

Connecticut Department of Transportation



PROFESSIONAL SERVICES CONSULTANT SELECTION PROCEDURES MANUAL

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**Consultant Selection Office
Office of the Commissioner
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Table of Contents

A. Consultant Selection Process Overview	2
B. Operational Guidelines	4
• Exemptions	4
• Organization of the Consultant Selection Office	4
• Organization of the Consultant Services Selection and Evaluation Panels	5
• Performance Evaluations of Consultants	5
• Responsibilities for Fiscal Records	6
• Prequalification	6
• Requests to Engage Consultants	6
• Federal Approval for Major Consultant Roles	7
• Solicitation and Advertisement Procedures	7
• Consultant Responses	8
• Determinations	9
• Notification Responsibilities	10
• Maintenance and Protection of Records	10
• Code of Ethics	10
• Equal Employment Opportunity	10
C. Consultant Selection Panel Responsibilities	11
Appendix	
Connecticut State Statutes that Govern the Process	16
Connecticut Code of Ethics for Public Officials	20
Department Code of Ethics Policy Statements	21
Federal Law: 40 USC 1101 – 1104 (Brooks Act)	27
Federal Law: 23 USC 112	28
Federal Regulation: 23 CFR 172	34
Notice Concerning Subconsultant and Part-Time Personnel’s Presence at Interviews	37
Individual Panel Member Certification Form	38

A. Consultant Selection Process Overview

The Connecticut Department of Transportation's (Department) process for obtaining professional consulting services is in accordance with Sections 13b-20b through 13b-20k of the Connecticut General Statutes (CGS) and all applicable Federal laws, regulations and policies. This process is intended to permit the Department to select Consultants and award contracts for various professional services on an impartial, equitable and rational basis.

Federal Compliance

This process is in compliance with the following Federal laws and regulations:

- Federal Law 40 USC 1101 through 1104 (Brooks Act);
- Federal Law 23 UCS 112; and
- Federal Regulation 23 CFR 172

and as such, ensures that the Department advertises for professional consultant services, reviews and ranks the responses received, and selects consultants based on demonstrated competence and qualifications for the type of engineering and design related services being procured where cost is not a part of the selection process consistent with the required Quality Based Selection requirements as stipulated in the Federal regulations, laws and policies. Any modifications to this document must be coordinated through the Federal Highway Administration.

Consultant Prequalification

Every year, in accordance with CGS Section 13b-20e, the Department publishes notice in newspapers with a statewide circulation and various national trade publications soliciting firms to become prequalified in technical categories that there is an expected need for in the upcoming year. A Technical Qualifications Panel typically consisting of the Chief Engineer, the Engineering Administrator, and the Construction Administrator reviews all submittals and recommends prequalification in the categories that they deem a firm is technically capable.

Consultant Selection Panels

In accordance with CGS Section 13b-20c, Consultant Selection Panels are established to evaluate, interview and furnish the Commissioner a list of the most qualified consulting firms for each anticipated contract for professional services. The Commissioner appoints three people from within the Department to serve as members of each Selection Panel and designates one permanent member of each Selection Panel to serve as Chairperson. The Bureau Chief requesting consultant services for a specific project appoints one additional person that must be approved by the Commissioner. The Bureau Chief of another Bureau may appoint another person, which must also be approved by the Commissioner, if that Bureau is administering the specific project. Each Selection Panel is an independent entity, responsible only to the Commissioner.

Consultant Selection Office

The Consultant Selection Office (CSO) is a unit of the Office of the Commissioner. It is responsible for the administration and execution of all procedures necessary for the selection of professional consultants utilized by the Department. It provides the Selection Panels and the Commissioner with all information necessary to perform their duties in accordance with all relevant State statutes, Federal regulations, and Department policy and procedures, and acts as liaison for the Department with the consulting firms.

Requests to Engage Consultants

Whenever a Bureau within the Department determines that there is a need to hire a consultant firm, they must receive written approval from the Commissioner to begin the process. If there is a prequalified list of consultants with the expertise needed, a solicitation letter is sent by mail to each firm on the list notifying them of the Department's need, the general scope of the assignment, the information required for the Department's evaluation and any other pertinent information. If a prequalified list is not available, a legal notice is published in accordance with Section 13b-20e (c) and 13b-20g of the CGS. All professional services being solicited are also posted on the Department's website and the Department of Administrative Service's website.

Review of Consultant Submittals

All responses from a solicitation are evaluated by a Selection Panel. The Selection Panel members evaluate and rate all submittals independently utilizing uniform criteria appropriate to the nature of the proposed services in accordance with CGS Section 13b-20i.

All individual panel member rankings are compiled with a volume and recent selection report for the Commissioner's approval to interview the highest rated firms in light of the volume and recent selection report. The top five firms from this compilation are then brought in for interviews with the Selection Panel that rated the initial submittals. It should be noted that if the Department is seeking the services of more than one consultant firm, a minimum of four firms plus the number of firms required are brought in for interviews.

Interviews

The consultant firms are notified by mail of the time, place and format for the interviews. The interview format is uniform for all consulting firms for each assignment. The Panel asks each firm a predetermined set of questions that are relevant to the proposed assignment. Each firm gets the same amount of time to answer the questions and provide a wrap-up to the Panel. The individual Panel Members give a numerical rating to each question answered as well as for the wrap-up presentation.

Final Selection(s)

The individual panel member interview ratings are then compiled with a current volume and recent selection report for the Commissioner to make the final selection guided by the criteria in CGS Section 13b-20i. Once the Commissioner makes a selection, the originating Bureau Head notifies the successful consultant firm and all other firms that were not selected.

Communication

Members of a Selection Panel shall not discuss any aspect of the Consultant Selection Process with a consultant or anyone else with the exception of the Commissioner, Deputy Commissioner(s) or the CSO prior to, during or upon conclusion of the selection process. During the selection process, all inquiries on a particular project shall be referred to the CSO. The CSO exclusively is responsible for discussing any aspect of the selection process with an interested Consultant during or after the selection process.

B. Operational Guidelines

The following internal Operational Guidelines have been developed to insure the integrity of the selection process and to better define the duties and responsibilities of the Selection Panel(s) and the various Bureaus of the Department. It is incumbent upon all Bureaus of the Department to institute appropriate measures as outlined herein that will satisfy our obligations in the hiring of Consultants.

Exemptions

These operational guidelines apply when the Department is hiring Consultants for professional consultant services as defined in the CGS Sections 13b-20b (b) and (c). These guidelines do not include consultants as defined in:

- a) OPM Statutes Sections 4-205 through 4-211;
- b) DAS Statutes Sections 4a-50 through 4a-60a; and
- c) DPW Statutes Sections 4b-55 through 4b-59.

Municipal administered projects, as overseen by the Department's Local Roads Unit, shall utilize the procedures depicted in the Department's 'Consultant Selection, Negotiation and Contract Monitoring Procedures for Municipal Administered Projects' manual.

Organization of the Consultant Selection Office

The Commissioner may designate staff as necessary to coordinate and administer the policy and procedures of this program. This staff shall be known as the Consultant Selection Office (CSO).

The CSO shall be a unit of the Office of the Commissioner. It shall be responsible for the development, administration, maintenance and execution of all procedures necessary for the selection of professional services firms (consultants) engaged by the Department. It shall provide the Selection Panels and the Commissioner with all information necessary to perform their duties in accordance with all relevant State statutes, Federal regulations, and Department policy and procedures. It shall provide guidance to Department staff in all procedures in retaining professional service consultants.

The staff of the CSO will act as the administrative liaison between the Commissioner and the Selection Panel(s), coordinate panel activities, review schedules, act as spokesperson for the Department with consulting firms, and provide the Selection Panel(s) with all the support necessary to promote integrity, equity and quality in the selection of consultants required by the Department.

The CSO shall be the clearinghouse for the review and approval of all professional consultant solicitations, rating forms, and notification letters. They shall also be responsible for the coordination of the annual consultant prequalification process, compilation of consultant past performance evaluations, volume of work information and data, debriefings, and records retention which includes all pertinent information on each Selection Panel's reviews. The CSO exclusively is responsible for discussing any aspect of the selection process with an interested consultant before, during or after the selection process.

Organization of Consultant Services Evaluation and Selection Panels

In accordance with CGS Section 13b-20c, one or more Consultant Services Evaluation and Selection Panels (Selection Panels) shall be established within the Department to evaluate, interview and furnish to the Commissioner a list of most qualified consulting firms for each anticipated contract for professional services.

The Commissioner shall appoint three individuals from within the Department to serve as members of each Selection Panel, normally for one year terms. The Commissioner shall designate one permanent member of each Selection Panel to serve as Chairperson for the term. One additional individual shall be appointed by the Bureau Head of the Bureau for which the specific project is being performed, subject to the approval of the Commissioner, and a fifth individual shall be appointed by the Bureau Head of any other Bureau if such other Bureau is requesting the specific consultant services and will be responsible for the administration of the consultant contract, also subject to the approval of the Commissioner.

A Selection Panel shall be involved with all proposed consultant selections for professional services except in those situations where the Commissioner deems it necessary to hire consultants under emergency procedures.

The Selection Panel(s) shall report directly to the Commissioner through the CSO. Panel members shall be released from their normal Bureau assignments on an as-needed basis to fulfill their Selection Panel obligations.

Performance Evaluation of Consultants

In accordance with CGS Section 13b-20f, the performance of all Consultants who have active agreements with the Department shall be evaluated by the supervising unit within the Bureau utilizing a consultant service at six-month intervals and at the completion of each project. For projects less than six months in duration, at least one performance evaluation shall be prepared.

Performance evaluations shall be completed in such format and on such forms as developed by the Department specifically for the purposes of this evaluation. The completed and approved evaluation(s) shall be sent from the supervising unit to the project consultant with a copy kept on file in the supervising unit and a copy forwarded to the CSO prior to January 31 and July 31 of each year. It is incumbent upon the Bureau to submit a revised Consultant Performance Evaluation to the CSO at any time if, in the opinion of the supervising unit, the Consultant's performance has changed significantly (positively or negatively) from that reported in the previous evaluation. The originating Bureau, exclusively, will be responsible for discussing these performance evaluations with the particular firms.

The Selection Panels shall consider this data in the selection process for current projects. The Selection Panel reserves the right to contact outside sources familiar with the Consultant's work for additional input and references, especially in the case of firms without a performance evaluation rating in the activity being considered for assignment.

Responsibilities for Fiscal Records

In accordance with CGS Section 13b-20i (4), the Bureau of Finance and Administration will be responsible for assembling and updating the most recent three (3) year volume of work requirements. This will include the total dollar amount performed by each firm for the last three years, the dollar volume of work remaining, the number of projects involved, and the percentage that the total dollar amount performed in the last three years by each firm plus the volume to be completed is to the total dollar amount performed in the last three years plus the amount to be completed by all firms. It is incumbent upon each fiscal operating office to keep accurate and up-to-date fiscal records on each consultant having active, inactive, or pending contracts within each Bureau. This information shall be made available to the CSO upon request.

Prequalification

In accordance with CGS Section 13b-20e, every year the CSO shall administer all procedures to implement the prequalification program. A legal notice shall be published during the month of September in various newspapers and national trade publications indicating the various categories of expertise likely to be needed by the Department during the next calendar year. Interested firms must submit their qualifications on the required forms and in the required format by November 15th of every year in order to be eligible for projects in those specific categories for the following year. Any expertise required during the year that was not included in the prequalification shall be advertised for separately in accordance with CGS Section 13b-20g.

The Commissioner shall appoint a Technical Qualifications Panel (typically the Chief Engineer, Engineering Administrator, and the Construction Administrator), by Administrative Memorandum, to review and analyze the consultant prequalification submittals. Prior to January first, the Technical Qualifications Panel shall notify the Commissioner of those consultants they recommend as qualified to perform services in the areas of expertise indicated in the legal notice. All submittals shall be retained by the CSO in accordance with record retention and may be referred to by a Selection Panel at any time during a particular selection process.

All consultants shall be notified by mail, from the Technical Qualifications Panel Chairperson, of the approval or rejection of their prequalification request. Any consultant that is rejected may appeal the decision to the Technical Qualification Panel within the time frame indicated in the notification (normally fourteen (14) days).

Requests to Engage Consultants

Any Bureau desiring to engage the professional services of a consultant shall obtain the written approval of the Commissioner for such action. A memorandum from the Bureau Head to the Commissioner requesting the retention of a consulting firm(s) should contain a description of the project, the reason for soliciting outside services, a project cost estimate and funding source, the designated Bureau Representative to serve on the Selection Panel, the established DBE goal or SBE set-aside requirement (as established by the DBE Committee), a general scope of services (as extensive as possible), and the anticipated prequalification category(s) that should be utilized or if a legal notice will be necessary due to specialized professional service needs. The Bureau must also include the proposed consultant solicitation letter or legal notice and the proposed submittal evaluation rating form (both marked as drafts). Whenever feasible, the originating unit will

consolidate similar projects for a single solicitation thus enabling a Selection Panel to perform multiple, simultaneous reviews and reduce a duplication of effort.

The solicitation must describe the Department's need, the general scope of the assignment, the experience and expertise required (should be the same as the proposed rating elements), the DBE/SBE requirement, the submittal due date (leave blank when in draft form) and any other pertinent information including the expected duration of the assignment and anticipated start date.

Once the Bureau Head has signed the memo requesting the Commissioner's approval, the entire package shall be forwarded to the CSO for review. After the CSO has reviewed and signed off as such, the package shall be forwarded to the Commissioner for approval.

The CSO will help the Bureau refine the solicitation and rating form and will provide any required revisions during their review of the draft documents. In the case of a solicitation for specialized services that will go out by legal notice, the CSO will provide a reduced version for publication that will refer all interested firms to the Department's website for the full-length solicitation.

Federal (FHWA) Approval for Major Consultant Roles

When federal funds are to be utilized in a contract, the originating unit shall obtain prior approval from the FHWA regional office and provide this to the CSO in order to solicit for consultant services in management roles or for 'major projects' (total estimated project cost greater than \$500 million).

Solicitation and Advertisement Procedures

Once a Bureau receives the Commissioner's approval to engage the services of a consultant, the Bureau's originating unit shall edit the draft solicitation and rating form in accordance with the CSO's provisions. The originating unit shall also gather a complete copy of anything an interested consultant would want to review prior to them submitting for the particular assignment and provide the CSO with the list of items that will be available and an office representative, not involved with the assignment that will be coordinating the reviews. The originating unit shall email the final draft of the solicitation and rating form to the CSO for final approval prior to mailing or publishing the notice and shall indicate to the CSO when the solicitation will be mailed or published. The due date for submittals shall be a minimum of fourteen (14) days from the mailing date or latest publication date.

The CSO will supply the originating unit with the required enclosures, the list of prequalified consultants and a set of mailing labels (if applicable) once they've received a copy of the Commissioner's approval to hire a consultant for the services, any required edits have been incorporated in the solicitation and rating form, and a complete copy of anything an interested consultant may want to review is in place.

If a prequalified consultant list is obtained from the CSO, the solicitation letter, as prepared by the Bureau and approved by the CSO, shall be sent by the Bureau through the mail to each consultant on the list. If a prequalified list is not available, a legal notice shall be published by the Bureau in accordance with Section 13b-20e (c) and Section 13b-20g of the CGS. The Bureau shall publish

the reduced version of the legal notice, as provided by the CSO, a minimum of one day in a newspaper that reaches every county in Connecticut (such as the Hartford Courant) and in a national trade publication that is available to any interested consultant throughout the country.

The CSO will post all solicitations on this Department's website as well as the Department of Administrative Services website.

Consultant Responses

Responses to the Department's solicitation for professional services shall be received by the originating Bureau and forwarded to the CSO within seven days of the submittal due date.

The originating unit shall forward all letter of interest submittals and any other correspondence received with a transmittal memorandum which shall include the CSO solicitation number, the total number of firms that submitted, a listing of all responding firms addresses with the date the submittal was postmarked and the date it was received, requesting the CSO to proceed with the selection process.

There shall be no pre-screening of the submittals or disqualification by the originating unit or any other Department personnel. No submittals shall be returned and no communication on the assignment shall be provided by anyone other than the CSO.

The CSO will compile the past performance evaluations of the responding firms for the particular category of service required and forward those with all submittals received and all information on file relative to the assignment to the Chairperson for distribution to the Panel to be reviewed, ranked and the shortlisted firms interviewed in accordance with Section C (Consultant Selection Panel Responsibilities) of this document.

A Selection Panel shall be responsible for the evaluation of all properly submitted consultant submittals utilizing uniform criteria appropriate to the nature of the proposed services. The evaluation and selection process shall be in full compliance with Section 13b-20h thru Section 13b-20j of the CGS and all applicable Federal regulations.

In the case of only one firm submitting for an assignment, the panel shall review the submittal for the appropriate qualifications and experience as requested in the solicitation and shall forward their recommendation to the CSO to be compiled with a report for the Commissioner to either award the assignment or request State forces to undertake it.

The Chairperson is responsible to resolve any outstanding Panel issues or concerns and, if necessary, request assistance from the CSO. The Chairperson may also request information from other sources as necessary to enable an evaluation of the consultant submittals in accordance with all relevant State statutes, Federal regulations, and Department policy and procedures.

A Selection Panel shall make every effort to perform its duties in a timely manner and shall act on requests for consultant services in order of Departmental priority as established by the Commissioner.

Determinations

Once the initial submittals have been reviewed, rated and ranked by the panel members, the Chairperson shall forward all of the individual ratings and overall rankings to the CSO to be compiled with a volume and recent selection report for the Commissioner to establish a shortlist of firms to be interviewed. The top five firms are then brought in for interviews with the Selection Panel that rated the initial submittals. If fewer than five firms responded to the solicitation, all firms shall be interviewed. It should be noted that if the Department is seeking the services of more than one consultant firm, a minimum of four firms plus the number of firms required shall be brought in for interviews.

The Chairperson shall establish a date, time, location and format for the interviews and submit this information to the CSO. The CSO shall notify the (shortlisted) firms by mail as to the time and place for the interview and any other pertinent information. The interview format shall be uniform for all consulting firms for each assignment.

After the interviews, the Panel Chairperson shall prepare a memorandum indicating how the evaluation criteria was applied to determine the most qualified firms and forward this with all of the individual ratings and overall rank order of firms to the CSO to again be compiled with a volume and recent selection report for the Commissioner to make a selection(s). All submittals and documents distributed throughout the process must also be turned over to the CSO for the Commissioner's review and to be filed in accordance with record retention.

Volume and Recent Selection Guidelines

The Commissioner and the Selection Panel shall be guided by the objective criteria as specified in the CGS Section 13b-20i for the shortlist and selection of consultants and as such the Commissioner utilizes a firm's three-year volume of work (with the Department) percentage and their recent selections as guidelines when approving shortlists and selecting firms for assignments in order to distribute the work amongst qualified firms as much as possible. The Commissioner will typically approve the panel's shortlist recommendation of the top ranked firms and selection of the recommended top ranked firm(s) unless a firm has over 5% volume of the Department's consultant work or has been selected for a previous assignment within 6 months. In this case, the Commissioner will utilize discretion so as to not violate the principle of selection of the most highly qualified firms. (If firms are ranked closely together, those that have over 5% volume or a recent selection within 6 months may not be shortlisted or selected. The magnitude and type of assignment will guide the Commissioner as to whether it is prudent to waive these guidelines.) All determinations shall be documented and kept on file in the CSO.

The Commissioner shall make the final selection from the list of most qualified firms submitted by the Selection Panel. In addition to the information provided by the Selection Panel, the CSO shall furnish all the background data on the finalists for review by the Commissioner. The Commissioner may request additional information from other sources that he may deem appropriate to assist him in the final selection process and will document all pertinent additional information.

After the Commissioner has made his selection, the names of the Consultant firms that submitted shall be available to the public upon request. The Commissioner shall also prepare a memorandum of the final phase of the selection process, indicating how he applied the evaluation criteria to determine the most qualified firm(s). This memorandum shall also be available to the public after execution of the negotiated agreement with the selected consultant.

Notification Responsibilities

Upon notification by the Commissioner, the Bureau Head who will administer the contract shall notify the successful consultant firm(s) of their selection. The Bureau shall also notify all other consulting firms who responded that they were not selected. Copies of all notifications shall be forwarded to the CSO. Arrangements shall begin for the assignment meetings and negotiations by the Bureau Representative and the Negotiations Committee.

Maintenance and Protection of Records

Submittals of consultants selected for interview and all non-finalists submittals received by the Department and processed by the Selection Panel shall be returned to the CSO and all materials shall be retained in accordance with the approved Records Retention Schedule. The CSO shall maintain all internal records, pre-interview ratings, post-interview ratings, recommendations, and pertinent correspondence for a minimum of four years after finalization of the Consultant's negotiated agreement. All rating information shall be treated as strictly confidential until execution of a negotiated agreement with the selected consultant. However, firms wishing to discuss, in general terms, their initial submittals or their interview presentation may do so through a representative of the CSO. Panel members shall not meet or discuss their evaluations with any consultant firm or Department personnel, other than the Commissioner, Deputy Commissioner(s) or the CSO.

Code of Ethics

All members of the Department, including the Selection Panels (both permanent and non-permanent members) and any Department personnel working with or for the Selection Panel shall scrupulously comply with both the letter and the spirit of the Department's Code of Ethics Policy (Policy No. F&A-10 and F&A-10A) and the Code of Ethics provisions contained in the CGS (Chapter 10, Section 1-79 through 1-89.).

Equal Employment Opportunity

It is the policy of the Department to ensure that no person is excluded from participation in, or denied the benefits of, or otherwise subject to discrimination under any contract, agreement, arrangement, program or activity, participated in, funded or sponsored by the Department, on the grounds of race, color, national origin, ancestry, religious creed, sex, age, learning or physical disability including, but not limited to handicap or impairment, mental disability, past or present history of mental disorder, mental retardation, marital status, civil union, sexual orientation, transgender status or expression of gender identity, genetic background, or criminal record unless provisions of CGS 46a-60(b), 46a-80(b), or 46a-81(b) are controlling or there is a bona fide occupational qualification excluding individuals. In the conduct of its work, the Selection Panel shall adhere to policies contained in the Equal Opportunity provisions in both Federal Regulations and CGS.

C. Consultant Selection Panel Responsibilities

The Chairperson, Panel Members, and Bureau Representative(s) are responsible only to the Commissioner during all phases of the selection process and should not discuss their evaluations or any aspect of the process with any firm or Department personnel other than the Commissioner, Deputy Commissioner(s), and the Consultant Selection Office (CSO). There shall be no actions taken by any officials or individuals, either within or outside the Department to attempt to influence the impartial and independent actions of a Selection Panel.

All members of the Department, including the Selection Panels and Bureau Representative(s), shall comply with the Department's Code of Ethics Policy (Policy No. F&A-10 and F&A-10A) and the Code of Ethics provisions contained in the Connecticut General Statutes (CGS Chapter 10, Sec. 1-79 through 1-89).

Selections are extremely sensitive departmentally, politically, and publicly. Discretion and confidentiality are critical.

Review of Consultant Submittals

- The Panel Chairperson, upon notification by the Commissioner of an assignment, shall coordinate a meeting with the other Panel Members and Bureau Representative(s) to distribute the letters of interest and other pertinent material, and establish a schedule for the panel member's independent reviews. At this initial meeting, the Bureau Representative(s) must brief the full Panel on the intent of the project and the manner in which the rating criteria is to be used to evaluate the letters of interest. *(The CSO will forward all letters of interest, the approved rating form, and other pertinent information on file to the Panel Chairperson for distribution.)*
- Panel Members, including Bureau Representatives, who have a conflict of interest with any of the prospective consultant firms (in accordance with the department's Code of Ethics Policies and the CGS Code of Ethics for Public Officials) must notify the CSO as soon as possible. An alternate panel member will then be appointed for that particular assignment. (Panel Members, including Bureau Representatives, are required to sign a document at the end of each selection process certifying that they had no conflicts of interest or communications with any prospective consultants regarding the particular assignment.)
- The Selection Panel must give fair and impartial consideration to all letters of interest submitted in proper form and received within the stipulated time period from prospective consultants. Firms that did not make a submission in accordance with the solicitation may be disqualified. Meetings of a Selection Panel to make this determination may be called by any of its members at a mutually convenient time during normal working hours. All motions and decisions require the affirmative vote of three (3) Panel Members for passage. All disqualifications must be documented by the Panel Chairperson and forwarded to the CSO at the time that the rankings are forwarded.

- The Chairperson may, with the approval of the CSO, revise the project evaluation rating form submitted by the originating unit for sufficient cause. The rating criteria will vary from project to project depending on the assignment, but shall conform to the mandated criteria stipulated in CGS Sec. 13b-20i and shall also be in compliance with all applicable federal guidelines. The rating scale and system for each assignment shall be reviewed and approved by the CSO for consistency and uniformity in application before it is used by a Selection Panel.
- The Selection Panel shall take into consideration the data from the Department's past performance evaluations when reviewing the consultant submittals for current projects. The Chairperson may request information from other sources familiar with the Consultant's work for additional input and references, especially in the case of firms without a performance evaluation in the activity being considered for an assignment. The Chairperson must document and share all additional information with the full panel as well as the CSO. The manner in which the past performance data and additional input is used shall be at the discretion of the Panel Chairperson and must be documented when it becomes a determining factor. *(The CSO will forward the past performance data to the Panel Chairperson for distribution.)*
- Each Panel Member, including the Bureau Representative(s), shall independently rate all submittals that the Panel has determined to merit further consideration using the approved project evaluation rating form.
- Upon completion of the independent reviews, the Panel Members must sign and return their rating sheets to the Panel Chairperson. The Chairperson then prepares a summary sheet showing the rank order and numerical ratings of all of the panel members and forwards this and all individual rating sheets to the CSO to be compiled with a volume and recent selection report for the Commissioner to establish a shortlist of the highest rated firms to interview in light of the volume and recent selection report. The top five firms from this compilation are then brought in for interviews with the Selection Panel that rated the initial submittals. It should be noted that if the Department is seeking the services of more than one consultant firm, a minimum of four firms plus the number of firms required are brought in for interviews.

Interviews

- The Chairperson is notified by the CSO once the Commissioner has approved a shortlist. The Chairperson then coordinates a date (at least two weeks out), time, location (typically at the Training Center) and format for the interviews and submits this information to the CSO for issuance of notification letters to the shortlisted firms.
- The interview format and amount of time given must be uniform for all consulting firms for each assignment. All firms shall be asked a predetermined set of questions and all shall be allowed to make a statement relative to the assignment(s) and/or a presentation at the conclusion of the questioning.

- The Bureau Representative(s) is responsible to develop the interview questions and rating form as well as provide bullet answers to help the Panel Members gage their ratings. The Chairperson is responsible to help the Bureau Representative(s) develop the interview questions and interview rating form as well as to determine the time necessary for the questions and concluding remarks and/or presentation. (Confidentiality of the interview questions is extremely important. They should not be emailed or sent through the mail.)
- The Chairperson shall schedule time with the Panel Members prior to the interviews (day of preferably) to review the interview questions and potential answers so that all have the same understanding.
- The Chairperson must ensure that the interview questions are either displayed on an overhead projector or that multiple copies are taped to the table that the firms will be sitting at to guarantee that there is no misunderstanding of the questions.
- It is the Chairperson's responsibility to make sure that only representatives from the scheduled firm and their preapproved subconsultants (in accordance with Department policy) are in attendance during the interviews. (*The CSO will provide the Panel Chairperson with information on the preapproved subconsultants prior to the interviews.*) No one else shall be allowed to attend an interview without the prior approval of the CSO. The Chairperson must document the people in attendance at each interview.
- The Chairperson shall conduct the interviews and lead the deliberations of the Panel. The Chairperson shall be responsible to ensure that each firm is given an equal opportunity to respond to the Panel and to keep the responses and conclusion within the appropriate time frames.
- Each Panel Member shall independently evaluate and rate each consulting firm during or immediately following the interview. Following the completion of the interviews, the Panel may discuss their conclusions and a Panel Member based on these discussions may make adjustments. The Panel may also agree to secure additional information, based on comments from the interview, prior to finalizing their ratings.
- Panelists must sign and turn their independent ratings and all notes that were taken during the interviews over to the Panel Chairperson at the completion of the interview session.
- The Panel Chairperson must then prepare a summary sheet indicating the rank order and numerical ratings of all the panel members and forward this, and all of the individual ratings and notes taken during the interviews to the CSO to be compiled again with a volume and recent selection report for the Commissioner to make the final selection(s).
- The Panel Chairperson must also forward to the CSO the individual panel member's certifications, all additional materials that the firms may have submitted at the interviews, a list of the people in attendance at each interview, and one copy of all initial letter-of-interest submittals to be filed in accordance with the established record retention schedule.

Final Selection Process

The Commissioner shall make the final selection from the list of most qualified firms submitted by the Selection Panel. In the process of making the final selection of the most qualified consultant for a specific assignment, the Commissioner shall be guided by the criteria set forth in CGS Sec. 13b-20i. In addition to the information provided by the Selection Panel, the CSO shall furnish all the background data on the finalists for review by the Commissioner. The Commissioner may request additional information from other sources or individuals that he may deem appropriate to assist him in the final selection process. After the Commissioner has made his selection, the names of the Consultant firms submitted shall be available to the public upon request. The Commissioner shall also prepare a memorandum of the final phase of the selection process, indicating how he applied the evaluation criteria to determine the most qualified firm. This memorandum shall be available for public inspection after execution of the negotiated agreement with the selected consultant.

Debriefings

- Members of a Selection Panel (as well as Bureau Representatives) shall not discuss any aspect of the Consultant Selection Process with a Consultant prior to, during or upon conclusion of the selection process. The CSO exclusively is responsible for discussing all aspects of the selection process with an interested Consultant during or after the selection process. All rating forms prepared by the Panel Members are considered strictly confidential by the Department until execution of the negotiated agreement with the selected firm(s); however, firms wishing to discuss, in general terms, their initial proposals or their interview presentation may do so through a representative of the CSO.
- Appropriate comments must be provided on the individual rating sheets for both the initial submittals as well as the interviews. (Many times firms ask for a debriefing months from when the actual ratings were done and this helps Panel Members remember why they rated firms the way they did.)

Overall

- The Chairperson is responsible to resolve any outstanding Panel issues or concerns, and, if necessary, request assistance from the CSO. Any questions or discrepancies, which cannot be resolved by the Panel and the CSO, shall be submitted to the Department's Office of Legal Services for advice and, as may be necessary, to the Office of the Attorney General.
- All inquiries regarding the selection process shall be forwarded to the CSO for response. Under no circumstances should anyone tell a consultant who is on a Selection Panel for a specific assignment.
- A Selection Panel shall make every effort to perform its duties in a timely manner. A Selection Panel shall act on requests for consultant services in order of Departmental priority as established by the Commissioner.

APPENDIX

Connecticut Department of Transportation
Consultant Selection State Statutes that Govern the Process

Title 13b: Chapter 242

Sec. 13b-20a. Regulations re hiring of consultants. Section 13b-20a is repealed.

(P.A. 79-53; P.A. 83-521, S. 12, 13.)

Sec. 13b-20b. Definitions. As used in sections 13b-20b to 13b-20k, inclusive:

(a) “Commissioner” means the Commissioner of Transportation;

(b) “Consultant” means any architect, professional engineer, landscape architect, land surveyor or accountant who is registered or licensed to practice his profession in accordance with the applicable provisions of the general statutes, any planner or any environmental, management or financial specialist;

(c) “Consultant services” includes those professional services rendered by architects, professional engineers, landscape architects, land surveyors, accountants, planners or environmental, management or financial specialists, as well as incidental services that members of such professions and those in their employ are authorized to perform;

(d) “Firm” means any individual, partnership, corporation, joint venture, association or other legal entity authorized by law to practice the profession of architecture, landscape architecture, engineering, land surveying, accounting, planning or environmental, management or financial specialization;

(e) “Selection panel” means the evaluation and selection panel established under section 13b-20c; and

(f) “Negotiation committee” means the committee established under section 13b-20d.

(P.A. 83-521, S. 1, 13; P.A. 84-546, S. 36, 173.)

History: P.A. 84-546 made technical changes in definition of “consultant”; (Revisor’s note: In 1999 a reference to Sec. 13b-20l was changed editorially by the Revisors to Sec. 13b-20k, since section 13b-20l was repealed by P.A. 98-182).

Sec. 13b-20c. Consultant services evaluation and selection panels. There is established within the Department of Transportation one or more consultant services evaluation and selection panels which shall consist of the following persons from within the department: (1) Three individuals appointed by the commissioner; (2) one individual appointed by the bureau head of the bureau for which the specific project is being performed, subject to the approval of the commissioner; and (3) one individual appointed by the bureau head of any other bureau if such other bureau is requesting the specific consultant services and if such bureau will be responsible for the administration of the consultant contract, subject to the approval of the commissioner.

(P.A. 83-521, S. 2, 13; P.A. 85-613, S. 149, 154; P.A. 91-124, S. 4.)

History: P.A. 85-613 made technical changes, authorizing multiple panels where previously a single panel was mentioned and deleting references to “modal” bureaus; P.A. 91-124 deleted the provision requiring that appointees of the commissioner on the selection panels serve for a one-year term.

Sec. 13b-20d. Negotiation committees. There shall be within the Department of Transportation one or more negotiation committees each of which shall consist of three individuals, appointed by the commissioner from within the department, none of whom shall be members of a selection panel.

(P.A. 83-521, S. 3, 13; July Sp. Sess. P.A. 85-1, S. 12, 15.)

History: July Sp. Sess. P.A. 85-1 authorized multiple committees where previously a single committee was mentioned.

Sec. 13b-20e. Prequalification of consultants. Letters of interest for provision of consultant services. (a) Any consultant who desires to provide consulting services to the department in any calendar year shall be required to submit, not later than the fifteenth day of November immediately preceding such calendar year, information concerning their qualifications as may be required by the department. Such consultants shall provide the department with additional or updated information upon request by the department. The commissioner shall by January first, annually, analyze the information submitted and determine those consultants qualified to perform services in areas of expertise established by the department. The commissioner shall publish annually, in accordance with the provisions of section 13b-20g, at any time between September first to October first, a notice that any person, firm or corporation which desires to be listed with the department as a consultant shall submit such information as required pursuant to this subsection to the department. Such notice shall also list the areas of expertise likely to be needed by the department during the next calendar year.

(b) Except as provided in subsection (c) of this section, any consultant, who has not submitted his qualifications to the department, pursuant to subsection (a) of this section, shall not be eligible to perform consultant services for the department. Any prequalified consultant, who has submitted his qualifications to the department, pursuant to subsection (a) of this section, who desires to provide consultant services to the department in response to a notice published in accordance with the provisions of section 13b-20g shall submit only a letter of interest to that effect.

(c) If the prequalified list contains less than five consulting firms or does not include a consultant with a particular expertise required by the department, any consultant may submit a letter of interest to the department in response to a notice published, in accordance with the provisions of section 13b-20g. The letter of interest shall set forth the consultant's qualifications for performing the specific service sought by the department. The selection panel shall then develop a qualified list of consultants in accordance with sections 13b-20i and 13b-20j.

(P.A. 83-521, S. 4, 13; P.A. 89-152, S. 1; P.A. 91-124, S. 5.)

History: P.A. 89-152 inserted new Subsec. (a) re process for prequalification of consultants and designated former provisions as Subsec. (b); P.A. 91-124 in Subsec. (a) changed the submittal date from November thirtieth to the fifteenth and deleted the provision requiring consultants moving into the state or expanding their services to submit information to the department, in Subsec. (b) added language making prequalification mandatory for those consultants desiring to provide services to the department and added a new Subsec. (c) establishing procedures for the department to obtain consultant when the prequalification list does not contain a consultant with the necessary expertise or when the list contains less than five consultants.

Sec. 13b-20f. Evaluation of consultants having active agreements with department. The performance of all consultants who have active agreements with the department shall be evaluated by the supervising unit within the bureau utilizing the consultant services, at six-month intervals and upon completion of the consultant services. Each such evaluation shall be kept on file in the supervising unit and a copy filed with the permanent selection panel.

(P.A. 83-521, S. 5, 13.)

Sec. 13b-20g. Notice of need for consultants. Responses. Whenever there is a need to engage a consultant, the commissioner shall publish a notice in appropriate professional magazines, professional newsletters and newspapers indicating the general scope of the assignment and requesting responses in accordance with subsection (b) of section 13b-20e, and at least once in one or more newspapers having a circulation in each county of the state. Responses shall be received at the Department of Transportation not later than fourteen days after the last date on which the notice is published, unless additional time is specifically authorized by the commissioner, or not later than any specific date set forth in such notice. For certain specialized projects the notice may also solicit a full work proposal in addition to the technical qualifications of a firm.

(P.A. 83-521, S. 6, 13; P.A. 89-152, S. 2.)

History: P.A. 89-152 made technical change.

Sec. 13b-20h. Selection panel. Responsibilities. Meetings. (a) A selection panel shall be responsible for the preparation of the evaluation of interested consultants and for the development of a list of prospective consultants for each specific project.

(b) Meetings of a selection panel may be called any time during normal working hours. All motions and decisions shall require for passage the affirmative vote of at least three of the members.

(c) A selection panel shall screen all responses submitted in proper form for a project and shall select five consultant firms for further consideration for appointment and award of a contract. If fewer than five responses are received, all responses shall be considered as eligible for further consideration.

(P.A. 83-521, S. 7, 13; P.A. 85-613, S. 150, 154; P.A. 89-152, S. 3; P.A. 91-124, S. 6.)

History: P.A. 85-613 made technical changes; P.A. 89-152 made technical change; P.A. 91-124 in Subsec. © changed the number of firms the department shall interview for a project from seven to five.

Sec. 13b-20i. Criteria for selection of consultants. In making the initial review of responses and in all other steps of the selection process, the commissioner and the selection panel shall be guided by the following objective criteria:

- (1) Specialized design and technical competence of the consultant firm regarding the types of service required;
- (2) Capacity and capability of the firm to perform the work, including any specialized services, within the time limitations;
- (3) Past record of performance on contracts with the state and other clients with respect to such factors as control of costs, quality of work, conformance with program and cooperation with client;
- (4) The volume of work performed by the firm within the previous three years for the Department of Transportation and the volume of work to be completed by such firm, if any, with the objective of effecting an equitable distribution of contracts among qualified firms and of assuring that the interest of the public in having available a substantial number of qualified firms is protected, provided, the principle of selection of the most highly qualified firms is not violated; and
- (5) Where a full work proposal process is utilized, the degree to which the consultant's proposal satisfies the requirements of the department.

(P.A. 83-521, S. 8, 13; P.A. 89-152, S. 4.)

History: P.A. 89-152 added provision in Subdiv. (4) re providing department with information re work to be completed by firm for the department.

Sec. 13b-20j. Procedure for selection of consultants. Memorandum re application of evaluation criteria. (a) A selection panel shall conduct interviews with the five consultant firms selected, or if fewer than five responses are received, the panel shall conduct interviews with all such firms and present the names of all the consultant firms responding to the commissioner.

(b) A selection panel shall proceed to furnish a list of the most qualified consultant firms to the commissioner, or the names of all the consultant firms responding if fewer than five respond. A panel shall prepare a memorandum of the selection process, indicating how the evaluation criteria were applied to determine the most qualified firms, which shall be available to the public after execution of the contract with the selected consultant. The commissioner shall select a consultant from among the list of firms submitted by a selection panel. After the commissioner has made his selection, the names of the consultant firms submitted to the commissioner shall be available to the public upon request. The commissioner shall also prepare a memorandum of the final phase of the selection process, indicating how he applied the evaluation criteria to determine the most qualified firm. Such memorandum shall be available to the public after execution of the contract with the selected consultant.

(P.A. 83-521, S. 9, 13; P.A. 85-613, S. 151, 154; P.A. 91-124, S. 7.)

History: P.A. 85-613 made technical changes; P.A. 91-124 in Subsecs. (a) and (b) changed the number of firms the department shall interview for a project from seven to five.

Sec. 13b-20k. Negotiations with selected consultants. Memorandum re negotiations. (a) Upon notification by the commissioner of his selection, the bureau head who will administer the contract shall notify the consultant of his selection. The selected firm shall be audited if necessary prior to negotiations and also during the contract life in accordance with federal statutes, the general statutes and regulations adopted pursuant to such statutes. A member of the negotiation committee shall be present at all such audit meetings.

(b) The selected consultant shall send its fee proposal to the negotiation committee. The appropriate bureau of the department shall prepare a comparative fee proposal that shall also be submitted to a negotiation committee. The committee shall complete negotiations and submit appropriate data to the initiating bureau for the purpose of processing an agreement.

(c) Prior to a contract being executed, the selected consultant shall execute a certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting and the consultant firm shall provide to the bureau responsible for administering the project a list of individuals who are expected to contribute to the project.

(d) Any such contract shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the commissioner determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

(e) If the negotiation committee is unable to negotiate a satisfactory contract with the firm selected by the commissioner, at a price the committee determines to be fair, competitive and reasonable, negotiations with that firm shall be formally terminated. The commissioner shall select a consultant from the remaining firms on the list submitted by the selection panel and the procedure established under this section shall be followed.

(f) Should the negotiation committee be unable to negotiate a satisfactory contract with any of the firms selected by the panel, the panel shall select additional firms and the procedures established under section 13b-20j and this section shall be followed.

(g) After award of a contract under sections 13b-20b to 13b-20k, inclusive, the negotiation committee shall prepare a memorandum setting forth the principal elements of the negotiations with each firm. Such memorandum shall contain sufficient detail to reflect the significant considerations controlling price and other terms of the contract. The memorandum shall be available to the public upon request.

(P.A. 83-521, S. 10, 13; P.A. 85-613, S. 152, 154.)

History: P.A. 85-613 made technical change; (Revisor's note: In 1999 a reference to Sec. 13b-20l in Subsec. (g) was changed editorially by the Revisors to Sec. 13b-20k, since section 13b-20l was repealed by P.A. 98-182).

Sec. 13b-20l. Regulations re selection of consultants. Section 13b-20l is repealed, effective July 1, 1998.

(P.A. 83-521, S. 11, 13; P.A. 98-182, S. 21, 22.)

Sec. 13b-20m. Guidelines for determining reasonableness of consultant services. In order to promote engineering and design quality and ensure maximum competition by firms providing consultant services, as defined in section 13b-20b, the Secretary of the Office of Policy and Management, in consultation with the Commissioner of Transportation, shall establish guidelines for determining the reasonableness and allowability of various cost factors which shall include, but not be limited to, salary limits, benefits and expense reimbursement.

(P.A. 96-222, S. 24, 41.)

History: P.A. 96-222 effective June 4, 1996.

Connecticut Code of Ethics for Public Officials (Sections Regarding Conflicts of Interest)

Title 1: Chapter 10

Sec. 1-85. (Formerly Sec. 1-68). Interest in conflict with discharge of duties. A public official, including an elected state official, or state employee has an interest which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, if he has reason to believe or expect that he, his spouse, a dependent child, or a business with which he is associated will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. A public official, including an elected state official, or state employee does not have an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to him, his spouse, a dependent child, or a business with which he, his spouse or such dependent child is associated as a member of a profession, occupation or group to no greater extent than any other member of such profession, occupation or group. A public official, including an elected state official or state employee who has a substantial conflict may not take official action on the matter.

History: P.A. 77-600 changed "person subject to this chapter" to "public official or state employee"; in 1979 Sec. 1-68 transferred to Sec. 1-85; P.A. 84-546 made technical change; P.A. 89-97 amended section to specify applicability to elected state officials, state employees, their spouses and dependent children and businesses with which they are associated and to prohibit an official or employee who has substantial conflict from taking official action on the matter.

Sec. 1-86. Procedure when discharge of duty affects official's or state employee's financial interests. Lobbyists prohibited from accepting employment with General Assembly and General Assembly members forbidden to be lobbyists. (a) Any public official or state employee, other than an elected state official, who, in the discharge of such official's or employee's official duties, would be required to take an action that would affect a financial interest of such official or employee, such official's or employee's spouse, parent, brother, sister, child or the spouse of a child or a business with which such official or employee is associated, other than an interest of a de minimis nature, an interest that is not distinct from that of a substantial segment of the general public or an interest in substantial conflict with the performance of official duties as defined in section 1-85 has a potential conflict of interest. Under such circumstances, such official or employee shall, if such official or employee is a member of a state regulatory agency, either excuse himself or herself from the matter or prepare a written statement signed under penalty of false statement describing the matter requiring action and the nature of the potential conflict and explaining why despite the potential conflict, such official or employee is able to vote and otherwise participate fairly, objectively and in the public interest. Such public official or state employee shall deliver a copy of the statement to the Office of State Ethics and enter a copy of the statement in the journal or minutes of the agency. If such official or employee is not a member of a state regulatory agency, such official or employee shall, in the case of either a substantial or potential conflict, prepare a written statement signed under penalty of false statement describing the matter requiring action and the nature of the conflict and deliver a copy of the statement to such official's or employee's immediate superior, if any, who shall assign the matter to another employee, or if such official or employee has no immediate superior, such official or employee shall take such steps as the Office of State Ethics shall prescribe or advise.

(b) No elected state official shall be affected by subsection (a) of this section.

(c) No person required to register with the Office of State Ethics under section 1-94 shall accept employment with the General Assembly or with any member of the General Assembly in connection with legislative action, as defined in section 1-91. No member of the General Assembly shall be a lobbyist.

History: P.A. 77-604 made technical changes; P.A. 81-53 amended this section to exempt public officials and state employees from compliance with its terms with respect to actions affecting a financial interest of theirs if such interest is not distinct from that of a substantial segment of the public where prior law provided an exemption only where the interest affected was the same as that of the public in general; P.A. 81-472 made technical correction; P.A. 83-249 made technical amendments; P.A. 83-586 eliminated requirement that official or employee refrain from action or decision in all instances in which a potential conflict exists; P.A. 85-369 added Subsec. (b) which prohibits persons required to register with the state ethics commission from accepting employment with the general assembly or a member thereof in connection with legislative action, and prohibits members of the general assembly from being lobbyists; P.A. 89-97 amended Subsec. (a) to limit applicability to public officials or state employees who are not elected state officials, to specify applicability in cases of both substantial and potential conflicts of interest and to rephrase provision re voluntary withdrawal from consideration of such matters, inserted new Subsec. (b) stating that Subsec. (a) does not apply to elected state officials, and relettered the former Subsec. (b) as Subsec. (c); P.A. 05-183 replaced "commission" and "State Ethics Commission" with "Office of State Ethics" throughout the section and in Subsec. (a) made technical changes for the purpose of gender neutrality, effective July 1, 2005.



POLICY NO. F&A-10

June 1, 2007

SUBJECT: Code of Ethics Policy

The purpose of this policy is to establish and maintain high standards of honesty, integrity, and quality of performance for all employees of the Department of Transportation (“DOT” or “Department”). Individuals in government service have positions of significant trust and responsibility that require them to adhere to the highest ethical standards. Standards that might be acceptable in other public or private organizations are not necessarily acceptable for the DOT.

It is expected that all DOT employees will comply with this policy as well as the Code of Ethics for Public Officials, and strive to avoid even the appearance of impropriety in their relationships with members of the public, other agencies, private vendors, consultants, and contractors. This policy is, as is permitted by law, in some cases stricter than the Code of Ethics for Public Officials. Where that is true, employees are required to comply with the more stringent DOT policy.

The Code of Ethics for Public Officials is State law and governs the conduct of all State employees and public officials regardless of the agency in which they serve. The entire Code, as well as a summary of its provisions, may be found at the Office of State Ethics’ web site: www.ct.gov/ethics/site/default.asp. For formal and informal interpretations of the Code of Ethics, DOT employees should contact the Office of State Ethics or the DOT’s Ethics Compliance Officer or her designee.

All State agencies are required by law to have an ethics policy statement. Additionally, all State agencies are required by law to have an Ethics Liaison or Ethics Compliance Officer. The DOT, because of the size and scope of its procurement activities, has an Ethics Compliance Officer who is responsible for the Department’s: development of ethics policies; coordination of ethics training programs; and monitoring of programs for agency compliance with its ethics policies and the Code of Ethics for Public Officials. At least annually, the Ethics Compliance Officer shall provide ethics training to agency personnel involved in contractor selection, evaluation, and supervision. A DOT employee who has a question or is unsure about the provisions of this policy, or who would like assistance contacting the Office of State Ethics, should contact the Ethics Compliance Officer or her designee.

The DOT Ethics Compliance Officer is:

Denise Rodosevich, Managing Attorney
Office of Legal Services

For questions, contact the Ethics Compliance Officer’s Designee:

Alice M. Sexton, Principal Attorney
Office of Legal Services
2800 Berlin Turnpike
Newington, CT 06131-7546
Tel. (860) 594-3045

To contact the Office of State Ethics:

Office of State Ethics
20 Trinity Street, Suite 205
Hartford, CT 06106
Tel. (860) 566-4472
Facs. (860) 566-3806
Web: www.ethics.state.ct.us

Enforcement

The Department expects that all employees will comply with all laws and policies regarding ethical conduct. Violations of the law may subject an employee to sanctions from agencies or authorities outside the DOT. Whether or not another agency or authority imposes such sanctions, the Department retains the independent right to review and respond to any ethics violation or alleged ethics violation by its employees. Violations of this policy or ethics statutes, as construed by the DOT, may result in disciplinary action up to and including dismissal from State service.

Prohibited Activities

1. **Gifts:** DOT employees (and in some cases their family members) are prohibited by the Code of Ethics and this Policy from accepting a gift from anyone who is: (1) doing business with, or seeking to do business with, the DOT; (2) directly regulated by the DOT; (3) prequalified as a contractor pursuant to Conn. Gen. Stat. §4a-100 by the Commissioner of the Department of Administrative Services (DAS); or (4) known to be a registered lobbyist or a lobbyist's representative. These four categories of people/entities are referred to as "restricted donors." A list of registered lobbyists can be found on the web site of the Office of State Ethics (www.ct.gov/ethics/site/default.asp). A list of prequalified consultants and contractors, *i.e.*, those seeking to do business with the DOT, can be found on the DOT's Internet site under "Consultant Information" and "Doing Business with ConnDOT," respectively.

The term "gift" is defined in the Code of Ethics for Public Officials, Conn. Gen. Stat. §1-79(e), and has numerous exceptions. For example, one exception permits the acceptance of food and/or beverages valued up to \$50 per calendar year from any one donor and consumed on an occasion or occasions while the person paying or his representative is present. Therefore, such food and/or beverage is not a "gift." Another exception permits the acceptance of items having a value up to ten dollars (\$10) provided the aggregate value of all things provided by the donor to the recipient during a calendar year does not exceed fifty dollars (\$50). Therefore, such items are not a "gift." Depending on the circumstances, the "donor" may be an individual if the individual is bearing the expense, or a donor may be the individual's employer/group if the individual is passing the expense back to the employer/group he/she represents.

This policy requires DOT employees to immediately return any gift (as defined in the Code of Ethics) that any person or entity attempts to give to the employee(s). If any such gift or other item of value is received by other than personal delivery from the subject person or entity, the item shall be taken to the Office of Human Resources along with the name and address of the person or entity who gave the item. The Office of Human Resources, along with the recipient of the item of value, will arrange for the donation of the item to a local charity (e.g., Foodshare, local soup kitchens, etc.). The Office of Human Resources will then send a letter to the gift's donor advising the person of the item's donation to charity and requesting that no such gifts be given to DOT employees in the future.

2. **Contracting for Goods or Services for Personal Use With Department Contractors, Consultants, or Vendors:** Executive Order 7C provides that: "Appointed officials and state employees in the Executive Branch are prohibited from contracting for goods and services, for personal use, with any person doing business with or seeking business with his or her agency, unless the goods or services are readily available to the general public for the price which the official or state employee paid or would pay."
3. **Gift Exchanges Between Subordinates and Supervisors/Senior Staff:** A recent change in the Code of Ethics prohibits exchanges of gifts valued at \$100 or more between (*i.e.*, to and from) supervisors and employees under their supervision. The Citizen's Ethics Advisory Board has advised that: (1) the monetary limit imposed by this provision is a per-gift amount; (2) gifts given between supervisors and subordinates (or *vice versa*) in celebration of a "major life event," as defined in the Code of Ethics, need not comply with the \$100 limit; and (3) the limitations imposed by this provision apply to a direct supervisor and subordinate *and to any individual up or down the chain of command*. The Citizen's Ethics Advisory Board has also advised that supervisors or

subordinates may not pool their money to give a collective or group gift valued at \$100 or more, even though each of the individual contributions is less than \$100.

4. **Acceptance of Gifts to the State:** A recent change to the Code of Ethics for Public Officials modified the definition of the term “gift” to limit the application of the so-called “gift to the State” exception. In general, “gifts to the State” are goods or services given to a State agency for use on State property or to support an event and which facilitate State action or functions. Before accepting any benefit as a “gift to the State,” DOT employees should contact the Ethics Compliance Officer.
5. **Charitable Organizations and Events:** No DOT employee shall knowingly accept any gift, discount, or other item of monetary value for the benefit of a charitable organization from any person or entity seeking official action from, doing or seeking business with, or conducting activities regulated by, the Department.
6. **Use of Office/Position for Financial Gain:** DOT employees shall not use their public office, position, or influence from holding their State office/position, nor any information gained in the course of their State duties, for private financial gain (or the prevention of financial loss) for themselves, any family member, any member of their household, nor any “business with which they are associated.” In general, a business with which one is associated includes any entity of which a DOT employee or his/her immediate family member is a director, owner, limited or general partner, beneficiary of a trust, holder of 5 percent or more stock, or an officer (president, treasurer, or executive or senior vice president).

DOT employees shall not use or distribute State information (except as permitted by the Freedom of Information Act), nor use State time, personnel, equipment, or materials, for other than State business purposes.

7. **Other Employment:** DOT employees shall not engage in, nor accept, other employment that will either impair their independence of judgment with regard to their State duties or require or induce them to disclose confidential information gained through their State duties.

Any DOT employee who engages in or accepts other employment (including as an independent contractor), or has direct ownership in an outside business or sole proprietorship, shall complete an Employment/Outside Business Disclosure Form (see attached) and submit it to the Department's Human Resources Administrator. Disclosure of other employment to the DOT Human Resources Administrator shall *not* constitute approval of the other employment for purposes of the Code of Ethics for Public Officials.

Inquiries concerning the propriety of a DOT employee's other employment shall be directed to the Office of State Ethics to assure compliance with the Code of Ethics for Public Officials. Employees anticipating accepting other employment as described above should give ample time (at least one month) to the Office of State Ethics to respond to such outside employment inquiries.

No employee of the DOT shall allow any private obligation of employment or enterprise to take precedence over his/her responsibility to the Department.

8. **Outside Business Interests:** Any DOT employee who holds, directly or indirectly, a financial interest in any business, firm, or enterprise shall complete an Employment/Outside Business Disclosure Form (see attached) and submit it to the Department's Human Resources Administrator. An indirect financial interest includes situations where a DOT employee's spouse has a financial interest in a business, firm, or enterprise. A financial interest means that the employee or his spouse is an owner, member, partner, or shareholder in a non-publicly traded entity. Disclosure of such outside business interests to the DOT Human Resources Administrator shall *not* constitute approval of the outside business interest under this Policy or the Code of Ethics for Public Officials. DOT employees shall not have a financial interest in any business, firm, or enterprise which will either impair their independence of judgment with regard to their State duties or require or induce them to disclose confidential information gained through their State duties. Inquiries concerning the propriety of a DOT employee's outside business interests shall be directed to the Office of State Ethics to assure compliance with the Code of Ethics for Public Officials.

9. ***Contracts With the State:*** DOT employees, their immediate family members, and/or a business with which a DOT employee is associated, may not enter into a contract with the State, other than pursuant to a court appointment, valued at \$100 or more unless the contract has been awarded through an open and public process.

10. ***Sanctioning Another Person's Ethics Violation:*** No DOT official or employee shall counsel, authorize, or otherwise sanction action that violates any provision of the Code of Ethics.

11. ***Certain Persons Have an Obligation to Report Ethics Violations:*** If the DOT Commissioner, Deputy Commissioner, or "person in charge of State agency procurement" and contracting has reasonable cause to believe that a person has violated the Code of Ethics or any law or regulation concerning ethics in State contracting, he/she *must* report such belief to the Office of State Ethics. All DOT employees are encouraged to disclose waste, fraud, abuse, and corruption about which they become aware to the appropriate authority (see also Policy Statement EX.O.-23 dated March 31, 2004), including, but not limited to, their immediate supervisor or a superior of their immediate supervisor, the DOT Office of Management Services, the Ethics Compliance Officer, the Auditors of Public Accounts, the Office of the Attorney General, or the Office of the Chief State's Attorney.

12. ***Post-State Employment Restrictions:*** In addition to the above-stated policies of the Department, DOT employees are advised that the Code of Ethics for Public Officials bars certain conduct by State employees *after they leave State service. Upon leaving State service:*
 - ***Confidential Information:*** DOT employees must never disclose or use confidential information gained in State service for the financial benefit of any person.

 - ***Prohibited Representation:*** DOT employees must *never* represent anyone (other than the State) concerning any "particular matter" in which they participated personally and substantially while in State service and in which the State has a substantial interest.

DOT employees also must not, for one year after leaving State service, represent anyone other than the State for compensation before the DOT concerning a matter in which the State has a substantial interest. In this context, the term "represent" has been very broadly defined. Therefore, any former DOT employee contemplating post-State employment work that might involve interaction with any bureau of DOT (or any Board or Commission administratively under the DOT) within their first year after leaving State employment should contact the DOT Ethics Compliance Officer and/or the Office of State Ethics.

 - ***Employment With State Vendors:*** DOT employees who participated substantially in, or supervised, the negotiation or award of a State contract valued at \$50,000 or more must not accept employment with a party to the contract (other than the State) for a period of one year after resigning from State service, if the resignation occurs within one year after the contract was signed.

13. ***Ethical Considerations Concerning Bidding and State Contracts:*** DOT employees also should be aware of various provisions of Part IV of the Code of Ethics that affect any person or firm who: (1) is, or is seeking to be, prequalified by DAS under Conn. Gen. Stat. §4a-100; (2) is a party to a large State construction or procurement contract, or seeking to enter into such a contract, with a State agency; or (3) is a party to a consultant services contract, or seeking to enter into such a contract, with a State agency. These persons or firms shall not:
 - With the intent to obtain a competitive advantage over other bidders, solicit any information from an employee or official that the contractor knows is not and will not be available to other bidders for a large State construction or procurement contract that the contractor is seeking;

 - Intentionally, willfully, or with reckless disregard for the truth, charge a State agency for work not performed or goods not provided, including submitting meritless change orders in bad faith with the sole intention of increasing the contract price, as well as falsifying invoices or bills or charging unreasonable and unsubstantiated rates for services or goods to a State agency; and

- Intentionally or willfully violate or attempt to circumvent State competitive bidding and ethics laws.

Firms or persons that violate the above provisions may be deemed a nonresponsible bidder by the DOT.

In addition, no person with whom a State agency has contracted to provide consulting services to plan specifications for any contract, and no business with which such person is associated, may serve as a consultant to any person seeking to obtain such contract, serve as a contractor for such contract, or serve as a subcontractor or consultant to the person awarded such contract.

DOT employees who believe that a contractor or consultant may be in violation of any of these provisions should bring it to the attention of their manager.

Training for DOT Employees

A copy of this policy will be posted throughout the Department, and provided to each employee either in hard copy or by e-mail. As set forth above, State law requires that certain employees involved in contractor/consultant/vendor selection, evaluation, or supervision must undergo annual ethics training coordinated or provided by the Ethics Compliance Officer. If you believe your duties meet these criteria, you should notify your Bureau Chief to facilitate compilation of a training schedule. In addition, the DOT Ethics Compliance Officer can arrange for periodic ethics training provided by the Office of State Ethics. Finally, the Department will make available, on its web site or otherwise, a copy of this policy to all vendors, contractors, and other business entities doing business with the Department.

Important Ethics Reference Materials

It is strongly recommended that every DOT employee read and review the following:

- Code of Ethics for Public Officials, Chapter 10, Part 1, Conn. General Statutes Sections 1-79 through 1-89a found at: www.ct.gov/ethics/site/default.asp
- Ethics Regulations Sections 1-81-14 through 1-81-38, found at: www.ct.gov/ethics/site/default.asp
- The Office of State Ethics web site includes summaries and the full text of formal ethics advisory opinions interpreting the Code of Ethics, as well as summaries of previous enforcement actions: www.ct.gov/ethics/site/default.asp. DOT employees are strongly encouraged to contact the Department's Ethics Compliance Officer or her designee, or the Office of State Ethics with any questions or concerns they may have.

(This Policy Statement supersedes Policy Statement No. F&A-10 dated January 6, 2006)

Ralph J. Carpenter
COMMISSIONER

Attachment

List 1 and List 3

(Managers and supervisors are requested to distribute a copy of this Policy Statement to all employees under their supervision.)

cc: Office of the Governor, Department of Administrative Services, Office of State Ethics



POLICY NO. F&A-10A
July 27, 2007

SUBJECT: Code of Ethics Policy Supplement

This policy supplements and reaffirms the Department's Code of Ethics Policy (F&A-10) issued on June 1, 2007.

In order to establish and maintain high standards of honesty, integrity, and quality of performance for all employees of the Department and to avoid even the appearance of impropriety, it is the policy of the Department that no Department employee participate in any matter involving a contractor, consultant, or vendor (collectively "contractor") that employs such employee's spouse, child (including stepchild), brother, sister (including stepbrother, stepsister, half brother, and half sister), mother, father, or brother-in-law, sister-in-law, mother in-law, or father-in-law (collectively "family member").

If the Department employee learns of a project or solicitation that is being pursued or is likely to be pursued by a contractor that so employs a family member, the employee shall: (1) inform his or her supervisor of the conflict and of the need to be assigned to other projects/work not involving such contractor; (2) except for his supervisor, *not* disclose the conflict of interest to any subordinate or any other employee who may be involved in selecting or working with the contractor; and (3) together with his supervisor, meet with the Ethics Compliance Officer's Designee to determine any other appropriate measures to ensure that the employee has no involvement with such contractor.

To ensure compliance with this policy, all employees are required to complete the attached form and submit a copy to their supervisor and to the Office of Human Resources by August 31, 2007, and annually thereafter by no later than May 1. Should an employee be placed under the supervision of a different Department supervisor during the year, he or she shall give such supervisor a copy of such form. Should a family member become employed or leave the employment of a contractor who does business with or is seeking to do business with the Department, a new form must be completed and given to the employee's supervisor and to the Office Human Resources as soon as the employee learns of the family member's employment status.

The Department expects that all employees will comply with all laws and policies regarding ethical conduct. Violation of the law may subject an employee to sanctions from agencies or authorities outside the Department. Whether or not another agency or authority imposes such sanctions, the Department retains the independent right to review and respond to any ethics violation or alleged ethics violation by its employees. Violations of this policy or ethics statutes, as construed by the Department, may result in disciplinary action up to and including dismissal from State service.

Ralph J. Carpenter
COMMISSIONER

Attachment

List 1 and List 3

(Managers and supervisors are requested to distribute a copy of this Policy Statement to all employees under their supervision.)

cc: Office of the Governor, Department of Administrative Services, Office of State Ethics

FEDERAL LAW: 40 USC 1101 THRU 1104 (Brooks Act)

Chapter 11 – Selection of Architects and Engineers

§ 1101. Policy (Formerly 40 U.S.C. § 541)

The policy of the Federal Government is to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

§ 1102. Definitions (Formerly 40 U.S.C. § 542)

In this chapter, the following definitions apply:

(1.) Agency Head. – The term "agency head" means the head of a department, agency, or bureau of the Federal Government.

(2.) Architectural and Engineering Services. – The term "architectural and engineering services" means –

(A.) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;

(B.) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(C.) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

(3.) Firm. – The term "firm" means an individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture or engineering.

§ 1103. Selection procedure (Formerly 40 U.S.C. § 543)

(a) In General. – These procedures apply to the procurement of architectural and engineering services by an agency head.

(b) Annual Statements. – The agency head shall encourage firms to submit annually a statement of qualifications and performance data.

(c) Evaluation. – For each proposed project, the agency head shall evaluate current statements of qualifications and performance data on file with the agency, together with statements submitted by other firms regarding the proposed project. The agency head shall conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services.

(d) Selection. – From the firms with which discussions have been conducted, the agency head shall select, in order of preference, at least 3 firms that the agency head considers most highly qualified to provide the services required. Selection shall be based on criteria established and published by the agency head.

§ 1104. Negotiation of contract (Formerly 40 U.S.C. § 544)

(a) In General. – The agency head shall negotiate a contract for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Federal Government. In determining fair and reasonable compensation, the agency head shall consider the scope, complexity, professional nature, and estimated value of the services to be rendered.

(b) Order of Negotiation. – The agency head shall attempt to negotiate a contract, as provided in subsection (a), with the most highly qualified firm selected under section 1103 of this title. If the agency head is unable to negotiate a satisfactory contract with the firm, the agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the agency head is unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

FEDERAL LAW: 23 USC 112

Title 23 – Highways

§ 112. Letting of contracts

(a) In all cases where the construction is to be performed by the State transportation department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary. The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.

(b) Bidding Requirements. -

(1) In General. – Subject to paragraphs (2) and (3), construction of each project, subject to the provisions of subsection (a) of this section, shall be performed by contract awarded by competitive bidding, unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

(2) Contracting for Engineering and Design Services. –

(A) General Rule. – Subject to paragraph (3), each contract for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a project subject to the provisions of subsection (a) of this section shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40.

(B) Performance and Audits. – Any contract or subcontract awarded in accordance with subparagraph (A), whether funded in whole or in part with Federal-aid highway funds, shall be performed and audited in compliance with cost principles contained in the Federal Acquisition Regulations of part 31 of title 48, Code of Federal Regulations.

(C) Indirect Cost Rates. – Instead of performing its own audits, a recipient of funds under a contract or subcontract awarded in accordance with subparagraph (A) shall accept indirect cost rates established in accordance with the Federal Acquisition Regulations for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

(D) Application of Rates. – Once a firm's indirect cost rates are accepted under this paragraph, the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and shall not be limited by administrative or de facto ceilings of any kind.

(E) Prenotification; Confidentiality of Data. – A recipient of funds requesting or using the cost and rate data described in subparagraph (D) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided, in whole or in part, to another firm or to any government agency which is not part of the group of agencies sharing cost data under this paragraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

(F)(F) (1) Subparagraphs (B), (C), (D) and (E) herein shall not apply to the States of West Virginia or Minnesota.

(3) Design-Build Contracting. –

(A) In General. – A State transportation department or local transportation agency may award a design-build contract for a qualified project described in subparagraph (C) using any procurement process permitted by applicable State and local law.

(B) Limitation on Final Design. – Final design under a design-build contract referred to in subparagraph (A) shall not commence before compliance with section 102 of the National Environmental Policy Act of 1969

(42 U.S.C. 4332).

(C) Qualified Projects. – A qualified project referred to in subparagraph (A) is a project under this chapter (including intermodal projects) for which the Secretary has approved the use of design-build contracting under criteria specified in regulations issued by the Secretary.

(D) Regulatory Process. – Not later than 90 days after the date of enactment of the SAFETEA-LU, the Secretary shall issue revised regulations under section 1307(c) of the Transportation Equity Act for 21st Century (23 U.S.C. 112 note; 112 Stat. 230) that –

(i) do not preclude a State transportation department or local transportation agency, prior to compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), from –

(I) issuing requests for proposals;

(II) proceeding with awards of design-build contracts; or

(III) issuing notices to proceed with preliminary design work under design-build contracts;

(ii) require that the State transportation department or local transportation agency receive concurrence from the Secretary before carrying out an activity under clause (i); and

(iii) preclude the design-build contractor from proceeding with final design or construction of any permanent improvement prior to completion of the process under such section 102.

(E) Design-Build Contract Defined. – In this paragraph, the term "design-build contract" means an agreement that provides for design and construction of a project by a contractor, regardless of whether the agreement is in the form of a design-build contract, a franchise agreement, or any other form of contract approved by the Secretary.

(c) The Secretary shall require as a condition precedent to his approval of each contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, a sworn statement, executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.

(d) No contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, shall be entered into by any State transportation department or local subdivision of the State without compliance with the provisions of this section, and without the prior concurrence of the Secretary in the award thereof.

(e) Standardized Contract Clause Concerning Site Conditions. –

(1) General Rule. – The Secretary shall issue regulations establishing and requiring, for inclusion in each contract entered into with respect to any project approved under section 106 of this title a contract clause, developed in accordance with guidelines established by the Secretary, which equitably addresses each of the following:

(A) Site conditions.

(B) Suspensions of work ordered by the State (other than a suspension of work caused by the fault of the contractor or by weather).

(C) Material changes in the scope of work specified in the contract.

The guidelines established by the Secretary shall not require arbitration.

(2) Limitation on Applicability. –

(A) State Law. – Paragraph (1) shall apply in a State except to the extent that such State adopts or has adopted by statute a formal procedure for the development of a contract clause described in paragraph (1) or adopts or has adopted a statute which does not permit inclusion of such a contract clause.

(B) Design-Build Contracts. – Paragraph (1) shall not apply to any design-build contract approved under subsection (b)(3).

(f) Selection Process. – A State may procure, under a single contract, the services of a consultant to prepare any environmental impact assessments or analyses required for a project, including environmental impact statements, as well as subsequent engineering and design work on the project 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 the Secretary.

(g) Temporary Traffic Control Devices. –

(1) Issuance of Regulations. – The Secretary, after consultation with appropriate Federal and State officials, shall issue regulations establishing the conditions for the appropriate use of, and expenditure of funds for, uniformed law enforcement officers, positive protective measures between workers and motorized traffic, and

installation and maintenance of temporary traffic control devices during construction, utility, and maintenance operations.

(2) Effects of Regulations. – Based on regulations issued under paragraph (1), a State shall –

(A) develop separate pay items for the use of uniformed law enforcement officers, positive protective measures between workers and motorized traffic, and installation and maintenance of temporary traffic control devices during construction, utility, and maintenance operations; and

(B) incorporate such pay items into contract provisions to be included in each contract entered into by the State with respect to a highway project to ensure compliance with section 109(e)(2).

(3) Limitation. – Nothing in the regulations shall prohibit a State from implementing standards that are more stringent than those required under the regulations.

(4) Positive Protective Measures Defined. – In this subsection, the term "positive protective measures" means temporary traffic barriers, crash cushions, and other strategies to avoid traffic accidents in work zones, including full road closures.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 895; Pub. L. 90-495, Sec. 22(c), Aug. 23, 1968, 82 Stat. 827; Pub. L. 96-470, title I, Sec. 112(b)(1), Oct. 19, 1980, 94 Stat. 2239; Pub. L. 97-424, title I, Sec. 112, Jan. 6, 1983, 96 Stat. 2106; Pub. L. 100-17, title I, Sec. 111, Apr. 2, 1987, 101 Stat. 147; Pub. L. 104-59, title III, Sec. 307(a), Nov. 28, 1995, 109 Stat. 581; Pub. L. 105-178, title I, Secs. 1205, 1212(a)(2)(A)(i), 1307(a), (b), June 9, 1998, 112 Stat. 184, 193, 229, 230; Pub. L. 107-217, Sec. 3(e)(1), Aug. 21, 2002, 116 Stat. 1299; Pub. L. 109-59, title I, Secs. 1110(b), 1503, Aug. 10, 2005, 119 Stat. 1170, 1238; Pub. L. 109-115, div. A, title I, Sec. 174, Nov. 30, 2005, 119 Stat. 2426.)

REFERENCES IN TEXT

The date of enactment of the SAFETEA-LU, referred to in subsec. (b)(3)(D), is the date of enactment of Pub. L. 109-59, which was approved Aug. 10, 2005.

Section 1307(c) of the Transportation Equity Act for 21st Century, referred to in subsec. (b)(3)(D), is section 1307(c) of Pub. L. 105-178, which is set out as a note below.

AMENDMENTS

2005 - Subsec. (b)(2)(A). Pub. L. 109-115, Sec. 174(1), substituted "title 40" for "title 40 or equivalent State qualifications-based requirements".

Subsec. (b)(2)(B) to (D). Pub. L. 109-115, Sec. 174(2), (3), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out heading and text of former subpar. (B). Text read as follows:

"(i) In a Complying State. – If, on the date of the enactment of this paragraph, the services described in subparagraph (A) may be awarded in a State in the manner described in subparagraph (A), subparagraph (A) shall apply in such State beginning on such date of enactment.

"(ii) In a Noncomplying State. – In the case of any other State, subparagraph (A) shall apply in such State beginning on the earlier of (I) August 1, 1989, or (II) the 10th day following the close of the 1st regular session of the legislature of a State which begins after the date of the enactment of this paragraph."

Subsec. (b)(2)(E). Pub. L. 109-115, Sec. 174(3), (4), redesignated subpar. (F) as (E) and substituted subparagraph (D)" for "subparagraph (E)". Former subpar. (E) redesignated (D).

Subsec. (b)(2)(F). Pub. L. 109-115, Sec. 174(5), which directed that subpar. (F) be amended by substituting "(F) Subparagraphs (B), (C), (D) and (E) herein shall not apply to the States of West Virginia or Minnesota." for "'State Option' and all that follows through the period", was executed by making the substitution for "State option. - Subparagraphs (C), (D), (E), and (F) shall take effect 1 year after the date of the enactment of this subparagraph; except that if a State, during such 1-year period, adopts by statute an alternative process intended to promote engineering and design quality and ensure maximum competition by professional companies of all sizes providing engineering and design services, such subparagraphs shall not apply with respect to the State. If the Secretary determines that the legislature of the State did not convene and adjourn a full regular session during such 1-year period, the Secretary may extend such 1-year period until the adjournment of the next regular session of the legislature.", to reflect the probable intent of Congress.

Pub. L. 109-115, Sec. 174(3), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Subsec. (b)(2)(G). Pub. L. 109-115, Sec. 174(3), redesignated subpar. (G) as (F).

Subsec. (b)(3)(C) to (E). Pub. L. 109-59, Sec. 1503, added subpars. (C) and (D), redesignated former subpar. (D) as (E), and struck out former subpar. (C), which described a qualified project as one for which the Secretary had approved the use of design-build contracting under criteria specified in regulations and for which total costs had been estimated to exceed specified amounts.

Subsecs. (f), (g). Pub. L. 109-59, Sec. 1110(b), added subsec. (g), redesignated former subsec. (g) as (f), and struck out former subsec. (f) which read as follows: "The provisions of this section shall not be applicable to contracts for projects on the Federal-aid secondary system in those States where the Secretary has discharged his responsibility pursuant to section 117 of this title, except where employees of a political subdivision of a State are working on a project outside of such political subdivision."

2002 - Subsec. (b)(2)(A). Pub. L. 107-217 substituted "chapter 11 of title 40" for "title IX of the Federal Property and Administrative Services Act of 1949".

1998 - Subsec. (a). Pub. L. 105-178, Sec. 1212(a)(2)(A)(i), substituted "State transportation department" for "State highway department".

Subsec. (b)(1). Pub. L. 105-178, Sec. 1307(a)(1), substituted "paragraphs (2) and (3)" for "paragraph (2)".

Pub. L. 105-178, Sec. 1212(a)(2)(A)(i), substituted "State transportation department" for "State highway department".

Subsec. (b)(2)(A). Pub. L. 105-178, Sec. 1307(a)(2), substituted "Subject to paragraph (3), each contract" for "Each contract".

Subsec. (b)(2)(B)(i). Pub. L. 105-178, Sec. 1205(a), struck out before period at end ", except to the extent that such State adopts by statute a formal procedure for the procurement of such services".

Subsec. (b)(2)(B)(ii). Pub. L. 105-178, Sec. 1205(a), struck out before period at end ", except to the extent that such State adopts or has adopted by statute a formal procedure for the procurement of the services described in subparagraph (A)".

Subsec. (b)(3). Pub. L. 105-178, Sec. 1307(a)(3), added par. (3).

Subsec. (d). Pub. L. 105-178, Sec. 1212(a)(2)(A)(i), substituted "State transportation department" for "State highway department".

Subsec. (e)(2). Pub. L. 105-178, Sec. 1307(b), designated existing provisions as subpar. (A), inserted heading, realigned margins, and added subpar. (B).

Subsec. (g). Pub. L. 105-178, Sec. 1205(b), added subsec. (g).

1995 - Subsec. (b)(2)(C) to (G). Pub. L. 104-59 added subpars. (C) to (G).

1987 - Subsec. (b). Pub. L. 100-17, Sec. 111(a), (b), (d), inserted subsec. heading, designated existing provisions as par. (1), inserted par. (1) heading, substituted "Subject to paragraph (2), construction" for "Construction" and inserted "or that an emergency exists", added par. (2), and realigned margins.

Subsecs. (e), (f). Pub. L. 100-17, Sec. 111(c), added subsec. (e) and redesignated former subsec. (e) as (f).

1983 - Subsec. (b). Pub. L. 97-424, Sec. 112(1), substituted "unless the State highway department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective" for "unless the Secretary shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest" after "by competitive bidding,".

Subsec. (e). Pub. L. 97-424, Sec. 112(2), inserted exception relating to a situation where employees of a political subdivision of a State are working on a project outside of such political subdivision.

1980 - Subsec. (b). Pub. L. 96-470 struck out provision that all findings by the Secretary that a method other than competitive bidding is in the public interest be reported in writing to the Committees on Public Works of the Senate and the House of Representatives.

1968 - Subsec. (b). Pub. L. 90-495 required that contracts for the construction of each project be awarded only on the basis of the lowest responsive bid by a bidder meeting established criteria of responsibility and required that, to be imposed as a condition precedent, requirements and obligations have been specifically set forth in the advertised specifications.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-178, title I, Sec. 1307(e), June 9, 1998, 112 Stat. 231, provided that:

"(1) In General. - The amendments made by this section [amending this section] take effect 3 years after the date of enactment of this Act [June 9, 1998].

"(2) Transition provision. -

"(A) In General. - During the period before issuance of the regulations under subsection (c) [set out below], the Secretary may approve, in accordance with an experimental program described in subsection (d) [set out below],

design-build contracts to be awarded using any process permitted by applicable State and local law; except that final design under any such contract shall not commence before compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

"(B) Previously awarded contracts. - The Secretary may approve design-build contracts awarded before the date of enactment of this Act.

"(C) Design-build contract defined. - In this paragraph, the term 'design-build contract' means an agreement that provides for design and construction of a project by a contractor, regardless of whether the agreement is in the form of a design-build contract, a franchise agreement, or any other form of contract approved by the Secretary."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

REGULATIONS

Pub. L. 105-178, title I, Sec. 1307(c), June 9, 1998, 112 Stat. 230, provided that:

"(1) In general. - Not later than the effective date specified in subsection (e) [see Effective Date of 1998 Amendment note above], after consultation with the American Association of State Highway and Transportation Officials and representatives from affected industries, the Secretary shall issue regulations to carry out the amendments made by this section [amending this section].

"(2) Contents. - The regulations shall -

"(A) identify the criteria to be used by the Secretary in approving the use by a State transportation department or local transportation agency of design-build contracting; and

"(B) establish the procedures to be followed by a State transportation department or local transportation agency for obtaining the Secretary's approval of the use of design-build contracting by the department or agency."

EFFECT ON EXPERIMENTAL PROGRAM

Pub. L. 105-178, title I, Sec. 1307(d), June 9, 1998, 112 Stat. 231, provided that: "Nothing in this section [amending this section and enacting provisions set out as notes under this section] or the amendments made by this section affects the authority to carry out, or any project carried out under, any experimental program concerning design-build contracting that is being carried out by the Secretary as of the date of enactment of this Act [June 9, 1998]."

REPORT TO CONGRESS

Pub. L. 105-178, title I, Sec. 1307(f), June 9, 1998, 112 Stat. 231, provided that:

"(1) In general. - Not later than 5 years after the date of enactment of this Act [June 9, 1998], the Secretary shall submit to Congress a report on the effectiveness of design-build contracting procedures.

"(2) Contents. - The report shall contain -

"(A) an assessment of the effect of design-build contracting on project quality, project cost, and timeliness of project delivery;

"(B) recommendations on the appropriate level of design for design-build procurements;

"(C) an assessment of the impact of design-build contracting on small businesses;

"(D) assessment of the subjectivity used in design-build contracting; and

"(E) such recommendations concerning design-build contracting procedures as the Secretary determines to be appropriate."

PRIVATE SECTOR INVOLVEMENT PROGRAM

Pub. L. 102-240, title I, Sec. 1060, Dec. 18, 1991, 105 Stat. 2003, provided that:

"(a) Establishment. - The Secretary shall establish a private sector involvement program to encourage States to contract with private firms for engineering and design services in carrying out Federal-aid highway projects when it would be cost effective.

"(b) Grants to States. -

"(1) In General. - In conducting the program under this section, the Secretary may make grants in each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997 to not less than 3 States which the Secretary determines have implemented in the fiscal year preceding the fiscal year of the grant the most effective programs for increasing the percentage of funds expended for contracting with private firms (including small business concerns

and small business concerns owned and controlled by socially and economically disadvantaged individuals) for engineering and design services in carrying out Federal-aid highway projects.

"(2) Use of Grants. – A grant received by a State under this subsection may be used by the State only for awarding contracts for engineering and design services to carry out projects and activities for which Federal funds may be obligated under title 23, United States Code.

"(3) Funding. – There are authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 1992 through 1997. Such sums shall remain available until expended.

"(c) Report by FHWA. – Not later than 120 days after the date of the enactment of this Act [Dec. 18, 1991], the Administrator of the Federal Highway Administration shall submit to the Secretary a report on the amount of funds expended by each State in fiscal years 1980 through 1990 on contracts with private sector engineering and design firms in carrying out Federal-aid highway projects. The Secretary shall use information in the report to evaluate State engineering and design programs for the purpose of awarding grants under subsection (b).

"(d) Report to Congress. – Not later than 2 years after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall transmit to Congress a report on implementation of the program established under this section.

"(e) Engineering and Design Services Defined. – The term 'engineering and design services' means any category of service described in section 112(b) of title 23, United States Code.

"(f) Regulations. – Not later than 180 days after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall issue regulations to carry out this section."

PILOT PROGRAM FOR UNIFORM AUDIT PROCEDURES

Pub. L. 102-240, title I, Sec. 1092, Dec. 18, 1991, 105 Stat. 2024, directed Secretary to establish pilot program to include no more than 10 States under which any contract or subcontract awarded in accordance with subsec. (b)(2)(A) of this section was to be performed and audited in compliance with cost principles contained in Federal acquisition regulations of part 41 of title 48 of Code of Federal Regulations, provided for indirect cost rates in lieu of performing audits, and required each State participating in pilot program to report to Secretary not later than 3 years after Dec. 18, 1991, on results of program, prior to repeal by Pub. L. 104-59, title III, Sec. 307(b), Nov. 28, 1995, 109 Stat. 582. See subsec. (b)(2)(C) to (F) of this section.

EVALUATION OF STATE PROCUREMENT PRACTICES

Pub. L. 102-240, title VI, Sec. 6014, Dec. 18, 1991, 105 Stat. 2181, directed Secretary to conduct a study to evaluate whether or not current procurement practices of State departments and agencies were adequate to ensure that highway and transit systems were designed, constructed, and maintained so as to achieve a high quality for such systems at the lowest overall cost and, not later than 2 years after Dec. 18, 1991, to transmit to Congress a report on the results of the study, together with an assessment of the need for establishing a national policy on transportation quality assurance and recommendations for appropriate legislative and administrative actions.

FEDERAL REGULATION: 23 CFR 172

Part 172 – Administration of Engineering and Design Related Service Contracts

Section

- § 172.1 Purpose and applicability.
- § 172.3 Definitions.
- § 172.5 Methods of procurement.
- § 172.7 Audits.
- § 172.9 Approvals.

Authority: 23 U.S.C. 112, 114(a), 302, 315, and 402; 40 U.S.C. 541 *et seq.*; sec. 1205(a), Pub. L. 105–178, 112 Stat. 107 (1998); sec. 307, Pub. L. 104–59, 109 Stat. 568 (1995); sec. 1060, Pub. L. 102–240, 105 Stat. 1914, 2003 (1991); 48 CFR 12 and 31; 49 CFR 1.48(b) and 18.

Source: 67 FR 40155, June 12, 2002, unless otherwise noted.

§ 172.1 Purpose and applicability.

This part prescribes policies and procedures for the administration of engineering and design related service contracts under 23 U.S.C. 112 as supplemented by the common grant rule, 49 CFR part 18. It is not the intent of this part to release the grantee from the requirements of the common grant rule. The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost. Recipients of Federal funds shall ensure that their subrecipients comply with this part.

§ 172.3 Definitions.

As used in this part:

Audit means a review to test the contractor's compliance with the requirements of the cost principles contained in 48 CFR part 31.

Cognizant agency means any Federal or State agency that has conducted and issued an audit report of the consultant's indirect cost rate that has been developed in accordance with the requirements of the cost principles contained in 48 CFR part 31.

Competitive negotiation means any form of negotiation that utilizes the following:

- (1) Qualifications-based procedures complying with title IX of the Federal Property and Administrative Services Act of 1949 (Public Law 92–582, 86 Stat. 1278 (1972));
- (2) Equivalent State qualifications-based procedures; or
- (3) A formal procedure permitted by State statute that was enacted into State law prior to the enactment of Public Law 105–178 (TEA–21) on June 9, 1998.

Consultant means the individual or firm providing engineering and design related services as a party to the contract.

Contracting agencies means State Departments of Transportation (State DOTs) or local governmental agencies that are responsible for the procurement of engineering and design related services.

Engineering and design related services means program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a construction project subject to 23 U.S.C. 112(a).

One-year applicable accounting period means the annual accounting period for which financial statements are regularly prepared for the consultant.

§ 172.5 Methods of procurement.

(a) *Procurement.* The procurement of Federal-aid highway contracts for engineering and design related services shall be evaluated and ranked by the contracting agency using one of the following procedures:

- (1) *Competitive negotiation.* Contracting agencies shall use competitive negotiation for the procurement of engineering and design related services when Federal-aid highway funds are involved in the contract. These contracts shall use qualifications-based selection procedures in the same manner as a contract for architectural and engineering

services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541–544) or equivalent State qualifications-based requirements. The proposal solicitation (project, task, or service) process shall be by public announcement, advertisement, or any other method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract. Price shall not be used as a factor in the analysis and selection phase. Alternatively, a formal procedure adopted by State Statute enacted into law prior to June 9, 1998 is also permitted under paragraph (a)(4) of this section.

(2) *Small purchases.* Small purchase procedures are those relatively simple and informal procurement methods where an adequate number of qualified sources are reviewed and the total contract costs do not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11). Contract requirements should not be broken down into smaller components merely to permit the use of small purchase requirements. States and subrecipients of States may use the State's small purchase procedures for the procurement of engineering and design related services provided the total contract costs do not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11).

(3) *Noncompetitive negotiation.* Noncompetitive negotiation may be used to procure engineering and design related services on Federal-aid participating contracts when it is not feasible to award the contract using competitive negotiation, equivalent State qualifications-based procedures, or small purchase procedures. Contracting agencies shall submit justification and receive approval from the FHWA before using this form of contracting. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- (i) The service is available only from a single source;
- (ii) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or
- (iii) After solicitation of a number of sources, competition is determined to be inadequate.

(4) *State statutory procedures.* Contracting agencies may procure engineering and design related services using an alternate selection procedure established in State statute enacted into law before June 9, 1998.

(b) *Disadvantaged Business Enterprise (DBE) program.* The contracting agency shall give consideration to DBE consultants in the procurement of engineering and design related service contracts subject to 23 U.S.C. 112(b)(2) in accordance with 49 CFR part 26.

(c) *Compensation.* The cost plus a percentage of cost and percentage of construction cost methods of compensation shall not be used.

§ 172.7 Audits.

(a) *Performance of audits.* When State procedures call for audits of contracts or subcontracts for engineering design services, the audit shall be performed to test compliance with the requirements of the cost principles contained in 48 CFR part 31. Other procedures may be used if permitted by State statutes that were enacted into law prior to June 9, 1998.

(b) *Audits for indirect cost rate.* Contracting agencies shall use the indirect cost rate established by a cognizant agency audit for the cost principles contained in 48 CFR part 31 for the consultant, if such rates are not under dispute. A lower indirect cost rate may be used if submitted by the consultant firm, however the consultant's offer of a lower indirect cost rate shall not be a condition of contract award. The contracting agencies shall apply these indirect cost rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and the indirect cost rates shall not be limited by any administrative or de facto ceilings. The consultant's indirect cost rates for its one-year applicable accounting period shall be applied to the contract, however once an indirect cost rate is established for a contract it may be extended beyond the one year applicable accounting period provided all concerned parties agree. Agreement to the extension of the one-year applicable period shall not be a condition of contract award. Other procedures may be used if permitted by State statutes that were enacted into law prior to June 9, 1998.

(c) *Disputed audits.* If the indirect cost rate(s) as established by the cognizant audit in paragraph (b) of this section are in dispute, the parties of any proposed new contract must negotiate a provisional indirect cost rate or perform an independent audit to establish a rate for the specific contract. Only the consultant and the parties involved in performing the indirect cost audit may dispute the established indirect cost rate. If an error is discovered in the established indirect cost rate, the rate may be disputed by any prospective user.

(d) *Prenotification; confidentiality of data.* The FHWA and recipients and subrecipients of Federal-aid highway funds may share the audit information in complying with the State or subrecipient's acceptance of a consultant's overhead rates pursuant to 23 U.S.C. 112 and this part provided that the consultant is given notice of each use and transfer. Audit information shall not be provided to other consultants or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the State or subrecipient's acceptance of a consultant's overhead rates pursuant to 23 U.S.C. 112 and this part without the written permission of

the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance, however should a release be required by law or court order, such release shall make note of the confidential nature of the data.

§ 172.9 Approvals.

(a) *Written procedures.* The contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These written procedures and all revisions shall be approved by the FHWA for recipients of federal funds. Recipients shall approve the written procedures and all revisions for their subrecipients. These procedures shall, as appropriate to the particular method of procurement, cover the following steps:

- (1) In preparing a scope of work, evaluation factors and cost estimate for selecting a consultant;
 - (2) In soliciting proposals from prospective consultants;
 - (3) In the evaluation of proposals and the ranking/selection of a consultant;
 - (4) In negotiation of the reimbursement to be paid to the selected consultant;
 - (5) In monitoring the consultant's work and in preparing a consultant's performance evaluation when completed;
- and
- (6) In determining the extent to which the consultant, who is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors or deficiencies in design furnished under its contract.

(b) *Contracts.* Contracts and contract settlements involving design services for projects that have not been delegated to the State under 23 U.S.C. 106(c), that do not fall under the small purchase procedures in §172.5(a)(2), shall be subject to the prior approval by FHWA, unless an alternate approval procedure has been approved by FHWA.

(c) *Major projects.* Any contract, revision of a contract or settlement of a contract for design services for a project that is expected to fall under 23 U.S.C. 106(h) shall be submitted to the FHWA for approval.

(d) *Consultant services in management roles.* When Federal-aid highway funds participate in the contract, the contracting agency shall receive approval from the FHWA before hiring a consultant to act in a management role for the contracting agency.

NOTICE CONCERNING SUBCONSULTANT and PART-TIME PERSONNEL'S PRESENCE at INTERVIEWS

The Department policy regarding subconsultants and part-time personnel eligibility, to be present at an interview, is as follows:

1. The subconsultant (and/or part-time personnel) is exclusive to the Firm;
2. The subconsultant (and/or part-time personnel) is undertaking a significant and/or separate element of the project; and
3. Prior approval is obtained from the Consultant Selection office a minimum of five (5) days in advance of the interview date.

Any subconsultant (and/or part-time personnel) may be available at the interview site in proximity to the actual interview room. Should a specific question or issue arise, the Firm may request the Consultant Selection Panel Chairperson to allow the subconsultant (and/or part-time personnel) to respond to that specific question. The extent of participation and the format shall be at the sole discretion of the Consultant Selection Panel Chairperson.

At the beginning of the interview, you must provide the Chairperson with a list of persons present in the room for the interview and persons available outside the room that may be called upon.

Thank you for your cooperation. Please contact the Consultant Selection Office if you have any questions.

Consultant Selection Office
(860) 594-3017
fax: (860) 594-3491

CONNECTICUT DEPARTMENT of TRANSPORTATION
CONSULTANT SERVICES SELECTION PANEL MEMBER
CERTIFICATION

CSO Solicitation Number:

Project Description:

I certify that I have not communicated information with any person, firm, or corporation (collectively “firms”) prior to the advertisement of the above-mentioned Department of Transportation project and have not communicated and will not communicate information concerning the project until the Commissioner has made a selection.

I also certify that I have not and will not discuss the determinations of this consultant selection process with anyone other than the panel listed below, the Commissioner or Deputy Commissioners, or the Consultant Selection Office, as necessary, unless otherwise directed by the Commissioner, Deputy Commissioners or Consultant Selection Office.

I further certify that my rating of the above-mentioned firms was not the result of collusion, the giving of a gift, fraud or inappropriate influence from any person. I further certify that neither I nor any member of my immediate family has a financial interest, including employment interest, with any of the above-noted firms or their subcontractors.

Panel:

Panel Member:

Panel Member Signature

Date