds for the protest, including a description of the resulting prejudice to the protester.
4. Copies of relevant documents.
5. Description of relief or corrective action requested.

The protest will be reviewed and evaluated by the Assistant Secretary Engineering and Regional Operations Chief Engineer, or a designee. In all cases, the reviewer must be a qualified individual within WSDOT who was not personally involved in the procurement process. WSDOT will deliver its written decision to the protester within five business days after receiving the protest. If additional time is needed, the protester will be notified.

When a formal protest is filed, work under the agreement may not proceed until the protest process is concluded. In the event the agreement was filed with the Department of Enterprise Services (DES) prior to submission of a formal protest, WSDOT must notify DES immediately of the protest. DES will hold the agreement filing without processing until the department notifies DES that the protest review has been concluded, and informs them about the outcome of the review. For A&E contracts, the CSO will hold on executing the agreement until the protest is resolved.

CSO's decision on a protest shall be conclusive unless otherwise appealed in accord with terms and conditions of the contract.

K.4 Release of Consultant Information

The following pertains to the release of information regarding firm selection:

- After final selection has taken place, the contracting officer may release information identifying only the architect-engineer firm with which a contract will be negotiated. If negotiations are terminated without awarding a contract to the highest-rated firm, the contracting officer may release that information and state that negotiations will be undertaken with the next-highest-rated architectural & engineer firm. When an award has been made, the contracting officer may release award information by posting it on the CSO website ([Contract services | WSDOT \(wa.gov\)](#)).
- Pre-award notices of exclusion from competitive range: The contracting officer will notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice will state the basis for the determination and that a proposal revision will not be considered.
- Post-award notices: Within three (3) days after the date of contract award, the contracting officer will provide written notification to each offeror whose proposal was in the competitive range but was not selected for award or had not been previously notified.

Any requests for disclosure of public documents, or requests that might be labeled Freedom of Information Act requests (the federal law people are familiar with), will be forwarded to the WSDOT Records and Information Services Office (Public Disclosure) for handling in accordance with Secretary's Executive Order E 1023.

Appendix L **Determining Cost Factors**

L.1 Introduction

For A&E contracts, cost factors will be part of a selected firm's proposal and will be subject to negotiation as allowed by 23 CFR 172. For Professional Services, cost factors may be requested as part of the selection process, and final costs will be subject to negotiation. Regardless of the payment method or contract type used, the same elements go into determining cost factors that, when applied to the hours negotiated for deliverables, make up reasonable costs to the state.

Oversight on costs is provided by both CSO and the WSDOT Audit Office. The Audit Office uses its risk-based oversight framework to review a firm's indirect costs for compliance with FAR Part 31, based on the requirements in 23 CFR 172.11(b)(1). The Audit Office obtains the certificate of indirect costs to accompany a firm's indirect cost rate schedule in accordance with 23 CFR 172.11(c)(3). More information about the Audit Office and its role in the billing rate approval process may be found at [Audit | WSDOT \(wa.gov\)](#).

Federal Acquisition Regulation (FAR) Part 31 sets the criteria for determining costs eligible for cost reimbursement on Federally funded agreements and is used for contracts funded solely by State funds. The Audit Office uses FAR Part 31 in its evaluation process. The following are costs generally associated with items invoiced on projects.

L.2 Direct Labor

Direct labor is the labor rate paid directly to personnel working for the consultant or the subconsultants and is negotiable if the department determines the rates are unreasonable for the labor class. Direct labor is billed at actual cost unless capped or otherwise negotiated.

Salary employees in management or executive levels normally have a fixed salary with varied work schedules, meaning the number of hours worked are often more than 40 hours per week. The additional hours worked may be considered uncompensated overtime. The consultant is responsible for identifying whether the uncompensated overtime is calculated based on the salary variance method (standard labor rate billed consistently) or effective rate method (billed labor rate fluctuates based on hours worked). The consultant must be able to demonstrate that the employee's billed labor rate does not include company/project bonuses or other fringe benefits, for that rate to be directly billable to the project. Otherwise, these costs, if allowable, are recovered as a component of the indirect costs. The Audit Office may assist CSO in verifying the whether the salary variance or effective rate method is used for uncompensated overtime.

Under certain circumstances, such as the need to complete a particular design by a certain time, overtime on the part of consultant staff may be requested. Certain levels of consultant staff are eligible for overtime premium payments or are eligible for shift differential and call-back premium payments (shift differential and call back premiums are usually needed when the consultant is required to provide inspection services or other services during construction, though the premiums may also be negotiated

for critical timeline design work) which are above and beyond the normal salary rate. These costs, which are related to the direct salary cost of the employee, must be negotiated at the time the contract is negotiated. However, the overtime, call back or shift differential portion of the salary, which is paid in addition to the underlying hourly salary rate, is not eligible to include indirect cost recovery or fee. The underlying hour for the overtime, call back or shift differential work is allowed indirect cost recovery and fee. For the WSDOT policy and details regarding this aspect of the direct salary costs, see [Appendix Q](#), Overtime/Premium Pay. It is noted that all overtime or other premiums must be pre-approved both in the contract documents and prior to working the overtime.

L.3 Indirect Costs (Fringe and General Overhead)

Consultants establish, for their employees, compensation packages which may include sick leave, vacation leave, contributions to various retirement systems (including Social Security), health care costs, employer taxes and other items related to employing a staff member. These costs are fringe benefits and are not eligible for direct billing to the project. Instead, these costs are recovered as part of the indirect costs attributed to the labor costs.

The company's other costs, including indirect labor, insurance, rent, and several other factors covered in FAR 31, are recovered in the indirect costs as well. These costs are referred to as general overhead costs.

Indirect Costs are recovered as a percentage of each labor hour billed to the project. In coordination with CSO, the Audit Office uses its risk-based oversight framework to review a firm's indirect costs for compliance with FAR 31, based on the requirements in 23 CFR 172.11(b)(1). The indirect cost rates for a consultant will be used for all contracts the consultant holds with the WSDOT. For more details on determining these costs, see the Audit Office website, [Audit | WSDOT \(wa.gov\)](#). For further adjustments that must be made to the cost-plus-fixed-fee (CPFF) and Negotiated Hourly billing methods, see [Appendix H](#), Contract Payment Methods. Note that indirect cost recovery is not allowed on the overhead premium, call back premium or shift differential premium pay.

L.4 Fee (Profit)

The fee is the profit portion of the costs associated with a project or work effort that encourages a "for profit" company to take the risks and carry the associated burdens of providing services to government and the private sector. For all contracts, profit (fixed fee) shall be negotiated separately in accordance with 23 CFR 172.11(b)(3).

At the federal level, profit is determined for all Professional and A&E services as a percentage of the combined labor and overhead hourly costs. However, it is WSDOT's position that using both the labor and overhead to calculate profit could encourage overhead costs to "creep." WSDOT calculates the profit as a percentage of the labor costs directly attributable to the work effort involved using a method which is expected to approximate the federal allowable percentages. The method used by the WSDOT to calculate fixed fee for any payment method is described in [Appendix AA](#). A fee calculation worksheet is included in [Appendix AA](#). Note that fee (profit) is not allowed on the overhead premium, call back premium or shift differential premium pay.

- For the CPFF payment method, the amount that is “fixed” for the project or work effort is first determined by applying this percentage to an estimate of the labor costs related to the work effort, and then fixing the profit amount as a lump sum profit for the work.
- For all negotiated hourly rate contract types (both single project and master task order contracts), the fee is calculated for an appropriate percentage over all the work expected, and that percentage is included in every hour worked as part of the negotiated hourly rate.
- For lump sum agreements, the fee is calculated similarly to the cost-plus fixed fee type of payment method and included as part of the negotiated lump sum price.

There may be times when an incentive or disincentive on a project or work effort may be beneficial to the department. This could be for any number of reasons. Incentives must be determined prior to advertising the project or work effort and approved by executive management. Incentives and disincentives are a potential additional profit or a profit penalty to the firm or project team.

L.5 Direct Non-salary Costs

On many projects, there are costs not associated with labor, including expenses such as travel costs, temporary housing, printing, specialized services not considered to be A&E or Professional Services (such as drilling or traffic control), and other types of materials and/or expenses directly associated with the work effort. These costs, when they can be directly related to the project, are billable to the project. They are to be billed **at cost**, without any profit or markup.

If travel costs are approved for the contract, see the [State Administrative and Accounting Manual](#) (excluding air, train, and rental car costs) for payment guidelines. The FAR 31.205-46 “Travel Costs” determines allowability for air, train, and rental car costs.

Anticipated direct non-labor costs are covered in the estimates and at the negotiations. Unanticipated costs need to be discussed with the WSDOT project manager and ACL, and written approval through the ACL or CSO Manager must be obtained whenever possible before the costs are incurred. Unusual direct costs may need to be negotiated prior to acceptance by the WSDOT on a consultant contract.

Appendix M *Ethics in Contracting*

M.1 Legal References for Ethics and Organizational Conflict of Interest (OCOI)

It is expected that all parties in a contracting situation will follow the basic principles of ethical behavior. These include, but are not limited to:

- Maintaining the highest professional standard of job performance and exercising due diligence in carrying out professional duties.
- Maintaining trust and confidence in the integrity of the contracting process.
- Avoiding involvement in any transaction that might conflict or appear to conflict with the proper discharge of one's professional duties.
- Maintaining knowledge of and complying with all relevant laws and regulations governing the contracting process.
- Not intentionally influencing others to commit any act that would constitute an ethical violation.

Following are the federal regulations and state laws and policies upon which the legal references for ethics and OCOI are based.

M.1.1 Federal Regulations

2 CFR 200.112: This law covers individual and organizational conflict of interest requirements, including ethical behavior on the part of state employees and their contractors. They also include specific guidelines for grantee state employees, their immediate families, partners, or associates, and the relationships they might have with any contractor or potential contractor. This section requires rules and procedures for identifying, evaluating, and resolving organizational conflicts of interest in contract acquisitions.

M.1.2 Washington State Laws

[Chapter 42.52 RCW](#); [WAC 292](#): This statute and its related administrative rules establish a framework for ethics in public service that provides specific guidelines and prohibitions related to activities that may be incompatible with the public duties of state employees.

[Chapter 42.52 RCW](#) applies to all state employees contracting on behalf of the state. All WSDOT employees are required to state annually whether they have contracting authority and whether they have any beneficial interest in an outside business that could present a potential conflict of interest. All WSDOT employees are required to complete ethics training once every three years and be knowledgeable of the statutes and rules governing professional conduct.

[Chapter 18.43 RCW](#); [RCW 18.235.140](#); [WAC 196-27A](#): These statutes and rules provide guidelines for the professional conduct of engineers and land surveyors.

M.1.3 WSDOT Policy

WSDOT management adheres to the provisions of [Chapter 42.52 RCW Ethics in Public Service](#), and has published supporting policy statements in a variety of areas, including guidelines on the use of state resources.

In addition, Secretary's Executive Order E 1059 *Organizational Conflicts of Interest*, and the *Organizational Conflicts of Interest Manual*, provides guidance relating specifically to design-build and design-bid-build construction projects. For further details, see [Appendix P](#).

M.2 Ethics Requirements for Contracting

State employees, their families and friends, contractors and consultants are required to comply with 2 CFR 200.112 in their work together on WSDOT projects, whether or not there are federal funds involved.

During procurements, those directly or indirectly involved in the selection of consultants, negotiations for the final contract, and management of the consultant work will need to ensure that their behavior is always ethical. This may require that each person involved in the procurement and management of consultants sign a confidentiality and/or conflict of interest statement which outlines the restrictions or other requirements for the project. Other documents may be requested of those involved in consultant services based on the particular situation.

In addition, the above citation places emphasis on contractor behavior in business transactions with the state, including:

- A mandatory duty is established for the contractor to disclose procurement, fraud, and overpayments, or risk debarment or suspension. The contractor must report fraud, conflicts of interest, bribery, and illegal gratuities in connection with the award or performance of a state contract.
- Contractors are encouraged to have a written code of business ethics and conduct. In addition, the contractor is expected to have an ongoing ethics and compliance training program for principals and employees, as well as a system of internal controls to detect fraud and improper conduct. These items are mandatory for firms whose contractual operations include co-location with WSDOT personnel.
- Past contractor performance, considered a key criterion in awarding new contracts, should include the contractor's record of integrity and business ethics, including their efforts to implement an effective ethics and compliance program.

While transparency and accountability are goals when managing information related to government business transactions, there are specific prohibitions on divulging information during the acquisition solicitation cycle to protect the integrity of the process. Contracting officers are required to maintain a high level of business security, especially when preparing estimates or cost analyses and scopes of work to be acquired that require proprietary information from outside WSDOT. During the solicitation phase, contracting officers are expected to protect information that would provide undue or discriminatory advantage to private or personal interests; information received in confidence from an offer; or any internal agency communications regarding the solicitation process, including technical reviews and recommended actions.

All requests for proprietary or confidential information regarding an HQ Consultant Services Office (CSO) solicitation must be forwarded to the CSO manager, who will coordinate a response through the WSDOT public disclosure process (see Section 650.02.02 for further details).

M.3 Ethics Roles and Responsibilities

The WSDOT Internal Audit Office is tasked with aiding in reviewing questions and clarifying issues relating to the State Ethics Law for WSDOT employees. The Internal Audit Office works closely with the Executive Ethics Board on requests for ethics advice or formal advisory opinions for state-related issues. It also investigates complaints of alleged ethics violations.

The state has established an Executive Ethics Board under [RCW 42.52.320](#), which has the authority to investigate complaints regarding potential ethics violations of state officials and state employees in agencies within the executive branch, issue advisory opinions, and enforce penalties. Reports or complaints regarding potential ethics violations may be filed directly with the Executive Ethics Board or may be filed through the Whistleblower Program managed by the State Auditor's Office.

Individual state employees or former state employees may also refer their own requests for informal opinions to the Executive Ethics Board prior to determining a personal course of action. State employees and former state employees are ultimately responsible for compliance with Washington State ethics laws.

[Chapter 18.43 RCW](#) covers topics such as accepting gifts or other considerations to influence the award of professional work; being willfully deceptive or untruthful in professional work products; and having a financial or other business conflict of interest in the performance of a contract and failure to disclose such conflict. This statute establishes the Board of Registration that registers and certifies engineers and land surveyors. The Board has the authority to investigate violations and impose disciplinary action for unprofessional conduct. Guidelines and prohibitions on the unprofessional conduct of engineers and land surveyors are provided in [Chapter 18.43 RCW](#); [RCW 18.235.130](#); and [WAC 196-27A-020](#).

On a more general level, [RCW 18.235.130](#) covers acts and conditions that constitute unprofessional conduct, including any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business.

[WAC 196-27A-020](#) provides rules of professional conduct for registered engineers and land surveyors, including obligations to the public, to employers and clients, to other members of the profession, and to the Board of Registration.

Appendix N *Negotiations, Statements of Work, and Managing Project Delivery*

N.1 Introduction

Understanding how the various elements of federal and state regulations work together helps clarify how a detailed and workable statement of work (SOW) is achieved. It has been past policy and is a current WSDOT business practice to adhere to federal guidelines regarding architectural and engineering contracts when they are equivalent or more restrictive so that the state will be in federal compliance should it choose to seek federal participation midcourse in the design phase of a project.

N.1.1 Statements of Work

In the public announcement of a project, the state provides, in as few words as possible, the general scope and nature of the project. With regard to statements of work (SOW), as seen in [RCW 39.80.040](#) and in the solicitations process (see [Appendix U](#)), firms identified as the most qualified in the initial evaluations should be engaged to discuss “anticipated concepts” and “alternative methods” in their approaches to the project as part of the interview process.

Historically, interviews have been used to give consultants opportunities to explain their understanding, concepts, and approaches to the project. Care must be taken to ensure there is no implied design competition, which requires specific approvals and usually involves a stipend or monetary reimbursement for participation.

It is anticipated that the top-rated firm selected for negotiations, based in part on its innovative or alternative (to the usual) approach, would provide the more detailed SOW as part of the Request for Proposal (RFP) going into negotiations.

Federal Acquisition Regulation (FAR 31) covers the allowable and non-allowable costs associated with direct or indirect project costs billable by a firm. FAR 31.205-18 covers “bid and proposal” costs. Bid and proposal costs are considered the costs of doing business and are allowed in a firm’s overhead computations. Neither the costs associated with putting together a budget estimate, nor the costs associated with negotiating the contract with the state, are allowed as a direct reimbursable to the consultant on the project.

N.1.2 Statement of Work and Budget Negotiations Using the Managing Project Delivery (MPD) Process

In the last half of the 1990s, WSDOT and the consultant community were spending a large amount of time, resources, and money on claims and disagreements related to design contracts. Many of the issues centered on SOWs and the expectations of the state and consultants. To eliminate those costly disagreements, both sides got together to work out a systematic approach that would eliminate the problems associated with reaching a consensus.

From this effort came the “MPD” process for scoping. MPD was terminology derived from the larger Managing Project (or Program) Delivery business system popular in the business community at the time. The process was developed jointly through a chartered group made up of WSDOT and consultant personnel. This group, known as

the WSDOT/CECW Project Delivery Group, was sponsored by an executive committee jointly made up of WSDOT executive management, the Environmental and Engineering Services Division, and executive-level members of the Consultant Engineers Council of Washington (CECW). The CECW is now known as the American Council of Engineering Companies (ACEC), Washington State Chapter.

Short of contracting with a firm to write statements of work (SOWs) for the state, the MPD process is the only legal format for a consulting firm receiving cost reimbursement for developing SOWs. If the state were to contract with a consultant separately to develop SOWs, the firm would not be eligible to participate in the contract, just as a consultant hired to develop Plans, Specifications, and Estimates for construction cannot participate in the construction contract. Full details of the MPD process are included as Exhibits N-1a and N-1b.

A brief explanation of the MPD process is as follows:

The advertisement for the Request for Qualifications (RFQ) should state whether the MPD process will be followed for the statement of work or not. During the pre-solicitation meeting between the project and the HQ Consultant Services Office (CSO), the decision should be made whether to use MPD for developing the full SOW or to have the consultant firm develop and submit the SOW as part of its proposal package. The proposal package is submitted to the state upon issuing the Request for Proposal (RFP) after the firm has been notified that it is the top-rated firm.

The basis for the decision should be made according to the difficulty and complexity of the work; the approaches to the project by the department; whether the state anticipates varying alternatives to the approach to the work; and whether or not innovation is a major component to the final selection. This decision should involve executive management for contracts anticipated to need the MPD process, as there are budgetary and time issues that may need to be resolved.

Regardless of which method is used, enough time should be allowed for the firm to prepare for the first meeting. Usually, this will be two to three weeks from the time the firm is notified of having been selected. If the MPD process is used, a contract must be entered into for the SOW development phase. If it has not already been done, the firm's billing rates need to be negotiated/approved for this contract.

Strong consideration should be given to a lump sum (see [Appendix H](#)) payment method for the SOW development phase. This provides a significant incentive for the firm to come prepared to work to reach consensus in the negotiation process. The purpose for using the MPD process is to develop a SOW that is clear, concise, well thought out, and workable, with little disruption caused by changes to the SOW from omissions or errors. A well-developed SOW means lower cost(s) to the state and timely project completion.

Under the MPD process, the SOW development contract should close when the SOW is sufficient for the state and the consultant to develop independent estimates. Further adjustments to the scope will be considered part of the negotiations and will not be reimbursable to the consultant.

After development, the firm will include the SOW in its proposal package.

Working together on the SOW provides a statement of work that is better defined and less likely to be misunderstood by any of the parties to the contract. The process needs to be conducted by the CSO working together with the state's project team and the consultant's project team. The consultant's team, working together with the state's team, is providing a service to the state that the state would normally provide on its own. This is the justification for payment to the consultant.

When the MPD process is used in lieu of the state furnishing a statement of work for A&E services, the CSO will organize and conduct the meetings based on the project's input. That input will be to provide sufficient information for the CSO to arrange for the presence of the appropriate team members during the process. All parties will agree to and follow the flowchart and narrative provided in Exhibits N-1a and N-1b.

The contract for compensation for the SOW development must cover the issues regarding the SOW not being a guarantee of any further work. If the state and the consultant do not come to terms, the contract can be concluded without further expectations on the part of the consultant. No compensation can be made for time spent in actual negotiations.

After successful negotiations have concluded, a contract for the services should be completed and executed by both parties. Notices should then be sent to any firms still waiting and to those firms desiring debriefing. A notice to proceed should accompany the final executed original sent to the consultant.

When negotiating or while using the MPD process, special attention should be paid to the issue of subconsultants.

Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. Changes to team members should not occur if subconsultants were included as part of the solicitation and selection process. If subconsultants were not part of the solicitation and evaluation process, and are not proposed until the negotiations, then subconsultants will be fixed at execution of the contract.

Other items that should be covered in the scoping or negotiations are use of recovered material and energy efficiency, which should also have been covered in the selection criteria in the Statement of Qualifications (SOQ) and RFP.

In accordance with 40 USC 1103, the CSO should hold discussions with at least three of the most highly qualified firms regarding concepts, the relative utility of alternative methods, and feasible ways to prescribe the use of recovered materials and achieve waste reduction and energy efficiency in facility design (see 2 CFR 200.322).

The lead negotiator needs to keep in mind the possibility that the firm rated most qualified may have been ranked number one based on its unique or alternative approach to the project or application of energy-saving technology. The contract officer should become familiar with the selection board's documentation. The negotiated labor rates, costs, and fees may be affected by the consultant team's unique concepts.

The appropriate information on use of the MPD process should be included in the record of negotiation and should be signed by the CSO manager before placing in the Project File.

N.1.3 Statement of Work and Budget Negotiations Without Using the MPD Process

If the MPD process is not going to be used, the CSO or the appropriate area consultant liaison (ACL) will arrange for the negotiations to be started.

Negotiations and finalization of the SOW are based on the consultant's response to the RFP. The RFP is issued to the consultant after the final ranking of firms is approved by the CSO manager. If the MPD process is not used, the consultant is not paid for the SOW development or the negotiations process. This is considered a part of the consultant firm's bid and proposal costs, which are recoverable in its annual overhead.

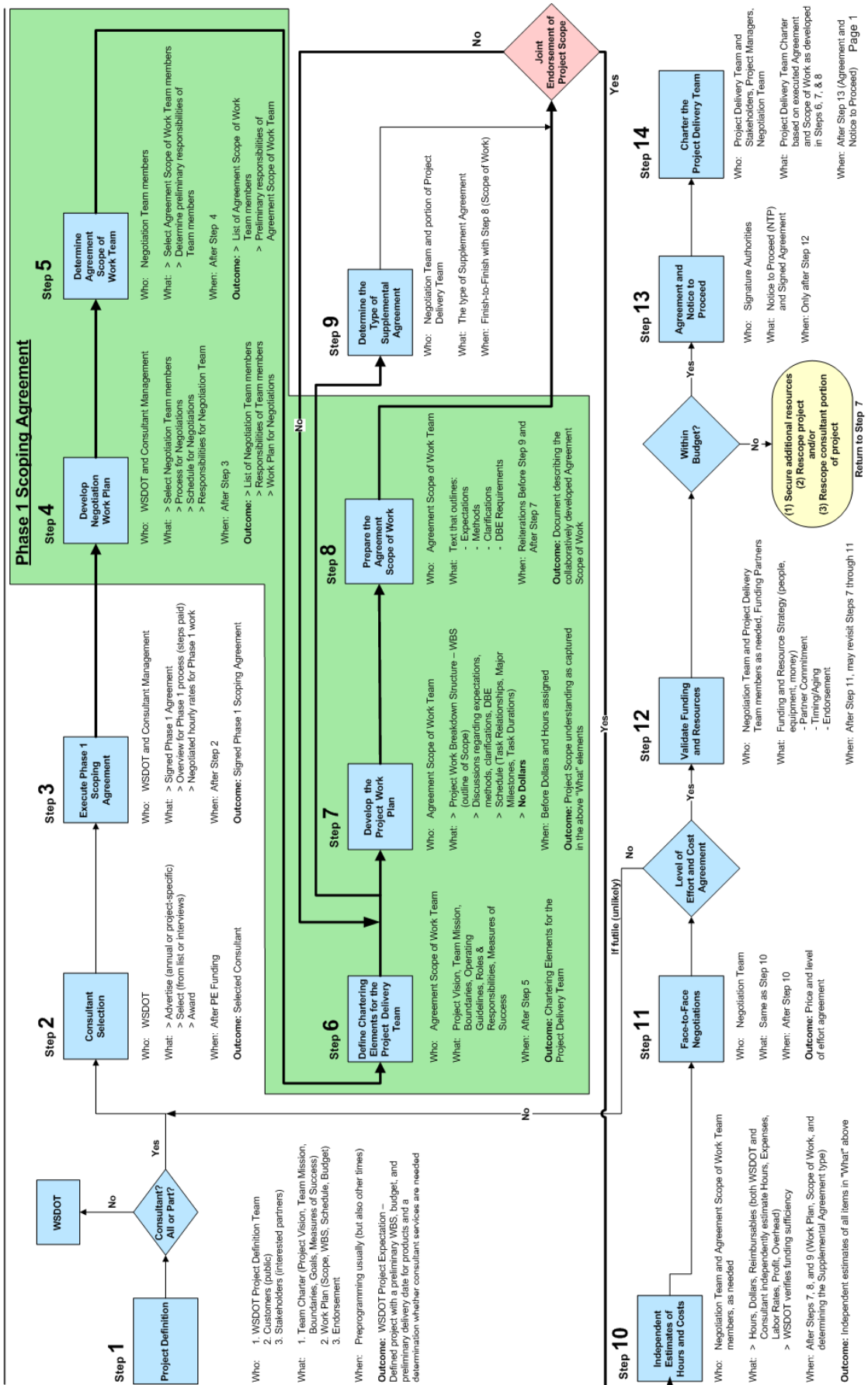
Care must be taken by the CSO to ensure the synopsis of the work effort expected is of sufficient detail for the consultant to develop the SOW without many changes during the negotiations.

23 CFR 172.11, which covers government cost estimates for architect-engineer work, states that a cost analysis of the consultant's proposal for architect-engineer services shall be done by the contracting officer. As a starting point, an independent estimate shall be prepared by the state prior to receiving proposals for each proposed contract or contract modification expected to exceed the simplified acquisition threshold. The cost analysis shall be done in compliance with 23 CFR 172.11.

The appropriate ACL or the CSO manager's representative will lead the negotiations, with support from the project personnel. A meeting should be held between the project, the CSO, and the ACL prior to the negotiations to establish the goals and expectations of the state.

After negotiations reach agreement and an award has been made, notifications will be sent to the submitting firms regarding the award, along with the award information. Information will include the contract amount, the name of the firm awarded the contract, and information regarding debriefing, if not already provided.

Negotiations Flowchart – Deliverable: A Signed Contract



MPD: Negotiations Flow Chart Exhibit N-1a

Managing Project Delivery Negotiation Steps

Step 1: Project Definition

Who: Regions establish a Project Definition Team for each project and assign a project manager to lead and coordinate the project.

What: The WSDOT Project Definition Team establishes the following expectations at the project definition stage:

1. Project Title
2. Preliminary Team Chartering elements
 - Project vision
 - Team mission
 - Boundaries
 - Goals
 - Measures of success
3. Preliminary customers and stakeholders
4. Project Work Plan that includes preliminary:
 - Scope
 - Work Breakdown Structure (WBS)
 - Schedule
 - Delivery date for product(s)
 - Budget
5. Endorsement from WSDOT's authorized representative

Outcome: Defined project expectations. When the project is defined and approved, the Project Definition Team can determine whether a consultant is needed.

Decision Point Diamond: The department determines whether a consultant's services will be needed for the project.

Step 2: Consultant Selection

Who: The project manager works with the HQ Consultant Services Office (CSO) to select a consultant to provide services for all, or part, of the project.

When: After the region's Program Management Office verifies funding for the project and after the manager of the CSO approves the request to select a consultant.

What: Follow the Advertisement, Selection, and Award procedures in the WSDOT *Consultant Services Manual*.

Outcome: Consultant is selected for the project.

Step 3: Execute Phase 1 Scoping Agreement

Who: The HQ Consultant Services Office (CSO) prepares a Phase 1 Scoping Agreement with the consultant and obtains approval from the CSO manager.

When: Process this step as soon as possible after the consultant has been selected for the project.

What: The Phase 1 Scoping Agreement is used to establish reimbursable billing rates for Steps 4 through 8 of the negotiations procedures.

The consultant's and subconsultant's billing rates for Phase 1 include only direct labor and overhead costs. Billing rates are established when the CSO obtains from the consultant, and any subconsultants, the rates for those individuals and/or job classifications that will be working on Steps 4 through 8 of the negotiations procedures.

Profit will not be paid to the consultant for Phase 1. The department will pay only reimbursable costs based on the Phase 1 Scoping Agreement. Before any work begins, the Assistant Secretary for Environmental and Engineering must approve the Phase 1 Scoping Agreement.

Outcome: A signed agreement for the Phase 1 scoping process between WSDOT and the consultant.

Step 4: Develop Negotiation Work Plan

Who: WSDOT and the consultant form a Core Group to develop the Negotiation Work Plan. It is recommended that a facilitator, who is proficient in the application of Managing Project Delivery procedures, be used.

The WSDOT participants are usually the WSDOT project manager, an assistant, and possibly other personnel whose expertise is needed. The HQ Consultant Services Office normally has a representative available for this process.

The consultant participants are usually the consultant project manager and team leaders from each of the subconsultants.

When: This process should occur immediately after the Phase 1 Scoping Agreement has been signed.

What: The Core Group performs the following functions:

- Select the Negotiation Team members.
- Develop the procedures for the negotiations.
- Determine a preliminary schedule for the negotiations.
- Outline the responsibilities of the Negotiation Team.

The role of a facilitator should be to guide the team toward a means of developing a priority listing that provides a clear definition of team member responsibilities.

Outcome: A Negotiation Work Plan, which includes a schedule (through Step 13) and the responsibilities of each member of the Negotiation Team.

MPD: Negotiation Steps Exhibit N-1b (continued)

Step 5: Determine the Agreement Scope of Work Team

Who: Negotiation Team members selected in Step 4.

When: After Step 4.

What: Determine the WSDOT and consultant members for the Agreement Scope of Work Team. This team usually consists of technical staff from WSDOT and the consultant; it may also include customers and/or stakeholders, and is representative of the full project development team that is yet to be convened (see Step 14.)

The Negotiation Team will determine the Agreement Scope of Work Team's preliminary responsibilities and schedule.

Outcome: The result is an Agreement Scope of Work Team with specific scheduled duties and responsibilities.

Step 6: Define Chartering Elements for the Project Delivery Team

Who: The participants are the Agreement Scope of Work Team (representative of the full Project Delivery Team). It is recommended that a facilitator, who is proficient in the use of Managing Project Delivery procedures, be used.

When: Development of chartering elements for the Project Delivery Team will be initiated at the team's first meeting.

What: Chartering elements for the Project Delivery Team, including the following:

- Develop a project vision, team mission, boundaries, and goals for the project.
- Identify the preliminary customers and stakeholders for the project.
- Define roles and responsibilities for the Project Delivery Team.
- Develop measurements of success and a change management framework for the project.

Outcome: The result will be documentation of the team's chartering elements as defined in the "What" section above.

Step 7: Develop the Project Work Plan for the Agreement

Who: The Agreement Scope of Work Team consisting of WSDOT and consultant representatives and a facilitator.

When: The development of the Project Work Plan should occur after the team's chartering elements have been prepared and before hours and dollars are discussed for the project.

What: The Agreement Scope of Work Team will develop the following for the project:

- A Project Work Plan that includes a Work Breakdown Structure and all deliverables.
- Expectations for the project.
- A Project Schedule.
- A Disadvantaged Business Enterprise (DBE) preliminary requirement for the project, if federal funds are included in the project.

Dollars and hours are not discussed during this step of the process.

Outcome: Agreement Scope understanding as captured in the above "What" elements.

Step 8: Prepare the Agreement Scope of Work

Who: The Agreement Scope of Work Team consisting of WSDOT and consultant representatives.

When: This process may go through several iterations before it is finalized by the team and before hours and dollars are discussed for the project.

What: The Agreement Scope of Work Team will determine the following:

- Define the project's expectations.
- Explain the level of detail expected for each of the work elements of the project.
- Outline the methodology used to perform the work; address and resolve clarifications.
- If there is federal participation, the team is required to define the DBE requirement participation percentage and ensure this requirement is met by following the appropriate methodology defined in the WSDOT DBE Participation Plan.

Dollars and hours are not discussed during this step of the process.

Outcome: A document describing the collaboratively developed Agreement Scope of Work.

Important Note: Payments are terminated for the Phase 1 scoping process at the conclusion of this step of the process for the consultant and subconsultants.

Step 9: Determine the Type of Agreement

Who: Usually, WSDOT's project manager, a representative from the HQ Consultant Services Office, and the project manager for the consultant. There may be additional members on the team who could be determined on a case-by-case basis.

When: This step usually occurs following the iterations for the project's scope of work. However, it could be completed simultaneously with that process.

What: The team agrees on the type of agreement.

Outcome: The agreed-upon type of agreement.

Decision Point Diamond: Was there joint endorsement of the Agreement Scope? If yes, proceed to the next step of the process. If no, please return to Step 7, "Develop the Project Work Plan for the Agreement."

Step 10: Independent Estimates of Hours and Costs

Who: This may include members from the Negotiation Team and/or members from the Agreement Scope of Work Team. WSDOT and the consultant each form independent teams for this step.

When: Immediately following the joint endorsement of the Agreement Scope, including completion of Step 4 (Work Plan), Step 5 (Scope of Work), and Step 9 (Determine the Type of Agreement).

What: Each team prepares the following proposals for the independent estimates of hours and costs:

- Categories of work elements.
- Categories of personnel who will be assigned to the project.
- Number of hours for each category of employee and the work element each individual will be working on.
- Direct labor rates for each proposed category of employee.
- Supporting documentation for the direct labor rates.
- Overhead rates, including justification.
- Reimbursable costs for the project.
- Profit for the project.

It is important that WSDOT verifies funding is available based on the department's independent estimate of costs for the project.

Outcome: Comprehensive independent project estimates by WSDOT and the consultant, which are the basis for negotiations.

Step 11: Face-to-Face Negotiations

Who: The Negotiation Team consisting of selected members from WSDOT and the consultant team. Usually, the WSDOT project manager and an area consultant liaison will represent the department. The prime consultant's project manager and subconsultant's task managers usually represent the consultant team. However, there may be a need for a financial representative from the prime consultant.

When: Immediately following Step 10.

What: Independent estimates are compared, differences are negotiated, and both sides reach a consensus regarding those items included in Step 10 of the process.

Outcome: Level of effort and cost for the project.

Decision Point Diamond: If consensus is reached on the agreement, proceed to the next step of the process. If consensus cannot be reached with the consultant, proceed to Step 2, Consultant Selection.

Step 12: Validate Funding and Resources

Who: The department's project manager and/or area consultant liaison will validate funding with the appropriate program management office and requesting authority for the project.

When: Following Step 11. Based on the results of validating the funding for the project, there is a possibility of revisiting Steps 7 through 11 of the process.

What: Verify that adequate funding and resources (people, equipment, and money) exist for the project, and/or develop a funding and resource strategy if adequate funds are not available for the project.

Outcome: Funding has been validated and/or a funding and resource strategy has been developed for the project.

Decision Point Diamond: If the project is within budget, proceed to the next step of the process. If there is not adequate funding for the agreement as negotiated, attempt to obtain additional funding; redefine the project and/or rescope the consultant portion of the project. (Return to Step 7.)

Step 13: Agreement or Supplement Review, Execution, and Notice to Proceed

Who: Reviewers: The HQ Consultant Services Office (CSO) and the department's designated Assistant Attorney General. Executors: For WSDOT, the Assistant Secretary for Environmental and Engineering Programs or a designee. For the consultant, the individual with evidence of signature authority.

When: Following Step 12.

What: Reviewers recommend whether the department should approve the agreement or agreement supplement.

The department and the consultant execute the agreement or agreement supplement.

The CSO, or area consultant liaison, issues a "notice to proceed" letter to the consultant and the project manager.

Outcome: A signed agreement or agreement supplement and a notice to the consultant to proceed with work on the project.

Step 14: Charter the Project Delivery Team

Who: The full Project Delivery Team chartered for the project.

When: The charter for the Project Delivery Team will be developed after the notice to proceed has been given to the consultant.

What: Using the chartering elements, work plan, and scope of work developed in Steps 6, 7, and 8, charter the full membership of the Project Delivery Team. This should include the following elements:

- Develop the vision, team mission, and goals for the project.
- Identify the customers and stakeholders for the project.
- Develop measurements of success and a change management framework for the project.

Outcome: A signed charter for the Project Delivery Team.

Appendix O **Consultant Design Errors and Omissions Procedures**

O.1 Introduction

There are times during a construction contract when a potential error or omission in the design is discovered. Other times an error or omission is discovered after the work is completed. Regardless of the cause, design errors and omissions can be costly in many ways. This section explains how to determine whether a consultant error or omission has occurred and establishes uniform procedures for resolution and cost-recovery.

The following process may be subject to other requirements for arbitration or legal proceedings based on the consultant contract under which the work was done. The manager of the WSDOT HQ Consultant Services Office (CSO) is to be contacted as soon as a possible design error or omission is suspected. The CSO manager will gather the appropriate information and make first contact with the Attorney General's Office to determine whether other processes must take precedence.

Note: This process is also to be used for other determinable errors or omissions that may occur in consultant work efforts, such as survey and geotechnical work.

O.1.1 WSDOT Project Manager Identifies Design Error

The WSDOT spends a considerable amount of time reviewing design alternatives, working with constructability issues, and conducting value engineering studies. Extensive analysis is done during the various stages leading up to a construction contract. However, design flaws in the plans or specifications are sometimes found by the construction contractor during or after construction. If an error or omission is discovered during construction, there are potentially significant financial impacts and delays to the progression of the project. If discovered after construction is completed, the impacts could be very costly.

As soon as a suspected design error or omission is found, a determination must be made whether an error or omission has occurred. When an error or omission is discovered prior to or during construction, the first course of action is to allow the consultant to correct the error or omission. If that is not an option, then efforts must be made to correct the problem and recover financial damages to the state.

The financial impacts to the state may include, but are not limited to: the costs of redesign; correction of construction work already accomplished; payment of delay costs to the contractor; loss of participating funding; delayed revenue collections while bond interest may need to be paid; and potential litigation costs.

At the first sign of a potential consultant design error or omission, the WSDOT project manager must immediately notify the project supervisor and the area consultant liaison (ACL) regarding the potential design error(s) or omission(s). The ACL will immediately notify the CSO that the potential for a design error and/or omission exists on the project. The ACL will also indicate to the project manager that documentation of the full situation is critical.

O.1.2 WSDOT Project Manager Meets with the Area Consultant Liaison

Upon notification of a potential design error or omission, the ACL will meet with the state's project manager and the appropriate WSDOT executive staff member to discuss the magnitude of the alleged consultant design error(s) or omission(s). The project manager's team will be asked to gather very detailed documentation – more than what is normally required for a project. Documentation will include but not be limited to: all decisions made to date; descriptions of work performed; photographs; communications between WSDOT team members and consultant team members; negotiation notes; records of labor, materials, and equipment; and any other items that might pertain to the issue.

If federal funds are involved, the work is on part of the Interstate System, or the project meets the definition of "major project" under 23 USC 106(h), the Federal Highway Administration will be notified of the potential design error(s) or omission(s). If the project includes funds from another federal agency (including pass through funds from a local or state agency), that federal agency and its local or state partners (if any) must also be advised of the issue. The appropriate agencies must be kept informed of the proceedings throughout the process to conclusion.

To collect costs or damages as a result of design error or omission, the government must be able to substantiate that:

1. There was in fact a design error or there was an omission.
2. The error or omission was the result of, or was caused by, the negligence of the consultant firm/team. (**Note:** Negligence is understood to be (1) the failure of the consultant firm/team to meet the standards of reasonable care, skill, and diligence that someone in the profession would ordinarily exercise under similar circumstances, or (2) there was a breach of contractual duty. For further information, see the professional chapters of the Revised Code of Washington (RCW), which include Chapters [18.08](#), [18.43](#), and [18.96](#).)
3. The state suffered measurable damages because of the error(s) or omission(s). The state has a responsibility to mitigate any damages it incurs due to the error(s) or omission(s).
4. There were no outside actions that contributed to the error(s) or omission(s).

O.1.3 CSO Manager Contacts Consultant

After the WSDOT project team and the ACL determine the need for further action, the ACL will notify the CSO manager of that determination. The CSO will contact the Attorney General's Office with the pertinent information. Upon receiving the Attorney General's recommendation, the CSO manager will contact the consultant regarding the alleged design error(s) or omission(s) and schedule at least one meeting between WSDOT and the consultant's team. The CSO manager, the project manager, and WSDOT executive will represent WSDOT at the meeting, and the consultant will be represented by the project manager and any other personnel (including subconsultants) deemed appropriate.

O.1.4 Project Team Resolves Alleged Consultant Design Error or Omission

The meeting between the CSO manager, the project manager, the WSDOT executive, and the consultant will result in one of three possible outcomes:

1. **Mutual agreement:** No consultant design error(s) or omission(s) occurred. If WSDOT and the consultant agree that no design errors or omissions occurred, the process is stopped.
2. **Mutual agreement:** One or more consultant design error(s) or omission(s) occurred. If WSDOT and the consultant agree that design error(s) or omission(s) did occur, the WSDOT executive will assist the CSO manager or project manager in negotiating a settlement with the consultant. The settlement could result in the consultant doing a redesign or providing payment to WSDOT for costs incurred. Because the consultant may already be under contract to provide “design services during construction,” the consultant may have already been directed to proceed with a design solution. If this is the case, then the settlement could be a reduction in the original negotiated price in the contract authorization for the services. Alternatively, a reduction in the amount of money due to the consultant for the portion of the statement of work in which the error(s) or omission(s) occurred, that reflects the degree of the consultant’s responsibility, might be more appropriate. After WSDOT and the consultant agree on appropriate reimbursement, the existing contract is to be amended, or a new contract is to be assembled, documenting what was agreed to.
3. **No mutual agreement:** The consultant may need to review the documentation and their own project notes before deciding regarding the alleged design error(s) or omission(s). If that is the case, another meeting should be scheduled as quickly as possible. If the consultant disagrees that design error(s) or omission(s) occurred, then all pertinent information should be provided to the WSDOT Assistant Secretary Engineering & Regional Operations Chief Engineer for a determination as to further action.

O.1.5 WSDOT Assistant Secretary, Multimodal Development & Delivery Review

If no agreement has been reached with the consultant, the CSO manager will take the following actions:

1. The CSO manager will review all available information, including costs, and prepare a briefing document and recommendation for the Assistant Secretary Multimodal Development & Delivery will make a determination whether or not WSDOT will request reimbursement from the consultant for the legally recoverable costs incurred as a result of the alleged consultant design error(s) or omission(s).
2. The CSO manager, as part of the preparation for the Assistant Secretary Multimodal Development & Delivery’s briefing, will seek legal recommendations (as necessary) from the Attorney General’s Office.

3. If the Assistant Secretary Multimodal Development & Delivery determines that no further action will be taken, the Assistant Secretary Engineering & Regional Operations Chief Engineer will inform the CSO manager, who will then notify the responsible executive, the area consultant liaison, and the project manager in writing about the decision. The executive or the CSO manager will inform the consultant in writing about the decision. After notifications are complete, no further action is necessary.
4. If the Assistant Secretary Multimodal Development & Delivery determines that WSDOT will pursue further action with the consultant, the Assistant Secretary Multimodal Development & Delivery will notify the CSO manager, the project manager, and the project executive of the decision. The Assistant Secretary Multimodal Development & Delivery will direct the CSO manager to contact the Attorney General's Office for further action(s).

The Attorney General will determine the course of action based on the information provided and discussions with the WSDOT Assistant Secretary Multimodal Development & Delivery.

Appendix P Organizational Conflict of Interest

P.1 Organizational Conflict of Interest (OCOI)

An organizational conflict of interest may occur when an individual or firm:

- Is unable to render impartial assistance or advice.
- Is unable to be objective in the performance of the contract work.
- Has an unfair competitive advantage.

The potential for an organizational conflict of interest to occur and the process for identifying and mitigating OCOIs apply to all agreements for professional services related to WSDOT projects. While the applicability is not limited to any acquisition, OCOIs are more likely to occur in agreements involving management support services; consultant or other professional services; contractor involvement in technical evaluations; and design, systems engineering, and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.

P.1.1 Roles and Responsibilities Related to OCOI

The ultimate responsibility for avoiding, managing, neutralizing, or mitigating organizational conflicts of interest rests with the individual consultant or consulting firm that is potentially conflicted. An OCOI may occur in any number of different circumstances. All consultants proposing or bidding on solicitations for agreements may be impacted, including those applying as a design-build team, whether submitted on a Request for Statement of Qualifications or a Request for Proposal.

This section applies to all business configurations, including a joint venture and the individual entities that make up a joint venture; parent and subsidiaries comprising one entity; entities resulting from acquisitions and mergers; and employees of consultants who move from one firm to another. Actual or potential conflicts of interest are carried from one firm to another while completing a business transaction.

WSDOT employees have the responsibility to identify and manage potential, actual, or perceived OCOIs as the employees become aware of them. The goals in managing potential conflicts of interest are to prevent the existence of conflicting roles that might bias a contractor's judgment and to prevent unfair competitive advantage. Therefore, it is preferable that potential conflicts be identified as early as possible in the acquisition process. The federal regulations require that each individual contracting situation be examined based on its particular facts and the nature of the proposed agreement. Employees engaged in the contracting process must exercise common sense, good judgment, and sound discretion in determining whether a potential conflict of interest exists, and, if so, the appropriate means of resolving it.

WSDOT retains the sole discretion to determine, on a case-by-case basis, whether an OCOI exists and whether actions may be appropriate to avoid, neutralize, or mitigate any actual or potential conflict or the appearance of any such conflict. Any determination by WSDOT regarding the existence of an actual or potential OCOI or whether the OCOI may be avoided, neutralized, or mitigated is based solely on the facts made available at the time the determination is made. Unknown facts or a change in the facts over time can necessitate a reevaluation of the original conclusion. Risks associated with a successful legal challenge to an OCOI are the sole responsibility of the person or firm potentially conflicted.

Note: WSDOT reserves the right to reassess and revise any determination made regarding an OCOI at any time. WSDOT also recognizes that its concern with an OCOI must be balanced against the need to promote competition in the procurement process and not to unnecessarily restrict the pool of potential consultants or constructors available to perform needed work.

P.1.2 Evaluating OCOIs and Determining a Course of Action

The HQ Consultant Services Office's (CSO's) evaluation process incorporates the procedures and forms in the *2022 Organizational Conflicts of Interest Manual*. The CSO follows these procedures for use on all agreements administered by the CSO, regardless of funding source. Because it is possible that the same individuals and/or consulting firms will seek to be involved in one or more phases of a project (predesign, design, and construction), it is important that the department implements a coordinated approach to evaluating and addressing OCOIs. This is particularly relevant to the CSO's solicitations because potential proposers of early predesign and design phases of a project must be made aware of the potential OCOIs that can arise as later phases go out to proposal or bid. As an initial step in identifying OCOIs, the Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan (see OCOI Manual Exhibit A) and the Organizational Conflict of Interest Certification (see OCOI Manual Exhibit D.3) will be included in all relevant CSO solicitation documents, along with instructions for their use.

The following guidelines are intended to enhance pertinent federal and state statutes regarding ethics and OCOIs, as referenced and discussed earlier in this section. In general, the CSO will evaluate the following on a case-by-case basis:

- Whether or not an OCOI exists.
- Whether or not the OCOI can be avoided, neutralized, or mitigated.
- The appropriate steps to be taken to avoid, neutralize, or mitigate the OCOI.

P.1.3 Making the Determination

Initial considerations in the determination of a mitigation strategy would likely include a review of potential bidders/proposers who have requested the solicitation and a review of their teaming partners, including design professionals who may be more likely to have an OCOI. For those identified, a key factor would be previous work done by the individual or firm on the project or in the planning phases of the solicitation.

Mitigation plans may include contract clauses prohibiting some subsequent or related work by the contractor; restrictions on the specific work the contractor or subcontractor will be allowed to perform; nondisclosure and confidentiality agreements; and exclusion of specific individuals or business units from participation in the project.

P.1.4 OCOI Situations That Cannot Be Avoided, Neutralized, or Mitigated

The OCOI Manual includes examples of situations that cannot be avoided, neutralized, or mitigated as well as those can be avoided, neutralized, or mitigated.

P.1.5 Procedures for Addressing OCOIs

Because the CSO contracts process most often precedes the design-build or construction phase of a project, it is the initial point at which a consultant is encouraged to consider any potential OCOI. In addition, consultants becoming subconsultants should consider whether being a subconsultant could preclude their working on contracts related to their prime's work product due to the potential appearance of an OCOI. Consultants and subconsultants should investigate and manage potential OCOIs well in advance of forming teams or considering proposals/submissions in a solicitation. A firm or individual considering whether to enter into an agreement as a consultant or subconsultant on a WSDOT project should consider contacting the CSO regarding whether its proposed scope of work may create an OCOI if in the future the firm or individual chooses to participate with a proposer on a contract related to the firm's or individual's work product.

The CSO will include a provision in the solicitation document regarding any OCOI that could potentially occur in the solicitation, along with the method for the consultant to respond to the potential OCOI, and a process for imposing a restraint on eligibility for future contracting activities, as appropriate. The provision will also state whether the terms of the agreement and the application of the provision to the agreement are subject to negotiation. This process will most often be relevant to architectural and engineering (A&E) solicitations for predesign, and design services related to a project that is eventually going to design-build or construction.

1. Prior to submitting an SOQ or a proposal on a CSO solicitation, each submitter/proposer will conduct an internal review of its current affiliations and will require its team members to identify potential, real, or perceived OCOIs relative to the anticipated procurement. Potential submitters/proposers will be notified that existing and/or future contractual obligations relative to the proposed procurement may present an OCOI and these may require avoidance, neutralization, or mitigation.
2. If a potential, real, or perceived OCOI is identified or if there is any question regarding an OCOI, the potential submitter/proposer will submit an Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan (see OCOI Manual Exhibit A), along with other pertinent information, to the project manager and the area consultant liaison (ACL) or CSO staff. The project manager and the ACL/CSO will evaluate the plan following the provisions in P.1.2, propose changes to the plan as appropriate, and forward their recommendations regarding the plan to the WSDOT Engineer for the respective project to review.

3. Depending on the nature of the conflict the WSDOT Engineer will review the recommendations and issue a final written response to the consultant.
 - a. WSDOT, at its sole discretion, will decide regarding any potential OCOI and the entity's ability to avoid, neutralize, or mitigate such a conflict.
 - b. If the WSDOT Engineer determines that an actual or potential OCOI exists and cannot be avoided, neutralized, or mitigated, a written response will be issued indicating that the individual or firm that has been determined to have an OCOI will not be allowed to participate as a team member or as a contractor for that agreement. Failure to abide by WSDOT's determination in this matter may result in an SOQ or a proposal being declared nonresponsive.
 - c. If the WSDOT Engineer determines that the actual or potential OCOI can be avoided, neutralized, or mitigated, a written response will be issued indicating concurrence or stating that corrections and resubmittal of the plan are required.

P.1.6 Appeal Procedures

The consultant will have the right to appeal a finding of an actual or potential OCOI. WSDOT's determination, reflected in the response to the plan, may be appealed to the WSDOT Assistant Secretary Multimodal Development & Delivery, whose decision will be final, subject to further review only as provided for by state law.

P.1.7 Certification

For submittals or proposals in response to an A&E solicitation where there is potential for an OCOI to exist, an Organizational Conflict of Interest Certification (see OCOI Manual Exhibit D.3) will be required to be included with the SOQ or proposal.

It is expected that most, if not all, potential or real OCOIs will have been identified and reviewed by the department prior to the submission of the SOQ or proposal. However, if a potential, real, or perceived OCOI is identified or if there is any question regarding an OCOI, the submitter/proposer will submit an Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan (see OCOI Manual Exhibit A), along with other pertinent information, as attachments to the OCOI Certification. If a previously submitted and approved plan is still applicable, it should be included with the WSDOT Engineer's response as an attachment to the OCOI Certification. The submissions and responses will be evaluated in accordance with the criteria described in P.1.2 to P.1.4.

P.1.8 Contract Provisions

All relevant consultant services contracts are to include a reference to and require compliance with the provisions in this chapter related to OCOI and with the Secretary's Executive Order E 1059. In addition, the OCOI Acknowledgement for Consultant Contracts (see OCOI Manual M 3043 Exhibit C) is to be included in all relevant CSO contracts.

Appendix Q Overtime/Premium Pay

Q.1 Introduction

The FARS allows overtime premium, if approved by WSDOT in advance. Under Q.3(i), this is applied to direct and indirect labor; however WSDOT does not pay overhead or fee on the premium portion of direct labor. Overhead is not paid on the premium portion because WSDOT does not use the premium portion to compute the hourly rate. If that computation was made, the rate would be slightly smaller. Fee is paid on the underlying hour and not computed for premium time paid that is in addition to the hourly rate.

Q.2 Procedures

- (a) Solicitations normally shall not specify delivery or performance schedules that may require overtime at Government expense.
- (b) In negotiating contracts, contracting officers should, consistent with the Government's needs, attempt to (1) ascertain the extent that offers are based on the payment of overtime and shift premiums and (2) negotiate contract prices or estimated costs without these premiums or obtain the requirement from other sources.
- (c) When it becomes apparent during negotiations of applicable contracts that overtime will be required in contract performance, the ACL in coordination with the Project Office shall secure from the consultant a request for overtime to be used to ensure the contract deliverables meet the project schedule, to the extent that the overtime can be estimated with reasonable certainty. The consultant's request shall include the total hours for which the premium is requested, and show the premium rate used for each person receiving overtime salary premium as a separate line item in the contract documents. This calculation will also apply to shift differential and call back premiums added to an hourly rate.

Q.3 Approvals

- (a) The contracting officer shall review the consultant's request for overtime. Approval of the use of overtime may be granted by an agency approving official after determining in writing that overtime is necessary to—
 - (1) Meet essential delivery or performance schedules;
 - (2) Make up for delays beyond the control and without the fault or negligence of the consultant; or
 - (3) Eliminate foreseeable extended production bottlenecks that cannot be eliminated in any other way.
- (b) Approval by the designated official of use and total dollar amount of overtime is required before inclusion of an amount in the estimate for the consultant's services. Overtime premium as well as call back and shift differentials will be calculated in the project estimate on separate lines.

- (c) Contracting officer approval of payment of overtime premiums is required for negotiated hourly rates (including task orders) and cost-plus fixed fee contracts. Lump sum contracts do not require approvals for paying overtime premiums as the costs are already fixed.
- (d) During contract performance, consultant requests for overtime work must be approved by the project office and/or the ACL, to track use of same. Overtime requests exceeding the amount authorized by previous negotiations shall be submitted as outlined above under Q-2, Procedures to the Project Office and the ACL. The ACL along with the Project Office will review the request and if it is approved, the ACL will supplement the agreement or amend the task order with the approved additional overtime premium hours per the standard procedures for supplements and amendments.
- (e) Overtime premiums at Government expense should not be approved when the contractor is already obligated, without the right to additional compensation, to meet the required delivery date.
- (f) When the use of overtime is authorized under a contract, the office administering the contract and the auditor should periodically review the use of overtime to ensure that it is allowable in accordance with the criteria in the FARS part 31. Only overtime premiums for work in those sections of the consultant's estimate that have been approved shall be considered for payment.
- (g) Approvals for using overtime shall ordinarily be prospective, but, if justified by emergency circumstances, approvals may be retroactive.

Appendix R Vacated

Appendix S Vacated

Appendix T Vacated

Appendix U Selection Process and Boards

U.1 Selection Process

A&E contracting is a unique process wherein WSDOT seeks to find the most highly qualified firm for the type of architectural and engineering services required in order to start the process of negotiating a contract for those services. There is no guarantee that after going through the process of selecting the “most qualified firm,” agreement will be reached regarding “fair and reasonable” cost. For that reason, state and federal regulations require at least three firms “in the order of preference” to be carried forward to the negotiation phase. Here, order of preference means “in the order of rank” from the scoring and the interviews.

This section describes the process and the legal basis for the evaluations; short-listing and interviews; the need for and requirements of one or more selection boards; ownership of the overall process; and the importance and means of documenting the proceedings.

U.1.1 Selection Procedure

40 USC 1103, of the Brooks Act, specifies the following selection procedures:

1. These procedures are applicable to the procurement of architectural and engineering services.
2. The agency shall encourage firms to submit annually a Statement of Qualifications and performance data.
3. For each proposed project, the agency shall evaluate current Statements of Qualifications and performance data on file with the agency and statements submitted by additional firms regarding the proposed project.
4. The agency shall conduct interviews with at least three of those firms that demonstrated the highest qualifications.
5. From those firms interviewed, the agency shall select, in order of preference, at least three firms that the agency considers most highly qualified to provide the services required.
6. Selection shall be based on criteria established and published by the agency.

U.1.2 Selection Board(s) Make-Up

The selection of the most qualified firms to go forward into negotiations shall be accomplished by one or more permanent or “ad hoc” boards. Where one board is used, it is generally known as the selection board. Where two boards are involved, the first is known as the preselection, slating, or evaluation board; the second is known as the selection board.

An ad hoc board is typically used for the occasional selection of a consultant for a long-term project or one with highly specialized requirements. The ability to select board members that have specialized areas of knowledge directly related to the work requirements of the firm that will be contracted with may be an important consideration.

Ad hoc boards require more involvement and oversight by the CSO. With each assembly of a board, instructions and review of the necessary processes must be done by the CSO manager or someone in the CSO. Where ad hoc boards are used, the CSO manager will appoint someone from the CSO to either sit as a member or to facilitate the process.

A permanent board is typically chosen when there are larger volumes of solicitations and CSO resources are at a premium. Generally, one session with the group should provide the necessary instructions and provide for more efficient use of resources. A properly selected group will cover the requirements necessary to meet state and federal regulations and ensure the integrity of the selection process.

The following choices for the make-up of the evaluation or selection board are available to the CSO manager by regulation:

- A single permanent board, which does the preliminary evaluations and determines the top firms to interview, then does the interviews and makes the final recommendations to the CSO manager.
- Two permanent boards as above, one doing the preselection evaluations and one conducting the interviews and making the final recommendations.
- A single ad hoc board selected as needed. The board would do the evaluations, determine the top firms for interviews, conduct the interviews, and make recommendation to the CSO manager.
- Two separate ad hoc boards selected as needed: one responsible for the evaluations and screening to a short list recommendation and one conducting the interviews and making recommendations to the CSO manager.
- A single permanent board that does the evaluations and screening to a short list recommendation that is subsequently sent to an ad hoc board for interviews and final recommendations.
- A permanent selection board that receives the short list of candidates for interviews from an ad hoc evaluation board made up of individuals with strong backgrounds in the area in which consultant services are needed.

U.1.2.1 A Single Permanent Board

A single permanent board works under the general direction of the CSO manager or the manager's appointee. Up to twelve members would be appointed on a statewide basis, with three "sitting" as active during any given period. They would rotate monthly or quarterly, whichever fits the needs of the department. During each period, one would act as chairperson, ensuring the integrity of the process, arranging for any necessary meetings and note taking, and attending to the documentation and recommendations to the CSO manager.

Additional persons could be added to any selection, as needed, such as outside stakeholder participation. The single permanent board would first evaluate the data from the database and any additional submittals of general information received from firms via the solicitation and announcement, in accordance with [Section 410.03](#).

After going through the prescreening process, documenting the reasons for eliminating any firms from further consideration, the board will then move to evaluating the solicitation-specific information included with the firm's submittal. They will need to document the elimination process followed, establishing that the selection criteria advertised were the criteria used for the scoring and elimination of firms dropped from further consideration.

The board will then submit its documentation to the CSO manager, with recommendations for firms to be interviewed. Upon approval of the recommendations, the chairperson will plan for interviews of the top-rated firms. Upon completion of interviews, the board will finalize the ranking and make recommendations to the CSO manager of the top three firms to carry into negotiations.

It is recommended that two alternate or additional members be added, for a total of five members, when a single board performs both the evaluations and final selection processes, especially for the interview portion.

U.1.2.2 Two Permanent Boards

Two permanent boards will work under the general direction of the CSO manager or the manager's appointee. As with the single permanent board, up to twelve members will be appointed on a statewide basis. The difference is that three will be active at any given period on the evaluation board and will then rotate to the final selection board. Upon completion of service on these two boards, the members will rotate off for the appropriate period before rotating back on again.

As with the single permanent board, outside parties will be added as needed to either board. These extra members will be outside stakeholders, alternate supplemental persons, project advocates, or executive-level members at the chair level.

The first board would act as the evaluation board, prescreening firms' available data and any general data submitted with the proposal packets. This first board would go through the prescreening process, documenting the reasons for eliminating any firms from further consideration.

Board number one would then evaluate solicitation-specific information included with the firms' submittals. The board will need to document the elimination process followed, establishing that the selection criteria advertised were the criteria used for the scoring and elimination of firms dropped from further consideration.

The board would then submit its documentation to the CSO manager, with recommendations for the firms to be interviewed.

Upon approval of the recommendations, the CSO manager will then submit the short list to the chairperson of board number two, who will make arrangements for interviews with the top-rated firms. Upon completion of the interviews, the board will finalize the ranking and make recommendations to the manager regarding the top three firms to carry into negotiations.

During each period, the group will select someone to act as chairperson, ensuring the integrity of the process, arranging for any necessary meetings and note taking, and attending to the documentation and recommendations made to the manager.

U.1.2.3 A Single Ad Hoc Board

A single ad hoc board will work under the general direction of the CSO manager or the manager's appointee. The only difference in this board's duties and that of the single permanent board is that this board will be made up of nominees as needed for one specific project selection. As previously stated, it is recommended that there be at least five total members of the board when a single board is used for the full selection process, or at least for the interview process.

U.1.2.4 Two Separate Ad Hoc Boards

Two separate ad hoc boards will work under the general direction of the CSO manager or the manager's appointee. Both boards will be made up of nominees as needs arise for one specific project selection. The duties of board one and board two will be the same as that of each of the boards where two permanent boards are maintained.

U.1.2.5 A Single Permanent Board Performs Evaluations; An Ad Hoc Board Conducts Interviews

Each board will work under the general direction of the CSO manager or the manager's appointee. The permanent (evaluation) board will consist of up to twelve board members that would "sit" in active status on a rotational basis as discussed in the single permanent board section above. This board will be responsible for the evaluations and screening of firms' general information and the subsequent scoring of firms' data in their submittal packages. This board will document the process and recommend the short-listed firms to the CSO manager for interviews.

If the short list is acceptable to the CSO manager, the interview board, made up of individuals selected specific to this project, will receive the list; select a chairperson; possibly meet with the project and the CSO area consultant liaison to get input on potential questions; review the documentation package from the evaluation board with the short-listed firms' qualifications data; and make arrangements for the interviews.

Upon completion of the interviews, the ad hoc selection board will finalize the ranking of firms, document the processes followed, and submit a final recommendation of the top three firms, in ranked order, to the CSO manager.

U.1.2.6 An Ad Hoc Evaluation Board and a Permanent Selection Board

Each board will work under the general direction of the CSO manager or the manager's appointee. The duties and the steps involved for each board are as described previously.

U.1.3 Selection Process Expectations

Special emphasis on the importance of the selection process needs to be made to ensure all participants meet the requirements of the Brooks Act regulations. The amount of time needed to do a thorough job depends on the scale of the project for which consultant services are being sought. Board members will need to be able to make the necessary time commitment required to do a thorough job.

Projects will need to cover the expenses of note takers and/or facilitators and, in some cases, travel for board members.

U.1.4 Evaluation Board Process

The evaluation process will be done by the board as a group, rather than individually at separate locations. Evaluation of the data is an iterative process and is best accomplished through discussions among the members. A project representative may need to be available for clarification of project needs as the process starts, but will not be active in the actual evaluation of data.

The CSO will develop a process packet for use by each board that explains the importance of the process and the expectations and documentation needed by the CSO, and covers the required issues of fair and impartial treatment of prospective firms. Templates for the evaluation process, interview process, and recommendation transmittals that go back to the CSO manager should be included.

The evaluations by the appropriate board can be either verbal or numeric, if detailed documentation is accomplished. Evaluations must be based on the criteria published in the RFQ and should include, but not be limited to, the requirements of 49 CFR 18.36 (as appropriate to the solicitation).

During the evaluation process, three areas must be considered:

1. Initially, the chairperson establishes the method and the baseline the group will use for evaluating firms in each area. Consideration must be given to the firms' general data, making sure that firms are appropriate for the type of work the project requires. Past performance is the next consideration, and only scores or performance evaluations on similar work should be considered. For example, performance data on a hydraulics design should not be considered when the work is for a traffic study.
2. Next is the evaluation of data supplied by the firm for the specific project. By this time, several firms may have already been eliminated from further consideration, depending on the number of submittals and the type of work. At this point, consideration has to be given to any proposed subcontractors, going back through an evaluation of their qualifications for the proposed work. Each step must be documented, with reasons given for decisions made, not just a statement saying that a firm was dropped.

Finally, the evaluation board will document the basis of its determination regarding the firms recommended for interviews. The number recommended is not specific, but should be at least three. The evaluation board needs to be satisfied that it is recommending the best potential firms based on all data considered. The chair of the board should prepare the recommendation report and submit it to the CSO manager.

Upon approval of the short list recommendation by the CSO manager, the manager will submit the appropriate data package to the selection board (whether the same group or a new group) for the interview phase. The CSO will notify firms that are on the short list and follow up with written letters. The other firms will be notified that they are no longer under consideration for the project. Refer to [Section 410.05](#) for information on notification and debriefing.

U.1.5 Selection Board Process

Adherence to the Brooks Act, 40 USC 1101–1104, requires “discussions” with at least three firms to consider their anticipated concepts and compare their alternative methods of approach for furnishing the services needed on a project. The selection board is responsible for engaging those firms recommended for interviews to determine the best qualified for the project. The term “discussions” is often used interchangeably with the term “interviews” under this requirement.

The selection board will schedule interviews with the firms on the short list, making sure there is an appropriate amount of time allowed for each session. It is important to provide adequate time for board members to make an informed decision regarding each firm. Neither the board members nor the consultant team should be rushed.

U.1.6 Interview Process

A determination should be made prior to scheduling the interviews as to the format, the number people the consultant team should bring, and whether audiovisual equipment is allowed. When scheduling with the consultant firms, after covering the board’s requirements, questions should be asked of the firm regarding any ADA accommodations that may be necessary.

Under most circumstances, a two-hour time frame should be allotted for each firm’s session. Presentations and question and answer (Q&A) sessions should be covered in one and a half hours, with a thirty-minute time frame between for board discussion after the consultant team vacates the room. Additional time may be needed for set up and preparation prior to the start of each session.

During the interviews, a project representative (project advocate) may be present, but does not have a vote in the selection.

Interviews should be conducted in person whenever possible. However, allowance can and should be made when key persons from the consultant’s team cannot be physically present for the session. Presence by phone or video conference is the alternative.

If the board chooses to do so, interviews can be done by phone or video conference. This should be measured against the size of the project and the type of work involved. This choice may be best suited to smaller work requirements of shorter duration. However, as travel costs rise and technology improves, consideration for remote interviews may become more appropriate.

For the Q&A session, the board may provide the questions to the firms prior to the interviews or the questions may be reserved until the time of the interviews. Except for the need to clarify some specific item of information provided by the firm in its submittal, questions are to be the same for all firms. Individual questions may be asked about a firm’s presentation, but care must be taken not to lead a firm to a response.

Subconsultants are often proposed on more than one team. When the same subconsultant is proposed on more than one short list team, they are to be excluded from any interviews. The prime will need to address the way that sub will be used on the project. Each main firm needs to be made aware that the sub will not participate in the interviews.

Upon completion of the interview process, the board reviews its collective results. If any clarifications are needed, phone calls are to be made to the contact person listed in the firm's proposal. Care must be taken not to provide any information not already given to all firms. If any questions are to be asked, they are only to relate to answers given in the submittal or the presentation and must not be leading in any way.

After reviewing the results, the board makes the final compilations and organizes all the documentation. The chair then submits the full package with the names of the top three firms in order of preference to the CSO manager. If the manager is satisfied that all necessary steps have been taken and all factors have been considered, the manager will notify the top three firms of the name of the top-rated firm and explain the process steps through negotiations. At this point, all three firms are still in the running. Negotiations will now begin with the top-rated firm (see [Section 410.05](#)).

Neither the CSO manager, nor the manager's appointee, may add to or remove from any list, short list, or board recommendation. If the manager is not satisfied that the process followed was appropriate, or that the board missed or did not consider all appropriate information, the manager can return the recommendations to the appropriate board for further work, along with an explanation. This is true for both the evaluation and selection phases.

As a final note, evaluation and selection boards are to be made up of members who have a broad background covering the potential areas in which services are being sought. Strong consideration should be given to upper-level managerial candidates and at least one executive who would sit as chairperson. Project managers from design, construction, and the discipline being sought are potential candidates (when specialized or supportive in nature).

Appendix V Vacated

Appendix W Vacated

Appendix X Vacated

Appendix Y **Consultant Services – On Call Agreements Second-Tier Competition Process Steps**

Prior to negotiating and executing task orders for services under the On Call agreements, the need for a second-tier competition must be conducted as shown below. In the event of unusual circumstances, only the CSO Manager, or designee, may grant an exception to this process.

- \$0 - \$10,000 Customer may select directly from the list
- \$10,001 - \$20,000 Customer must document discussions with at least 3 firms prior to selection
- \$20,001 and higher Customer must engage in the formal process outlined below

**Dollar amounts shown above represent the TOTAL task order value including amendments.

FORMAL PROCESS – Task Orders of \$20,001 and higher:

1. Customer (Purchaser) develops a “draft scope of work” outline, including a cost estimate for the work scoped.
2. Customer, in consultation with either the Area Consultant Liaison (ACL) or HQ CSO determines appropriate On Call Roster (Type of Work) to be utilized.
3. Customer and ACL reviews On Call Consultant roster and selects an appropriate number of related consultants for competition.

Multiple firms. Customer(s) shall solicit responses from “multiple firms” in selecting a consultant. “Multiple” firms mean a reasonable number of parties considering such factors as type of services needed, schedule, and availability. The offer is to be issued to, at a **minimum, not less than 50% of the firms on the list**. If fewer than 50% of the firms are contacted, an explanation is to be included in the contract file as to why more firms were not invited to participate.

Note: if there are 6 or fewer qualified firms on the roster/list, the customer and ACL shall solicit all firms.

4. ACL and Customer develop Request for Additional Information (RFAI) documentation. For Task Orders estimated less than \$200,000, the page limitation for RFAI response should not exceed 3 written pages. For Task Orders estimated more than \$200,000, the page limitation for the RFAI response should not exceed 7 written pages. Exceptions may be requested through written request to the HQ CSO office.

Note: Examples and Templates are available from HQ CSO if needed.

5. ACL and Customer formally communicate, via email, the 2nd Tier Competition opportunity. The appropriate Request for Additional Information (RFAI) documentation shall be attached to the outgoing email.

Recommended that HQ CSO staff be included as a cc.

6. Consultants submit Responses to ACL/Customer via email by the Response Due Date and Time, as specified by the RFAI documentation.
7. ACL and Customer conduct evaluation of all responding consultant Responses and make selection.
8. ACL and Customer negotiate the Task Order Document (TOD). Upon execution of a final TOD, work may commence.
9. Consultant performs work and submits proper invoices to Customer for payment, per the Payment terms outlined in the Master On-Call Services Agreement.

Consultant Services Staff Contact Information

Attention: CSO Manager

Email: CSOSubmittals@wsdot.wa.gov

Phone: 360-705-7104

[Contract services](#) | [WSDOT \(wa.gov\)](#)

Second-Tier Selection Processes – Recommended Process Hints

To help with the Second-Tier process, a checklist has been developed which outlines the minimum required documentation for the competition from the WSDOT rosters, and offers information on critical items to have prior to starting the process. This checklist is in this appendix, located after these Process Hints.

First, check with the ACL and CSO to determine which on call list is appropriate for the project, and what the project total cost limits are on that list. All lists have maximum project amounts allowable for any work to be assigned. For example, the Transportation Design PS&E lists have limits for the Under \$500,000 firms at \$150,000 for the total project amount including all amendments. The Over \$500,000 list has a limit of \$1,500,000 total project amount including all amendments. Anything needed from this set of lists that is expected to exceed \$1,500,000 must be advertised. For most on call agreements, the task orders are limited to projects at \$1,500,000 or less. The CSO must also be notified that a Second-Tier selection process is expected for the project along with the methods, list of firms to be invited, and criteria expected to be used.

Second, the ACL and CSO can help with structuring the information for the consultants and developing the Request for Additional Information (RFAI). The process may include meetings between the project office and the ACL to ensure as much project information is available as possible for the consultants to understand it. A draft scope is recommended for the work to be provided by the consultant, along with a draft state's estimate of total consultant services cost. Decisions regarding whether ties between firms responding or very close scores will need a second process must be made to ensure the consultants know the full selection process in the RFAI. A schedule will need to be provided for the project including the selection process dates. The scoring of the criteria (point system) and a list of scoring staff will be developed. Note that for A&E selections, cost of the consultant services is not a criteria for selection, though the State needs to estimate their project costs using average consultant rates to ensure the \$1,500,000 maximum is not going to be exceeded.

Third, the process is to be managed by the ACL or CSO rather than the project office to provide a more neutral, one person contact point for the process. All documents from the consultants should be received by the ACL or CSO person in charge of the process. Questions during the RFAI will be asked, and a process for answering them to all consultants needs to be available within the invitation to the consultants.

Fourth, the due date and time and email address of the receiver (the ACL or CSO person) must be clearly stated. Criteria must be in accord with the project. For those projects under \$200,000, the page limitation is three (3) pages for the submittals and for those over \$200,000, the page limitation is seven (7) pages. Requests to CSO for the process should include whether the project demands more pages than the limitation and the reasons behind the request. The CSO has final decision authority on the parameters of the proposed process.

During the process, the project office does not contact any consultants, and if any consultants contact the project office, the ACL or CSO person managing the process should be notified immediately. A decision will be made regarding whether the consultant in question will be eliminated from the process or if the situation can be repaired in some way to not give that consultant an advantage.

After all proposals have been received (do not expect all invited consultants to respond with a proposal) on the date and by the time noted, the scorers are provided with a score sheet and the received proposals with a deadline for returning their scores to the process manager, the ACL or the CSO designee. Scorers should be expected to also provide a listing of the strengths and weaknesses noticed on the various proposals to allow for debriefings. The ACL will compile all scores on a combined score sheet and provide the results to the scorers with a recommendation to either select (a consultant has scored much higher than the rest) or to do the secondary selection process (certain firms are too close in score to determine best team), as outlined in the RFAI request document.

After the consultant is selected for the project, all consultants who responded will be notified of the selection. Debriefings are appropriate to offer to the non-selected firms. The debriefings need to be done by the ACL or CSO based on information received from the scoring team. Debriefings can be by phone or in person. Debriefing and Protest procedures are outlined in [Appendix AA](#). Should the negotiations with the selected firm fail, the process for working with the second firm is outlined in [Chapter 410](#).

Costs or pricing components cannot be considered for A&E projects during the process until negotiations begin with the selected Consultant.

For Professional Services Second-Tier processes, cost or pricing may be considered, along with Best Value. The Second-Tier solicitation would include these elements, if desired, as part of the criteria for selection, and the Cost Analysis and Price Reasonableness form (see [Appendix Z](#)) will be used to help compare the proposing consultants' proposals.

Second-Tier Selection Processes – Checklist

Below are the minimums required for documentation of 2nd tier competition when selecting from WSDOT's statewide On-Call Rosters:

- List of who you sent the "Request for Additional Information" (RFAI) to;
- RFAI Documents, including copy of the email;
- Copies of all responses; and
- Justification for selection.

Notes: The ACL or HQ Consultant Services can help with the following additional items:

- *Make sure you have authorization from the Agreement Manager to pursue a task order utilizing their master agreements;*
- *Make sure the firms that you send it to have the capacity/time left on their master agreements to complete your Task; and*
- *When selection is complete and all documentation is attached, please make sure that this documentation package is included as back-up data to the Task Order that is generated from this process. (Keep with your copy of the Task Order in your working files and do not attach to the original Task Order, this is an internal WSDOT process only.)*

**COST ANALYSIS AND PRICE REASONABLENESS DETERMINATION
WSDOT**

RFP / RFQ Proposal Title:

I hereby determine the estimate quoted by [name of firm] for this proposal to be fair and reasonable based on the following analysis:

_____ Comparison of price components against current industry standards, such as labor rates, dollars per pound, dollars per square foot, etc., to justify the price reasonableness of the whole. Attach the analysis which supports the conclusions drawn. Show the summary of the consultant and state estimates in the matrix below.

_____ Comparison of proposed pricing with an in-house independent cost estimate for the same or similar item. Complete the matrix below, attach the signed in-house estimate, and explain factors influencing any differences found.

Show the summary of the consultant and state estimates in the matrix below.

Summary Matrix

Consultant Name	Consultant Estimate	State/WSDOT Estimate

Additional comments and information:

Supporting documents are attached. This analysis and determination will be filed in the project Procurement History file.

Signature

Title

Date

Attachments:

Appendix AA Consultant Fee Calculation Worksheet

AA.1 Consultant Fee Calculation Worksheet

This technique will ensure consideration of the relative value of the appropriate factor in the establishment of a fee objective in the conduct of negotiating and provide a basis of documentation of the fee objective.

In negotiating a fee as an element of price, a reasonable fee shall be negotiated or determined for each agreement by using the following procedure as a guide:

Weighted Guidelines			
Factor	Rate	Weight	Value
Degree of Risk	25		
Relative Difficulty of Work	20		
Size of Job	15		
Period of Performance	15		
Assistance by the State	15		
Sub-consulting	10		
Total			

Based on the circumstances of each agreement and/or supplement, each of the above factors shall be weighted from .17 to .35 as indicated below. The value shall be obtained by multiplying the rate by the weight. The value column, when totaled, indicates the fair and reasonable fixed fee and/or profit percentage of direct (raw) labor costs for the agreement and/or supplement.

AA.2 Description of Calculation of Fee Factors

Degree of Risk: Where the design involves no risk, or the degree of risk is very small, the weighting should be .17; as the degree of risk increases, the weighting should be increased up to a maximum of .35. Agreements with options will have, generally, a higher weighted value than agreements without options for which quantities are provided. Other things to consider: nature of the design, responsibility for design, reasonableness of negotiated costs, amount and type of labor included in costs, amount of executive management/principal time required.

Relative Difficulty of Design: If the design is most difficult and complex, the weighting should be .35 and should be proportionally reduced to .17 on the simplest of jobs. This factor is tied in, to some extent, with the degree of risk. Some things to consider: the nature of the design; what is the time schedule; etc., and whether it is rehabilitation or new work.

Size of Job: All agreement (estimated) total costs less than \$100,000 shall be weighted at .35. The fixed fee percentage should be proportionately weighted for those projects between \$100,000 and \$5,000,000 from .34 to .21. Agreements from \$5,000,000 to \$10,000,000 may be proportionately weighted from .21 to .17, and work more than \$10,000,000 at .17.

Period of Performance: Agreements and/or supplements that are 24 months or longer are to be weighted at .35. Agreements and/or supplements of lesser duration are to be proportionately weighted to a minimum of .17 for work less than 2 months.

Assistance by the State: To be weighted from .35 in those situations where few items are provided by the state to .17 in those situations where the state provides many items. Things to consider: existing or provided design or plans, mapping, quantities, surveys, geotechnical information, etc.

Sub-Consulting: To be weighted in proportion to the amount of sub-consulting. Where 40% (40 percent) or more of the design is to be done by subconsultants, the weighting is to be .35. The weighting is proportionally decreased to .17 where all the design is performed by the consultant's own forces.

Appendix AB Vacated

Appendix AC Vacated
