



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

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Office of the
Commissioner

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July 28, 2010

Mr. Gale A. Mattison
Chairman
State Contracting Standards Board
165 Capitol Avenue
Hartford, CT 06106

Dear Mr. Mattison:

Subject: June 28, 2010 Letter Regarding Bridge Inspection Questions

Enclosed please find the Department of Transportation's (Department) responses to the initial questions set forth in your letter dated June 28, 2010. The Department understands that the responses are for "initial orientation" purposes and looks forward to continuing to work with the Privatization Committee (Committee) as it conducts its analysis.

I suggest that staff from the Department's Finance and Administration unit meet with you and the Committee as soon as possible so that the staff can explain how the numbers set forth in Attachment 3 were generated. If after hearing that discussion the Committee would like for the Department to take a different approach in generating the numbers, we will be happy to do so.

I also suggest that a second meeting occur so that the Committee and Department staff can answer any questions the Committee may have or provide additional information that the Committee may need regarding the bridge inspection process. Please also note that new regulations take effect September 13, 2010 that will change how the Department inspects railroad bridges.

Sincerely,

Jeffrey A. Parker
Commissioner

Enclosure

July 28, 2010

Responses of the Department of Transportation to Questions of
the Privatization Committee of the State Contracting Standards Board for
Initial Orientation Regarding Bridge Inspections

The primary responsibilities of the Connecticut Department of Transportation (Department) include ensuring the safety of the traveling public and protecting the State's capital investment in its transportation infrastructure. Towards that end, insofar as bridge safety is concerned, the Department is responsible for inspecting approximately 5,300 highway bridges and 330 railroad bridges.

The inspection of highway bridges is the responsibility of the Bridge Safety and Evaluation Unit in the Bureau of Engineering and Construction. The inspection of railroad bridges is the responsibility of the Office of Rail in the Bureau of Public Transportation. In addition to inspecting highway bridges, the Bridge Safety and Evaluation Unit is also responsible for inspecting approximately 2,400 sign and mast-arm signal support structures. An engineering inspection of highway and railroad bridges is performed at intervals not exceeding once every two years. The inspection of sign supports and mast arm structures is performed at intervals not exceeding once every four years.

1. Describe the Department's statutory responsibility in the area of bridge inspections.

A. Highway Bridges, Sign Supports, and Mast-Arm Signal Supports

The inspection of all bridges over public roads greater than 20 feet in length (hereinafter referred to as "highway bridges," as opposed to railroad bridges) is mandated by Title 23 Part 650 Subpart C of the Code of Federal Regulations (Attachment 1). Those regulations, issued by the Federal Highway Administration (FHWA), establish the National Bridge Inspection Standards (NBIS). The NBIS dictate such items as inspection procedures, frequency of inspections, and qualifications of personnel involved in the bridge inspection process. Highway bridge inspections must be conducted in accordance with the FHWA "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges" and the Department's Bridge Inspection Manual (BIM), September 2001 Version 2.1 and as revised. The Department's Bridge Inspection Manual can be accessed via the internet at:

http://www.ct.gov/dot/lib/dot/documents/dpublications/Inspection_Manual_061905.pdf#44255

As part of its safety and capital investment protection program, the Department also inspects bridges it owns measuring 20 feet or less which carry state highways. While no regulation mandates these bridge inspections, they are conducted in conformance with the Department's BIM.

The inspection of sign support structures that span state highways began in 1995, and the inspection of mast-arm signal support structures began in 2002. These inspection programs, which were precipitated by the failures of sign support and mast arm structures either in Connecticut or elsewhere in the country, were initiated in 1995 and 2002 by the Commissioners at that time, and assigned to be the responsibility of the Department's Bridge Safety & Evaluation Unit.

B. Railroad Bridges

The inspection of railroad bridges is governed by the federal Railroad Safety Improvement Act (RSIA) of 2008 (2008 Public Law 110-432, Division A). As required by section 417 of the RSIA, the Federal Rail Administration (FRA) published new regulations governing the inspection of railroad bridges on July 15, 2010. Those regulations are slated to take effect 60 days from the publication date, or September 13, 2010.

Until the date specified in the new regulations, railroad bridge inspections will continue to be conducted in accordance with the RSIA, FRA guidelines, the American Railway Engineering and Maintenance-of-Way Association (AREMA) Bridge Inspection Handbook, and the Department's BIM, September 2001 Version 2.1. The AREMA Bridge Inspection Handbook is not available online and is too long to attach hereto. The Department's BIM can be found online at: http://www.ct.gov/dot/lib/dot/documents/dpublications/Inspection_Manual_061905.pdf#44255

The Department inspects railroad bridges under state ownership using a two-pronged approach. The first prong, under the AREMA and FRA guidelines, requires each railroad operator to perform annual visual safety inspections of the bridges over which the rail line operates. The second prong, based on the Department's BIM, requires that each such structure receive a comprehensive structural inspection at regular intervals not exceeding 24 months.

Pursuant to the new FRA regulations that take effect on September 13, 2010, on and after March 14, 2011, the Department must have in place a bridge management program that complies with the regulations. The Department is currently assessing the regulations to determine what changes will need to be made to its railroad bridge inspection program and processes as a result of these regulations. These new regulations can be found online at: <http://www.fra.dot.gov/downloads/safety/bridgefinalsafetyrule2010.pdf>. It can be said at this point, that an annual inspection will need to be done to detect deterioration and deficiencies before they present a hazard to safe train operation, and that a "railroad engineer" will need to be used to (a) determine the forces and stresses in railroad bridges and bridge components; (b) prescribe safe loading conditions for railroad bridges; (c) prescribe inspection and maintenance procedures for railroad bridges; and (d) design repairs and modifications to railroad bridges. The regulations, among other things, prescribe the educational qualifications of a "railroad engineer," and the required technical competence of a "railroad bridge inspector" and a "railroad bridge supervisor." Therefore, what is presented in this document as it relates to railroad bridge inspections will be modified to achieve compliance with these new regulations.

- 2. How many bridge inspectors and other related professional staff does the Department currently employ to fulfill this mission? How many positions are filled and how many authorized positions are vacant? Please list by job title.**

The Department's Bridge Safety and Evaluation (BS&E) Unit has 50 filled positions and no vacancies. In addition, the Office of Rail (OR) has six (6) filled positions related to railroad bridge inspections with no vacancies. Please refer to the attached listing of job titles in Attachment 2.

In addition to the staff of BS&E and OR noted above, other staff of the Department provide support on an as-needed basis to employees conducting bridge inspections. Employees of the following units within the Department assist in the fulfillment of the Department's bridge inspections:

- The Office of Transportation Maintenance within the Bureau of Highway Operations (OTM) provides traffic control services for some of the Department's bridge inspection operations, particularly those on limited access highways, but also on some secondary roadways depending on the traffic level and the type of inspection equipment in use. The OTM also purchases and maintains the inspection vehicles (bucket trucks, vans and pickups) used by BS&E's inspection staff. The OTM does not currently have the staff or equipment to meet all of the BS&E traffic control needs.
- The Department's Hydraulics & Drainage and Soils & Foundations Units provide assistance regarding the structural stability of bridges, and erosion, scour and hydraulic issues that affect the safety of bridges.
- The Department's Office of Research & Materials provides specialized testing assistance such as confirmation of cracks in primary members of bridges and additional testing of the weld repair of those cracks.
- The Department's State Bridge Design Unit provides support for bridge load evaluations and complex design features that may be encountered during the bridge inspection process such as designing repair details for non-routine repairs and designing additional details for design changes of a structure under a rehabilitation or repair project.
- The Department's Survey Unit provides survey support for measurement of bridge underclearances, roadway alignment, and monitoring of survey points at culverts and larger bridges.
- The Office of Information Systems provides software development and systems support, including developing, repairing and maintaining the Structures Inventory System (SIS and SISLite), conducting back-up, query runs, and error checks.

3. How many contracts with private ('outside') firms does the Department currently have related to bridge inspections? Please list.

The Department currently has eight (8) contracts with Consultant Engineering (CE) firms to perform bridge inspections for the contract periods noted below:

Inspection of highway bridges and sign/mast-arm supports

- A. AI Engineers (July 1, 2010 to June 30, 2013)
- B. Pennoni Associates (July 1, 2010 to June 30, 2013)
- C. HAKS Engineers (July 1, 2010 to June 30, 2013)
- D. Michael Baker Engineering, Inc. (July 1, 2010 to June 30, 2013)
- E. Transystems (July 1, 2010 to June 30, 2013)
- F. McLaren Engineers (underwater inspections) (July 1, 2009 to June 30, 2012)

Railroad Bridges

- G. Chas H. Sells, Inc. (May 1, 2006 to October 1, 2010)
- H. Purcell Associates, Inc. (November 1, 2008 to November 1, 2010)

4. **How does the Department determine whether a particular bridge inspection should be conducted by Department staff or by outside contractor? (i.e. what is the business rationale?)**

Highway bridges and sign/mast-arm supports

Bridge inspectors employed by the Department inspect approximately 75% of the highway bridges, equating to approximately 46% of the square footage of the total bridge deck area covered by the Department's highway bridge program. The assignment of bridge inspections to CE firms is largely a function of the greater time, expertise, and equipment required to inspect the state's largest and most complex bridges.

Generally, CE firms are assigned the largest and most complex structures and bridges with difficult or time-consuming access requirements. The larger bridges often require equipment which the Department either does not own or have enough of to complete the work (e.g., under bridge snooters, moogs, lifts mounted on barges or boats, bridge specific rigging or scaffolding). Additionally, CE firms are sometimes assigned to inspect certain bridges to ensure that such inspections occur within the inspection timeframes required by regulation and the Department's BIM. In some cases, inspection of a simple bridge structure is also assigned to a CE firm for efficiency, where, for example, it is located near a complex structure that the CE firm is also inspecting, and sometimes a CE firm is assigned inspection of all locally-owned bridges within select towns as part of the QA process for the Department's bridge inspection teams. Finally, as discussed below, all inspections that include underwater inspections requiring diving services, mechanical and electrical inspections of movable bridges, and the majority of inspections of sign support and mast-arm signal structures are performed by CE firms.

The Department does not have on its staff personnel qualified to perform underwater inspections or the mechanical and electrical inspections of movable bridges. The State has 13 movable highway bridges. Furthermore, inspections of movable, suspension and other bridges with unusual design features, often require highly specialized inspection knowledge and procedures. This expertise is most easily secured by CE firms which can access the needed engineering personnel from anywhere in the country. The CE firms that the Department uses also have projects involving movable, suspension and other bridges with unusual design features in other states. These CE firms can then be called upon for their opinion and expertise should problems or anomalies develop on similar bridges in Connecticut.

Although they carry no traffic, overhead sign supports and masts arms are similar to bridges in some of their design properties (e.g. shear, fatigue) and also the types of deficiencies or deterioration that can be found (e.g. section loss, cracks). For these reasons, the inspection of these structures has been delegated to the Department's Bridge Safety and Evaluation Unit (note that full-spanning sign trusses are referred to as sign bridges). CE firms are generally utilized for the inspection of sign supports and mast arms because the Department does not have sufficient bridge

inspection staff to perform this work. Additionally, consultant inspectors perform minor maintenance repairs, as necessary and efficient, on these supports and mast arms as part of their inspections; thereby minimizing the necessity for having to set up lane closures for a bucket truck a second time and thereby increasing efficiency, reducing costs, and minimizing the disruption to the traveling public. Maintenance repairs are outside the established job specifications of the Department's bridge inspector series.

Railroad Bridges

The Office of Rail does not have a staff of bridge inspectors. All railroad bridges are inspected utilizing CE firms. It should be noted that there are also six movable railroad bridges. The business rationale for using CE firms for the inspection of these bridges is the same as set forth above regarding movable highway bridges.

Load Rating Evaluations

All calculations of railroad bridge load carrying capacity are performed by consultants. A portion of BS&E's evaluations for more complex bridges and all sign supports are performed by consulting services because such consultants have, update, and renew the software and software licenses that are needed to perform load rating evaluations for such structures. In some instances, the analysis of these bridges, even with the appropriate software, is not necessarily a "plug-and-chug" operation. Some manipulation may be needed in order to fit the software to a specific structure. This takes additional expertise and understanding of the software relative to these structures and how the structures function.

- 5. For Fiscal Years 2007, 2008, 2009 & 2010, what was the total cost of bridge inspections? What is the breakdown of inspections conducted by DOT employees vs. outside contractors? Please provide the total number and percentage breakdown in the following ways for each fiscal year:**

a. Number of inspections.

See Attachment 3b which includes the number of inspections per fiscal year by Department employees and consultant bridge inspectors along with the total associated deck area of those bridges.

b. Dollar cost.

See Attachment 3a, which includes the expenditures for bridge inspections per fiscal year by Department and consultant inspectors.

- 6. For each current contract related to bridge inspection –**

a. Describe the procurement process for the contract;

The Department's selection process for all professional consulting services, including bridge inspection consultants, is based on federal law and state statute. The process

requires a quality-based selection which is then followed by a fee negotiation process. See Attachment 4, the Department's Professional Services Consultant Selection Procedures Manual.

The Department's consultant selection process is conducted in accordance with Conn. Gen. Stat. § 13b-20b *et seq.*, 40 USC §§ 1101-1104 (Brooks Act); 23 USC § 112; and 23 CFR Part 172. Generally, this statutory process is as follows:

Towards the end of each year, the Department advertises the opportunity for firms to become prequalified in the technical categories expected to be needed by the Department in the following calendar year. A Technical Qualifications Panel, consisting of the Department's Chief Engineer, Engineering Administrator and Construction Administrator, reviews all submittals and makes recommendations regarding prequalification of each firm in the categories for which the firm has requested to become prequalified in and has demonstrated technical capabilities and credentials. A list of prequalified firms is developed and those on the list are eligible to respond to solicitations for work in the categories for which they have been prequalified.

Whenever a Department Bureau determines that it has a need to hire a consultant firm, it must first seek and receive written approval from the Commissioner. Assuming that approval is received, the solicitation process begins. If there is a prequalified list of consultants with the expertise needed, then the Department sends a solicitation letter to only those firms prequalified that year in the technical category(s) required for the contract, indicating the general scope of the assignment, the information required for the Department's evaluation, and any other pertinent information. If the expertise required is not one for which a prequalified consultant list is available, then the Department advertises the opportunity via legal notice for all interested firms to respond.

Regardless of the manner of the solicitation, all responses are reviewed by the members of one of the Department's Consultant Selection Panels. Each year, the Commissioner appoints several three-member Consultant Selection Panels made up of Department employees. These panels are established to evaluate, interview and rank the consulting firms based on their qualifications for each anticipated contract for professional services. Each Consultant Selection Panel is an independent entity, responsible only to the Commissioner.

The members evaluate and rate all submittals independently using uniform criteria appropriate for the proposed services. The rankings are compiled and transmitted to the Commissioner with a report indicating the volume of Department consulting work each firm has (current volume report), and an indication of their recent selections for Department consulting work (recent selection report). The Commissioner is asked to approve the list of firms selected for interview in light of the current volume and recent selection reports. Depending on the number of consulting firms the Department is seeking, at least the top five ranked firms are brought in for an interview (the number of firms interviewed is the number of firms sought to be selected plus four).

The same Consultant Selection Panel conducts the interviews with a uniform format and predetermined set of questions. The Panel members rank the responses to each question as well as the firms' wrap-up presentation.

The Panel's interview ratings are compiled and transmitted to the Commissioner along with a current volume report and recent selection report. The Commissioner then makes a selection guided by the criteria set forth in Conn. Gen. Stat. § 13b-20i, including, among others, the technical competence of the firms for the services required, the capacity and capability of the firms to perform the work, and the firms' past record of performance on contracts with the state.

b. Identify the name of the firm;

Highway bridges and sign/mast-arm supports

1. AI Engineers (July 1, 2010 to June 30, 2013)
2. Pennoni Associates (July 1, 2010 to June 30, 2013)
3. HAKS Engineers (July 1, 2010 to June 30, 2013)
4. Michael Baker Engineering, Inc. (July 1, 2010 to June 30, 2013)
5. Transystems (July 1, 2010 to June 30, 2013)
6. McLaren Engineers (underwater inspections) (July 1, 2009 to June 30, 2012)

Railroad Bridges

7. Chas H. Sells, Inc. (May 1, 2006 to October 1, 2010)
8. Purcell Associates, Inc. (November 1, 2008 to November 1, 2010)
9. WSP Sells, Inc. (this firm was recently selected and is not under contract yet)

c. the dollar amount of the contract;

Highway bridges sign/mast-arm supports

The negotiated dollar amounts for the following five bridge inspection contracts are for only the first year of these contracts:

1. AI Engineers – \$1,394,500 plus 5% for Extra Work = \$1,464,225
2. Pennoni Associates – \$ 1,272,000 plus 5% for Extra Work = \$1,335,600
3. HAKS Engineers – \$ 2,445,100 plus 5% for extra work = \$ 2,567,355
4. Michael Baker Engineering, Inc. – \$ 1,790,500 plus 5% for extra work = \$ 1,880,025
5. Transystems - \$ 2,112,500 plus 5% for extra work = \$ 2,218,125

Underwater inspection contracts (negotiated dollar amount is for three years):

6. McLaren Engineers – \$ 2,822,100 plus 10% for extra work = \$ 3,104,310

Railroad Bridges (negotiated dollar amounts are for the full term of these contracts):

7. Chas H. Sells, Inc. - \$ 3,958,100 plus 10% for extra work = \$ 4,353,910 (4 years, 5 months)
8. Purcell Associates, Inc. - \$ 1,350,200, plus 10% for extra work = \$ 1,485,220 (2 years)

9. WSP Sells, Inc. (this firm was recently selected and is not under contract yet)

(Note: the above contracts are **Cost Plus Fixed Fee contracts**. Such contracts are used because the extent, scope, complexity, character and duration of the work cannot be predetermined to the degree that permits an exact compensation amount. The cost plus fixed fee includes direct, indirect costs, overhead and a fixed fee for profit. A set of maximum hourly rates has been established for all firms. Progress payments are made on actual hours performed, actual rates of the individuals performing the work, indirect costs, overhead and a portion of the fixed fee for profit. The fixed fee for profit will not vary with the actual cost of the work performed.)

d. the duration of the contract;

Highway bridges and sign/mast-arm supports

1. AI Engineers (July 1, 2010 to June 30, 2013)
2. Pennoni Associates (July 1, 2010 to June 30, 2013)
3. HAKS Engineers (July 1, 2010 to June 30, 2013)
4. Michael Baker Engineering, Inc. (July 1, 2010 to June 30, 2013)
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7. Chas H. Sells, Inc. (May 1, 2006 to October 1, 2010)
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9. WSP Sells, Inc. (this firm was recently selected and is not under contract yet)

e. a brief summary of the scope of work.

Attachment 5 contains summaries of the scopes of work for the Highway Bridge/Sign Contracts that commenced July 1, 2010, the current Railroad Bridge Inspection Contracts, and the Underwater Inspection Contract that commenced July 1, 2009.

7. What is the DOT process for ensuring the quality of work done by outside contractors on bridge inspection?

The primary goal of the inspection process is to identify deficiencies with the bridges and recommend repairs, rehabilitation, or replacement in a timely manner. All inspections are concluded with a written report for each bridge outlining the general condition of the structure, noting any deficiencies and recommending repairs as required.

The Department's process for ensuring the quality of work done by outside consultants on highway bridges and sign/mast-arm supports is the same in many regards to the process used for railroad bridges. These commonalities are first set forth below, followed by those processes that are distinct to highway bridge and sign/mast arm support inspections and distinct to railroad bridge inspections.

Common process:

- Prior to starting any inspections, the Department reviews the credentials of the CE firms' Lead Inspectors and Assistant Inspectors to ensure conformance with the NBIS qualifications and the scope of work. If they do conform to the NBIS guidelines and the scope of work, such individuals are approved by the Department's Project Manager (Department Transportation Supervising Engineer). If they do not conform, such individuals cannot conduct inspections for the Department unless and until such conformance is obtained. (Note: The individual may be able to perform in a lower capacity on the project until such training is completed or experience is acquired).
- All inspection reports submitted by CE firms are signed and sealed by a Professional Engineer (PE). All CE firm inspection reports are reviewed by Transportation Engineer 3's (TE3's) for compliance with the Department's BIM and, if the report is acceptable, signed off by Department engineers. This sign off is the Department's quality control procedure to signify that the report has been reviewed and meets the standards and requirements set forth in the BIM. Any reports that are found to be deficient or lacking are returned to the CE for correction, additional information, etc. in order to address the points identified by the Department. Department TE3's involved with reviewing CE reports have taken and passed the NHI two-week Bridge Safety Inspection Course and periodic refresher or related courses.

Distinct Highway Bridge Processes:

Additionally, for highway bridges, Department engineers conduct field visits of each CE firm at least weekly to ensure that the CE firm is conducting its work in conformance with the inspection requirements of the BIM (verification of equipment being used is also checked). Questions are asked of the inspection team based on the type of inspection (routine or in-depth) that is being conducted. If the Project Manager and/or TE3 has any concerns, they are raised with the CE firm and addressed.

Quality Control/Quality Assurance reviews are also performed by Department Engineers and partnering meetings are held with all CE firms to ensure the quality of work is consistent with the Department's standards and procedures set forth in the BIM. (The BIM sets forth what is expected of the inspectors and the inspection report for each level of inspection (in-depth versus routine)). At partnering meetings, representatives from the Department and from the CE firm meet to go over any issues or new information or standards. In addition, CE firms' inspection areas are rotated so that periodically a new set of eyes inspects each bridge. For all highway bridge inspection reports, whether inspected by CE or by a Department team, an additional level of review may be required. If the structure is rated 5 (Fair) or less, a maintenance memorandum is required, or, if the bridge is owned by the town (local bridge), the bridge inspection report must also be signed off by a Department Supervising Engineer (TSE).

Distinct Railroad Bridge Processes:

Additionally, for railroad bridges, and because the Office of Rail does not have bridge inspection personnel on staff, if an inspection report shows that a railroad structure (bridges and retaining walls) needs repair or rehabilitation, a separate, third party (an on-call consultant engineering firm) inspects the subject area and advises the Department on whether it agrees that a repair or

rehabilitation is needed, and the Department's engineering staff concurs, the on-call consultant designs the work that is needed.

ATTACHMENT 1

imposes on the States. These requirements include the development of procedures for follow-up on critical findings.

In the NPRM published on September 9, 2003, the FHWA proposed a burden increase of 67,000 hours for the information collection, OMB control number 2125-0501, and invited interested parties to send comments regarding any aspect of these information collection requirements. Such comments could include, but were not limited to: (1) Whether the collection of information will be necessary for the performance of the functions of the FHWA, including whether the information will have practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected. The FHWA did not receive any comments in response to the proposed burden hour increase of 67,000 hours. The revision to the information collection, OMB control number 2125-0501, based on this final rule will increase the burden hours by only 2,080 hours, a much smaller amount than that originally proposed in the NPRM.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order, because although it is a significant regulatory action under Executive Order 12866 it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant Programs—transportation, Highways and roads, Incorporation by reference, Reporting and record keeping requirements.

Issued on: December 9, 2004.

Mary E. Peters,
Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 650, subpart C, as follows:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

■ 1. The authority citation for part 650 continues to read as follows:

Authority: 23 U.S.C. 109 (a) and (h), 144, 151, 315, and 319; 33 U.S.C. 401, 491 *et seq.*, 511 *et seq.*; 23 CFR 1.32; 49 CFR 1.48(b), E.O. 11988 (3 CFR, 1977 Comp. p. 117); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678); sec. 161 of Public Law 97-424, 96 Stat. 2097, 3135; sec. 4(b) of Public Law 97-134, 95 Stat. 1699; and sec. 1057 of Public Law 102-240, 105 Stat. 2002; and sec. 1311 of Pub. L. 105-178, as added by Pub. L. 105-206, 112 Stat. 842 (1998).

■ 2. Revise subpart C to read as follows:

Subpart C—National Bridge Inspection Standards

Sec.
650.301 Purpose.
650.303 Applicability.
650.305 Definitions.
650.307 Bridge inspection organization.
650.309 Qualifications of personnel.
650.311 Inspection frequency.
650.313 Inspection procedures.
650.315 Inventory.
650.317 Reference manuals.

Subpart C—National Bridge Inspection Standards

§ 650.301 Purpose.

This subpart sets the national standards for the proper safety inspection and evaluation of all highway bridges in accordance with 23 U.S.C. 151.

§ 650.303 Applicability.

The National Bridge Inspection Standards (NBIS) in this subpart apply to all structures defined as highway bridges located on all public roads.

§ 650.305 Definitions.

Terms used in this subpart are defined as follows:
American Association of State Highway and Transportation Officials (AASHTO) Manual. "Manual for Condition Evaluation of Bridges," second edition, published by the American Association of State Highway and Transportation Officials

(incorporated by reference, see § 650.317).

Bridge. A structure including supports erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

Bridge inspection experience. Active participation in bridge inspections in accordance with the NBIS, in either a field inspection, supervisory, or management role. A combination of bridge design, bridge maintenance, bridge construction and bridge inspection experience, with the predominant amount in bridge inspection, is acceptable.

Bridge inspection refresher training. The National Highway Institute "Bridge Inspection Refresher Training Course"¹ or other State, local, or federally developed instruction aimed to improve quality of inspections, introduce new techniques, and maintain the consistency of the inspection program.

Bridge Inspector's Reference Manual (BIRM). A comprehensive FHWA manual on programs, procedures and techniques for inspecting and evaluating a variety of in-service highway bridges. This manual may be purchased from the U.S. Government Printing Office, Washington, DC 20402 and from National Technical Information Service, Springfield, Virginia 22161, and is available at the following URL: <http://www.fhwa.dot.gov/bridge/bripub.htm>.

Complex bridge. Movable, suspension, cable stayed, and other bridges with unusual characteristics.

Comprehensive bridge inspection training. Training that covers all aspects of bridge inspection and enables inspectors to relate conditions observed on a bridge to established criteria (see the Bridge Inspector's Reference Manual for the recommended material to be covered in a comprehensive training course).

Critical finding. A structural or safety related deficiency that requires immediate follow-up inspection or action.

Damage inspection. This is an unscheduled inspection to assess structural damage resulting from environmental factors or human actions.

¹ The National Highway Institute training may be found at the following URL: <http://www.nhi.fhwa.dot.gov/>

Fracture critical member (FCM). A steel member in tension, or with a tension element, whose failure would probably cause a portion of or the entire bridge to collapse.

Fracture critical member inspection. A hands-on inspection of a fracture critical member or member components that may include visual and other nondestructive evaluation.

Hands-on. Inspection within arms length of the component. Inspection uses visual techniques that may be supplemented by nondestructive testing.

Highway. The term "highway" is defined in 23 U.S.C. 101(a)(11).

In-depth inspection. A close-up, inspection of one or more members above or below the water level to identify any deficiencies not readily detectable using routine inspection procedures; hands-on inspection may be necessary at some locations.

Initial inspection. The first inspection of a bridge as it becomes a part of the bridge file to provide all Structure Inventory and Appraisal (SI&A) data and other relevant data and to determine baseline structural conditions.

Legal load. The maximum legal load for each vehicle configuration permitted by law for the State in which the bridge is located.

Load rating. The determination of the live load carrying capacity of a bridge using bridge plans and supplemented by information gathered from a field inspection.

National Institute for Certification in Engineering Technologies (NICET). The NICET provides nationally applicable voluntary certification programs covering several broad engineering technology fields and a number of specialized subfields. For information on the NICET program certification contact: National Institute for Certification in Engineering Technologies, 1420 King Street, Alexandria, VA 22314-2794.

Operating rating. The maximum permissible live load to which the structure may be subjected for the load configuration used in the rating.

Professional engineer (PE). An individual, who has fulfilled education and experience requirements and passed rigorous exams that, under State licensure laws, permits them to offer engineering services directly to the public. Engineering licensure laws vary from State to State, but, in general, to become a PE an individual must be a graduate of an engineering program accredited by the Accreditation Board for Engineering and Technology, pass the Fundamentals of Engineering exam,

gain four years of experience working under a PE, and pass the Principles of Practice of Engineering exam.

Program Manager. The individual in charge of the program, that has been assigned or delegated the duties and responsibilities for bridge inspection, reporting, and inventory. The program manager provides overall leadership and is available to inspection team leaders to provide guidance.

Public road. The term "public road" is defined in 23 U.S.C. 101(a)(27).

Quality assurance (QA). The use of sampling and other measures to assure the adequacy of quality control procedures in order to verify or measure the quality level of the entire bridge inspection and load rating program.

Quality control (QC). Procedures that are intended to maintain the quality of a bridge inspection and load rating at or above a specified level.

Routine inspection. Regularly scheduled inspection consisting of observations and/or measurements needed to determine the physical and functional condition of the bridge, to identify any changes from initial or previously recorded conditions, and to ensure that the structure continues to satisfy present service requirements.

Routine permit load. A live load, which has a gross weight, axle weight or distance between axles not conforming with State statutes for legally configured vehicles, authorized for unlimited trips over an extended period of time to move alongside other heavy vehicles on a regular basis.

Scour. Erosion of streambed or bank material due to flowing water; often considered as being localized around piers and abutments of bridges.

Scour critical bridge. A bridge with a foundation element that has been determined to be unstable for the observed or evaluated scour condition.

Special inspection. An inspection scheduled at the discretion of the bridge owner, used to monitor a particular known or suspected deficiency.

State transportation department. The term "State transportation department" is defined in 23 U.S.C. 101(a)(34).

Team leader. Individual in charge of an inspection team responsible for planning, preparing, and performing field inspection of the bridge.

Underwater diver bridge inspection training. Training that covers all aspects of underwater bridge inspection and enables inspectors to relate the conditions of underwater bridge elements to established criteria (see the Bridge Inspector's Reference Manual section on underwater inspection for the recommended material to be covered in

an underwater diver bridge inspection training course).

Underwater inspection. Inspection of the underwater portion of a bridge substructure and the surrounding channel, which cannot be inspected visually at low water by wading or probing, generally requiring diving or other appropriate techniques.

§ 650.307 Bridge inspection organization.

(a) Each State transportation department must inspect, or cause to be inspected, all highway bridges located on public roads that are fully or partially located within the State's boundaries, except for bridges that are owned by Federal agencies.

(b) Federal agencies must inspect, or cause to be inspected, all highway bridges located on public roads that are fully or partially located within the respective agency responsibility or jurisdiction.

(c) Each State transportation department or Federal agency must include a bridge inspection organization that is responsible for the following:

(1) Statewide or Federal agencywide bridge inspection policies and procedures, quality assurance and quality control, and preparation and maintenance of a bridge inventory.

(2) Bridge inspections, reports, load ratings and other requirements of these standards.

(d) Functions identified in paragraphs (c)(1) and (2) of this section may be delegated, but such delegation does not relieve the State transportation department or Federal agency of any of its responsibilities under this subpart.

(e) The State transportation department or Federal agency bridge inspection organization must have a program manager with the qualifications defined in § 650.309(a), who has been delegated responsibility for paragraphs (c)(1) and (2) of this section.

§ 650.309 Qualifications of personnel.

(a) A program manager must, at a minimum:

(1) Be a registered professional engineer, or have ten years bridge inspection experience; and

(2) Successfully complete a Federal Highway Administration (FHWA) approved comprehensive bridge inspection training course.

(b) There are five ways to qualify as a team leader. A team leader must, at a minimum:

(1) Have the qualifications specified in paragraph (a) of this section; or

(2) Have five years bridge inspection experience and have successfully completed an FHWA approved comprehensive bridge inspection training course; or

(3) Be certified as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineer's program for National Certification in Engineering Technologies (NICET) and have successfully completed an FHWA approved comprehensive bridge inspection training course, or

(4) Have all of the following:

(i) A bachelor's degree in engineering from a college or university accredited by or determined as substantially equivalent by the Accreditation Board for Engineering and Technology;

(ii) Successfully passed the National Council of Examiners for Engineering and Surveying Fundamentals of Engineering examination;

(iii) Two years of bridge inspection experience; and

(iv) Successfully completed an FHWA approved comprehensive bridge inspection training course, or

(5) Have all of the following:

(i) An associate's degree in engineering or engineering technology from a college or university accredited by or determined as substantially equivalent by the Accreditation Board for Engineering and Technology;

(ii) Four years of bridge inspection experience; and

(iii) Successfully completed an FHWA approved comprehensive bridge inspection training course.

(c) The individual charged with the overall responsibility for load rating bridges must be a registered professional engineer.

(d) An underwater bridge inspection diver must complete an FHWA approved comprehensive bridge inspection training course or other FHWA approved underwater diver bridge inspection training course.

§ 650.311 Inspection frequency.

(a) *Routine inspections.* (1) Inspect each bridge at regular intervals not to exceed twenty-four months.

(2) Certain bridges require inspection at less than twenty-four-month intervals. Establish criteria to determine the level and frequency to which these bridges are inspected considering such factors as age, traffic characteristics, and known deficiencies.

(3) Certain bridges may be inspected at greater than twenty-four month intervals, not to exceed forty-eight-months, with written FHWA approval. This may be appropriate when past inspection findings and analysis justifies the increased inspection interval.

(b) *Underwater inspections.* (1) Inspect underwater structural elements at regular intervals not to exceed sixty months.

(2) Certain underwater structural elements require inspection at less than sixty-month intervals. Establish criteria to determine the level and frequency to which these members are inspected considering such factors as construction material, environment, age, scour characteristics, condition rating from past inspections and known deficiencies.

(3) Certain underwater structural elements may be inspected at greater than sixty-month intervals, not to exceed seventy-two months, with written FHWA approval. This may be appropriate when past inspection findings and analysis justifies the increased inspection interval.

(c) *Fracture critical member (FCM) inspections.* (1) Inspect FCMs at intervals not to exceed twenty-four months.

(2) Certain FCMs require inspection at less than twenty-four-month intervals. Establish criteria to determine the level and frequency to which these members are inspected considering such factors as age, traffic characteristics, and known deficiencies.

(d) Damage, in-depth, and special inspections. Establish criteria to determine the level and frequency of these inspections.

§ 650.313 Inspection procedures.

(a) Inspect each bridge in accordance with the inspection procedures in the AASHTO Manual (incorporated by reference, *see* § 650.317).

(b) Provide at least one team leader, who meets the minimum qualifications stated in § 650.309, at the bridge at all times during each initial, routine, in-depth, fracture critical member and underwater inspection.

(c) Rate each bridge as to its safe load-carrying capacity in accordance with the AASHTO Manual (incorporated by reference, *see* § 650.317). Post or restrict the bridge in accordance with the AASHTO Manual or in accordance with State law, when the maximum unrestricted legal loads or State routine permit loads exceed that allowed under the operating rating or equivalent rating factor.

(d) Prepare bridge files as described in the AASHTO Manual (incorporated by reference, *see* § 650.317). Maintain reports on the results of bridge inspections together with notations of any action taken to address the findings of such inspections. Maintain relevant maintenance and inspection data to allow assessment of current bridge condition. Record the findings and results of bridge inspections on standard State or Federal agency forms.

(e) Identify bridges with FCMs, bridges requiring underwater inspection, and bridges that are scour critical.

(1) Bridges with fracture critical members. In the inspection records, identify the location of FCMs and describe the FCM inspection frequency and procedures. Inspect FCMs according to these procedures.

(2) Bridges requiring underwater inspections. Identify the location of underwater elements and include a description of the underwater elements, the inspection frequency and the procedures in the inspection records for each bridge requiring underwater inspection. Inspect those elements requiring underwater inspections according to these procedures.

(3) Bridges that are scour critical. Prepare a plan of action to monitor known and potential deficiencies and to address critical findings. Monitor bridges that are scour critical in accordance with the plan.

(f) *Complex bridges.* Identify specialized inspection procedures, and additional inspector training and experience required to inspect complex bridges. Inspect complex bridges according to those procedures.

(g) *Quality control and quality assurance.* Assure systematic quality control (QC) and quality assurance (QA) procedures are used to maintain a high degree of accuracy and consistency in the inspection program. Include periodic field review of inspection teams, periodic bridge inspection refresher training for program managers and team leaders, and independent review of inspection reports and computations.

(h) *Follow-up on critical findings.* Establish a statewide or Federal agency wide procedure to assure that critical findings are addressed in a timely manner. Periodically notify the FHWA of the actions taken to resolve or monitor critical findings.

§ 650.315 Inventory.

(a) Each State or Federal agency must prepare and maintain an inventory of all bridges subject to the NBIS. Certain Structure Inventory and Appraisal (SI&A) data must be collected and retained by the State or Federal agency for collection by the FHWA as requested. A tabulation of this data is contained in the SI&A sheet distributed by the FHWA as part of the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges," (December 1995) together with subsequent interim changes or the most recent version. Report the data using FHWA established procedures as

outlined in the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges."

(b) For routine, in-depth, fracture critical member, underwater, damage and special inspections enter the SI&A data into the State or Federal agency inventory within 90 days of the date of inspection for State or Federal agency bridges and within 180 days of the date of inspection for all other bridges.

(c) For existing bridge modifications that alter previously recorded data and for new bridges, enter the SI&A data into the State or Federal agency inventory within 90 days after the completion of the work for State or Federal agency bridges and within 180 days after the completion of the work for all other bridges.

(d) For changes in load restriction or closure status, enter the SI&A data into the State or Federal agency inventory within 90 days after the change in status of the structure for State or Federal agency bridges and within 180 days after the change in status of the structure for all other bridges.

§ 650.317 Reference manuals.

(a) The materials listed in this subpart are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these documents will be published in the **Federal Register**. The materials are available for purchase at the address listed below, and are available for inspection at the National Archives and Records Administration (NARA). These materials may also be reviewed at the Department of Transportation Library, 400 Seventh Street, SW., Washington, DC, in Room 2200. For information on the availability of these materials at NARA call (202) 741-6030, or go to the following URL: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. In the event there is a conflict between the standards in this subpart and any of these materials, the standards in this subpart will apply.

(b) The following materials are available for purchase from the American Association of State Highway and Transportation Officials, Suite 249, 444 N. Capitol Street, NW., Washington, DC 20001. The materials may also be ordered via the AASHTO bookstore located at the following URL: <http://www.aashto.org/aashto/home.nsf/FrontPage>.

(1) The Manual for Condition Evaluation of Bridges, 1994, second edition, as amended by the 1995, 1996, 1998, and 2000 interim revisions, AASHTO, incorporation by reference approved for §§ 650.305 and 650.313.

(2) 2001 Interim Revision to the Manual for Condition Evaluation of Bridges, AASHTO, incorporation by reference approved for §§ 650.305 and 650.313.

(3) 2003 Interim Revision to the Manual for Condition Evaluation of Bridges, AASHTO, incorporation by reference approved for §§ 650.305 and 650.313.

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

Financial Crimes Enforcement Network; interpretive Release 2004-1—Anti-Money Laundering Program Requirements for Money Services Businesses With Respect to Foreign Agents or Foreign Counterparties

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule; interpretive release.

SUMMARY: This Interpretive Release sets forth an interpretation of the regulation requiring Money Services Businesses that are required to register with FinCEN to establish and maintain anti-money laundering programs. Specifically, this Interpretive Release clarifies that the anti-money laundering program regulation requires such Money Services Businesses to establish adequate and appropriate policies, procedures and controls commensurate with the risk of money laundering and the financing of terrorism posed by their relationship with foreign agents or foreign counterparties of the Money Services Business.

DATES: Effective June 13, 2005.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Policy and Programs Division, 1-800-800-2877, Office of Chief Counsel (703) 905-3590 (not a toll free number).

SUPPLEMENTARY INFORMATION: Section 5318(h) of the Bank Secrecy Act, which is codified in subchapter II of chapter 53 of title 31, United States Code, requires every financial institution to establish an anti-money laundering program. The Bank Secrecy Act regulations define financial institution to include money service businesses. On April 29, 2002, FinCEN issued interim final rules-31

CFR 103.125-concerning the application of the anti-money laundering program requirement to money services businesses. 67 FR 21114.

List of Subjects in 31 CFR Part 103

Authority delegations (government agencies), bank, banking, currency, investigations, reporting and recordkeeping requirements.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C 5311-5314 and 5316-5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub. L. 107-56, 115 Stat. 307, 12 U.S.C. 1786(q).

■ 2. Part 103 is amended by adding a new appendix C to read as follows:

APPENDIX C TO PART 103—INTERPRETIVE RULES

Release No. 2004-01

This Interpretive Guidance sets forth our interpretation of the regulation requiring Money Services Businesses that are required to register with FinCEN to establish and maintain anti-money laundering programs. See 31 CFR 103.125. Specifically, this Interpretive Guidance clarifies that the anti-money laundering program regulation requires Money Services Businesses to establish adequate and appropriate policies, procedures, and controls commensurate with the risks of money laundering and the financing of terrorism posed by their relationship with foreign agents or foreign counterparties of the Money Services Business.¹

Under existing Bank Secrecy Act regulations, we have defined Money Services Businesses to include five distinct types of financial services providers and the U.S. Postal Service: (1) Currency dealers or exchangers; (2) check cashers; (3) issuers of traveler's checks, money orders, or stored

¹ This Interpretive Guidance focuses on the need to control risks arising out of the relationship between a Money Service Business and its foreign counterparty or agent. Under existing FinCEN regulations, only Money Service Business principals are required to register with FinCEN, and only Money Service Business principals establish the counterparty or agency relationships. 31 CFR 103.41. Accordingly, this interpretive Guidance only applies to those Money Service Businesses required to register with FinCEN, that is, only those Money Service Businesses that may have a relationship with a foreign agent or counterparty.

ATTACHMENT 2

Bridge Safety and Evaluation Positions
July 2010

Positions	Number
Trans. Manager of Bridge Safety and Evaluation	1
Administrative Assistant	1
Secretary 2	1
Trans. Supervising Engineer	4
Trans. Engineer 3	16
Trans. Engineer 2 (TE2)	4
Engineer Trainee (Targeted at TE2)	1
Trans. Bridge Safety Inspector 2	21
Trans. Maintainer 4	1
Total filled positions	50
Total vacant positions	none

Rail Bridge Safety and Evaluation Positions

Position	Number
Assistant Rail Administrator	1
Principal Engineer	1
Transportation Supervising Engineer	1
Transportation Engineer 3	1
Transportation Engineer 3	1
Transportation Engineer 2	1
Total Filled Positions	6
Total Vacant Positions	None

ATTACHMENT 3a

**Analysis of Bridge Inspection Expenditures
(FY2007 through FY2010)**

FY Summary					
Fiscal Year	Consultant Expended	Inhouse Expended	DOT Non-Project	Total	Percentages
FY2007	\$ 8,597,473	\$ 6,475,698	\$ 973,282	\$ 16,046,453	(54% / 40% / 6%)
FY2008	\$ 9,719,468	\$ 4,552,054	\$ 1,110,239	\$ 15,381,762	(63% / 30% / 7%)
FY2009	\$ 15,964,268	\$ 5,980,769	\$ 1,302,453	\$ 23,227,489	(69% / 25% / 6%)
FY2010	\$ 15,818,929	\$ 7,142,819	\$ 1,309,028	\$ 24,270,776	(65% / 30% / 5%)

FY 2007 Project_ID	Project Description	In-House Payroll (Salary, Fringes, & Additives) FY07	In-House Non-Salary FY07	Outside Payments FY07	Total FY07
DOT01702357	Inspection of Complex & Mod. Complex Bridges	347,884	1,421	4,394,471	4,743,776
DOT01702730	Sign Support Inspection	54,915	12,687	-	67,602
DOT01702729	Inspection of On/Off System Bridges	335,556	109	1,388,120	1,723,785
DOT01702687	Underwater Bridge Inspections	636	-	714,007	714,643
DOT01702203	Underwater Bridge Inspections	2,464	26	55,529	58,020
DOT01702868	Underwater Bridge Inspections	-	-	-	-
DOT01702614	Inspection of Traffic Signal Mast Arms	-	-	-	-
DOT01701940	Underwater Non-Part Bridge Inspections	2,429	-	161,627	164,056
DOT01702272	Sign Support Inspection	36,131	250	88,474	124,855
DOT03000097	Inspection of New Haven Line RR Bridges	163,617	50	542,058	705,726
DOT01701789	Scour Analysis & Monitoring by Consultant	12,393	353	44,700	57,446
DOT01702575	Scour Analysis/Monitoring-Town Structures	-	-	6,540	6,540
DOT01702822	Scour Analysis/Monitoring-NBI Bridges	-	-	-	-
DOT01702860	Scour Analysis/Monitoring-Non NBIS Bridges	-	-	-	-
DOT01702010	Inspection of various RR Bridges	3,234	-	227,791	231,025
Consultant Exp. Totals:		\$ 959,260	\$ 14,896	\$ 7,623,317	\$ 8,597,473
DOT01701967	Statewide Non-NBI Bridge Inspection	\$ 415,626	\$ -	\$ -	\$ 415,626
DOT01701767	Overweight Truck Permits - Bridge Analysis	\$ 6,627	\$ -	\$ -	\$ 6,627
DOT01702356	Statewide On/Off System Bridge Inspection	\$ 3,377,134	\$ 1,046,346	\$ -	\$ 4,423,480
DOT01702731	Statewide On/Off System Bridge Inspection	\$ 1,461,914	\$ 168,051	\$ -	\$ 1,629,965
DOT01702993	Statewide On/Off System Bridge Inspection	\$ -	\$ -	\$ -	\$ -
In-House Exp. Totals:		\$ 5,261,301	\$ 1,214,396	\$ -	\$ 6,475,698

FY 2008 Project_ID	Project Description	In-House Payroll (Salary, Fringes, & Additives) FY08	In-House Non-Salary FY08	Outside Payments FY08	Total FY08
DOT01702357	Inspection of Complex & Mod. Complex Bridges	\$ 6,990	\$ -	\$ 36,803	\$ 43,794
DOT01702730	Sign Support Inspection	\$ 153,578	\$ -	\$ 499,140	\$ 652,718
DOT01702729	Inspection of On/Off System Bridges	\$ 872,256	\$ -	\$ 6,556,895	\$ 7,429,151
DOT01702687	Underwater Bridge Inspections	\$ 7,244	\$ -	\$ 415,474	\$ 422,717
DOT01702203	Underwater Bridge Inspections	\$ 1,586	\$ 7,104	\$ 62,525	\$ 71,216
DOT01702868	Underwater Bridge Inspections	\$ -	\$ -	\$ -	\$ -
DOT01702614	Inspection of Traffic Signal Mast Arms	\$ 1,624	\$ -	\$ -	\$ 1,624
DOT01701940	Underwater Non-Part Bridge Inspections	\$ 784	\$ 3,000	\$ 29,402	\$ 33,186
DOT01702272	Sign Support Inspection	\$ 478	\$ -	\$ 2,691	\$ 3,168
DOT03000097	Inspection of New Haven Line RR Bridges	\$ 192,938	\$ -	\$ 514,168	\$ 707,106
DOT01701789	Scour Analysis & Monitoring by Consultant	\$ 13,241	\$ -	\$ 53,802	\$ 67,043
DOT01702575	Scour Analysis/Monitoring-Town Structures	\$ -	\$ -	\$ -	\$ -
DOT01702822	Scour Analysis/Monitoring-NBI Bridges	\$ -	\$ -	\$ -	\$ -
DOT01702860	Scour Analysis/Monitoring-Non NBIS Bridges	\$ -	\$ -	\$ -	\$ -
DOT01702010	Inspection of various RR Bridges	\$ 2,641	\$ -	\$ 285,105	\$ 287,745
Consultant Exp. Totals:		\$ 1,253,360	\$ 10,104	\$ 8,456,004	\$ 9,719,468
DOT01701967	Statewide Non-NBI Bridge Inspection	\$ 259,972	\$ -	\$ -	\$ 259,972
DOT01701767	Overweight Truck Permits - Bridge Analysis	\$ -	\$ -	\$ -	\$ -
DOT01702356	Statewide On/Off System Bridge Inspection	\$ -	\$ 30,000	\$ -	\$ 30,000
DOT01702731	Statewide On/Off System Bridge Inspection	\$ 3,973,345	\$ 288,737	\$ -	\$ 4,262,082
DOT01702993	Statewide On/Off System Bridge Inspection	\$ -	\$ -	\$ -	\$ -
In-House Exp. Totals:		\$ 4,233,317	\$ 318,737	\$ -	\$ 4,552,054

Notes:

- Expenditures based on Core-CT Project and Non-Project related queries.
- Project Expenditures capture the vast majority of Inspection work, but do not include minor expenditures to specific non-inspection projects.
- Consultant Expenditures by FY are based on date of Expenditure, not date of work.
- Consultant Expenditures do not include unpaid retainages (generally 2.5% of non-ex wk labor).
- In-House Non-Salary Expenditures include costs for capital purchases and database support.
- DOT Non-Project Costs include unit personnel costs not directly billable to inspection project accounts. The estimate presented is based on current employees because the Bridge Safety Unit does not have a unique DeptID to query.
- Additives included in In-House Payroll are Core-CT project allocations to cover leave time earned while charging to the project.

**Analysis of Bridge Inspection Expenditures
(FY2007 through FY2010)**

FY 2009 Project ID	Project Description	In-House Payroll (Salary, Fringes, & Additives) FY09	In-House Non-Salary FY09	Outside Payments FY09	Total FY09
DOT01702357	Inspection of Complex & Mod. Complex Bridges	\$ -	\$ -	\$ 80,926	\$ 80,926
DOT01702730	Sign Support Inspection	\$ 212,389	\$ -	\$ 1,733,044	\$ 1,945,433
DOT01702729	Inspection of On/Off System Bridges	\$ 997,622	\$ 1	\$ 9,516,573	\$ 10,514,197
DOT01702687	Underwater Bridge Inspections	\$ 5,336	\$ -	\$ 1,337,359	\$ 1,342,695
DOT01702203	Underwater Bridge Inspections	\$ -	\$ -	\$ 396	\$ 396
DOT01702868	Underwater Bridge Inspections	\$ -	\$ -	\$ -	\$ -
DOT01702614	Inspection of Traffic Signal Mast Arms	\$ -	\$ -	\$ 123,085	\$ 123,085
DOT01701940	Underwater Non-Part Bridge Inspections	\$ -	\$ -	\$ 270,340	\$ 270,340
DOT01702272	Sign Support Inspection	\$ -	\$ -	\$ 23,691	\$ 23,691
DOT03000097	Inspection of New Haven Line RR Bridges	\$ 200,481	\$ -	\$ 1,115,402	\$ 1,315,883
DOT01701789	Scour Analysis & Monitoring by Consultant	\$ 1,520	\$ -	\$ 3,371	\$ 4,892
DOT01702575	Scour Analysis/Monitoring-Town Structures	\$ -	\$ -	\$ -	\$ -
DOT01702822	Scour Analysis/Monitoring-NBI Bridges	\$ -	\$ -	\$ 48,194	\$ 48,194
DOT01702860	Scour Analysis/Monitoring-Non NBIS Bridges	\$ -	\$ -	\$ 8,298	\$ 8,298
DOT01702010	Inspection of various RR Bridges	\$ 27,356	\$ -	\$ 258,882	\$ 286,237
Consultant Exp. Totals:		\$ 1,444,705	\$ 1	\$ 14,919,562	\$ 16,364,268
DOT01701967	Statewide Non-NBI Bridge Inspection	\$ 251,149	\$ -	\$ -	\$ 251,149
DOT01701767	Overweight Truck Permits - Bridge Analysis	\$ -	\$ -	\$ -	\$ -
DOT01702356	Statewide On/Off System Bridge Inspection	\$ -	\$ 204	\$ -	\$ 204
DOT01702731	Statewide On/Off System Bridge Inspection	\$ 5,066,692	\$ 642,725	\$ -	\$ 5,709,416
DOT01702993	Statewide On/Off System Bridge Inspection	\$ -	\$ -	\$ -	\$ -
In-House Exp. Totals:		\$ 5,317,841	\$ 642,928	\$ -	\$ 5,960,769

FY 2010 Project ID	Project Description	In-House Payroll (Salary, Fringes, & Additives) FY10	In-House Non-Salary FY10	Outside Payments FY10	Total FY10
DOT01702357	Inspection of Complex & Mod. Complex Bridges	\$ -	\$ -	\$ -	\$ -
DOT01702730	Sign Support Inspection	\$ 99,993	\$ -	\$ 2,108,764	\$ 2,208,756
DOT01702729	Inspection of On/Off System Bridges	\$ 822,888	\$ -	\$ 8,265,988	\$ 9,088,876
DOT01702687	Underwater Bridge Inspections	\$ 999	\$ -	\$ 206,335	\$ 207,334
DOT01702203	Underwater Bridge Inspections	\$ -	\$ -	\$ 86	\$ 86
DOT01702868	Underwater Bridge Inspections	\$ -	\$ -	\$ 728,141	\$ 728,141
DOT01702614	Inspection of Traffic Signal Mast Arms	\$ 1,246	\$ -	\$ 539,278	\$ 540,524
DOT01701940	Underwater Non-Part Bridge Inspections	\$ -	\$ -	\$ 137,109	\$ 137,109
DOT01702272	Sign Support Inspection	\$ -	\$ -	\$ 310	\$ 310
DOT03000097	Inspection of New Haven Line RR Bridges	\$ 292,290	\$ -	\$ 1,830,789	\$ 2,123,079
DOT01701789	Scour Analysis & Monitoring by Consultant	\$ -	\$ -	\$ -	\$ -
DOT01702575	Scour Analysis/Monitoring-Town Structures	\$ -	\$ -	\$ -	\$ -
DOT01702822	Scour Analysis/Monitoring-NBI Bridges	\$ -	\$ -	\$ 48,194	\$ 48,194
DOT01702860	Scour Analysis/Monitoring-Non NBIS Bridges	\$ -	\$ -	\$ 8,298	\$ 8,298
DOT01702010	Inspection of various RR Bridges	\$ 24,098	\$ -	\$ 704,123	\$ 728,221
Consultant Exp. Totals:		\$ 1,241,514	\$ -	\$ 14,577,414	\$ 15,818,929
DOT01701967	Statewide Non-NBI Bridge Inspection	\$ 366,188	\$ -	\$ -	\$ 366,188
DOT01701767	Overweight Truck Permits - Bridge Analysis	\$ -	\$ -	\$ -	\$ -
DOT01702356	Statewide On/Off System Bridge Inspection	\$ -	\$ -	\$ -	\$ -
DOT01702731	Statewide On/Off System Bridge Inspection	\$ 3,259,693	\$ 692,808	\$ -	\$ 3,952,501
DOT01702993	Statewide On/Off System Bridge Inspection	\$ 2,410,067	\$ 414,083	\$ -	\$ 2,824,129
In-House Exp. Totals:		\$ 6,035,948	\$ 1,106,871	\$ -	\$ 7,142,819

Notes:

- Expenditures based on Core-CT Project and Non-Project related queries.
- Project Expenditures capture the vast majority of Inspection work, but do not include minor expenditures to specific non-inspection projects.
- Consultant Expenditures by FY are based on date of Expenditure, not date of work.
- Consultant Expenditures do not include unpaid retainages (generally 2.5% of non-ex wk labor).
- In-House Non-Salary Expenditures include costs for capital purchases and database support.
- DOT Non-Project Costs include unit personnel costs not directly billable to inspection project accounts. The estimate presented is based on current employees because the Bridge Safety Unit does not have a unique DeptID to query.
- Additives included in In-House Payroll are Core-CT project allocations to cover leave time earned while charging to the project.

ATTACHMENT 3b

**State and Consultant Bridge Inspection Comparisons
Fiscal Years 2007, 2008, 2009 and 2010**

Fiscal Year 2007				
July 1, 2006 to June 30, 2007				
Inspection Performed by	Number of Inspections	% of Inspections Completed	Deck Area of Inspections Completed (in Square Feet)	% of Deck Area of Inspections
1 State	1,973	74%	9,653,492	41%
1 Consultant - Highway	515	19%	13,151,340	56%
2 Consultant - Railway	140	5%	391,264	2%
3 Divers (Complete)	51	2%	137,764	1%
4 Divers (UW Only)	12			
Total	2,679		23,333,860	

Fiscal Year 2008				
July 1, 2007 to June 30, 2008				
Inspection Performed by	Number of Inspections	% of Inspections Completed	Deck Area of Inspections Completed (in Square Feet)	% of Deck Area of Inspections
1 State	2,091	74%	8,279,117	47%
1 Consultant - Highway	465	16%	8,527,463	48%
2 Consultant - Railway	144	5%	526,790	3%
3 Divers (Complete)	126	4%	366,199	2%
4 Divers (UW Only)	21			
Total	2,826		17,699,569	

Fiscal Year 2009				
July 1, 2008 to June 30, 2009				
Inspection Performed by	Number of Inspections	% of Inspections Completed	Deck Area of Inspections Completed (in Square Feet)	% of Deck Area of Inspections
1 State	2,171	75%	11,082,386	46%
1 Consultant - Highway	505	17%	12,281,297	51%
2 Consultant - Railway	118	4%	336,608	1%
3 Divers (Complete)	95	3%	226,964	1%
4 Divers (UW Only)	33			
Total	2,889		23,927,255	

Fiscal Year 2010				
July 1, 2009 to June 30, 2010				
Inspection Performed by	Number of Inspections	% of Inspections Completed	Deck Area of Inspections Completed (in Square Feet)	% of Deck Area of Inspections
1 State	2,371	76%	12,231,804	49%
1 Consultant - Highway	440	14%	11,964,117	47%
2 Consultant - Railway	173	6%	606,419	2%
3 Divers (Complete)	138	4%	399,121	2%
4 Divers (UW Only)	68			
Total	3,122		25,201,461	

Totals for Last 4 Years				
Inspection Performed by	Number of Inspections	% of Inspections Completed	Deck Area of Inspections Completed (in Square Feet)	% of Deck Area of Inspections
State	8,606	75%	41,246,799	46%
Consultant - Highway	1,925	17%	45,924,217	51%
Consultant - Railway	575	5%	1,861,081	2%
Divers (Complete)	410	4%	1,130,048	1%
Divers (UW Only)	134			
Total	11,516		90,162,145	

- 1 - Includes all inspections - Routine, Indepth, Special, Semi-Final, Incident.
- 2- All types of inspections of State-owned structures carrying Railroad - Metro North and various smaller Freight rail lines.
- 3 - Includes Complete inspection by Divers due to efficiency or access.
- 4 - U/W means Underwater Inspection Only - Main Inspection by State Team or Consultant.

NOTE: All totals are as recorded in the Bridge Inspection and Report Management System (BIRMS) as of June 30, 2010 (end of Fiscal Year).

ATTACHMENT 4

Connecticut Department of Transportation



PROFESSIONAL SERVICES CONSULTANT SELECTION PROCEDURES MANUAL

Prepared By:

Consultant Selection Office
Office of the Commissioner
January 2010

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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.

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-20f was changed editorially by the Revisors to Sec. 13b-20k, since section 13b-20f 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

ATTACHMENT 5

SUMMARY
SCOPE OF WORK
Highway Bridge & Sign Contracts Summary

1.0 OVERVIEW

The consultant is given an assignment list identifying structures to be inspected along with the type of inspection required and the proposed inspection date noted. The Consultant is required to document structure conditions in an inspection report; prepare maintenance memorandums for those structures needing repair; update inventory database; perform non-destructive testing when needed and perform minor maintenance to sign supports. During this contract cycle, the structures assigned include structures spanning roadway, railway or river crossings; Overhead Sign Supports; and inspection of local structures for QA purposes. If required, the Consultant may be assigned analysis of bridges and signs and non-destructive testing.

The Consultant is compensated on a cost-plus basis and there is a 13% DBE requirement for the project.

2.0 ADMINISTRATION

The Consultant staffing including resumes and classifications will be submitted for approval by the Department. All key staff members must meet the education, experience and training (including satisfactorily completing the National Highway Institute (NHI) course) required. In addition to the NHI course, periodic refresher courses are required of the Team Leaders and Project Managers. For work within the Railroad right of way, Metro North and/or Amtrak training may be required.

The Consultant will provide a one-time written *Quality Assurance Statement* within 30 days of the start of the project, explaining their intentions to assure quality throughout this project. A *Quality Control Report* shall be submitted quarterly.

3.0 INSPECTION

The Consultant will review various document on file for pertinent background information including a copy of the previous inspection report. The Consultant will submit a two week schedule noting any lane closures required. They will submit daily inspection activity reports detailing which structures they will inspect that day, who the inspection team will be, and what equipment they will be utilizing. They are responsible for arranging access to all structures including ordering access and safety equipment, ordering local and state police where needed, setting out lane closures, and notifying Coast Guard for certain specific structures. The Consultant is expected to obtain a bucket truck, cube truck, boat, signing pattern and other small tools of the trade. Other equipment can be rented through vendor solicitation (3 bids minimum).

All inspections must be conducted in accordance with the Department's Bridge Inspection Manual (BIM) and all operations must conform to current OSHA/ANSI Regulations. For Overhead Sign Support inspections, the Consultant is also required to perform certain minor repairs/maintenance including tightening and replacing sign clips; installing missing handhole covers, bolts and plugs; sealing gaps; torquing anchor bolts; stenciling missing or faded identification numbers; and performing various non-destructive testing. The Consultant must not only perform a structural inspection, but also mechanical and electrical inspection of movable structures.

All reports are signed and sealed professionally (PE) by the Project Manager and the Consultant sends in original report and required copies including an electronic copy of the report. If required, the Consultant prepares and submits a Maintenance Memorandum. Other electronic submissions include database information for Sign inventory and Pontis files for bridge inspections.

SUMMARY SCOPE OF WORK Underwater Inspection Contracts

1.0 OVERVIEW

The consultant is given an assignment list identifying structures over waterways to be inspected along with the type of inspection required and the proposed inspection date noted. The Consultant is required to document structure conditions in an inspection report; update CADD drawings; prepare maintenance memorandums for those structures needing repair; update inventory database; and perform non-destructive testing when needed. During this contract cycle, the structures assigned include larger structures requiring underwater inspection only (report serves as addendum to main report); and smaller less complex structures requiring a complete inspection due to limited headroom or for efficiency. The Consultant is expected to be available to assist the Department during emergency situations (e.g. flooding).

The Consultant is compensated on a cost-plus basis and there is a 13% DBE requirement for the project.

2.0 ADMINISTRATION

The Consultant staffing including resumes and classifications will be submitted for approval by the Department. All key staff members must meet the education, experience and training (including satisfactorily completing the National Highway Institute (NHI) course) required. In addition to the NHI course, periodic refresher courses are required of the Team Leaders and Project Managers. Staff directly involved with diving or tending need to meet OSHA requirements for commercial divers and have training in CPR and First Aid.

The Consultant will provide a one-time written *Quality Assurance Statement* within 30 days of the start of the project, explaining their intentions to assure quality throughout this project. A *Quality Control Report* shall be submitted quarterly.

3.0 INSPECTION

The Consultant will review various document on file for pertinent background information including a copy of the previous inspection report. The Consultant will submit a two week schedule noting any lane closures (infrequent on this project). They will submit daily inspection activity reports detailing which structures they will inspect that day, who the inspection team will be, and what equipment they will be utilizing. They are responsible for arranging access to all structures including ordering safety equipment, ordering local and state police where needed, following confined space guidelines where needed and notifying Coast Guard for structures over navigable waterways. The Consultant is expected to obtain a boat, dive equipment and other small tools of the trade. Other equipment can be rented through vendor solicitation (3 bids minimum).

All inspections must be conducted in accordance with the Department's Bridge Inspection Manual (BIM) and all operations must conform to current OSHA/ANSI Regulations.

All reports are signed and sealed professionally (PE) by the Project Manager and the Consultant sends in original report and required copies including an electronic copy of the report. If required, the Consultant prepares and submits a Maintenance Memorandum. Other electronic submissions include database information for underwater inventory and Pontis files for bridge inspections.

SUMMARY
SCOPE OF WORK
Railroad Bridge Inspection Contracts

1.0 OVERVIEW

The consultant is given an assignment list identifying structures carrying railroad spanning roadway or river crossings to be inspected along with the type of inspection required and the proposed inspection date noted. The Consultant is required to document structure conditions in an inspection report; prepare maintenance memorandums for those structures needing repair; update inventory database; and perform non-destructive testing when needed. Structures requiring an underwater inspection are included. If required, the Consultant may be assigned analysis of bridges.

The Consultant is compensated on a cost-plus basis. There is a 15% SBE requirement for the Metro North project. The Off-System Rail project is 100% SBE.

2.0 ADMINISTRATION

The Consultant staffing including resumes and classifications will be submitted for approval by the Department. All key staff members must meet the education, experience and training (including satisfactorily completing the National Highway Institute (NHI) course) required. In addition to the NHI course, periodic refresher courses are required of the Team Leaders and Project Managers. Annual Metro North training is required. In addition to training listed above, inspectors involved with underwater inspection must be certified in First Aid and CPR.

The Consultant will provide a one-time written *Quality Assurance Statement* within 30 days of the start of the project, explaining their intentions to assure quality throughout this project. A *Quality Control Report* shall be submitted quarterly.

3.0 INSPECTION

The Consultant will review various document on file for pertinent background information including a copy of the previous inspection report. The Consultant will submit a two week schedule noting where Metro North safety personnel or lane closures are required. They will submit daily inspection activity reports detailing which structures they will inspect that day, who the inspection team will be, and what equipment they will be utilizing. They are responsible for arranging access to all structures including ordering access and safety equipment, ordering local and state police where needed, setting out lane closures, and notifying Coast Guard for certain specific structures. The Consultant is expected to obtain a bucket truck, cube truck, boat, traffic control devices and other small tools of the trade. Other equipment can be rented through vendor solicitation (3 bids minimum).

All inspections must be conducted in accordance with the Department's Bridge Inspection Manual (BIM) and all operations must conform to current OSHA/ANSI Regulations. The Consultant must not only perform a structural inspection, but also mechanical and electrical inspection of movable structures.

All reports are signed and sealed professionally (PE) by the Project Manager and the Consultant sends in original report and required copies including an electronic copy of the report. If required, the Consultant prepares and submits a Maintenance Memorandum. Other electronic submissions include updated CADD drawings for underwater inspections.