



## FDM 8-5-1 Selection Process

March 14, 2016

### 1.1 General

The consultant selection process begins once an identification of need for consultant services on the project and the annual consultant services budget have been approved by WisDOT managers.

The selection process for engineering and design services (as defined in 23 CFR 172) on all two-party and federally funded three-party contracts will be in accordance with the "Brooks Act" (Public Law 92-582, 86 Stat. 1278 {1972}, 40 U.S.C. 541). The Brooks Act requires a Qualification-Based Selection (QBS) process whereby at least three firms are selected in order of preference based upon qualification criteria. Negotiations are initiated with the firms in their order of preference until a fair and reasonable price is secured. The intent of the Brooks Act is that consideration of price within the selection process is not in the public's best interest.

The use of competitive bids to select consultants for three-party federally funded local improvement projects is not allowed. Selection in accordance with the Brooks Act is the preferred method for non-federally funded three-party contracts, however, an alternate selection process may be used when there exists a local ordinance that permits the alternate procedure. Using an alternate selection process requires prior approval by the WisDOT Contract Manager.

The definition of "engineering and design services" contained in 23 CFR 172.3(e) applies to the specific types of services listed in Title 23, U.S.C. 112(b)(2), which was amended by Section 111(b) of the 1987 STURRA to include environmental and geotechnical drilling and laboratory testing when such services are required for engineering and design studies, investigations, tests, evaluations or soils investigations for a specific project. In contrast, a federally funded contract for aerial survey (unrelated to a specific project) for a section of the state would not be subject to provisions of the Brooks Act. Other exempt services include general studies authorized under Section 402 Safety Program and general statewide/area wide projects financed with HPR funds.

For projects involving non-engineering types of services (real estate, training, planning studies), an alternate selection process may be used with prior approval by the WisDOT Contract Manager.

Firms awarded preliminary or final design engineering contracts are not eligible to compete for the construction engineering contract on that same project. This policy does not apply to Non-traditional transportation projects covered under the Sponsor's Guide to Non-Traditional Transportation Project Implementation.

In order to preserve fair and open competition, WisDOT has directed all of its staff to direct all consultant inquiries pertaining to upcoming projects, concerns about workload, available staff, and general capabilities to consultant services unit supervisor. Consultant services unit supervisor may decide appropriate response. During an ongoing solicitation, all consultant questions about a project must be e-mailed to the contact in the Scope of Services narrative.

### 1.2 Solicitation of Interest

General interest in performing engineering services for WisDOT is solicited annually from consultants who have completed a Consultant Report, Form [DT1538](#), indicating their qualifications and experience and are included on WisDOT's Roster of Eligible Engineering Consultants (see [FDM 8-5-45](#)).

DTIM-CAU solicits for interest for consultant services on specific projects on the WisDOT Internet web site at:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/solicitations/default.aspx>

This site contains a list of projects and a scope of services narrative/Notice of Interest Questionnaire (NOI) for each. The narrative includes the expected location and services to be provided, deliverables, required special skills and contract length. Consultants complete the NOI and submit it according to the instructions on the web site.

In the case of a state or local design services contract, the scope of services narrative may sometimes include providing (under a separate contract) consulting services to consultant construction project engineers during construction of highway projects (under a concept called the Transparency Effort). The intent is to provide a way of improving construction communications on consultant managed projects so that project engineers can make timely project decisions. See [FDM 8-1-10](#) for more detailed information.

Since one of the options to provide design consulting services is to have a separate contract with the project

design firm, in the future the following note should be provided on all design solicitations:

*“The design services requested in this solicitation may, at the discretion of the department, include a separate contract to provide consulting services to consultant construction project engineers during construction of highway projects. That separate contract would be negotiated as the final design is nearing completion.”*

Region or Central Office bureau staff may change the standard questions on the NOI form to meet their needs of selecting consultants for these services. The questionnaire may also be in the form of a Request for Proposal or an expanded version of a notice of interest questionnaire. In that case, the period for NOI submittal may exceed the normal time-period given in regular solicitations. If a Request for Proposal Questionnaire is used, see [FDM 8-5-40](#) for an example.

The solicitation processes differ depending on the type of services involved. See [FDM 8-5-5](#) through [FDM 8-5-40](#) for more information.

### 1.3 Non-Roster Solicitations

Firms must be on the WisDOT Roster of Eligible Engineering Consultants to receive contracts for construction management and design engineering services. The Department also solicits for interest, however, on projects requiring specialized services such as landscape architecture, planning studies, historical preservation, surveying, and environmental/hazardous materials activities. Firms applying for contracts noted on the Internet solicitation as "open to all firms" do not need to be part of the Roster of Eligible of Engineering Consultants to apply.

### 1.4 Selection Authorization

The selection process should include the following steps:

1. Development of the short list-
  - a. A short list of at least three qualified consultants to potentially be awarded a contract is based upon:
    - i. Consultant responses to solicitations of interest.
    - ii. Roster of Eligible Engineering Consultants, Consultant Report ([FDM 8-5-45](#)), and Consultant Performance Evaluations ([FDM 8-25-5](#)).
    - iii. Other relevant information as appropriate. This may include interviews, RFPs, survey questionnaire, direct inquiries regarding staff availability and experience, interest, policies, and qualifications. Contacts with former clients may also be made.
  - b. If a request for proposal (RFP) is used, see [FDM 8-5-40](#) for guidance.
2. Selection of a recommended consultant
  - a. Each of the consultants on the short list will be evaluated and ranked based on the information noted above.
  - b. For design/related services contracts.
    - i. Recommendations for the top consultants are made by:
      - DTSD Region/Bureaus: a committee including the region Consultant Unit Supervisor or Central Office project manager, staff from other regions/bureaus, Statewide Consultant Engineer, Federal Highway Administration, and/or other interested members of the affected community.
      - DTIM Bureaus: a committee approved and/or including the WisDOT Contract Manager.
    - ii. For contracts estimated at \$1,000,000 or more, all consultants on the recommended short list will be interviewed prior to ranking.
      - Recommended interview lists and interview panels are approved by DTSD Local Program and Consultant Section.
      - The Statewide Consultant Engineer takes part in the interview process.
  - c. For construction engineering services contracts
    - i. DTIM-CAU and DTSD will coordinate an interview schedule at a central location for all transportation regions.
    - ii. Region staff make selection recommendations based on the information noted in

(1) above.

3. Selection approvals

- a. The DTSD Statewide Bureau Operations Manager approves the recommended consultant for DTSD region/bureau engineering and related services projects.
- b. The DTIM Administrator approves contracts for DTIM bureaus.
- c. Selection may be approved prior to the Project ID being authorized for charges, however, the contract may not be executed until after the Project ID is authorized.

4. Selection documentation

- a. The selection process, ranking of consultants, list of the selection committee including the chairperson and reason(s) for selecting the preferred consultant must be documented and records retained for three years after the project is closed in accordance with 2 CFR 200, 333-337.
- b. In the event any litigation, claim, negotiation, audit, or other action involving these records has commenced prior to expiration of three years, the records must be retained until all issues are resolved.
- c. For contracts where formal interviews are conducted, the selection committee's final composite rating and recommendation(s) resulting from those interviews should be retained for the duration of the contract.

5. Selection notification

- a. Firms are notified of selections for solicited projects via the WisDOT Internet site:  
<https://wisconsin.gov/Pages/doing-bus/eng-consultants/selections/default.aspx>
- b. The preferred, or first ranked, consultant will be invited by WisDOT to formally discuss the required services. The invitation may include a brief outline of the scope of the project, its schedule, and a request for a written response.
- c. If the invitation is declined, the second ranked consultant should be notified in the same manner.

## FDM 8-5-2 Length of Contracts

March 16, 2018

### 2.1 Project Contracts

The contract completion date for most consultant contracts is determined by the overall project schedule in conjunction with the time it reasonably takes to complete the deliverables required under the contract. Contracts for design engineering, construction engineering and planning studies are examples that fit within this category of "project contracts."

Two design services contracts will be required for projects expected to require an EIS or EA and may also be required for some complex and/or high cost projects for which an EIS or EA is not required. If two design services contracts are required, each would be considered a "project contract".

### 2.2 Period Contracts

Some contracts require services to be provided or available for a fixed period of time. Program management, traffic operations, staffing contracts, and master contracts fit within the category of "period contracts."

### 2.3 Length of Contracts

The contract period for "project contracts" is defined by the project schedule and scope of services.

The contract period for "period contracts" should be consistent with guidelines for contract periods published by the Department of Administration (DOA) in the State Procurement Manual section PRO-E-10, Length of Contracts. Period contracts should not exceed a total of three years of contracts including permitted contract extensions and renewals. Often the period contracts are renegotiated and renewed on an annual basis. Period contracts from the same solicitation should not overlap.

Exceptions to the three-year guideline may be made when there is significant investment required by either the State or the consultant and the requirements of the DOA PRO-E-10 are met. Period contracts exceeding three years must be approved by the Administrator of the Division of Transportation Investment Management prior to advertising or soliciting interest for the contract.

Specialty master contracts are subject to the three-year maximum for period contracts noted above. Full service design master contracts shall not exceed 2 years. Full service construction engineering master contract should cover a single construction season.

## 2.4 Contract Extensions

Contract extensions may be granted to consultants on “project contracts” for delays not attributable to the consultant. Contract extensions should be granted in the form of an amendment and approved in accordance with guidelines published in [FDM 8-25-15](#), Contract Amendments.

Additional contracts may be granted on “period contracts” only when potential contract renewals were disclosed in the solicitation of interest or other advertisement for the contract. Renewals of period contracts should be contracted through a new contract, not an amendment. All period contract amendments must be signed and approved by the WisDOT Contracts Manager. This includes time only or no cost amendments. The total contract period including renewals shall not exceed 3 years unless the contract meets the requirements for longer contract periods established in DOA PRO-E-10. Renewals of contract periods for “period contracts” can only be approved if the Department has completed an interim performance evaluation of the consultant.

Amendments extending a master contract period up to six months may be requested only in special circumstances and must be approved by the WisDOT Contract Manager.

## 2.5 Administrator’s Approval for Exceptions

Extensions of period contracts periods may be requested in extraordinary circumstances. A justification must be prepared and submitted to the Contract Manager who will submit it to the Administrator of the Division of Transportation Investment Management for approval.

### FDM 8-5-3 Conflict of Interest

July 13, 2018

## 3.1 Conflicts of Interest for WisDOT Employees

Due to the relatively subjective nature of the consultant selection and negotiation process, Department employees responsible for any phase of consultant contract administration must take special care to avoid conflicts of interest and the appearance of conflict of interest. WisDOT employees are prohibited from accepting anything of value from consultants including meals, tickets, imprinted clothing and gifts. In consideration of these rules, consultants should not offer anything of value to WisDOT employees.

Travel and transportation expenses of WisDOT employees should normally be paid through WisDOT travel expense processes and should not be reimbursed through consultant contracts. In those cases where travel and transportation expenses of WisDOT employees are paid by a consultant and recovered from the Department as part of the consultant contract, expenses incurred by the consultant shall not exceed those expenses which would have been allowed had the travel expense been paid directly by WisDOT.

A WisDOT employee may not transact business with any entity with which either the employee or a family member has a personal and private interest. Examples of personal and private interest in HR 103, Code of Ethics include situations where the employee/family member is an officer, director or has a significant ownership interest in an entity. An employee’s family member employed by a consultant may also represent a personal and private interest when the family member’s compensation is based, in part, on activities associated with obtaining contract work with WisDOT or in the performance of any work under a contract with WisDOT. A conflict of interest may also exist when a family member’s continuation of employment is directly related to the firm’s success in receiving WisDOT contracts.

## 3.2 Employment of Current or Former WisDOT Employees by Consultants

WisDOT does not restrict the right of its employees to seek external employment, including with entities that routinely transact business with the Department. WisDOT has policies in place to assist employees in ensuring there are no conflicts of interest when seeking external employment. These conflict of interest policies ensure that such activities take place in an environment that does not bring into question the ethics of the Department, its employees and its business partners. WisDOT’s Employee Handbook defines internal staff expectations regarding conflicts of interest and external employment.

A permanent or limited term employee will remain on WisDOT’s payroll (in pay status) until all accrued leave time is exhausted or paid out. Depending on the option selected, the employee may still be on payroll beyond the last day physically on-the-job. Consultants are not prohibited from discussing and offering employment while the employee is on WisDOT’s payroll including while exhausting their accrued leave time (no longer physically working).

The consultant’s response to WisDOT’s notice of interest, request for qualifications or proposals, or other

procurement activities (including interviews) shall not name or otherwise refer to a permanent or limited term employee currently on WisDOT's payroll. Compliance with this policy is required commencing at submittal of the consultant responses and continuing through interviews (if held) and posting of selections.

Consultants will be eliminated from consideration for selections where the consultant violates this policy. If the consultant's inclusion occurs before the contract/work order is executed, the consultant's selection will be rescinded.

For the annual Construction Fair solicitation, the exclusion from projects for a consultant failing to adhere to this policy includes the initial selection posted in the fall for any region(s) where the WisDOT employee was working for both prime or sub-consultant participation. The consultant would be eligible to offer that employee for addenda selections as prime or sub-consultant, provided the permanent or limited term employee is no longer on WisDOT's payroll at the time of being considered for selection.

Standard contract provisions relating to conflict of interest prohibit consultants from performing contract work using persons employed by WisDOT on or after the date the contract was signed. WisDOT may approve exceptions to this provision, on a case-by-case basis, if WisDOT determines that the employee had no involvement or oversight in the selection, negotiation, or administration of the subject contract while working for WisDOT.

- Project contracts - this provision applies to all solicited work but does not carry through to follow-on activities (such as from design to construction).
- Period/Phased contracts - this provision applies to all solicited work spanning multiple agreements (such as Years 1, 2, and 3).
- Master contracts - this provision applies to all work orders.

Questions regarding this section should be directed to the Statewide Consultant Engineer.

### **3.3 Conflict of Interest Relating to WisDOT's Use of Consultants**

Unfair competitive advantage occurs when a consultant firm is hired to develop detail tasks of work and detail cost estimates for work that will be advertised to consultants in a future competitive solicitation. If WisDOT hires a consultant to develop the detailed hour and costs estimates for a project, the initial solicitation for this work shall contain a clear provision to the effect that award of this work will preclude the consultant referenced above from competing for the work for which the detailed cost estimate is prepared.

There is a special regulatory requirement imposed by 40 CFR 1506.5 on a consultant who develops an environmental impact statement (EIS). For these services, WisDOT has developed a special provision to be added to the appropriate two- or three-party design boilerplates that require the consultant to disclose or certify that the firm has no financial or other interests in the execution or outcome of the proposed project. This certification is intended to avoid situations where a consultant is hired to study alternatives and potential environmental impacts of proposed projects when the consultant has an interest in the outcome of the consultant's findings. This does not preclude the EIS consultant from competing for other work on the project as long as there is no conflict of interest. Federal law allows states to utilize a single selection process for a project that includes an EIS and subsequent design engineering work if the state conducts a review that assesses the objectivity of the environmental assessment, environmental analysis, or environmental impact statement prior to its submission to FHWA.

### **3.4 Conflict of Interest for Consultants**

All engineering estimates are considered confidential and shall not be provided to parties other than the DEPARTMENT before, during, or after the letting.

Regulations governing the conduct of architectural/engineering firms require consultants to avoid conflicts of interest. WisDOT contract provisions also require the consultant to warrant that it has no conflicts of interest. Potential conflicts of interest for WisDOT consultants include:

1. Consultant firms affiliated with contractors through common ownership may not oversee the work of affiliated contractors under construction engineering contracts. However, it may be permissible for a consultant to work on a project when the Department supplies project engineer and the affiliated contractor is a subcontractor as long as staffing can be managed by the Department to ensure that the consultant is not overseeing/testing/inspecting work done by the affiliated contractor.
2. Consultants may not perform services for contractors on projects for which they prepared the plan, specifications and estimate.
3. It is not permissible, without prior written approval from Statewide Consultant Engineer, for a consultant to work for both WisDOT and a construction contractor on the same project. Consultants



may not perform staking for contractors when under contract with WisDOT to perform construction-engineering services. [Attachment 3.1](#) shows limited opportunity for consultants to perform testing services for contractors when under contract with WisDOT.

4. Consultants hired to manage local programs and or administer contracts of other consultants may be restricted from competing for certain contracts relating to the programs they manage. Special contract provisions may also be required to maintain confidentiality of certain scheduling and cost information.
5. Consultants under retainer to act as the municipal engineer may not compete for DOT related contracts that impact the municipality. See [FDM 8-5-55](#) for additional conflict of interest rules pertaining to consultants in management roles.
6. Consultants may have contracts with other clients (e.g. utility companies, other units of government and abutting land owners) whose interests may conflict with the objectives of a particular WisDOT project. It is the consultant's responsibility to avoid conflicts of interest and disclose conflicts to WisDOT as soon as they arise.
7. Consultants hired to manage or inspect the work of a contractor may have other contractual relationships with contractors that are independent of the WisDOT contract. While these relationships are not automatically assumed to represent a conflict of interest by WisDOT, the consultant needs to ensure that relationships with WisDOT contractors in no way impair the consultant's ability to fulfill its responsibilities under WisDOT contracts.
8. It is not permissible for a consultant to prepare an independent engineering study of a local bridge (per Trans 213) and then to perform design activities on the project.
9. On Local Program projects, it is permissible for a consultant to prepare grant applications under a separate contract funded by the municipality and be eligible to compete for the design work on any or all projects for which the same consultant prepared the grant application(s) through the Qualifications Based Selection (QBS) process. A municipality shall either:
  - a. use a one-step QBS process with the scope of work to include the grant application and the design services, if authorized; or
  - b. use a two-step QBS process with the scope of work for the first selection for the preparation of the grant application(s) and the second selection for the actual design(s).

In both cases, all costs incurred prior to WisDOT project authorization are the responsibility of the municipality.
10. It is permissible for a consultant to perform structure inspection and compete for structure design work on bridge replacement or bridge rehabilitation projects.

## **LIST OF ATTACHMENTS**

[Attachment 3.1](#) Testing Service Allowed to be Performed by Consultant

## **FDM 8-5-5 Sole Source Contracting**

*November 15, 2019*

Sole source procedures are used when circumstances justify a waiver to the competitive selection process. One or more of the following criteria must be met:

- Uniqueness: When a service can be established as not available from more than one consultant.
- Emergency: When risk of human suffering or substantial property damage requires immediate action.
- Inadequate Response: After solicitation, competition is determined inadequate.

### **5.1 Approval**

Prior to initiating a sole source request, the DTSD Consultant Services and Project Management Section Chief must be notified at: [DOTConsultantServicesApproval@dot.wi.gov](mailto:DOTConsultantServicesApproval@dot.wi.gov).

The process for selection approval depends on the origin of the contract:

- DTSD Regions/Bureaus - Selections must be submitted through Masterworks for review and approval by DTSD Management and the DTSD Consultant Services and Project Management Section Chief.
- DTIM Bureaus - Selections must be submitted through Masterworks for review and approval by DTIM Management and the DTSD Consultant Services and Project Management Section Chief.
- Municipalities - Selection approval process is defined in [FDM 8-5-20](#). The [DT1515](#) form must be completed

by the municipal representative and forwarded by the WisDOT Region Consultant Unit to [DOTConsultantServicesApproval@dot.wi.gov](mailto:DOTConsultantServicesApproval@dot.wi.gov).

If federal funds will be used on the contract, FHWA must also approve the use of the sole source selection process prior to the selection of a consultant.

## 5.2 Negotiation

Contracts are negotiated in accordance with [FDM 8-10-1](#).

## 5.3 Amendments

Prior to initiating amendment negotiations, the DTSD Consultant Services and Project Management Section Chief must be notified at: [DOTConsultantServicesApproval@dot.wi.gov](mailto:DOTConsultantServicesApproval@dot.wi.gov). Contracts are amended in accordance with [FDM 8-25-15](#).

## 5.4 Documentation/Contract Approval Process

The contract approval process as well as the originator's obligation to maintain consultant selection supporting documentation are the same as for other engineering services and must be in accordance with [FDM 8-5-1](#) and [FDM 8-20-1](#). All contracts greater than or equal to \$3,000 require the completion of the [DT25](#).

## FDM 8-5-10 Small Purchase Contracting

November 15, 2019

Small purchase procedures are for consultant services estimated to cost less than \$200,000. Examples include design, construction, surveying, photogrammetry, geotechnical and mapping. If municipalities are performing services, WisDOT's contract specialist emails the project ID to [DOTConsultantServicesApproval@dot.wi.gov](mailto:DOTConsultantServicesApproval@dot.wi.gov) so it is added to CARS for tracking purposes. The [DT1515](#) form must be filled out by the municipal representative and forwarded by the WisDOT Region Consultant Unit to [DOTConsultantServicesApproval@dot.wi.gov](mailto:DOTConsultantServicesApproval@dot.wi.gov).

There are no solicitation/small purchase requirements for intergovernmental agreements. WisDOT may contract with municipalities and regional planning organizations without conducting a competitive process.

### 10.1 Solicitation of Consultants

Small purchase contracts may be originated by DTSD Regions/Bureaus, DTIM Bureaus, or local governments.

The originator will:

1. Identify the scope of the project.
2. Develop a list of criteria to be used in ranking responses.
3. Contact a minimum of three consultants.
4. All communication with consultants must be documented and maintained by the originator.
5. Rank and select consultants based on established criteria. Bidding is not allowed.
6. If the originator and the DTSD Consultant Services and Project Management Section Chief concur that only one consultant is qualified, refer to the sole source procedure. See [FDM 8-5-5](#).

### 10.2 Approval

The process for selection approval depends on the origin of the contract.

- DTSD Regions/Bureaus - Selections must be submitted through Masterworks for review and approval by DTSD Management and the DTSD Consultant Services and Project Management Section Chief.
- DTIM Bureaus - Selections must be submitted through Masterworks for review and approval by DTIM Management and the DTSD Consultant Services and Project Management Section Chief.
- Municipalities - Selection approval process is defined in [FDM 8-5-20](#). The [DT1515](#) form must be completed by the municipal representative and forwarded by the WisDOT Region Consultant Unit to [DOTConsultantServicesApproval@dot.wi.gov](mailto:DOTConsultantServicesApproval@dot.wi.gov).

### 10.3 Negotiation

Contracts are negotiated in accordance with [FDM 8-10-1](#).

### 10.4 Maximum

The maximum initial contract may not exceed \$200,000. Contracts exceeding this maximum must be solicited

as defined in [FDM 8-5-1](#).

### 10.5 Amendments

Contracts are amended in accordance with [FDM 8-25-15](#). Including amendments, the contract must not exceed \$250,000 including amendments. Small purchase selection must not be used for contracts on projects that may require significant contract amendments. The full amount of any contract amendment that would cause the total contract amount to exceed the federal small purchase threshold of \$250,000 is ineligible for federal aid. In addition, the FHWA reserves the right to withdraw all federal aid from a contract if it is modified or amended above the federal threshold. Developing a second contract to avoid an amendment will not be approved. Prior to executing amendments that will cause a small purchase contract to exceed \$250,000, an explanation and request for determination must be submitted to FHWA through the DTSD Consultant Services and Project Management Section Chief.

### 10.6 Documentation/Contract Approval Process

The contract approval process as well as the originator's obligation to maintain consultant selection supporting documentation for small purchase contracts are the same as for other engineering services and must be in accordance with [FDM 8-5-1](#) and [FDM 8-20-1](#). All contracts greater than or equal to \$3,000 require the completion of the [DT25](#).

## FDM 8-5-15 State Design and Related Services

July 13, 2018

### 15.1 Solicitation

WisDOT conducts bimonthly solicitations to notify consultants of upcoming design or related services engineering service contracts. The advertisements are held on the WisDOT Internet site:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/solicitations/default.aspx>

These solicitations include design and related service master contracts (see [FDM 8-5-30](#)).

Included on this web site is the scope of services narrative/Notice of Interest Questionnaire (NOI) form for each project, a list of the anticipated future solicitation dates, and the normal solicitation procedures for both consultant and WisDOT reference.

In the case of a state design services contract, the scope of services narrative may sometimes include providing (under a separate contract) consulting services to consultant construction project engineers during construction of highway projects (under a concept called the Transparency Effort). The intent is to provide a way of improving construction communications on consultant managed projects so that project engineers can make timely project decisions. See [FDM 8-1-10](#) for more detailed information.

Occasionally WisDOT may publish special solicitations for design and related service contracts on the Internet site above. Consultants will be notified via e-mail of these publications if they have submitted an e-mail address for the web notification publication list or are on the Roster of Eligible Engineering Consultants. See the following website for more information on the notification list:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rgistr/roster.aspx>

DTSD Central Office bureau/region staff prepare the appropriate documents for each solicitation, including the scope of services narrative/NOI for each project, to be reviewed by the Statewide Consultant Engineer, DTIM-Contract Administration Unit (DTIM-CAU) and DBM-Web Support Unit before publication.

Once published, consultants interested in being considered for available projects must submit a completed NOI electronically via ESubmit to WisDOT by the designated deadline date. Instructions on how to complete and submit the NOI are included on the web site listed in the first paragraph of this procedure.

In order to improve medium term planning and assist the consultant industry in anticipating staffing needs WisDOT also publishes a "12 month rolling solicitation" that lists contracts WisDOT anticipates soliciting in the next year. The contracts include state design and related services, master contracts, and construction engineering for major projects. Anticipated solicitations do not include contracts that are solicited as part of the annual Construction Fair. The 12-month rolling solicitation lists anticipated contracts based on current program needs and constraints, is subject to change and revision, and does not guarantee that a specific contract will be solicited in the future.

The 12-month rolling solicitation is updated with each bimonthly solicitation publication and may be found at:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/solicitations/default.aspx>

Region and bureau consultant unit supervisors are responsible for coordinating with the necessary authorities in



his/her region/bureaus to list projects on the 12-month rolling solicitation.

### 15.2 Selection

A diverse selection committee, headed by the Consultant Unit Supervisor and including members of their region/bureau (as well as others, if appropriate), the Statewide Consultant Engineer, Federal Highway Administration, and/or members of the affected communities, develop a short list of at least five qualified consultants (where there are five firms considered qualified for the work) based primarily on a review of consultant NOI written in response to WisDOT's solicitation of interest.

Other factors and/or sources of information for WisDOT staff making selection decisions may include some of the following:

- Roster of Eligible Engineering Consultants
- Consultant Report (Form [DT1538](#))
- Consultant performance evaluations
- Consultant workload and contract award analysis
- WisDOT Disadvantaged Business Enterprise goals
- Other relevant information as appropriate. This may include survey questionnaires, Requests for Proposal (RFP) (see [FDM 8-5-40](#)), direct inquiries regarding staff availability and experience, interest, policies, and qualifications. Contacts with former clients or other reference checks can also be made. The following information may be collected, especially if the information is not clearly shown in the firm's NOI for the particular project:
  - General
    - Professional registration of the firm and staff
    - General experience and professional expertise
    - Education of pertinent staff
    - Staff size, availability, current workloads
    - Familiarity with WisDOT requirements
    - Proximity of office to project location
  - Specific Relevant Experience With
    - Public involvement
    - Environmental Assessment and Analysis
    - Right-of-way plat preparation
    - Rural, urban, and structure design
    - Soils analysis and materials testing
    - Utility and/or railroad coordination
  - Other
    - Knowledge of project and experience with similar projects
    - Anticipated scheduling of work activities
    - Probable staff assignments
    - Previous performance - quality and timeliness
    - Capacity to handle additional work

### 15.3 Interviews

Design contracts estimated at \$1,300,000 or more require all consultants on the short list to be interviewed prior to ranking. The short list of three firms must be approved by the Statewide Consultant Engineer prior to setting up the interviews.

A diverse selection committee recommends three firms capable of performing the contract because of the interviews. The committee is headed by the Consultant Unit Supervisor and includes members of their region/bureau, the Statewide Consultant Engineer. In addition, representatives from Federal Highway Administration, and/or members of the affected communities may be included with approval from the DTSD Statewide Consultant Engineer prior to setting up the interviews.

Each region/bureau management team reviews the selection committee's list of three firms and ranks them according to many of the same criteria noted above.

There is no uniform style, length or location for design consultant interviews, but the format must be consistent

for each firm. Interviews are allowed, but not required, for contracts estimated to be less than \$1,300,000.

#### **15.4 Selection Approval**

For design/related services contracts part of bimonthly solicitations, DTSD region/bureau staff meet to reach consensus on recommended ranked short list for each project in the solicitation. Those recommendations are then submitted to the Statewide Consultant Engineer by the deadline date.

Region Consultant Unit Supervisors review the bimonthly solicitation selections with the Statewide Consultant Engineer. Modifications may be made if region recommendations interfere with Department selection goals. The Statewide Consultant Engineer reviews the final recommendations coming from this group and approves them if no additional modifications are necessary.

For those solicitations originating from DTIM, the Division of Transportation Investment Management (DTIM) management team submits its recommended short lists to the WisDOT Contract Manager. The DTIM Administrator approves those selections.

The approved selection only covers the scope included in the original solicitation for the project. For example, work resulting in a completed final design cannot be included within a contract solicited as preliminary design engineering.

[Attachment 15.1](#) provides a flow chart of the selection process.

#### **15.5 Documentation**

The selection process, ranking of consultants, names of selection committee members including the chairperson and reason(s) for selecting the preferred consultant must be documented and records retained. In the event any litigation, claim, negotiation, audit, or other action involving these records has commenced prior to expiration of three years, the records must be retained until all issues are resolved.

For contracts estimated at \$1,000,000 or more, the selection committee's final composite rating and recommendations resulting from interviews should be retained for the duration of the contract.

#### **15.6 Contract Approval**

Design contracts estimated at \$3,000 or more must follow the approval procedures as published in [FDM 8-20-1](#).

The Transportation Region/Bureau Director or designee approves contracts estimated at less than \$3,000 after the consultant has signed them.

#### **15.7 Contract Amendments**

Amendments to design contracts are allowed. The total increase to the contract due to the amendment cannot exceed the original amount of the contract. Refer to [FDM 8-25-15](#) "Contract Amendments" for additional information.

#### **15.8 Web Resources**

WisDOT staff can view the Consultant Services webpage for more information on internal contracting processes.

### **LIST OF ATTACHMENTS**

[Attachment 15.1](#) Consultant Contracting Process for Consultants

### **FDM 8-5-20 Local Design**

May 18, 2020

When using federal-aid highway funds in consultant service contracts, local units of government must comply with procedures set forth by WisDOT and FHWA for selection and approval processes as defined in this chapter and 23 CFR 172. WisDOT is responsible for ensuring compliance with the procedures outlined in this procedure and will provide assistance if requested.

Two design services contracts will be required for projects expected to require an EIS or EA and may also be required for some complex and/or high cost projects for which an EIS or EA is not required. If two design services contracts are required, funds for the second contract will not be obligated / authorized until after the environmental document (from the first contract) is approved.

Another contract sometimes needed is to have the design consulting firm provide consulting services to consultant construction project engineers during construction of highway projects (under a concept called the

Transparency Effort). The intent is to provide a way of improving construction communications on consultant managed projects so that project engineers can make timely project decisions. See [FDM 8-1-10](#) for more detailed information.

There are local program contacts in each region across the state. Local program management consultants are also available as resources for local governments.

### **20.1 Cost Estimate**

The local unit of government prepares an engineering cost estimate for the project to be performed. Upon request, the WisDOT region office where the project is located will prepare or review the engineering cost estimate.

### **20.2 Solicitation**

The municipality must announce general interest in performing engineering services funded by federal aid to a roster of eligible consultants. Solicitation options include the use of:

- WisDOT Roster of Eligible Engineering Consultants
  - The roster is located on the WisDOT Internet website at <https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rgistr/roster.aspx>
  - Using this option requires solicitation of all firms on the eligible roster, not just a subset based on geographic area or other factors.
- WisDOT Internet web site
  - Bimonthly solicitations are located at <https://wisconsindot.gov/Pages/doing-bus/eng-consultants/solicitations/default.aspx>
  - Municipalities choosing this medium should contact the appropriate region local program contact or consultant local program manager, as they will provide details on information needed and format used to publish on the web site.
- Newspaper advertisement - The solicitation may occur in an established local or state newspaper.
- Local Internet web site - If a municipality has an Internet web site, it may be used.
- Send a solicitation notice to ALL firms that are part of an established roster maintained by the municipality.
  - This roster must contain a minimum of 10 firms, must include all interested and qualified firms, and may not exclude firms based on geographic area.
  - The municipality must send solicitation notices to all firms on the established roster. Example: If the established roster constitutes 25 firms, a notice must be sent to all 25 firms.
  - A copy of the roster used must be documented in the project file.
- Sole Source - See [FDM 8-5-5](#) for more information.
- Small Purchase FDM - See [FDM 8-5-10](#).

### **20.3 Consultant Selection Committee**

The municipality shall establish a consultant selection committee comprised of at least two voting members and a chairperson (e.g. Town Board, Highway Committee or the Public Works Committee.) This committee is responsible for evaluating NOI, interviews, and other information and developing a short list of a minimum of five eligible consulting firms (if five firms are judged to be qualified) based on the firm's responses to objective criteria developed as it relates to the solicited project. Examples of objective criteria include staff availability, staff qualifications and similar work experience.

### **20.4 Selection**

To select a firm for a contract with estimated costs of \$1,000,000 or more, the selection committee is required to conduct interviews with the short list of at least five eligible firms (where possible). This short list must be approved by the DTSD Statewide Consultant Engineer prior to the interviews being scheduled.

These interviews are normally 45 - 60 minutes in length depending on the complexity of the project. Consultants should be given sufficient advance notice (two weeks or more) to prepare for the interview. The interview questions are objective in nature and the same questions are asked of all the potential candidates.

Selection of the preferred consultant at the interviews will be performed by a committee consisting of local representatives, WisDOT region local program contact (not consultant local program manager), and possibly the Statewide Consultant Engineer.

The selection committee must then rank the five or more (where possible) firms in order of preference based on evaluations of the interviews and submitted Notice of Interest forms, if applicable. [Attachment 20.1](#) is a sample consultant interview rating sheet. The selection committee should then notify all consultants in writing of the selection of the preferred consultant.

Interviews are not required to select a consultant for contracts estimated to be less than \$1,000,000. However, if the selection committee is unfamiliar with the potential firms they may elect to conduct interviews to collect additional information prior to ranking. If interviews are not warranted, the selection committee continues to rank firms in order of preference and then notifies all consultants in writing of the selection of the preferred consultant.

Price proposals may not be solicited or obtained prior to consultant selection on federally-funded engineering contracts. Doing so violates the Brooks Act which states consideration of price within the selection process is not in the public's best interest. Selection is based on qualification criteria, not by taking bids.

## 20.5 Selection Approval

Effective July 1, 2014, the fixed fee for local design contracts will no longer be negotiated with the consultant. As further discussed in [FDM 8-10-10](#), the Statewide Consultant Engineer will determine the fixed fee for these contracts as part of the selection approval process.

- **For contracts less than \$50,000** - Municipalities must submit their choice of the selected consultant to the WisDOT consultant unit supervisor (not consultant local program manager) within their geographic region for review and approval. The region's consultant unit supervisor will then determine the fixed fee for these contracts as part of their approval. Form DT1515 may be used for contracts less than \$50,000, and the consultant unit supervisor will sign this form on behalf of the Statewide Consultant Engineer. The region office will send a copy of the completed approval to the Statewide Consultant Engineer.
- **For contracts of \$50,000 or more** - Municipalities must submit their choice of the selected consultant, using the Local Design Selection Approval Checklist ([DT1515](#)).

The region office will then electronically submit the completed form to the Statewide Consultant Engineer for review, approval, and assignment of the fixed fee via the consultant services approval mailbox: [DOTConsultantServicesApproval@dot.wi.gov](mailto:DOTConsultantServicesApproval@dot.wi.gov). WisDOT region offices will notify municipalities upon approval.

## 20.6 Documentation

The selection process, ranking of consultants, reason(s) for selecting the preferred consultant and identification of the consultant selection committee members including the chairman must be documented and records retained for three years from the completion of the project in accordance with 23CFR172 and then become part of the municipality's permanent project file. Failure to have this documentation will jeopardize federal funding for these projects. Attachments 1, 3, and 4 are examples of consultant selection documentation letters and consultant interview rating sheet.

## 20.7 Contract Negotiations

WisDOT region local program contact or the consultant local program manager are resources for local governments but are not required to be part of the negotiations.

Negotiations for contracts over \$1,000,000 should include the WisDOT region local program contact and Statewide Consultant Engineer (unless waived).

Contract negotiation procedures are explained in [FDM 8-10-5](#). Depending on project complexity, and the receptiveness of WisDOT and the consultant, negotiations should be substantially completed in one or two meetings. If agreement does not seem imminent, the municipality is required to contact the region office; they will in turn contact the Statewide Consultant Engineer for permission to terminate the negotiations in writing.

The municipality, upon approval, can then invite the second ranked consultant to negotiate a contract. Negotiations with a consultant may not be re-opened after termination.

## 20.8 Contract Approvals

Contracts less than \$3,000 require the signature of the municipality, the department representative, and the consultant. Region Directors are delegated authority to sign contracts at this level. Contracts of \$3,000 or more require the approval of the Governor's Office. Contracts may not be executed prior to this approval.

Upon contract approval from the Governor's Office, the contract will be executed, and the municipality may

issue a Start Notice to the consultant.

### 20.9 Contract Amendments

Amending the contract for local units of government is the same as other design engineering services contracts and must be approved and processed in accordance with [FDM 8-20-1](#) and [FDM 8-25-15](#).

Amendments less than \$50,000 require the approval of the DTSD Statewide Consultant Engineer, the consultant and the municipality. Those of \$50,000 or more must be approved by the municipality, the consultant and the WisDOT Contract Manager.

Work or services under a contract amendment shall not proceed until the amendment is signed by all required parties.

### 20.10 Potential Conflicts of Interest

Consultants hired to manage local programs on behalf of the department shall not contract with any unit of local government within the region they are managing to work on transportation engineering projects with state or federal funding. Fully local-funded work is not considered is this restriction.

See [FDM 8-5-55](#) for more guidance on the role of consultants in managing programs for local governments and examples of situations that are considered conflicts of interest.

### 20.11 Contract Boilerplates

Boilerplates to be used for local design contracts are in Section 15 of this chapter.

### 20.12 Progress Report/Performance Evaluation

A monthly progress report, [FDM 8-25 Attachment 1.1](#) must accompany the invoice submitted to the department.

The department, with input from the municipality, prepares a Performance Evaluation Report per [FDM 8-25 Attachment 5.1](#) upon completion of the project. The department will provide a copy of the evaluation to the municipality.

### LIST OF ATTACHMENTS

<a href="#">Attachment 20.1</a>	Consultant Interview Rating Sheet
<a href="#">Attachment 20.2</a>	Sample Selection Letter
<a href="#">Attachment 20.3</a>	Sample Non-Selection Letter

## FDM 8-5-25 Construction Engineering

July 23, 2015

### 25.1 Solicitation

General interest in performing construction engineering services for WisDOT is solicited from consultants who are included on WisDOT's Roster of Eligible Engineering Consultants (see [FDM 8-5-45](#)). Only firms on the roster are eligible for construction engineering contracts. Firms awarded preliminary or final design engineering contracts are eligible to pursue construction engineering services for that same project under one (or both) of the following conditions;

- a separate firm is under contract to lead the Construction Engineering effort for that project, who did not have a contract associated with the preliminary or final design of the project (either solely or as part of a joint venture).
- WisDOT employees are leading the construction engineering effort in the field, and design firm staff only provide support for the construction engineering effort.

This policy does not apply to Non-traditional transportation projects covered under the Sponsor's Guide to Non-Traditional Transportation Project Implementation.

Each fall, WisDOT advertises construction projects for the following construction season on the WisDOT Internet web site:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/solicitations/prev.aspx>

Included there is a set of scope of services narratives for each region's projects and the normal solicitation procedures for both consultant and WisDOT reference.

DTSD region staff prepare the appropriate documents for each construction package, while local program managers assemble local construction package information. The Statewide Consultant Engineer, DTIM-



Contract Administration Unit (DTIM-CAU) and DBM-Web Support Unit review these documents (due one month prior to the solicitation) before publication.

Once published, consultants interested in being considered for available projects must submit a completed Notice of Interest Questionnaire form (NOI) to WisDOT by the designated deadline date. Instructions on how to complete and submit the NOI are included on the web site.

## 25.2 Interviews

Construction engineering interviews are held each fall at a forum called the Construction Fair, which typically takes place at a centralized location in the state. Consultants are given a set period of time to present their qualifications and expertise to WisDOT staff. A question-and-answer period follows their presentation.

For the Construction Fair, consultants will not be given the opportunity to interview twice. Therefore, if a consulting firm is considering pursuit of select construction engineering projects through a joint venture; that consulting firm must choose between participating in an interview as a joint venture or interviewing solely as a stand-alone firm with the primary intent being to represent that firm in the interview. Joint Venture qualifications can be presented by a consultant at their individual interview.

## 25.3 Selection Approval

A region selection committee, led by the Consultant Unit Supervisor, makes recommendations for consultant selections based on:

- Consultant responses to Construction Notification of Interest Questionnaire
- Firm performed preliminary or final design engineering work on the project (normally not eligible to compete for construction engineering contract)
- Annual construction interviews
- Roster of Eligible Engineering Consultants
- Construction Consultant Performance Evaluations
- Consultant workload and contract award analysis
- WisDOT Disadvantaged Business Enterprise goals
- Other relevant information as appropriate. This may include survey questionnaires, Requests for Proposal (RFP) (see [FDM 8-5-40](#)), direct inquiries regarding staff availability and experience, interest, policies, and qualifications. Contacts with former clients or other reference checks can also be made. The following information may be collected, especially if the information is not clearly shown in the firm's NOI for the particular project:
  - General
    - Professional registration of the firm and staff
    - General experience and professional expertise
    - Education of pertinent staff
    - Staff size, availability, current workloads
    - Familiarity with WisDOT requirements
    - Proximity of office to project location
  - Specific Relevant Experience With
    - Traffic control planning
    - Surveying
    - Construction management
  - Other
    - Knowledge of project and experience with similar projects
    - Anticipated scheduling of work activities
    - Probable staff assignments
    - Previous performance - quality and timeliness
    - Capacity to handle additional work

Firms prioritize their projects on their NOI, but regions may select firms for a project not listed on their submittal in order to maximize consultant industry resources.

The region selection committee then submits their recommendations to the Statewide Consultant Engineer. The region Consultant Unit Supervisors, DTSD Local Program/Consultant Section Chief, and Statewide Consultant

Engineer review the recommended firms' current WisDOT workload and examine how key consultant staff are distributed to projects around the state. See [Attachment 25.1](#) for selection approval process.

The consultant services engineer will create a statewide list of available project engineers based on firm NOI submittals and input from the region consultant unit supervisors. The list will include the project engineers identified on firm NOI submittals and the qualifications of each project engineer will be determined by region staff. When a project engineer is selected the project package and ID number and will be documented on the list.

When the selected project engineer of a previously advertised project becomes unavailable the second ranked individual will be chosen. If the second ranked individual is also unavailable the third ranked individual will be chosen. If both the second and third ranked individuals are unavailable the region consultant supervisor and WisDOT project manager will select a new project engineer from the statewide list of available project engineers based on project engineer availability and qualifications. New selections must be approved by the Statewide Consultant Engineer.

Volatility in the construction program may change the makeup and number of improvement projects needing consultant staff. The Statewide Consultant Engineer approves any selections for construction contracts outside of the original list of projects used in the annual interview process. Regions must submit a consultant selection approval request to the Statewide Consultant Engineer for these contracts.

Firms interviewing with the region needing construction engineering services may be selected for new projects without advertisement. Regions must solicit for interest on the new contracts if they do not wish to select a firm that interviewed with their staff during the annual process.

#### **25.4 “Turn-Key” Engineering**

WisDOT does not normally advertise contracts to hire a firm to complete both the design and construction engineering on a highway improvement project. This practice is not prohibited as long as the initial advertisement clearly defines the work to be completed on the consultant contract. The WisDOT Contract Manager must approve the use of “turn-key” engineering on a contract prior to advertising.

The selection criteria used to award this type of contract must consider a firm's ability to provide both types of engineering services.

#### **25.5 Documentation**

The selection process, ranking of consultants, selection committee members, chairman and reason(s) for selecting the preferred consultant must be documented and records retained. In the event any litigation, claim, negotiation, audit, or other action involving these records has commenced prior to expiration of three years, the records must be retained until all issues are resolved.

#### **25.6 Contract Approval**

Construction contracts estimated at \$3,000 or more must follow the approval procedures as published in [FDM 8-20-1](#).

The Transportation Region/Bureau Director or designee approves contracts estimated at less than \$3,000 after the consultant has signed them.

#### **25.7 Contract Amendments**

Amendments to construction contracts are allowed. Refer to [FDM 8-20-1](#) under “Contract Amendments” for additional information.

#### **25.8 Web Resources**

WisDOT staff can view the Consultant Services web page for more information on internal contracting processes.

### **LIST OF ATTACHMENTS**

[Attachment 25.1](#) WisDOT Construction Engineering Services Selection Process

### **FDM 8-5-30 Master Contracts**

*August 16, 2022*

Master contracts are agreements between WisDOT and consultants to provide specified engineering and related services during a given period of time (see [FDM 8-5-2](#)). This method of procuring consultant services is authorized under Wisconsin Statutes s. 84.01(13).

Master contracts are not encumbered upon signature like other consultant contracts. Payments to consultants do not occur until a project-specific agreement, called a work order, is executed. Work orders are similar to other consultant contracts in many respects. See the “Negotiation and Pricing” section of this procedure and [FDM 8-20-1](#) for information on the negotiation, submittal and approval of work orders.

There is a maximum amount of work associated with each master contract but no guarantee of a minimum amount of work. For example, receiving a \$500,000 master contract does not necessarily mean the consultant will receive \$500,000 in work order over the length of the contract. WisDOT reserves the right to use master contracts as little or as much as possible, depending upon the needs of the Department.

**30.1 Full Service Masters**

Full service engineering master contracts may include all of the services or an individual service, which could normally be included within the scope of a normal contract for design or construction engineering. Because many of the firms which provide construction engineering services have limited capacity for design work and vice versa, work for construction engineering and design engineering are separated into different master contracts.

Work orders may be issued to perform full scope design or construction engineering services on a project or just a small task or subpart of the work on the project. To the extent that firms with full service contracts are qualified, work orders may be issued for design or construction related specialties.

Work to be performed under full service engineering contracts may not be done on a three-party basis and is limited to work on state highways.

Regions and statewide bureaus are responsible for monitoring full service master contract usage to ensure work orders are not issued in excess of the designated amount of the master contract group. The Contract Administration Unit will account for work orders issued under master contracts and make reports available to WisDOT staff showing master contract usage and balances.

**30.2 Statewide Specialty Master Contracts**

Statewide specialty master contracts are used for those activities managed by DTSD statewide bureaus such as photogrammetry, hazardous materials remediation, and landscape architecture.

Contracts may also be managed on a statewide basis because it is more efficient for some specialties, such as landscape architecture, for which there may be little work in any one region.

DTSD Central Office bureaus manage their master contracts and coordinate the issuance of work orders for improvement projects otherwise managed by region offices. To maintain department-wide control over some types of work, master contracts for specialties such as photogrammetry, and hazardous material.

**30.3 Master contract work types**

Types of work typically performed under master contracts include:

Type of Work	State Wide Specialty	Full Service Design	Full Service Construction
<b>Business Opportunity &amp; Equity</b>			
Technical Assistance	X		
One on One Mobilization	X		
Legal Assistance	X		
Outreach and Marketing Services	X		
<b>Structures</b>			
Bridge Deck Surveys	X		
Shop Inspection of Structural Steel	X		X
Structure Plans and Design	X		
Sign Structure Inspection	X		
Underwater Dive Inspection	X	X	X
Complex Structural Analysis, Rating, and Special Evaluation	X		
Bridge Deck Survey	X		

Type of Work	State Wide Specialty	Full Service Design	Full Service Construction
<b>Technical</b>			
Geotech/Pavement Structure Investigation	X	X	
In-Plant Inspection of Pre-Stressed Girders	X		X
Photogrammetric Services	X		
Height Modernization Program – Geodetic Services	X		
Utility Coordination	X	X	X
LiDAR Services	X		
Archeological Investigation	X	X	
Stormwater Engineering	X	X	X
Historic Survey	X	X	X
Survey	X	X	X
<b>Real Estate</b>			
Reasonable Access Studies	X		
Appraisal Services	X		
<b>Traffic Operations</b>			
Freight Operations and Planning	X		
Traffic Engineering Infrastructure Design	X	X	
Traffic Engineering Services	X	X	
Traffic Data Collection	X	X	
Traffic Analysis & Design	X	X	
IT & Electrical System Design	X	X	
Traffic Safety	X		
Traffic Incident Management	X	X	X
<b>Design</b>			
Preliminary Engineering		X	
Roadway Design		X	
Drafting		X	
Right of Way Services		X	
Landscape Architecture	X	X	
Structure Design		X	
Plan Review		X	
Feasibility Studies		X	
Roundabout Design	X	X	
<b>Construction Engineering</b>			
Construction Management			X
Inspection			X
Materials Testing			X
Review Construction Finals			X
<b>Program Management</b>			
Local Program Management	X		

**30.4 Solicitation and Selection**

**30.4.1 Full Service Design and Statewide/Region Specialty Masters**

Solicitation for full service design master contracts is conducted in the spring of even numbered years, as part of a bimonthly design/related services solicitation on the WisDOT web site:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/solicitations/default.aspx>

Statewide and region specialty master contracts are also included in bimonthly design/related services Internet solicitations. They may occur at any time of the year. Consultants interested in being considered for full service or specialty master contracts will complete and return a Notice of Interest Questionnaire, provided at the above web site. See [FDM 8-5-15](#).

Selection of consultants for full service and specialty master contracts will be done in accordance with guidelines for regular design contracts. See [FDM 8-5-15](#).

### **30.4.2 Full Service Construction Engineering**

Full service construction engineering master contracts are advertised annually in the fall, along with all other construction work for the following season. Interested consultants complete and return a Notice of Interest Questionnaire including their preference for master contracts. Qualified consultants are interviewed by WisDOT staff at a central location. The interview list will be published at the WisDOT web site including firm's name, region that wishes to interview, time and location of interview.

Upon selection, regions will notify the Statewide Consultant Engineer for review and approval prior to notifying the selected firm. WisDOT or region staff will then send a letter to each firm they have interviewed, informing them of their selection or non-selection of their services.

### **30.5 Negotiation and Pricing**

Negotiating terms for master contracts are similar to those for other contracts (see [FDM 8-10-1](#)). Items typically negotiated under a master contract include response time, Department and consultant responsibilities, work specifications, elements of work order pricing, consultant staffing classifications and wages, profit, equipment costs and set-up costs.

Pricing of work orders under master contracts should also be consistent with guidelines for pricing other consultant contracts. Work order basis of payment may be lump sum, cost plus fixed fee, specific rate of compensation, or cost per unit of work. Unit prices for "specific rate of compensation" and "cost per unit of work" work orders may be negotiated when the master contract is developed and included within the terms of the special provisions. "Lump sum" and "actual cost plus fixed fee" work orders are negotiated individually and must have fee computations similar to those required for regular contracts. See [FDM 8-10-30](#).

To the extent possible, understandings reached regarding elements of costs to be included in work orders such as fixed fee percentages and direct cost limitations should be included within the master contract.

### **30.6 Master Contract Periods & Limits**

Master contract periods should not exceed two years (without permission from the WisDOT Contract Manager) and may not be more than \$2 million each. With approval of WisDOT DTSD Administrator and WisDOT Contract Manager, an individual Master Contract limit can be no more than \$3 million each. Amendments extending the master contract period up to six months may be requested only in special circumstances and must be approved by the WisDOT Contract Manager.

Work orders issued under master contracts may not exceed the total amount of the original master contract. Unused balances from work orders cannot revert back to the master contract amount available. Canceled work orders may be reversed and added back in if the WisDOT Contract Administration Unit is notified of the work order cancellation.

Amendments to master contracts increasing the master contract amount are subject to approval of the Governor.

Individual work order amounts shall not exceed \$400,000 without prior approval of the Statewide Consultant Engineer.

Work orders may not be executed after the expiration date of the master contract, but the project work included on the work order does not need to be completed before the master contract expiration date.

### **30.7 Master Contract Groups**

In most situations, it is advantageous for WisDOT to enter into master contracts with multiple consultants for the same type of work. By having more than one consultant under master contract for the same type of work, the Department may be able to achieve improved delivery of services provided by consultants. Master contract groups provide project development staff with options when issuing work orders on specific items of work.

Regions must justify their decision to use a single master contract based on the criteria shown below. In order to avoid unnecessary delays, regions and bureaus should seek prior approval of the use of single master contracts from the WisDOT Contract Manager.

While laws and regulations prohibit open price competition on engineering contracts, they do require states to



negotiate a reasonable price. If the government is unable to reach terms on a reasonable price with the number one consultant on a typical contract, it can terminate negotiations with the initially selected firm and attempt to negotiate a fair price with the second-ranked firm on the short list. Awarding a master contract to only one consultant can leave the government at a disadvantage when negotiating the scope and price of individual work orders. While a work order can be negotiated with the consultant under master contract with minimum effort, going to "number two" would require that the contract go through the entire solicitation, selection and approval process.

Master contract groups should be used to award master contracts for similar work to more than one consultant unless one of the following criteria are met:

- The price per deliverable can be clearly negotiated under the master contract and work order pricing will be on a cost-per-unit basis such as surveying, materials testing, etc.
- Contracts where hourly rates can be established in the contract and the department directly controls/monitors the consultant's work on a daily basis such as review of construction finals or inspection staff to work under direction of WisDOT project engineer.
- It is not practical to have more than one consultant under master contract such as in-plant materials inspection or local program management. For these types of contracts, the scope of services and contract pricing is well defined under the master contract. A master contract with work orders provides a more accurate mechanism for matching encumbrance and payments with the proper projects. The alternative to a master contract in many of these situations would be a broadly scoped regular contract providing less control and oversight than a single master contract.
- There are other adequate alternatives to use as leverage when negotiating, such as an interagency agreement with the UW campus or the State Historical Society. When specialty master contracts are used for services that could be performed under a full-service master contract, the full service master contract can serve as the second contract in the specialty group.
- There is only one consultant with the necessary technical expertise available.

**30.8 Master Contract Group Work Order Maximum**

When a master contract group is used, its work order maximum is equal to 80% of the maximum amounts for all master contracts in the group. The group maximum represents the total expenditure authority approved by the governor for all master contracts under the group.

Example:

<i>Department's Master Contracts</i>		<b>Master Contract Maximum</b>	<b>Maximum Work Order Usage per Contract</b>
<b>Group</b>	Master Contract with Firm A	\$1,000,000	\$1,000,000
	Master Contract with Firm B	\$1,000,000	\$1,000,000
	Master Contract with Firm C	\$1,000,000	\$1,000,000
<b>Group Total</b>		<b>\$3,000,000</b>	
<b>Master Contract Group Total Expenditure Authority</b>			<b>\$2,400,000 (80% of \$3M Group Total)</b>

Each master contract within the group may encumber work orders totaling the entire amount of its expenditure authority. The total amount of work orders written against the master contracts, however, can be only 80% of the total authority of the master contract *group* as a whole.

This does not mean that each master contract can use only 80% of its total expenditure authority. Using the example given above, the Department may choose to use all \$1,000,000 of Firm A's master contract. That would mean the Department would be limited to encumbering a total of \$1,400,000 in work orders for Firm B and Firm C's master contracts combined.

This work order limit allows WisDOT to maintain leverage in work order negotiations as individual firms reach their master contract maximum. The situation may arise where one of two firms under master contract with a region reaches their master contract maximum. The other firm under master contract then has leverage over the region when negotiating work orders because the Department may not have other options to complete the work in a timely manner.

### 30.9 Master Contract Group Approval Guidelines

All master contracts within a group should be submitted for approval at the same time. When submitting and administering master contract groups for engineering work, DTSD region and Central Office staff should adhere to the following rules:

- All master contracts with a group should have a unique Master Contract ID. Contact DTSD Consultant Services Section for assignment of Master Contract IDs. DTSD Consultant Services Section assigns Master Contract IDs at selection.
- The work order maximum must be established for the group when it is submitted for approval. The group total may not exceed 80% of the total value of all master contracts included within the group.
- All master contracts within a group will be required to expire on the same date. The element of competition does not exist if some contracts are allowed to expire while others remain open.
- There should be at least two master contracts within a group that have balances adequate to issue a typical work order. If there is only one contract left with a reasonable balance, the use of the group must be discontinued or an amendment to a low balance contract must be requested and approved.
- WisDOT staff will be responsible for ensuring that total work orders encumbered against each master contract and each master contract group do not exceed the set maximums.
- Work orders that exceed the master group limit must be approved by the Contract Manager. Exceptions may be approved by the Contract Manager on an individual basis or by increasing the group limit for the remainder of the master contract period. Work orders must remain within the contract maximum of individual master contracts.

### 30.10 Limitations on Master Contract Usage

A total of 25% of the statewide consultant budget for transportation regions can be written annually in work orders under specialty and full-service master contracts. Work orders written against statewide full service or specialty master contracts on region projects do not count against the dollar limit for regions.

### 30.11 Impacts of Work Orders on Contract Selection

Firms completing detailed scope and cost estimates for a phase of a design project under work orders for one contract are not eligible to compete for other contracts covering that design phase. This practice is a conflict of interest and gives master contract firms a distinct advantage over WisDOT when negotiating the scope and cost estimates of the design work.

Full service work orders cannot be used to get firms working on a project going through the normal selection process before the selection process for the consultant contract has been completed. WisDOT staff can receive permission from the WisDOT Contract Manager to execute work orders that focus on project work outside of the scope of the pending contract.

### 30.12 Monitoring Master Contract Balances

Regions and Central Office bureaus are responsible for monitoring the amount of work orders being written against their Master contracts. The Contract Administration Unit can provide reports to regions that show the remaining balance on their master contracts, including Master Contract Group work order limits.

### 30.13 DBE Goals and Usage

Disadvantaged Business Enterprise (DBE) goals are established only for federally-funded projects.

DBE goals for federally-funded work orders will be the same as for federally funded contracts. Any waiver of that goal for a work order needs to be approved by the Statewide Consultant Engineer in consultation with the OBOEC DBE Program Engineer.

### 30.14 Work Order Documents

Documents are available at:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/contracts/con-docs.aspx>

See [FDM 8-20-1](#) for more information on work orders.

### 30.15 Work Order Selection

The DTSD Local Program and Consultant Unit approves the recommended firms to be used under full service master contracts before work orders can be negotiated. The region/bureau supervisor should review selection of firms for specialty work orders.

### 30.16 Web Resources

WisDOT staff can view the Consultant Services web page for more information on internal contracting processes.

## FDM 8-5-40 Request for Proposal

July 23, 2015

### 40.1 Definition

A Request for Proposal (RFP) is a procurement method used to solicit interest and determine selection of vendors based on a pre-determined set of criteria. These criteria may include staff qualifications, organization capabilities, ability to perform technical requirements of the proposed project, experience in performing similar projects and ability to meet projected completion date. References may also be a component of the RFP.

### 40.2 When to Use an RFP

The RFP process is an optional activity that may be used to develop a short list of consultants to consider for a project. See [FDM 8-5-1](#) for an explanation of how the RFP process fits into the overall consultant selection process.

An RFP is used when the responsible party for a project prefers to solicit additional information from an existing roster of vendors and/or to develop a roster of interested vendors for a specific project from which selection will be based. An RFP may also be used to assist in the short listing of vendors in the selection process of contracting.

RFPs may be used regardless of Qualification Based Selection (QBS) applicability; however, the process differs slightly from non-QBS proposals.

### 40.3 Qualification Based Selection

Qualification Based Selection (QBS) is a process defined by the "Brooks Act" (Public Law) whereby at least three firms are selected in order of preference based upon qualification criteria. QBS establishes the procurement process by which architects and engineers are selected for design or construction engineering contracts with federal funded design and construction agencies. The intent of the "Brooks Act" is that consideration of price within the selection process is not in the public's best interest; thus, price is not a factor in the selection process.

### 40.4 When to Use QBS

Qualification Based Selection applies to all engineering and design related service contracts under ss 84.01(13) which are financed with federal-aid highway funds. This includes both two- and three-party federally funded projects. These services include program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping or architectural related services. QBS is the preferred method for non-federally funded three-party contracts; however, an alternate selection process may be used when there exists a local ordinance which permits an alternate procedure.

### 40.5 Solicitation Options

Available options for solicitation of RFPs include:

- WisDOT Roster of Eligible Engineering Consultants.
- Advertisement of project, those who respond as being interested are mailed a copy of the RFP.
- Solicitation via the WisDOT Internet web site. For a schedule of bimonthly publication dates, see

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/solicitations/sched.aspx>

### 40.6 Process

1. Determine if a Request for Proposal is the appropriate solicitation method to be used as a result of additional information being requested which cannot be accomplished through the bimonthly design Notice of Interest Questionnaire.
2. Determine what the project and funding source is and determine if QBS applies.
3. General interest is solicited for performing the work via advertisement. Responding consultants are ranked based on evaluation of their qualification statements submitted with their letters of interest. Proposals are then requested from the three highest ranked firms. Proposals are then scored; however, contract pricing is not included if QBS applies.
4. If QBS does not apply, proposals are then scored and may include contract price.

5. Approval must be received from the Statewide Consultant Engineer (DTSD regions/bureaus) or DTIM Administrator (DTIM bureaus), regardless of the project's dollar level, prior to negotiations with the selected proposer.
6. When requesting a proposal, be sure to allow sufficient time for consultants to prepare and submit their proposals.
7. Agencies must retain all documentation of the proposal, evaluation and selection of the consultant.
8. Approval of written contracts resulting from the RFP process must be in accordance with FDM approval procedures.

#### 40.7 Guidelines for an RFP

See [Attachment 40.1](#)

#### 40.8 Example of an RFP

See [Attachment 40.2](#)

### **LIST OF ATTACHMENTS**

- |                                 |                                      |
|---------------------------------|--------------------------------------|
| <a href="#">Attachment 40.1</a> | Guideline for a Request for Proposal |
| <a href="#">Attachment 40.2</a> | Sample Request for Proposal          |

### **FDM 8-5-45 Eligible Consultants**

July 23, 2015

Consultants desiring eligibility to perform engineering and related services on WisDOT administered projects must:

1. Hold a current Certificate of Authorization to practice professional engineering in the State of Wisconsin (per ss. 443.08). The certificate is acquired from the Wisconsin Department of Regulation and Licensing at (608) 266-5511. Sole proprietorships are not required to obtain this license. Individual PE licenses are not an acceptable substitution.
2. Biennially register their qualifications and experience by completing WisDOT's Consultant Report Form DT1538. The report is available on the WisDOT Internet website:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rgistr/default.aspx>

Instructions for completing the form are included at the end of the report.

3. Have certified ownership of or access to the following:
  - WisDOT - Construction and Materials Manual
  - WisDOT - Facilities Development Manual and Updates
  - WisDOT - Bridge Manual and Updates
  - WisDOT - Standard Specifications for Highway and Structure Construction1
  - FHWA - Manual on Uniform Traffic Control Devices
  - WisDOT- Supplemental to FHWA Manual on Uniform Traffic Control Devices
  - AASHTO - "Roadside Design Guide" and "A Policy on Geometric Design of Highways and Streets"

Firms with access to electronic versions of these manuals are not required to purchase paper copies.

4. Have submitted a current Consultant Financial Report to the Department in accordance with [FDM 8-5-47](#).

Once a firm meets these requirements, they are eligible to apply for any project WisDOT advertises. There is no prequalification process by work type. WisDOT staff will determine the qualifications of firms on a project-by-project basis. Firms awarded preliminary or final design engineering contracts are not eligible to compete for the construction engineering contract on that same project. This policy does not apply to Non-traditional transportation projects covered under the Sponsor's Guide to Non-Traditional Transportation Project Implementation.

#### 45.1 Roster of Eligible Engineering Consultants

WisDOT's "Roster of Eligible Engineering Consultants" provides an alphabetical listing of all registered and qualified consultants without ranking. Transportation regions and local units of government use this roster during

the selection process described in [FDM 8-5-55](#). The roster is updated and published on the Internet at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rgistr/roster.aspx>

It contains the name, address, and type of services offered by each firm.

Firms must be on the Roster of Eligible Engineering Consultants to be parties to preliminary/final design engineering or construction management contracts. Consultants completing specialty work such as surveying, environmental/hazardous materials, landscape architecture, historical preservation and planning studies such as the scenic byways program are not required to be on the Roster. Firms working only as subcontractors on WisDOT contracts are not required to be on the Roster.

Firms on the Roster must submit an updated version of Form [DT1538](#) to WisDOT by February 15th of each even-numbered year to remain eligible for construction and design engineering contracts. Firms not on the Roster can submit Form [DT1538](#) at any time to gain eligibility, if the rest of the registration process is completed.

The information published on the Roster is based on the submitted Form [DT1538](#). Consultants who wish to change their address, e-mail address or contact information must electronically re-submit the entire [DT1538](#) form to WisDOT.

The firm e-mail address provided on [DT1538](#) is used for general communications and special notifications. To be regularly notified of web site updates, sign up for the web publication notification list.

The general and web notification e-mail addresses may be the same or different, but only one of each per firm is maintained. Both addresses may receive an e-mail message from WisDOT when significant publications or changes in policy occur.

The form can be obtained by e-mail request to [DOTConsultantServicesApproval@dot.wi.gov](mailto:DOTConsultantServicesApproval@dot.wi.gov) or on the Internet at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rgistr/notify.aspx>

Instructions for submitting the form are also available at that site.

Consultants will receive an e-mail receipt when they have submitted Form [DT1538](#) but will not receive any formal notification of their eligibility. Firms not listed on the Roster published at the web site above should send inquiries about their eligibility status to [DOTConsultantServicesApproval@dot.wi.gov](mailto:DOTConsultantServicesApproval@dot.wi.gov).

Consultants who wish to change their address or contact information must electronically re-submit the entire [DT1538](#) form to WisDOT.

#### **45.2 Certificates of Insurance**

WisDOT contracts require firms under contract to have current Certificate(s) of Insurance on file with the Department. The Insurance Requirements section of the contract boilerplate outlines the types of amounts needed (see [FDM 8-15-1](#)). These certificates do not need to be submitted with every executed contract, nor with the annual registration materials. The certificates are also not required to be part of the Roster of Eligible Engineering Consultants.

It is, however, each firm's responsibility to ensure that the Department has an updated certificate(s) of insurance on file at the time of contract execution. Contact the WisDOT Contract Administration Unit to inquire about the status of your firms' certificate(s) of insurance by e-mail at [DOTConsultantServicesApproval@dot.wi.gov](mailto:DOTConsultantServicesApproval@dot.wi.gov).

#### **45.3 Consultant Extranet**

Firms are required to use the ESubmit application accessible through the extranet to upload Notice of Interest forms (NOIs) for construction and design solicitations. More information on ESubmit is available at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/solicitations/esub.aspx>

#### **45.4 Web Resources**

WisDOT staff can view the current [DT1538](#) form for each firm on the Roster of Eligible Engineering Consultants on the Consultant Services website.

### **FDM 8-5-47 Consultant Financial Report**

July 23, 2015

The Consultant Financial Report facilitates the establishment of an indirect cost overhead rate for consultants who work with WisDOT. It also provides information used during contract negotiation and subsequent audit processes.

Consultants must submit a Consultant Financial Report annually to the Department in order to be an eligible



consultant under [FDM 8-5-45](#). The report may also be required from consultants who are not on the Roster of Eligible Consultants, as a condition of selection (prior to execution of contracts) for WisDOT work open to all consultants.

Prime consultants and subconsultants must submit a Consultant Financial Report within five months of the consultant's fiscal year end for each year in which the consultant or subconsultant is paid under a WisDOT contract based on actual cost.

#### **47.1 Submittal of Forms**

Firms on the roster of Eligible Engineering Consultants must submit their Consultant Financial Report to the Department within five (5) months of the end of the consultant's fiscal year.

The report includes a Management Representation and Certification Letter, a Questionnaire, a Schedule of Indirect Costs, and Instructions for submitting the forms. The documents are available on the internet at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rgistr/fncl-rpt.aspx>

Firms not on the Roster of Eligible Engineering Consultants must submit a Report as part of the registration process (see [FDM 8-5-45](#).) The Report should be based on the most recent financial data that is available.

Failure to file the Report or filing an inaccurate or incomplete Report will result in a consultant being considered ineligible for selection to work for the Department until such time as accurate and complete forms are filed.

Electronic submittals of the Consultant Financial Report will not be accepted. Do not submit form DT1538 (Consultant Report) with your financial information. If you have not supplied WisDOT with your DT1538 for the biennium, refer to information at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rgistr/report.aspx>

for instructions on how to submit that information.

#### **47.2 Startup Firms**

New firms (does not include firms created as the result of a merger/acquisition/spin-off of existing firms) should submit the financial report based on pro forma rather than historical data. Firms whose historical data does not represent a complete year of full operation may request permission to use pro forma data for an additional year after startup. Contact the Audit Supervisor at (608) 261-6270 for assistance or questions on the financial report.

#### **47.3 Firms with Changes in Entity**

Firms whose entity changes due to merger, acquisition or spin-off of significant business segments or subsidiaries must submit a Consultant Financial Report within ninety (90) days for the new entity based on historical financial information of the entities affected by the transaction resulting in the change. New entities created through a merger or spin-off should use historical financial information of predecessor entities as the basis of pro forma information in the Consultant Financial Report.

When an entity contracting with WisDOT is acquired by another entity, the acquiring entity must submit a Consultant Financial Report for the acquiring entity to be eligible for selection.

When gross revenues of an acquired or spin-off entity exceed 25% of gross revenues of the acquiring/surviving entity, the Consultant must submit a revised Consultant Financial Report reflecting indirect cost and accounting disclosures of the surviving entity within ninety (90) days of the closing of the applicable acquisition/spin-off transaction.

#### **47.4 Acceptance**

Firms will receive e-mail notification when their financial report has been accepted. Firms may then use the rates submitted on the financial report on WisDOT contract proposals.

Only firms receiving formal notification of acceptance, via the e-mail address listed on the financial report, may propose using their submitted rate.

Overhead rates submitted on financial reports are considered unaudited and are subject to review upon contract submittal.

### **FDM 8-5-50 Disadvantaged Business Enterprise (DBE) Program**

*August 16, 2022*

The Disadvantaged Business Enterprise (DBE) Program's goal is to increase participation of firms owned by disadvantaged individuals in all federal aid and state transportation facility contracts.

The program started with the Surface Transportation Assistance Act of 1982. The act set an aspirational

national goal of placing at least 10% of federal highway and transit funds with persons who qualify as disadvantaged small business operators. A subsequent act in 1987 included women. Federal regulation 49 CFR Part 26 for the Disadvantaged Business Enterprise Program became effective March 9, 1999. The regulations substantially revised annual DBE goal planning and related methodologies from their previous versions. A flowchart summarizing the tasks and responsibilities for solicitations and contracts with DBE goals is included as [Attachment 50.1](#).

For mega projects, the Office of Public Affairs (OPA) has developed information relating to DBE and Small Business management and reporting for mega projects, refer to the DBE and Small Business Responsibilities, Management and Reporting section within chapter 9 (management systems) of the Mega Projects Guidelines manual website found at:

<https://wisconsin.gov/rdwy/mega/pubinvolve.pdf>

### **50.1 DBE Qualifications Criteria**

To become eligible as a DBE firm, a small business must be at least 51% owned, operated and fully controlled on a daily basis by a member or members of the following groups: African and Native Americans, Hispanic, Asian-Pacific and Asian-Indian Americans, women, and individuals found to be socially and economically disadvantaged as defined by the Small Business Act under the 8(a) program.

The Wisconsin Department of Transportation (WisDOT) may determine that individuals who are not members of the above groups may be socially and economically disadvantaged. WisDOT makes such determinations on a case-by-case basis.

### **50.2 DBE Certification Process**

To participate in WisDOT's DBE programs, a firm must first become certified by requesting a certification application. The DBE Coordinator at the Transportation Region office closest to the firm's headquarters will help collect initial certification information. Out of state firms must contact WisDOT's DBE Office and are also required to be DBE certified by their home state.

Certification of DBE firms is performed by the WisDOT Civil Rights and Compliance Section. Firms certified by Wisconsin municipalities can participate in WisDOT's DBE program. A directory of certified firms can be obtained at:

<https://wisconsin.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>

### **50.3 DBE Goal Setting on Federally Funded Consultant Contracts**

DBE Program Regulations (49 CFR Part 26) require that state transportation departments adopt and annually review an approach to DBE goal setting that includes race/gender neutral and race/gender conscious measures to achieve overall DBE goals.

WisDOT's current DBE program goal methodology considers the number of active firms (both DBE and non-DBE), past DBE achievements and adjustments for other factors. WisDOT works with the consultant industry to set its annual goal. DBE goals are enumerated in contract cover/signature pages and contribute to WisDOT's overall annual DBE program goal.

When a DBE participation goal is assigned to a contract, it is considered a race/gender conscious measure. The DBE participation percentage goal listed on the contract cover/signature page applies if a non-DBE firm is selected for a two or three-party design contract over the minimum contract amount for DBE goals, which is also stipulated on the cover/signature page.

Race/gender neutral measures occur when DBE subconsultants work on contracts without participation goals, a DBE firm is selected as a prime consultant, or DBE participation exceeds the goal set forth in the contract language. For example, if a contract requiring 20% DBE subconsulting achieved 25% participation, then the first 20% of DBE participation is race-gender conscious while the 5% additional participation is considered race/gender neutral. When DBE firms are selected as prime consultants, the full amount performed by all DBE firms on the contract is considered race/gender neutral. All DBE participation is reported by the prime consultant on Form DT1029.

The prime consultant is responsible for making a good faith effort in achieving assigned DBE goals. If the goal is not achieved, the WisDOT DBE Office must review and approve the good faith efforts submitted by the prime consultant on Form DT1026. Good faith effort must be satisfied prior to contract execution. Upon approval, a special provision indicating such must be written into the contract reflecting this modification to the DBE requirement.

The Office of Business Opportunity & Equity Compliance (OBOEC) and the Statewide Consultant Engineer,

together with industry stakeholders, are committed to evaluate the status of DBE participation data on a regular basis to determine if annual or interim adjustments to race/gender conscious or race/gender neutral measures are necessary.

Contract goals to achieve WisDOT DBE goals are reviewed on a periodic basis to ensure the department is meeting its objectives. Contact the Statewide Consultant Engineer for current policies on contract goals.

#### **50.4 State and Local DBE/MBE/WBE Requirements**

While WisDOT is committed to contracting with DBE participants on all contracts, only federally funded contracts have DBE requirements. WisDOT is permanently enjoined from setting and implementing goals for DBE subcontractor participation in construction projects that do not include federal funds. The permanent injunction remains in effect until revoked or modified by an appropriate court.

Some communities have their own requirements for Minority Business Enterprises (MBE) or Women Business Enterprises (WBE). Local units of government that have their own DBE, MBE or WBE programs cannot impose or refer to the goals of those programs in WisDOT contracts.

Questions regarding use of Disadvantaged Business Enterprise firms may be directed to the Central DBE Office of DBE at 608-267-2093 or the Statewide Consulting Engineer at 608-267-9390.

#### **50.5 DBE Commitment Form (DT1029) and Instructions**

DBE commitment forms are required to be submitted to the Department by the PRIME CONSULTANT for all contracts, work orders, and amendments with DBE participation or removal (prime or sub) - regardless if a DBE goal is established or not. A flowchart is included as [Attachment 50.1](#). Instructions for the DBE commitment form ([DT1029](#)) are in [Attachment 50.2](#) and examples of various scenarios are in [Attachment 50.3](#).

#### **50.6 Termination or Reduction of Services of DBE Subconsultant**

A DBE consultant may be terminated, or its services reduced, only for good cause as set forth in 49 CFR 26.53(f):

[http://www.ecfr.gov/cgi-bin/text-idx?SID=6ce41c664eeb65472626c63db72f63a5&mc=true&node=se49.1.26\\_153&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=6ce41c664eeb65472626c63db72f63a5&mc=true&node=se49.1.26_153&rgn=div8)

Upon making a decision to terminate a DBE subconsultant the prime consultant must send the affected DBE subconsultant(s) and Department a notice stating the reason(s) for termination. Upon receiving the termination notice the DBE subconsultant has five days to respond to the prime consultant and appeal to the Department to halt the termination. Upon termination of a DBE subconsultant, the prime consultant has seven days to replace the DBE subconsultant to meet any required DBE subcontracting goals unless the Department grants a DBE Goal Waiver.

#### **50.7 Commercially Useful Function (CUF) Monitoring**

A CUF is performed to meet federal standards for WisDOT projects with federal funding, to uphold the integrity of the DBE Program, and to promote the ability of the Prime consultant, to meet its contract goal, as well as WisDOT, to meet its overall goal.

The prime consultant and WisDOT receive credit toward the DBE goal, only when a DBE working on a contract performs a CUF. A DBE performs a CUF when it is responsible for the execution of the work on the contract, by truly performing, managing, and supervising the work involved. To perform a CUF, the DBE consultant must also be responsible, with respect to materials, supplies, and negotiating price.

USDOT regulations for the Disadvantaged Business Enterprise program require that recipients monitor every consultant contract on which DBE participation is claimed. The DBE Office will work with Regional Consultant Unit Supervisors and Bureau Representatives to coordinate and track CUF monitoring on contracts that include DBE consultants.

#### **LIST OF ATTACHMENTS**

- |                                 |  |
|---------------------------------|--|
| <a href="#">Attachment 50.1</a> | Flowchart for Solicitations and Contracts with DBE Goals |
| <a href="#">Attachment 50.2</a> | Instructions for DT1029 Form                             |
| <a href="#">Attachment 50.3</a> | Examples of Various Scenarios                            |

WisDOT contracts with consultants to provide management roles for WisDOT projects. The selection process for securing these services is the same as for other engineering services.

### 55.1 Federal Approval

Prior to solicitation, WisDOT projects which are federally funded must first receive approval from Federal Highway Administration to use consultants in this role. FHWA typically limits these types of contracts to situations where unique or unusual circumstances exist and when WisDOT has provided adequate justification. This justification prepared by WisDOT will include the scope of service, address potential conflict of interest, confidentiality of data and cost effectiveness. A copy of the solicitation advertisement must accompany the justification.

Upon approval, WisDOT may proceed with solicitation. A copy of the FHWA approval must be forwarded to the WisDOT Contract Manager and the Statewide Consultant Engineer.

FHWA has provided programmatic approval to continue using consultants in management roles (management consultants) for local programs in a January 20, 2016 e-mail ([Attachment 55.1](#)). This approval is valid until expressly revoked by FHWA.

### 55.2 Consultant Management Roles in Local Government

Management consultants are prohibited from doing work for local programs that they manage. Some local governments have a consultant on retainer to act as the city engineer and in essence is considered the local government's full time public employee. Selection of such firms on federally funded projects is considered a conflict of interest under 23 CFR 1.33 when:

- The engineer under retainer performs administrative functions for locals which involve either selection and/or negotiation for a potential contract or actual administration of an executed contract.
- The consulting engineer under retainer is a member of, or advisor to a selection committee for a contract for which the consulting engineer is being considered.
- The consultant under retainer is an employee of the consulting firm representing the locals in negotiating a contract with his/her own firm.
- The consultant under retainer as the municipal engineer is named as the municipal representative in charge of a contract with the consultant's own firm.

### 55.3 WisDOT Approval

The statewide consultant engineer and the contract unit manager must approve the request prior to submitting it to FWHA for approval.

## **LIST OF ATTACHMENTS**

[Attachment 55.1](#) Management Consultant Approval Email Record