

INDOT
Professional Services Contract Administration Manual
Version 3/12/20



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Chapter 1 Consultant Contracting – General

Introduction

The purpose and need for the manual is as follows:

1. Federal regulations (23 CFR 172.5) require specific written procedures to be approved by the Federal Highway Administration (FHWA). The requirements in 23CFR172 are meant to insure that a qualified consultant is obtained through an equitable qualifications based selection process and that work is properly accomplished in a timely manner at a fair and reasonable cost.
2. Documented procedures are needed to assist INDOT Districts and owner offices in administering contracts and to improve operational consistency.
3. Documented procedures are needed to establish internal lines of administrative accountability and to set into motion a system that will assist in holding consultants accountable for contractual responsibilities.

There is a separate contracting procedure for Local Public Agencies (LPAs) which is documented in Chapter 5 of the LPA Project Development Process Guidance Document. Consultant services shall be procured, managed and administered in accordance with applicable federal and state laws and regulations.

Contacts for questions or to make suggestions regarding consultant contracting or this manual may be directed to ContractsRFP@indot.in.gov.

1.1.1 Determination of Need

The services of a consultant may be requested if funding is available and at least one (1) of the following statements is true:

- the in-house capabilities of INDOT are insufficient to accomplish needed work within the desired time frame;
- the complexity or nature of the project requires specialized expertise;
- it is more economical to engage such services; or
- it is otherwise in the public interest.

The owner office shall evaluate the need for the services prior to proceeding with any subsequent steps.

FHWA approval is required where federal funds are used and a consultant is being hired to support management services as defined in 23 CFR 172.3 and 23 CFR 172.7b(5). This approval is requested through the INDOT Contracts Division. Management services or support roles may include actions taken on behalf of INDOT or an LPA to:

- provide oversight of a highway program,
- manage other consultants contracted with INDOT or an LPA for a project, or
- manage a series of projects.

1.1.2 Initiation of the Selection Process

All consultant selections shall be processed through the Contract Administration Division, which maintains INDOT's official project file through authorization of the contract.

The following elements are required to initiate the consultant selection process:

- A scope of services document.
- For projects that will use Federal funds, the project shall be included in the State Transportation Improvement Program (STIP) for the applicable phase and year.
- Owner office shall demonstrate that project funding is available.
- Owner office shall add applicable project information to the 12 Month RFP list via the Professional Services Contracting System (PSCS).
- Owner office shall provide a justification for the proposed advertised services upon request.

1.1.3 Prequalification

All firms desiring to provide services that require work to be performed by or under the supervision of a registered engineer, architect, or surveyor leading to a construction project shall be prequalified with INDOT. INDOT has identified categories of work that require prequalification that include such services. (See the INDOT Consultant Prequalification Manual <http://www.in.gov/indot/2732.htm>)

1.1.4 Scope of Services

A scope of services document should include all anticipated elements of service required, standard and/or any special requirements associated with the elements of service, any anticipated phases of services and all required deliverables. It is required for all contracts at least two (2) months prior to advertisement of an RFP.

On-call contracts typically use standard scope of services documents that are on file with the Consultant Services Section. The owner office shall prepare the scope of services documents for non-standard on-call contracts.

1.1.5 Preliminary Cost Estimate

Prior to advertisement of an RFP, the owner office shall provide a preliminary estimate, which will be reviewed by the Contract Administration Division.

1.1.6 Advertisements/Requests for Proposal (RFP) Announcements

INDOT publishes a twelve (12) month list of anticipated professional services under “Doing Business with INDOT / Consultants / Proposals & Contracts / INDOT RFPs” <https://psc.in.gov/rfppublicwebsite/> . INDOT will also post RFPs on this website. RFPs are typically advertised on the second Tuesday of each month. Special RFPs will also be posted from time to time for more urgent contracting needs. The RFPs will describe the services to be contracted, payment method to be used, deliverable schedule, prequalification categories required, special qualifications needed, the district/division responsible for the contract administration, schedule for two-step selection activities when applicable and due date for Letters of Interest (LOI). In the case of project specific services, project description information and the preliminary estimated construction cost will also be included.

1.1.7 Consultant Selection Process

INDOT will select a consultant or team of consultants in accordance with the consultant selection process. For details of this process see Chapter 3 – Consultant Selection Process. INDOT will post selection results on the INDOT RFP Archives webpage immediately following selection and will

distribute a notification on the free RFP Email Notification subscription listserv. A formal notification letter will be sent to the selected consultants within a week of official selection.

For RFP items requiring a cost proposal to be included in the Letter of Interest (LOI) response, the LOI responses, scoring information, and SRC Tabulation information will not be made available for viewing on the INDOT RFP Archives webpage until the contract negotiation process is complete and the Notice to Proceed is issued for services.

1.1.8 Detailed INDOT Cost Estimate

Prior to receipt of a cost proposal from the consultant, the owner office shall assist the Contract Administration Division in preparing a detailed estimate of the cost of services. When contract services are to be funded with federal participation the estimate shall include a breakdown with labor hours by major work element, classifications of labor, other direct costs and profit. Routine estimates may be prepared based on data collected from previous projects. Non-routine work element estimates will need to be coordinated with INDOT specialty area experts. Document details to support negotiation and final approval of costs should be maintained in PSCS.

1.1.9 Scope of Services Meeting

INDOT should invite the selected consultant to attend a Scope of Services Meeting for all project specific and non-standard on-call contracts. The purpose of this meeting is to define in further detail the parameters of the project; what INDOT expects of the consultant; and to provide instruction regarding cost proposal requirements.

The Scope of Services Meeting will:

- Provide an opportunity for discussion and questions for the purpose of defining the scope of services as it relates to both parties to the contract. The services provided by the consultant will be incorporated into Appendix A of the consultant contract, and the information and services provided by INDOT will be incorporated into Appendix B of the consultant contract.
- Finalize payment method for the prime (lead) consultant and each of the sub consultants (negotiated labor rates, unit price or lump sum, etc.). The compensation method should be the same as noted in the RFP advertisement unless, during the scope negotiation process, a more effective payment method is determined.
- Determine the schedule of deliverables, which will be incorporated into Appendix C of the consultant contract.
- Determine a cost proposal due date acceptable to both parties.
- The cost proposal shall include a detailed breakdown of costs associated with various work items including personnel classifications, hours, hourly rates and direct non-salary costs (DNS). DNS costs may include: travel, meals, per diem, equipment rental, copying, mailing and telephone charges, etc. However, the DNS costs for travel reimbursement shall not exceed the limitations on travel expenses set out in the current State policy on travel reimbursement <http://www.in.gov/idoa/2459.htm> .

If the Scope of Services meeting results in significant changes to the scope of services, INDOT shall revise the detailed cost estimate prior to receipt of the consultant cost proposal. INDOT shall not permit significant changes in contract services beyond the purpose, phases or character described in the original RFP advertisement.

1.1.10 Cost Proposals

The selected consultant shall organize the cost proposal using the format specified in the Notification Letter. The consultant shall submit the cost proposal to INDOT by the time and date established at the Scope of Services Meeting. If the consultant fails to submit a timely cost proposal or if the proposal does not include the required information, INDOT reserves the right to discontinue the selection and move to the next highest ranked firm.

1.1.11 Cost Proposal Review

INDOT's cost proposal review shall include, but not be limited to the following:

- Verification of consultant and all subconsultants' prequalification status.
- Verification of consultant insurance certificates and subconsultant certificates, as applicable.
- Verification that the consultant is not on the federal debarment list.
- Confirmation that the proposed provisional overhead rates are consistent with current INDOT audit information as approved in the prequalification process.
- For hourly rate contracts, verification that the certified payroll documentation for the prime and sub consultants are submitted with an appropriate certification statement and signature. INDOT shall keep the consultant's salary/certified payroll information confidential.
- Verification of the accuracy of the calculated average hourly rates per classification.
- Review of direct non-salary costs, such as travel, supplies, equipment rental, etc.
- Confirmation that profit does not exceed the amount calculated from INDOT's profit matrix.
- Comparison of total proposed cost to RFP cost estimate prepared by INDOT.
- Review of hours, classifications and costs proposed for each task.
- Evaluation of labor hours and costs in comparison to recent projects and detailed INDOT cost estimate.
- Consultation with project manager and appropriate specialty area offices to review scope of services, task list, level of effort, labor hours and costs (for example environmental services, utility coordination, hydraulics, etc.).
- For contracts greater than \$1,000,000, internal peer review of the estimate and negotiation plan by an independent contract estimator before proceeding with negotiations.

1.1.12 Negotiations

INDOT may accept the proposal or negotiate with the consultant. The detailed INDOT cost estimate shall serve as the basis for negotiation. When contract services are to be funded with federal participation cost elements including indirect cost rates, direct salary rates, fixed fee and other direct costs are to be established in accordance with 23 CFR Section 172.11. See Section 6.4 for additional information on indirect cost rates.

The points of negotiation may include, but not be limited to:

- Further definition of scope of services, project complexity & INDOT desire for creativity and added value
- Deliverables and Delivery schedule
- Commitment to project manager & other key personnel proposed in the LOI that the selection was based upon

- Appropriate personnel classifications for the required services
- Appropriate review time for INDOT
- Appropriate number and classifications of staff
- Appropriate labor hours
- Appropriate direct non-salary costs
- Consideration of phased contracting when appropriate
- Quality control/quality assurance plan and expectations

General negotiation procedures are as follows:

- INDOT's first offer should be based on the initial negotiation plan and estimate.
- Attempt to complete negotiations within fourteen (14) calendar days after INDOT's first offer.
- Negotiations for complex projects or contracts should always involve at least one (1) face-to-face meeting between the parties. INDOT Project managers should always be invited and encouraged to attend negotiation meetings.
- If negotiations for non-complex contracts do not succeed on the phone or via e-mail within fourteen (14) calendar days, then a face-to-face meeting with the consultant shall be scheduled to finalize negotiations.

If negotiation with the highest ranked consultant fails to result in an agreed upon cost, INDOT will notify that firm in writing of the termination of negotiations. INDOT will invite the next highest ranked consultant to a Scope of Services Meeting and then request that firm to submit a cost proposal. If negotiations again fail, the same procedure shall be followed with the next most qualified firm until a contract has been successfully negotiated. If negotiations with the top three (3) firms are unsuccessful, the advertisement and selection phases will be repeated.

1.1.13 Selection Documentation

The consultant's LOI and the INDOT's selection rating information will be considered public information upon approval of selection by the Commissioner and will be published on the INDOT internet website.

1.1.14 Contract Preparation and Signature Process

The Contract Administration staff prepares the draft contract and appendices and forwards the draft contract to the consultant for signature. Upon receipt of the contract from the consultant, the Contract Administration staff routes the contract for signature through INDOT, Indiana Department of Administration, State Budget Agency and the Attorney General's office.

1.1.15 Funding Process

Concurrent with contract preparation, the Contract Administration staff will prepare and submit a project funding request to the INDOT Finance Division. When federal funds are involved the Finance Division will transmit a funds request to the FHWA via the Federal Management Information System (FMIS) for approval. FHWA approvals are based upon existence of a project in the Statewide Transportation Improvement Program (STIP) and upon their reliance on INDOT's compliance with these approved procedures. The Finance Division will notify the Contract Administration Staff upon receipt of FHWA authorization and budget approval. Upon receipt of this approval the Contract Administration staff will process a Purchase Order (PO).

1.1.16 Notice to Proceed

The Contract Administration staff may issue notice to proceed upon receipt of a fully executed contract and PO. Any work performed prior to FHWA authorization is not eligible for federal reimbursement.

Chapter 2 Code of Ethics and Conflicts of Interest

All employees of INDOT and employees, elected officials, officers, or agents of sub-recipients of INDOT federal funds participating in the selection, award, or administration of a contract, if they are in a position to make a discretionary decision affecting the outcome of the selection or award, or the nature of the administration of the contract, shall be bound by this Code of Ethics. This Code of Ethics does not apply to campaign contributions or introduce limits to existing campaign finance rules.

2.1 Financial Conflicts of Interest

No employee, officer, or agent of INDOT nor a federal funds sub-recipient of INDOT shall participate in selection, award or discretionary administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict arises when there is a financial or other interest in the consultant selected for award by:

- (A) The employee, officer, or agent;
- (B) Any member of his or her immediate family;
- (C) His or her partner; or
- (D) An organization that employs or is about to employ any of the above.

Consultant personnel for INDOT participating in selection, award or discretionary administration of a contract shall adhere to the Code of Ethics, except that they may continue to accept salary and other employment benefits from their consultant employer.

A consultant hired in a management support role (as defined in 23 CFR 172.3 and 23 CFR 172.7b(5)) is precluded from providing additional services for projects, activities, or contracts under its oversight due to potential conflicts of interest. These services include performance of work and review or evaluation of work done by their firm on behalf of the contracting agency

2.1.1 INDOT Personnel

INDOT personnel shall:

- Abide by ethical requirements set forth in IC 4-2-6-9 and 42 IAC 1-5.
- Consider the interests of the State of Indiana and INDOT first when contracting for professional services.
- Seek to obtain the maximum value for each dollar spent for professional services.
- Request removal from any situation in which a personal relationship may affect judgment in selection, administration or performance evaluation activities.
- Avoid unnecessary sharing of internal INDOT information, including project or program information that may result in giving a competitive advantage to a select firm or firms.
- Accept nothing of monetary value from consultants, potential consultants or parties to sub-agreements. (Mementos or souvenirs of nominal value, in accordance with the state ethics rules, may be accepted.)

2.1.2 Sub-recipients

Local public agencies and communities that receive federal-aid highway funds are considered sub-recipients. Each sub-recipient may develop their own written conflict of interest policies which govern the performance of their employees, officers, or agents engaged in the selection, award and discretionary administration of contracts. The sub-recipient's conflict of interest policies shall at minimum include specific dollar thresholds to establish where a financial interest is not substantial or the gift is an unsolicited item of nominal value. If a sub-recipient chooses not to develop its own conflict of interest policy, the INDOT conflict of interest policy shall become the sub-recipient's conflict of interest policy.

Federal funds sub-recipients shall maintain a copy of their conflict of interest policy in an easily accessible location, and shall refer all questions about interpretation of this policy to its appropriate local legal advisor for review.

Employees, officers or agents of sub-recipients of INDOT federal funds who are involved in the selection, award or discretionary administration of a contract shall:

- Abide by the ethical requirements of the applicable Code of Ethics, which must be in conformity with 23 CFR 172.7(b)(4).
- Neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to sub-agreements, except that they may continue to accept salary and other employment benefits from their consultant employer. The applicable conflict of interest policy will be used to make a determination of where a financial interest is not substantial or the gift is an unsolicited item of nominal value.

Potential conflicts of interest or violations of the applicable conflict of interest policy shall be promptly disclosed in writing to the INDOT Director of LPA/MPO Grant Administration. Documented violations may result in sanctions, including ineligibility for upcoming federal aid or state funded projects financed through INDOT. Some inadvertent violations may be curable and some inadvertent violations may not be curable under the terms of the federal regulations and FHWA's interpretation of those regulations. If curable, INDOT will allow reasonable opportunity to cure inadvertent violations prior to consideration of sanctions. Sub-recipients will be notified a minimum of thirty (30) days in advance of any potential sanction determination and will be provided an opportunity to address conflict of interest concerns.

2.1.3 Consultants

Consultants shall:

- Abide by the INDOT Consultant Conflict of Interest Policy which is attached as Exhibit 1 and available at <http://www.in.gov/indot/2730.htm>.
- Strictly avoid marketing communication with INDOT personnel regarding the award of items and projects advertised on RFPs from the formal advertisement date until the date a selection decision is published.

Violations of the INDOT Consultant Conflict of Interest Policy are to be reported to the INDOT Ethics Officer. The INDOT Ethics Officer will investigate reported violations and refer serious

violations to the INDOT Prequalification Committee for consideration of sanctions that could include suspension of prequalification and termination of INDOT contracts. Where federal aid funds are used and a potential real or apparent conflict of interest is discovered, INDOT shall notify FHWA in writing. The notification will explain the conflict of interest and actions taken to alleviate or mitigate the conflict of interest.

2.1.4 Consultants to Sub-recipients

Consultants to Sub-recipients of INDOT federal funds are governed by the INDOT Consultant Conflict of Interest Policy is attached as Exhibit 1 and available at <http://www.in.gov/indot/2730.htm>.

- Potential conflicts of interest shall be promptly disclosed in writing to INDOT, Contract Administration, Consultant Contracting Section.
- Documented violations may result in sanctions, including ineligibility for upcoming federal aid or state funded projects financed through INDOT.

Chapter 3 Consultant Selection Process

This Chapter describes the procedures for seeking and selecting consultants for professional services contracts.

3.1.1 Standard Qualifications Based Selection Process

The Standard Qualifications Based Selection (QBS) Process is to be followed when procuring services that are required to be performed or approved by a person registered as an engineer or architect and when procuring services defined in the INDOT prequalification manual where those services are directly related to a construction project, unless the requirements of the small purchase procedure (3.3.1) or the sole source selection (3.4.1) procedures are met. The QBS process evaluates and ranks firms on the basis of qualifications and competence.

3.1.2 Request for Proposal Process

INDOT shall advertise RFPs seeking letters of interest (LOIs) from consultants for their services. RFPs will be posted on the INDOT Consultants website <https://pscs.indot.in.gov/rfppublicwebsite/> and email notifications will be sent to interested consultants via the RFP Listserv. RFPs shall be advertised for a minimum of two (2) weeks.

RFP Items shall contain the following information as appropriate:

- Project Designation Number (DES).
- Description of the project including the location.
- Specific services and deliverables required.
- Prequalification categories required to provide the service.
- Approximate construction cost.
- Major work elements involved.
- Additional qualifications that will be considered in the selection process.
- Anticipated payment method and contract type

- Estimated date of notice to proceed.
- Time period in which the work shall be completed.
- MBE/WBE or DBE participation goal.
- Score sheet to be used to evaluate LOI's.
- Instructions for submitting an LOI.
- Date and time that the LOIs are due and other schedule information as appropriate
- Identify special provisions or contract requirements.
- Identify requirements of any discussions or interviews that may be conducted.

The Disadvantaged Business Enterprise (DBE) program is applied to each consultant service contract that includes any direct or indirect federal funding. INDOT's Economic Opportunity Division (EOD) will review the planned services and associated items prior to advertisement to consider whether reasonable subcontracting opportunities exist. If appropriate, the EOD will assign a contract specific DBE goal to be included in the advertisement. Consultant services contracts that do not include federal participation will include applicable MBE/WBE/IVOSB (Indiana Veteran Owned Small Business) goals.

LOIs are submitted electronically via PSCS. PSCS verifies the prequalification status of prime and subconsultants for required prequalification categories via its prequalification application database. The consultant cannot successfully submit their LOI online via PSCS, unless all the item's prequalification requirements are assigned to a prequalified prime or subconsultant. PSCS will also not allow any LOIs to be electronically submitted after the advertised RFP response due date.

3.1.3 Review and Evaluation Process

Owner offices will identify a team leader for the scoring process for each item. Three (3) to seven (7) scorers, that may include the team leader, shall be assigned to score each RFP item. RFP items with four (4) or more prequalification work types shall have a minimum of five (5) scorers including no more than three scorers representing any one work type specialty group and no more than three project management scorers. Exceptions may be considered for specialty contracts. The Director of Bridge Design, the Director of Highway Design & Tech Support or the Director of Bridge Management will be invited to provide a scorer for items that involve bridge design, complex road design or bridge inspection. Occasionally, when deemed necessary to obtain the best qualified scorers for a particular item, INDOT may invite non-INDOT personnel to participate in the scoring process.

Scoring team members are required to sign a Scorer's Agreement prior to scoring responses to an RFP. A copy of the Scorer's Agreement is attached as Exhibit 2.

Scoring team members are responsible for thoroughly reviewing LOIs and associated supporting documents. Each scorer then electronically rates and signs a score sheet for each firm via PSCS. The standard score sheet used for selections and the "Consultant Selection Rating Form Guidelines" are attached as Exhibit 3. Scoring for engineering services described in 3.1.1 above may not consider cost or price as a factor. The scoresheet used should not vary from the scoresheet posted in the RFP.

Scoring team scores are posted to a Team Lead Tabulation form as shown in Exhibit 4. Each team member's scores are ranked by firm and the team member ranks are then totaled. The preliminary firm ranking is based on rank totals with the lowest rank total being the highest ranked firm.

Once all scoring has been completed the team leader reviews the overall scoring and ranking. The team lead is responsible for investigating and explaining any scoring anomalies to the Selection Review Committee (SRC). Scoring anomalies that will require explanation are:

- Negative scores among firms ranked for possible selection or alternate and
- Negative scores and low ranks from one scorer for a firm that is highly ranked by the other scorers.

After the review is complete the team lead electronically signs the Team Lead Tabulation. The Team Lead Tabulation displays the ranking of firms from highest to the lowest qualified.

The Central Office Consultant Contracting Staff will provide the Affirmative Action Certifications submitted by high ranking firms to the Economic Opportunity Division for DBE/MBE/WBE/IVOSB compliance review. DBE requirements are covered in the DBE Program Guide.

The Central Office Consultant Contracting Staff will compile prequalification capacity and contract balance information for the high ranked firms and prepare consultant workload reports in preparation for a SRC meeting. The Consultant Services Section will also check LOI page counts to assure they do not exceed the specified maximum number of pages. LOI's with more pages than allowed will be eliminated from consideration.

All signed score sheets and tabulation sheets are made available via PSCS to the SRC, which makes the final recommendations regarding rankings and selection.

3.1.4 Selection Decision Making Process

INDOT has a standing SRC whose role is to set business rules associated with the consultant selection process, make sure the consultant selection process is followed, and to determine final selection recommendations for all advertised items. The committee is composed of five Director and/or higher level representatives of stakeholder groups within INDOT, as appointed by the Commissioner.

The SRC will do the following to determine the final selection ranking recommendations:

- Review firm availability and determine SRC Selection Availability Adjustments. See Section 3.1.5.
- Determine actions for responses that do not comply with DBE/MBE/WBE/IVOSB requirements. Firms who have submitted clearly non-compliant responses may be eliminated from selection ranking. Firms who have submitted responses that demonstrate intent to comply but contain administrative errors may be allowed an opportunity to cure deficient information within a reasonable timeframe.
- Verify that recommended selections will not exceed a firm's prequalification capacity.
- Verify that a firm's key staff will not become overcommitted as a result of receiving multiple selections on the same RFP.
- Consult with the scoring team leader regarding any apparent scoring anomalies.

- Eliminate firms from the recommended selection or alternate list when there is significant concern about deficient performance or capacity.
- Insure SRC decisions are documented by the signatures of at least three (3) members applied to the Tabulation Forms in PSCS. Explanation of firm eliminations is to be included in the signed Tabulation Form comment area and published to the INDOT website.
- The highest-ranking selectable firms are approved as the recommended firm list in order from highest to lowest.
- When only one (1) response is received the SRC will re-advertise the RFP item unless unfavorable market conditions exist that do not provide for additional competition.
- When there are only two (2) responses to an RFP advertisement the SRC will review the solicitation information to determine if there were conditions or requirements that arbitrarily limited competition. In cases where conditions or requirements may have limited competition the SRC will require revision of the requirements and re-advertisement of the RFP item.

SRC recommendations are made available via PSCS to the INDOT Commissioner for final selection approval. The Commissioner can approve the recommended selection ranking, ask for clarification/additional information or eliminate ranked firms with written explanation.

3.1.5 Selection Availability Adjustment (SAA)

The SRC will review workload documentation and recent selection information for the top five (5) ranked firms and for firms ranked within the top half of the number of submitting firms to consider each firm's availability to deliver the services required for a contract. When considering items advertised to result in selection of more than one firm the SRC may review workload documentation for up to four firms beyond the advertised number of firms to be selected. The review will incorporate some information not available to the scoring team such as existing workload reports and concurrent selections. The SRC will choose one (1) of the following actions for each of the firms:

- +10 or Firms with apparent availability that will result in added value to INDOT will receive ten (10)
- +20 or twenty (20) bonus points that will be added to the score totals of each scorer. Added value to INDOT could be in the form of the speed of services delivery or in the form of quality of service due to the availability of highly qualified personnel.
- +0 Firms with apparent availability to deliver contract services to meet the desired schedule with no added value will not receive an adjustment.
- E Firms with questionable resource availability to deliver contract services will be eliminated from selection consideration and a comment of explanation will be documented on the selection tabulation form.

After SAA determination is complete the firm scores will then be re-ranked accordingly for each scorer and the rank totals for each firm will be recomputed.

3.1.6 Recommendations by the SRC

The SRC must have a quorum to make any recommendation to the INDOT Commissioner under this Chapter 3. A quorum is a majority of the total number of SRC members who have been

appointed by the Commissioner and who are serving as members of the SRC as of the date the final selection ranking recommendations are being considered.

Any recommendation by the SRC must have the support of a majority of the SRC members who are present or otherwise available when the final selection ranking recommendations are being considered. If three (3) SRC members are present or otherwise available to consider a recommendation, the SRC may make that recommendation to the Commissioner if two (2) of the three (3) SRC members are in favor of doing so.

3.2.1 Other Professional Services Selection Process

Professional services that do not fit within the QBS definition described in section 3.1.1 above will follow the processes outlined in this chapter except that cost proposals will be requested during the RFP solicitation process and the selection scoresheet will be modified to provide for evaluation of the cost estimates.

3.3.1 Small Purchase Procedures

Selection of professional services firms for contracts with an estimated cost not exceeding \$200,000 may be accomplished using a simplified small purchase procedure. Contracts shall not be broken down merely to permit the small purchase method. Use of this method is limited as follows:

- Selection for Architectural and Engineering (A&E) services is limited to firms certified as prequalified by INDOT.
- Only Lump Sum, Unit Price or Negotiated Labor Rate payment methods will be allowed.
- Services to be contracted may not be broken down into smaller components merely to permit the use of small purchase requirements.
- Contracts procured through this process may not be amended to increase the total to exceed \$250,000, except as approved by the INDOT Commissioner, and any balance in excess of \$250,000 will be funded with 100% State funds. FHWA may withdraw all federal aid from the contract if an amendment adjusts the contract balance above \$250,000.
- Each contract shall have a discrete scope that will be used in the quotation process and be appended to the contract. Scopes of work shall be specific, detailed, and include a schedule of deliverables.

Pre-audit of consultant cost proposals is not required due to the maximum cost limitation, the competitive cost proposal process and due to the limited contract payment methods.

Procedure

1. The owner office, after preparing a cost estimate and securing funding, shall send the detailed scope of services document with scoring template to the three (3) firms and request qualifications and cost proposals by a specific deadline. For A&E services the firms shall be from INDOT's list of prequalified firms and shall be approved for work types applicable for the services. For non-A&E professional services, advertised services and prices from a catalog, advertisement, or internet site may be considered proposals.

2. If the services are to be funded with federal funding participation, a proposal shall be solicited from an Indiana certified DBE, if a firm with the requisite qualifications is available.
3. If the services are to be funded with 100% state funds one of the solicited firms must be an MBE, WBE or IVOSB firm, if a firm with requisite qualifications is available.
4. The owner office shall create a contract record in PSCS and upload all procurement documents including all proposal invitations, responses, scoresheets and the applicable director approval as supporting documents.
5. Three (3) competing proposals are required so if one firm does not submit, another firm must be invited to respond.
6. The owner office scores the firms using a score sheet similar to score sheets used for INDOT's standard selection process. Only one (1) scoresheet per firm is required. The scoresheet shall at minimum rate qualifications, approach to project and price.
7. Upon completion of the selection scoring process the scope of work, cost estimate, proposals and scoring documentation is to be routed to the appropriate Director level position for approval and then to the Consultant Contract Supervisor.
8. The Central Office Consultant Contracting staff will review the submittal and prepare the contract for the recommended consultant.
9. The owner office will notify the winning and losing firms of the selection decision and will request the selected firm to submit certificates for Commercial/General liability insurance and applicable Professional liability insurance as defined in the INDOT Consultant Prequalification Manual.
10. The Central Office Consultant Contracting staff will issue a Notice to Proceed once a Purchase Order is approved and the consultant contract is executed.

3.4.1 Noncompetitive Selection

A department may ask a specific consultant to submit a proposal without advertising the work in an RFP, if one (1) or more of the following conditions exist:

- the project involves an emergency which will not permit the time necessary to issue an RFP, select a consultant, and negotiate a cost; or
- the service is available only from a single source; or
- after solicitation of a number of sources, competition is determined inadequate; or
- the project will be funded with 100% state funds and it is considered by the Commissioner to be in the best interest of the public.

Any sole-source selection requires the approval of the Commissioner. The requesting department will be responsible for documenting the reason(s) for using sole-source selection. Requests for sole source selection shall be approved by the requesting department director and directed to the facilitator of the SRC for consideration and recommendation to the Commissioner.

Contracts executed pursuant to sole-source selections may not be amended to include additional services without further approval of a sole-source selection for the amendment following the same procedures noted above.

3.5.1 Two Step Selection Process

The Two-Step Selection Process is a specific option of the standard process (section 3.1.1) and intended for use on larger, more complex projects for which a more informed selection decision

can be made based on a more extensive technical proposal and interview process. This process should be used when INDOT decides that the additional detail will add significant benefit in the selection decision-making process.

Details of the two-step process are as follows:

Step 1

Letters of Interest (LOIs) will be scored independently by a three (3) to seven (7) member “technical” evaluation committee using the Technical Selection Rating Form. The standard score sheet used for the “Technical Approach” evaluation is attached as Exhibit 5. Individual score totals will then be tabulated and ranked as in the normal one step process. The SRC will review the DBE review recommendations from the EOD, verify capacity compliance and determine SAA adjustments, if applicable. The top ranked teams satisfactorily passing compliance checks will be recommended to the Commissioner to participate in interviews. At least the top three (3) firms will be interviewed. If less than three (3) responses are received the SRC may recommend interviewing only one (1) or two (2) firms if a determination is made that there were no conditions or requirements that arbitrarily limited competition.

Step 2

The Project Manager of the lead firm from each of the selected teams will be asked to lead in presenting their project approach to an interview team that includes a three (3) to five (5) member “business approach” evaluation committee. The “business approach” evaluation committee shall not include any of the members of the original “technical” evaluation committee.

Interviews will be scheduled at least two (2) weeks after the initial scoring results are reviewed and approved; and the selection list published on the INDOT website. Interviews will include an allotted time period for team presentations and a time period for questions from the evaluation committee. The details of the time, place, durations, etc. will be given to the finalists immediately following selection announcement. Selected consultants will be required to provide a one-page summary of credentials documenting why their team is the best to deliver this project. These summaries will be distributed immediately prior to the interviews.

Two (2) to three (3) members of the original technical evaluation committee will be present during interviews to communicate technical approach observations to the business approach committee. Opportunities for discussion among the business committee and technical committee members present will be provided during an intermission in each interview between team presentations and questions and answers and subsequent to the conclusion of each interview.

Following the interviews, the “business approach” evaluation committee will independently score the interviewed teams using the Business Approach Selection Rating Form. The standard “Business Approach” Scoresheet is attached as Exhibit 6. Scoring will be based on both the initial letter of interest submittals and on the additional information conveyed during the interviews. Individual score totals from the business approach scoring form will be tabulated and ranked and the completed scoring documentation will be forwarded to the SRC for final compliance review. SAA adjustments will not be applied to the second-round scores. The recommended firms in ranked order will then be forwarded to the INDOT Commissioner for acceptance or rejection of the selection (Section 3.1.4).

Chapter 4 Contract Types

INDOT uses the following three (3) contract types:

4.1.1 Project Specific

A contract for the performance of services and defined scope of work related to a specific project or projects.

- Provides for qualifications-based selection based on the characteristics of a specific project.
- Provides for negotiation and contractual agreement of specific project deliverables, cost and schedule terms that provide a high level of accountability.
- May be prosecuted as multi-phase contracts whereby subsequent phases of services addressed in the RFP are incorporated as contract amendments near the completion of earlier phases.

4.2.1 On-Call

A contract for the performance of services for a number of project assignments, processed as work orders issued on an as-needed basis for an established contract period.

- Provides for selection and contracting on the basis of a generalized description of services without specific identified assignments.
- Provides for fast initiation of services subsequent to assignment identification.
- Limited to initial contract periods not to exceed four (4) years.
- On-call contracts may be advertised as renewable. If the contract includes federal participation the contract length may not exceed five (5) years.
- RFP items for multiple federal participating on-call contracts for engineering services shall indicate that assignment decisions between selected firms will be made based on qualification considerations and not competed and awarded on a cost basis.
- The RFP for an on-call contract shall specify the maximum amount of the contract.
- When multiple consultants will be selected from a single on-call RFP item, the number of consultants to be awarded shall be specified in the RFP.

4.2.2 Assignments to On-Call Contracts

In making assignments to on-call contracts, a prequalified consultant will have already been selected, with hourly or unit price rates established in the contract. Assignments to on-call contracts will be made in the following manner:

- The project manager determines: need, scope of services, estimate of cost, availability of funds, and project authorization in SPMS.
- If Federal participation will be used, the project manager shall verify that the appropriate phase of the project is in the STIP and determine the Federal/State funding split.
- The project manager identifies available contracts by region, scope of services, available contract balance and required deliverable schedule. Assignments may only be made when

the estimated total cost and deliverable schedule are within the contract balance and term of the contract.

- The date of an assignment is the date of the first PO for the project.
- Assignments with an executed PO must be made prior to the expiration of any advertised assignment period.
- If Federal participation will be used, and more than one (1) contract is available for the region and scope of work, the assignment decision shall be made based on qualification considerations and not competed and awarded on a cost basis. Qualification considerations shall include consideration of the experience and workload capacity of available firms for the particular scope of services to be assigned.
- Subsequent to the assignment decision making process a request for a cost proposal, with relevant project information and scope of services, is sent by the project manager to the consultant.
- The consultant's proposed cost is reviewed based on INDOT's cost estimate, followed by acceptance or negotiation. If negotiation fails, the request for a cost proposal is cancelled and another on-call contract selected.

Once an acceptable not-to-exceed cost amount has been agreed upon the project manager or delegate will create a work order request in PSCS to initiate the FMIS funding approval and PO process. Once the Purchase Order is issued, a Notice to Proceed with schedule of deliverables is sent by the owner office to the consultant for the assignment. The available balance of an on-call contract is reduced when a PO is issued. Contract balances are maintained in PSCS.

An assignment may be terminated by the owner office with a Termination Notice to the consultant. The consultant shall submit all work completed within fifteen (15) calendar days of the date of termination.

4.3.1 Other Non-Project Specific

- This is a contract type that provides for advertising for services that are not related to a programmed transportation project with an INDOT Des Number.

4.4.1 State Educational Institution or Government Body

- INDOT may contract directly with Indiana state educational institutions or government bodies without use of a public solicitation process. 105 IAC 12-2-3
- Contracts for services which are less than \$50,000 or which are purchases of standard NHI training courses do not require a formal contract beyond a purchase order.
- Procurement of services >\$50,000 should be documented in a formal contract.

Chapter 5 Contract Provisions

5.1 Required Contract Provisions

INDOT's standard consultant contract terms are included as Exhibit 7. Federal aid contracts must contain the standard contract provisions contained in 23 CFR 172.9(c).

5.2 Contract Time Period Terms

All contracts are to include expiration dates and on-call contracts may include assignment period end dates.

- All services must be completed by the contract expiration date. Expiration dates may be amended to provide for completion of a project, however, the amendment must be processed prior to expiration. A federally funded on-call contract may not exceed five (5) years.
- On-call contracts for project assignments that typically take two (2) or more years to complete will be advertised with assignment period end dates. Contracts with assignment period end dates will not be advertised with renewable assignment periods.
- Invoices for services completed prior to contract expiration may be submitted after expiration.

Chapter 6 Contract Compensation

6.1 Payment Methods

The payment method for a contract is typically determined during development of RFP item advertisements. The owner office will identify the preferred method, which will be reviewed by the Contract Administration Division prior to RFP advertisement. When the payment method is other than Lump Sum, the contract will specify a maximum payable amount. This maximum amount may be modified by contract amendments.

6.1.1 Cost Plus Fixed Fee

Cost plus fixed fee is a payment method whereby the consultant is reimbursed actual costs on a project, plus paid a specific fixed fee for performing the work. Assuming there is no change in the scope of services, the fixed fee does not vary even though the actual cost will vary. The fixed fee may, however, be adjusted in a contract modification if substantial changes occur to the scope or duration of services. Because the consultant is reimbursed for actual costs, this method provides low risk to the consultant and is suitable for situations where the required level of effort cannot be well defined. This payment method is not suitable for on-call type contracts whereby work is assigned on an as-needed basis or for construction inspection contracts.

The fixed fee amount is not to exceed 14% of the estimated labor and overhead costs.

Progress payments with this method are computed using a provisional overhead rate based upon the most recently audited rate that is accepted by INDOT. Final compensation is determined by actual audited and accepted overhead rates for the billing periods, which are determined subsequent to the close of the consultant's fiscal years. Progress payment adjustments are to be made upon issuance of accepted overhead rates and a final audit is required when the work is completed. A Federal Acquisition Regulation (FAR) auditable accounting system is essential for this type of contract. (An auditable accounting system requires the consultant have a job system which consistently and appropriately separates, accumulates and allocates costs as direct and indirect.) Consultants prequalified for more than \$250,000 of annual work can be expected to have such a system.

6.1.2 Cost Plus % of Cost

This payment method is not allowed pursuant to IC 5-22-17-1 and 23 CFR Part 172.9(b).

6.1.3 Negotiated Labor Rate Multiplier

Labor rate multiplier is a payment method whereby the consultant is reimbursed actual costs on a project, plus compensated for overhead and profit on the basis of a negotiated multiplier applied to

direct salary cost plus direct non-salary costs. This payment method is suitable for on-call type contracts whereby work is assigned on an as-needed basis and for situations where the required level of effort cannot be well defined.

A final audit will be necessary with this method at the completion of the contract to verify billed labor rates, hours and compliance of direct expense billings with INDOT policies.

6.1.4 Lump Sum

Lump sum is a payment method whereby a consultant is paid a specified sum of money for a specific service in the contract. With this payment method the compensation is not subject to any adjustment due to cost changes that the consultant encounters in performance of the work unless substantive changes occur in the scope of services. Because the consultant assumes full responsibility in the form of profits or losses, this method provides a maximum incentive for effective cost control in contract performance. This type of payment method imposes the minimum administrative burden on both the consultant and INDOT. This method should only be used when the estimate, duration of effort and project scope is defined to the extent that fair and reasonable compensation can be determined.

6.1.5 Negotiated Labor Rate

Negotiated labor rate, sometimes referred to as loaded labor rate, is a payment method whereby the consultant is paid based upon a specified hourly rate per personnel classification plus direct non-salary costs. The negotiated rates take into account the consultant's overhead rate and profit. The allowable negotiated labor rates are normally based on the employee's personnel classification pursuant to the firm's certified payroll report rather than the level of work performed. This payment method is suitable for on-call type contracts whereby work is assigned on an as-needed basis and for situations where the required level of effort cannot be well defined.

A final audit will be necessary with this method to compare billed hours and labor classes against time sheets and to verify compliance of direct expense billings with INDOT policies.

6.1.6 Unit Price

Unit price is a payment method whereby the consultant is paid based on specified fixed prices for described units of work. This payment method is suitable for situations whereby typical work units may be reasonably well defined but the quantity of units is unknown. This method can be used for on-call type contracts. Examples of services typically paid for using the unit price method are: geotechnical services, real estate services and sub-surface utility engineering services.

This payment method can be used when an adequate cost history is available for use in estimating and negotiating reasonable unit prices. These agreements shall clearly identify what work is covered by the unit prices and any direct costs that are to be paid separately.

6.2 Profit

Profit is calculated as a percentage of the total of the direct labor costs and indirect overhead costs.

The prime consultant is not allowed profit on the work performed by subconsultants as this would constitute two (2) firms profiting from the same work. The prime consultant is, however, allowed profit for their direct project billable labor in administering the subconsultant contract. The profit rate allowed for INDOT contracting is determined according to the matrix shown in Exhibit 8.

6.3 Indirect Cost Rates

Indirect cost rates are established on an annual basis through INDOT's financial prequalification process in accordance with the AASHTO Uniform Audit & Accounting Guide and are approved by the INDOT External Audit Section. This process is outlined in the INDOT Prequalification Manual available at <http://www.in.gov/indot/2732.htm>. All applicants are required to submit a "Certification of Final Indirect Costs" as part of the application. INDOT approved indirect cost rates are to be accepted in negotiation for all federally funded services, when applicable. INDOT may accept a lower rate, if submitted voluntarily by a consultant, but may not require a lower rate as a condition for contract award. INDOT may apply a negotiated indirect cost rate in negotiation of contracts in the following situations where an applicable rate is not available: 1) for consultants prequalified at the Limited Services financial prequalification level and for contract services not to exceed \$150,000; 2) for project specific contract field office services when the firm does not have an applicable field rate and when requirement of a field rate is identified in an RFP solicitation; 3) for consultants not performing engineering and design related services as defined in 23 CFR Section 172.3.

INDOT shall not provide audit information 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 a recipient's or subrecipient's acceptance of consultant indirect cost rates pursuant to 23 U.S.C. 112. INDOT's External Audit Section may share audit information in complying with a recipient's or subrecipient's acceptance of consultant indirect cost rates pursuant to 23 U.S.C. 112 provided that the consultant is given notice of the use and transfer.

6.4 Facilities Capital Cost of Money

Facilities capital cost of money is an imputed cost related to an engineering consultant's investment in fixed assets/facilities used in contract performance. [Reference: FAR 31.205-10, CAS 414, FAR 15.404-4] Consultants with audit approved facilities capital cost of money (FCCM) rates may request and shall be allowed to incorporate the rates into cost plus fixed fee contracts or into negotiation of negotiated labor rate multiplier, lump sum, negotiated labor rate or unit price contracts if included in the original cost proposal.

Chapter 7 Contract Administration

7.1 Employee in Responsible Charge (ERC)

Every INDOT consultant contract shall have an ERC. The ERC is the Project Manager as identified in INDOT's SPMS (Scheduling Project Management System). The ERC for contracts without an SPMS Project Manager is the Owner Office Contact identified in PSCS. The ERC is responsible for ensuring that work delivered under contract is complete, accurate, and consistent with the terms, conditions and specifications of the contract. ERC responsibilities include:

- Administering inherently governmental activities including, but not limited to coordination of contract negotiation with the Contract Administration Division, contract payment and evaluation of compliance, performance and quality of services provided by the consultant;
- Being familiar with the contract requirements, scope of services to be performed and deliverables to be produced by the consultant;

- Scheduling and attending progress and project review meetings commensurate with the magnitude, complexity and type of work to ensure the work is progressing in accordance with established scope of work and schedule milestones;
- Ensuring consultant costs billed are allowable in accordance with the contract and with Federal cost principles, when applicable;
- Evaluating and participating in decisions for contract modifications; and
- Documenting contract monitoring activities and maintaining supporting contract records.

7.2 Invoice Review

Invoices are to be submitted to the owner office at a frequency defined in the contract. Invoices and supporting documents are reviewed and approved by the ERC. The level of review required is dependent upon the contract payment mechanism. For example, lump sum requires less review than cost plus. Documents to be considered in this review include the contract and any amendments thereto, employee timesheets, employee expense reports, mileage records / logs, and all supporting receipts and invoices, including invoices from subcontractors or suppliers. Once the invoices are approved, the information is entered into Encompass (State accounting system) for payment. It is recommended that PSCS be used by owner offices for invoice tracking.

7.2.1 Lump Sum Contract Invoice Review

Lump sum contract invoices are based on the percentage of work complete. The ERC is responsible for verifying the percentage shown on the invoice does not exceed the percentage of work complete.

Lump sum project development services typically use a pre-determined status reporting form. The form provides estimated completion percentages for various project milestones. Consultants shall not be allowed to invoice for activities beyond the next milestone.

7.2.2 Unit Price Contract Invoice Review

Unit price contract invoices are based on the completion of units of work defined in the contract. The ERC is responsible for verifying units invoiced correspond with units of work completed and are invoiced at the unit rates stated in the contract.

7.2.3 Negotiated Labor Rate Contract Invoice Review

Negotiated labor rate contract invoices are based on the hours of work expended by consultant personnel multiplied by the contract approved personnel classification labor rates. These contracts also allow billing for approved direct expenses attributable to a project. The ERC is responsible for reviewing the invoice to verify hours and direct expenses billed for the time period are commensurate with the services being performed during the billing period. The ERC or other assigned contract administrator shall also check to verify that the classification rates match those approved in the contract and any travel cost rates do not exceed the State Travel Policy allowed rates.

7.2.4 Cost Plus Fixed Fee Contract Invoice Review

Cost plus fixed fee contract invoices are based on the hours of work expended by consultant personnel, plus an indirect cost additive based on a consultant's approved overhead rate plus a portion of the contract fixed fee amount based on the estimated percentage of work complete. These contracts also allow billing for approved direct expenses attributable to a project. The ERC is responsible for reviewing the invoice to verify hours and direct expenses billed for the time

period are commensurate with the services being performed and the portion of the fixed fee being billed is not beyond the applicable percentage of completion. The ERC or other assigned contract administrator shall also check to verify the overhead rate matches the most recent approved provisional rate for prequalification and any travel cost rates do not exceed the State Travel Policy allowed rates. Cost plus fixed fee contracts contain language requiring the consultant to adjust prior year billing based on the receipt of a newly approved overhead rate from INDOT's External Audit Section. It is the responsibility of the ERC to ensure that this adjustment occurs on a timely basis.

7.2.5 Negotiated Labor Rate Multiplier Contract Invoice Review

Labor rate multiplier invoices are based on the hours of work expended by consultant personnel, plus compensation for overhead and profit on the basis of a negotiated multiplier applied to direct salary. These contracts also allow billing for approved direct expenses attributable to a project. The ERC is responsible for reviewing the invoice to verify hours and direct expenses billed for the time period are commensurate with the services being performed and that the invoiced labor rate multiplier matches the rate approved in the contract.

7.3 Closeout Process for Purchase Orders (PO) and Contracts

7.3.1 PO Closeouts

- Once the final invoice has been paid, to the mutual satisfaction of both INDOT and the consultant, the PO will be closed in both Encompass and PSCS, as follows:
 - If the PO balance is \$0.00, Encompass automatically closes the PO.
 - If the PO balance is greater than \$0.00, the owner office notifies the Finance Procurement Section to close the PO in Encompass.
 - Once the PO has been closed in Encompass, PSCS will show the PO closed.

7.3.2 Contract Closeout

- The contract is considered closed once all contract work has been completed and approved by the project manager, the final invoice has been paid, and all PO(s) have been closed and audited if required. (See 6.2.1)
- The owner office shall complete the steps in Project Close Out (PCO) to start the audit process so that projects can be closed out promptly in FMIS.
- Contract documents to be submitted with the audit include the following:
 - The original contract, supplements, amendments and sub-contract contracts.
 - The original Notice to Proceed and any proceeding
 - All Purchase Orders (PO's)
 - All Invoices
 - All supporting documents for billed costs, including timesheets, mileage logs, direct expense receipts (meals, lodging, etc.) equipment rental invoices, etc.
 - All sub-recipient and/or sub-consultant invoices with supporting documents.
 - A claim log showing all PO's and invoices

7.3.3 Document Retention

- Contract documents are to be retained in accordance with the Title 2 CFR Subtitle A, Chapter II, Parts 200.333 - 200.337. Part 200.333 states in part:
 - Financial records, supporting documents, statistical records must be retained for a period of three (3) years from the date of submission of the final expenditure report.

7.4 Consultant Performance Evaluations

INDOT will evaluate the performance of consultants in accordance with the INDOT Performance Evaluation Guidelines using the PSCS Performance Evaluation application. The INDOT Performance Evaluation Guidelines are available at <http://www.in.gov/indot/2733.htm>. This data is used to provide feedback to consultants during the performance of contract services and is used in the scoring of LOIs as noted on the score sheet in Exhibit 3. The PSCS Performance Evaluation application provides for collection of quality, schedule, responsiveness and budget performance data during the course of contract services, provides immediate email notification to consultants when evaluations are completed, provides online access to all evaluations and provides opportunity for evaluated consultants to add comments to the evaluations. The guidelines also define an appeal process to be followed when there is a disagreement with the ratings.

7.5 Non-Performance

INDOT consultant contracts generally provide consultants with a ninety (90) day notice to correct any performance deficiencies prior to contract termination. The project manager is responsible for promptly recognizing substandard performance and the contract owner office is responsible for putting the consultant on notice of default.

- The owner office shall serve notice of default to a consultant at any point that the consultant is thirty (30) or more days behind the contract schedule or at any point when a consultant has made a second submittal of a deliverable that is of substandard quality
- The notice of default shall be initiated by verbal contact to the consultant president or principal in charge as identified by the consultant's prequalification submittal. The conversation shall be followed up by a formal letter documenting the conversation, the deficiencies in detail, and reiterating the requirements that shall be met.
- The formal letter notice shall provide a deadline date, ninety (90) days from the notification date, upon which termination will occur unless remedy is provided satisfactorily.
- The formal letter shall be sent by US Mail and should also be transmitted as an e-mail attachment to the principal with a copy to the consultant's project manager, INDOT project manager's division director, INDOT prequalification engineer and to the Central Office Consultant Contracting Manager.
- The INDOT project manager shall notify the Central Office Consultant Contracting Manager within one week of the passing of the remedy deadline documenting the project manager's satisfaction or dissatisfaction with the consultant's corrective performance. A copy of the notification shall be sent to the INDOT project manager's division director, the consultant president or principal in charge and consultant's project manager. The notification shall include a recommendation regarding whether the contract should be terminated. The recommendation should also address the cost of any damages to INDOT as provided for in the Termination for Default Clause of the contract.
- The Central Office Consultant Contracting Manager will bring the termination recommendation to the attention of the SRC. The SRC shall review the documentation and, if termination is confirmed, the SRC will direct the Central Office Consultant Contracting

Manager to issue notice of termination.

- The INDOT project manager or Central Office Consultant Contracting Manager may recommend action to INDOT's Prequalification Committee for the consultant's non-performance.

7.6 Sanctions and Penalties

INDOT shall consider administrative, contractual and legal remedies and sanctions in accordance with Federal and State laws and regulations where consultants knowingly violate or breach contract terms and conditions. Remedies to be pursued could include, but are not limited to, prequalification actions, Indiana State vendor suspension and federal suspension and debarment. INDOT shall pursue appropriate remedies and sanctions when a consultant has been found to have knowingly charged unallowable costs to a federally funded contract.

7.7 Change in Subconsultant Utilization on Federal Participating Contracts

7.7.1 Procedure for Terminating, Replacing or Adding a non-DBE Subconsultant

- The prime consultant sends a request to the INDOT Project Manager concerning terminating, replacing or adding a non-DBE sub-consultant related to services under the prime consultant's contract.
- The INDOT Project Manager may grant approval for termination of a subconsultant as long as the services are completed by the prime consultant or are no longer required. The INDOT Project Manager may grant approval for replacing or adding a sub-consultant as long as the new sub-consultant is prequalified for services that require prequalification and there is no increase in fee for the previously contracted service(s).
- Once the INDOT Project Manager grants approval, the new subconsultant should fill out and submit a Sub-Consultant Acknowledgement Form (Appendix E) to INDOT Contract Administration.
- If the affected services are not already addressed by a contract defined lump sum or unit price fee, the sub-consultant rates shall be submitted to INDOT Contract Administration for audit review and approval.

7.7.2 Procedure for Terminating or Replacing a DBE Subconsultant

- 49 CFR § 26.53 sets for the rules that must be adhered to whenever there has been a DBE goal established on a contract.
- The prime consultant must provide a written notice to the affected DBE sub-consultant. This notice must provide "good cause" for the change in utilization and inform the affected DBE that they have 5 days to respond with any objection.
- The prime consultant must make good faith efforts to find another DBE sub-consultant to perform at least the same amount of work under the contract as the DBE sub-consultant that was adversely affected to the extent needed to meet the contract goal.

- The prime consultant must provide a copy of the written notice to the INDOT Project Manager and to the INDOT Contract Compliance Manager of the Economic Opportunity Division (EOD) at DBEChange@indot.in.gov and any response of the affected DBE. A form for the Change in DBE Utilization Notification may be found here: <https://www.in.gov/indot/files/Change%20In%20DBE%20Utilization%20Form.pdf>
- The prime consultant must obtain written consent from INDOT EOD. If written consent is not provided by INDOT, the prime consultant **shall not** be entitled to any payment for work unless it is performed by the affected sub-consultant.
- Once written consent from INDOT EOD is given, the INDOT Project Manager may grant approval for terminating or replacing a sub-consultant. The new subconsultant must be prequalified for services that require prequalification and fees should not increase for previously contracted service(s).
- Once the INDOT Project Manager grants approval, the new subconsultant should fill out and submit a Subconsultant Acknowledgement Form (Appendix E) to INDOT Contract Administration.
- If the affected services are not already addressed by a contract defined lump sum or unit price fee, the subconsultant rates shall be submitted to INDOT Contract Administration for audit review and approval.
- Please contact the INDOT Contract Compliance Manager in the INDOT Economic Opportunity Division if you have further questions at DBEChange@indot.in.gov.

7.7.3 Procedure for Adding a DBE Subconsultant

- The prime consultant sends a request to the INDOT Project Manager and INDOT's Contract Compliance Manager in the Economic Opportunity Division (EOD) concerning adding a Disadvantaged Business Enterprise (DBE) subconsultant to perform services under the prime consultant's contract.
- The INDOT Project Manager may grant approval for adding a DBE sub-consultant. The new sub-consultant must be prequalified for services that require prequalification and fees should not increase for previously contracted service(s).
- Once the INDOT Project Manager grants approval, the new sub-consultant should fill out and submit a Subconsultant Acknowledgement Form (Appendix E) to INDOT Contract Administration.
- If the affected services are not already addressed by a contract defined lump sum or unit price fee, the subconsultant rates shall be submitted to INDOT Contract Administration for audit review and approval.
- Please contact the INDOT Contract Compliance Manager in the INDOT Economic Opportunity Division if you have further questions at DBEChange@indot.in.gov.

Chapter 8 Contract Amendments

8.1 Amendments

Contract amendments are required for any changes to the terms of the contract that change the character, scope, complexity, duration or conditions under which services are to be performed.

8.1.1 Initiation

Amendments to Contracts may be initiated through one of two processes as follows:

- INDOT may request a proposal for an amendment from a consultant specifying that additional services are to be performed. These requests should be made by the project manager and should clearly state the scope of the additional services requested. If additional clarification is needed, INDOT may arrange a scope of services meeting.
- A consultant may, when they believe the scope of the contract will be exceeded, submit a proposal for an amendment to the INDOT project manager with a detailed explanation. The consultant shall not exceed the original scope until additional work has been included in a fully executed contract. The INDOT project manager will process the request, or return the proposal to the consultant with an explanation of INDOT's denial. When specifically requested by the consultant, the project manager shall forward a proposal for modification to the Consultant Services Section to address any unresolved disputes regarding the need for or extent of the alleged additional services.

8.1.2 Evaluation of Contract Amendment Requests

Contract amendment requests are to be reviewed first by the INDOT project manager. The project manager is to verify the proposed modification is not covered by the original scope and cost, to verify the modification is warranted and then to evaluate the validity of the proposed hours and costs. When the project manager is satisfied that a modification is warranted and that the proposed scope and cost proposal is acceptable, the project manager shall upload the proposal, along with recommendations, into PSCS for review and further processing by the Central Office Consultant Services Section.

8.1.3 Approval of the Cost and Contract Processing

INDOT Consultant Services Section shall provide an independent review of the proposal and accept the proposed cost or negotiate a cost acceptable to both parties. When contract services are to be funded with federal participation cost elements including indirect cost rates, direct salary rates, fixed fee and other direct costs are to be established in accordance with 23 CFR Section 172.11. Following acceptance of the cost the Central Office Consultant Services Section will process the contract amendment and authorize the consultant to proceed. Work shall not be performed for the additional services until a project funding request has been submitted, PO created and notice to proceed issued.

8.2 Business Rules

Significant changes in contract services beyond the purpose, phases or character described in the original RFP advertisement shall not be added to a contract.

8.2.1 On-Call Contracts

Assignments shall only be made with the expectation the assignments can be completed within the contract term and balance. However, on-call contracts may be amended to add time or funds needed to complete previous assignments due to unexpected scope changes. If the contract includes federal participation the contract period may not be extended to exceed five (5) years.

Chapter 9 Consultant Errors & Omissions

9.1 General Requirements

At times, INDOT enters into contracts with consultants under which consultants provide professional services related to transportation projects. Deliverables of these contracts include, but are not limited to, environmental documents and studies, right of way acquisition and/or the creation of construction plans and contract documents.

A consultant's work must be performed with the appropriate standard of care. The consultant shall perform all services in accordance with the degree of skill and care ordinarily used by competent professionals of the same discipline, providing services of a similar nature. INDOT expects consultants to deliver technical accuracy and quality work. Also, the work must comply with and satisfy the requirements of all applicable standards including, but not limited to, those in the contract, specifications, directives, methodologies, manuals, terms and memoranda.

When a consultant commits an error and/or omission ("E&O")¹, the E&O may result in increased design, construction and/or maintenance costs, impacting INDOT's ability to deliver projects on time and within budget. As a result, INDOT prioritizes the reduction of E&O and the recovery of costs caused by E&O.

This Chapter applies to consultant contracts, in general, and where an E&O may have occurred, in particular. However, none of the procedures suggested in this Chapter shall be construed to constitute, reflect, endorse and/or evidence a waiver by INDOT of any right to pursue any claim and/or remedy, in any venue, against a consultant who committed an E&O. INDOT also reserves the right to determine whether an E&O affects or should affect a consultant's ability to perform work under future INDOT contracts.

INDOT staff may contact INDOT's Office of Contract Administration or INDOT's Legal/Litigation Department with questions about the consultant's contract, these procedures and/or possible claims.

¹ An E&O may give INDOT various causes of action against the consultant, including but not limited to breach of contract, negligence [based upon a claimed breach of the applicable standard of care], etc. This manual is not intended to define, modify, restrict, expand or supersede any rights or obligations under Indiana statutory and/or case law with regard to any aspect of such causes of action. Furthermore, this manual is not intended to define, modify, restrict, expand or supersede any remedies available for such E&O, including but not limited to INDOT's claim for damages, administrative and/or judicial review of an INDOT determination of the existence of an E&O, coverage under a consultant's professional liability insurance policy, etc.

9.2 Discovery of E&O, Development of a Project Solution

INDOT recognizes that appropriate communication between INDOT staff and the consultant is very important to the successful completion of a transportation project. To help establish the appropriate lines of communication, the Project Manager (“PM”)² and Engineer of Record (“EOR”)³ (or their representatives) shall attend the project’s pre-construction conference⁴. When necessary/appropriate, the Project Engineer/Supervisor (“PE/S”)⁵ may coordinate with the PM and EOR so that the PM and/or EOR may participate in project meetings.

Upon discovery of a potential E&O, the PE/S shall advise the PM of the specific project problems. Then, if the PM believes there is a potential E&O, the PM should promptly notify the EOR. Within one (1) business day, the EOR shall acknowledge receipt of the PM’s notification.⁶ The PM may request the EOR develop a potential Solution⁷ or determine an expeditious timeframe to develop a potential Solution.

When reviewing a potential Solution, the PM, with input from the consultant/EOR, may review the plans and specifications, the consultant’s/EOR’s original scope of work and any specific requirements that INDOT imposed on the consultant/EOR.

Solutions for an E&O discovered during a pre-construction conference can be resolved more quickly and at a lower cost than one discovered during construction and/or at a major point in the project’s critical path. When an E&O is identified prior to project construction, the consultant

² A PM is the INDOT or Local Public Agency (“LPA”) employee in responsible charge (“ERC”) for oversight of project development services.

³ An EOR is the Indiana professional engineer (employed by the consultant who is performing services for INDOT pursuant to a contract) responsible for the preparation, signing, dating, sealing and issuing of engineering documents for the project. The EOR is also the designated representative of the consultant to receive certain notices from INDOT. If the EOR who is responsible for those project documents leaves the employment of the consultant, then the consultant shall assign another Indiana professional engineer to serve as the EOR.

⁴ Compensation of the EOR for attendance at the pre-construction conference, project meetings and for all other work through post-design services will be in accordance with the provisions of the consultant’s contract with INDOT, unless INDOT determines that the meetings/work are required by or resulted from the consultant’s E&O.

⁵ A PE/S is the INDOT or certified LPA construction employee responsible for oversight of construction contract services.

⁶ Unless otherwise noted, all notifications and acknowledgments of receipt between the PM and the consultant/EOR as described in Section 9.2 of this Chapter may be verbal; however, the PM and the EOR shall follow these verbal communications with a confirming email or other written documentation.

Also, INDOT in its sole discretion, either on its own initiative or at the request of the consultant, may extend any time period or deadline identified in this Chapter 9.

⁷ A Solution is an appropriate course of action to resolve the project’s E&O issue(s).

should correct the E&O at the consultant's expense with no additional cost to INDOT. When an E&O is identified during project construction, INDOT emphasizes finding a Solution to correct the E&O as quickly as possible to avoid or minimize construction delays. In most cases, finding an early Solution to the E&O will reduce costs resulting from the E&O. INDOT may seek to recover from the consultant any and all costs due to the E&O. Resolving an E&O discovered during construction may require a change to the original construction contract. Modifying the original contract not only adds to a project's cost but also places an administrative burden/cost on INDOT.

Typically, a Solution includes revised drawings, calculations and/or specification changes by the consultant/EOR. The consultant/EOR may not bill the costs it incurs for site visits and additional engineering services when these visits and/or services are caused by a potential E&O.

After consultation with the PE/S and the consultant/EOR, the PM will determine the Solution to be used to address problems on the project. The PE/S will track the costs of the Solution and the consultant/EOR will track its costs associated with the Solution.⁸ The PE/S will negotiate with the construction contractor regarding any additional costs and/or time required to implement the Solution. The PE/S will document the Solution in a change order with the construction contractor and provide a copy to the PM and the consultant. If not included in the change order, the PE/S should provide the PM with a summary of all costs associated with the Solution.

9.3 Recovery: Assessment Review, Staff Review

After the PE/S provides a copy of the change order to the consultant, the PM will evaluate/review the E&O to determine if INDOT will seek to recover costs incurred due to the E&O.⁹ If the PM decides to seek recovery of those costs, the PM will provide the consultant with notification¹⁰ ("Early Notification Letter") that the project problems appear to have been caused by an E&O in the consultant's conduct/performance. The consultant must acknowledge receipt ("Acknowledgment Letter") of the Early Notification Letter within five (5) calendar days.

The Early Notification Letter may advise the consultant of its option to request an Assessment

⁸ The consultant/EOR shall track such costs separately for potential compensation, which will be evaluated by the PM.

⁹ When evaluating/reviewing the E&O, the PM may review the consultant's scope of work, project specific information provided to the consultant, any INDOT instructions and policies, any specific contract language and/or any other information (including the professional engineering standards in effect when the contract was executed). The PM may consider/evaluate/review the costs incurred by INDOT due to the E&O. The PM may consult with other INDOT personnel, such as the PE/S, subject matter experts and/or the Legal/Litigation Department, to assist in evaluating potential responsibility of the consultant and the recovery of damages.

¹⁰ Such notification will be substantially in the form of Exhibit 9: Early Notification Letter. The PM shall copy the Prequalification Engineer, in INDOT's Prequalification Division, on all notification letters involving possible E&O. INDOT's Prequalification Division will maintain a database of identified E&O along with a record of the final disposition of each, including disposition on appeal by consultant, if applicable.

Review Meeting with the PM and/or a Staff Review. At any time, the consultant may accept responsibility for the E&O and pay to INDOT an agreed sum as damages.¹¹

- (a) If the consultant wants to request an Assessment Review Meeting (“Meeting”) with the PM, it must include such a request in its Acknowledgment Letter (which must be received by INDOT within the five (5) calendar day time period described above). If the consultant fails to request a Meeting in a timely Acknowledgment Letter, the consultant’s opportunity to request such a Meeting is waived.

If the consultant requests a Meeting, the PM will schedule it at the PM’s earliest convenience. At the Meeting, the PM will discuss with the consultant the PM’s conclusions regarding the consultant’s responsibility and the costs/damages incurred by INDOT as a result of the E&O. During the Meeting, the consultant will have the opportunity to respond to the PM’s conclusions.

As a result of the Meeting, the PM may reaffirm his/her conclusions or reconsider his/her conclusions. Within fifteen (15) calendar days of the Meeting, the PM will issue a letter to the consultant (“PM’s Assessment Review Meeting Conclusions Letter”) summarizing the discussion and summarizing the PM’s conclusions [reaffirmed or modified as a result of the discussion].

- (b) If the consultant disagrees with the PM’s Assessment Review Meeting Conclusions Letter or if the consultant waived its opportunity for an Assessment Review Meeting but seeks a Staff Review, then the consultant may request a Staff Review. If the consultant fails to timely request a Staff Review under either of these circumstances, the consultant’s opportunity to request a Staff Review is waived.

To request a Staff Review, the consultant shall submit to INDOT’s Chief Legal Counsel a written summary of the issues (“Summary”). At a minimum, the Summary shall include a description of the alleged E&O, an evaluation of the responsibility for the E&O and an evaluation of the damages/costs caused by the E&O.

The Summary must be received by INDOT’s Chief Legal Counsel within fifteen (15) calendar days from 1) the consultant’s receipt of the Early Notification Letter, if the consultant did not request an Assessment Review Meeting or 2) the consultant’s receipt of the PM’s Assessment Review Meeting Conclusions Letter, if the consultant did request an Assessment Review Meeting.

Upon receipt of the consultant’s Summary, INDOT’s Chief Legal Counsel will confer with INDOT’s Deputy Commissioner of Capital Program Management and INDOT’s Deputy Commissioner of Operations. Each of those three (3) individuals will appoint one person to serve on the Staff Review Team. The Staff Review Team members will be appointed on a case by case basis. The individuals appointed should not have had involvement with this particular E&O claim prior to the start of the Staff Review process.

¹¹ The PM shall request that INDOT’s Legal/Litigation Department prepare settlement documents.

Also upon receipt of the consultant's Summary, INDOT's Chief Legal Counsel will assign the following responsibilities to an INDOT Attorney: (1) the INDOT Attorney will notify the PM of the consultant's request for a Staff Review; and (2) the INDOT Attorney will schedule the Staff Review.

When the PM receives notification from the INDOT Attorney that the consultant has requested a Staff Review, the PM has fifteen (15) calendar days to provide a written response to the consultant's Summary. Also upon receipt of that notification, the PM shall: 1) advise INDOT's Selection Review Committee that there is an outstanding unresolved dispute with the consultant¹² and 2) notify the Chairperson of INDOT's Prequalification Committee of the pending Staff Review.¹³

The INDOT Attorney shall schedule the Staff Review for a date within thirty (30) calendar days of receipt of the consultant's Summary, unless the consultant and PM agree otherwise.

At the Staff Review, the Staff Review Team will review and consider the issues. The Staff Review Team may review any materials it considers to be relevant to the issues, including but not limited to: the PM's Early Notification Letter, the PM's Assessment Review Meeting Conclusions Letter (if any), the consultant's Summary, the PM's written response to the consultant's Summary (if any) and any related construction change order(s). The Staff Review Team may consider any new information brought to it by the PM or the consultant. At the Staff Review, the PM and the consultant will have an opportunity to be heard by the Staff Review Team.

Within fifteen (15) calendar days following the Staff Review, the Staff Review Team will submit a recommendation to the Commissioner as to whether or not an E&O occurred, to what extent the consultant's conduct/performance caused the E&O and the damages suffered by INDOT as a result of the consultant's E&O.

The Commissioner will review the Staff Review Team's recommendation and make a decision with regard to the issues.

The INDOT Attorney will provide a copy of the Commissioner's decision to the consultant and the PM.

¹² If the consultant reaches an agreement/settles with INDOT regarding its E&O liability, the PM shall notify the Selection Review Committee that the issue has been resolved.

¹³ Any action taken by the Prequalification Committee will follow applicable rules and policies governing that Committee.

9.4 Collection

If the Commissioner issues a decision following the Staff Review and if the Commissioner decided the consultant is liable to INDOT for damages caused by the E&O, then the PM will notify INDOT's Accounting Division of the Commissioner's decision. INDOT's Accounting Division will invoice the consultant per the Commissioner's decision.

If the PM and the consultant agree that the consultant owes an agreed amount to INDOT for damages due to the E&O, then the PM will notify INDOT's Accounting Division to begin collection of that agreed amount.

If the consultant does not request a Staff Review and if INDOT and the consultant do not reach an agreement as to the amount owed by the consultant to INDOT, then the PM will notify INDOT's Accounting Division to begin collection of the amount of damages INDOT suffered due to the E&O.

INDOT's Accounting Division will invoice the consultant for (a) the amount indicated in the Commissioner's order, if applicable, (b) the amount agreed upon by INDOT and the consultant in a settlement agreement, if applicable, or (c) the amount of damages INDOT suffered due to the E&O. INDOT's Accounting Division will include in the amount invoiced to the consultant any amounts previously paid to the consultant that should be reimbursed to INDOT because those amounts include costs associated with post letting work caused by the E&O. The consultant shall pay the amount due within thirty (30) calendar days of the invoice date.

INDOT's Accounting Division will notify INDOT's Project Finance Department of any collections on federal-aid projects.

9.5 Commissioner's Authority Not Waived

Nothing in this Chapter 9 shall be construed to constitute, reflect, endorse and/or evidence a waiver or diminution of the Commissioner of INDOT's authority or ability to act granted by Indiana statutes or other law.

Chapter 10 Federal Transit Administration Funding

10.1 Professional Services Procurements using Federal Transit Administration Funding

Procurements using Federal Transit Administration Funding shall be conducted according to the above procedures except as modified by the INDOT Office of Transit Procurement Policies/Procedures available at <https://www.in.gov/indot/2436.htm>.

**INDIANA DEPARTMENT OF TRANSPORTATION
CONSULTANT CONFLICT OF INTEREST POLICY**

Applicability

This policy applies to all contracts for professional services related to INDOT projects including design-bid-build (DBB) contracts and design-build (DB) contracts. This policy applies to the individual entities that make up a joint venture in the same manner as they apply to the joint venture. Parent and subsidiary entities shall be considered the same entity for the purposes of these guidelines.

INDOT maintains a separate conflict of interest policy for Public-Private Partnership (P3) projects procured under IC 8-15.7-2-14 which will take precedence over this policy for P3 projects. The P3 Conflict of Interest Policy is available in the INDOT P3 Implementation Guidelines document available at <https://secure.in.gov/indot/3186.htm>.

Goals

This policy is intended to accomplish the following goals:

- Promote integrity, competitiveness and fairness in the procurement and prosecution of consultant contract services;
- Provide guidance to enable consultants to make informed business decisions concerning participation in contracts with INDOT;
- Permit consultants to compete fairly to either work for INDOT or as part of DB construction contract team;
- Protect the interests of INDOT; and
- Permit consultants to work without actual or apparent conflicts of interest.

Responsibilities

The consultant (and any subconsultant), not INDOT, shall reasonably and in good faith anticipate, identify, and disclose to INDOT any actual or potential Conflict.

In addition to complying with the requirements of this Policy, the consultant or subconsultant shall also comply with any other professional responsibilities, ethics code of conduct or law applicable to the consultant or subconsultant.

The consultant shall include a term requiring compliance with this Policy in any agreement or arrangement with any subconsultant in furtherance of any INDOT contract.

The consultant and any subconsultant shall notify INDOT of any conflict or potential conflict according to this policy in writing (by emailing INDOT at contractsrfp@indot.in.gov), fully explaining the conflict or potential conflict and providing any recommendations or protocol to remedy the conflict prior to (as applicable):

- The completion of any INDOT consultant selection process;
- Any consultant engaging any subconsultant on an INDOT contract; or
- The consultant or subconsultant accepting any work from an entity other than INDOT.

Policy

1. Consultants and subconsultants shall provide independent and uncompromised judgment, counsel, work product and public representation, with respect to every contract with INDOT.
2. Consultants and subconsultants shall support the policies and practices of the State of Indiana.
3. Any conduct or set of facts that could or does compromise or limit the duties in Paragraphs (1) and (2) above shall be considered a Conflict of Interest (“Conflict”).
4. INDOT will review conflict of interest disclosures and strictly disallow the existence of conflicts in furtherance of the above goals. Exceptions will only be considered when, in the best interest of INDOT, it is determined that the number of consultants available for a particular activity are inadequate.

Guidelines for Evaluating Conflicts of Interest

- INDOT’s Consultant Selection Review Committee will consider the consultant’s or subconsultant’s notification of a potential Conflict with consultation from the Project Manager and agency Ethics Officer. The Committee will make a recommendation to the Commissioner on whether to object to the Conflict, waive the potential Conflict or require the consultant or subconsultant to remedy the Conflict. The Committee will include an explanation on why a waiver is appropriate for all recommendations to waive a Conflict.
- After receiving the recommendation of the Committee, INDOT’s Commissioner or the Commissioner’s designee, in his or her sole discretion and with the exercise of reasonableness and good faith, may object to the Conflict, waive the Conflict, or require the Consultant (or subconsultant) to remedy the Conflict to INDOT’s satisfaction as a condition of INDOT awarding or continuing any contract or awarding any amendment to, extension or supplement of or additional work under any contract.

Conflict of Interest Examples

The following are activities considered to be Conflicts of Interest.

- Neither consultants nor subconsultants actively engaged in INDOT contracted responsibilities for a project shall perform concurrent services for other clients that impact or depend upon INDOT’s project.
- Neither consultants nor subconsultants actively engaged in INDOT contracted responsibilities for a project shall market to perform future services for other clients that impact or depend upon INDOT’s project while under contract to INDOT.
- Neither consultants nor subconsultants actively engaged in INDOT contracted responsibilities for a project shall entertain participation on a DB construction contract team for the same project.
- Neither consultants nor subconsultants who prepare engineering construction plans or construction contract bid documents for a project under contract to INDOT shall entertain participation on a DB construction contract team for the same project.
- Neither consultants nor subconsultants actively engaged on a DB construction contract team for a project shall participate in an INDOT professional services contract for the same project in a different role.
- Neither consultants nor subconsultants shall act as the Project Engineer/Supervisor

within the hierarchal chain of command over construction inspection activities associated with construction plans or bid documents they prepared for INDOT Sponsored DBB projects.

- Neither consultants nor subconsultants who prepare the detailed independent labor hour estimate specified in 23 CFR 172.7(a)(1)(v)(B) to be used as the basis of negotiation for engineering services shall entertain participation in the same services.

The following activities are not considered to be Conflicts of Interest.

- A consultant or subconsultant that collects and reports environmental or geotechnical data, without engineering design recommendations, may participate on a construction contract team at the same project location so long as all contract services have been fulfilled and all work product is made available to all potential construction contract teams on an equal and timely basis such that there is no unfair competitive advantage.
- A consultant or subconsultant that performs real estate acquisition services, may participate on a construction contract team at the same project location so long as all contract services have been fulfilled prior to construction contract bid opening and all work product is made available to all potential construction contract teams on an equal and timely basis such that there is no unfair competitive advantage.
- A consultant or subconsultant contracted to perform specific planning surveys and studies such as asset management plans and biennial bridge inspections may concurrently perform or compete for project specific preliminary engineering, right-of-way and construction engineering services for projects within the study area.
- A consultant or subconsultant that prepares an engineering assessment or similar project report may compete for future project development services so long as the completed report is made publically available to other competing teams at least four weeks prior to the RFP response due date.

Exhibit 2

Selection Scorer Agreement

The primary purpose of scoring for this RFP is to identify the best firm for the scope of work advertised. It is the responsibility of INDOT scorers to make every effort to identify the firm most capable of producing the highest quality deliverables in a timely and cost effective manner without regard to personal preference. Historical performance data and references should be sought out and applied to the maximum extent necessary to make the best professional judgment possible. All information contained in Letters of Interest, scoring documents, and scoring tabulations, including the names of the scoring team, consultant ranking and shortlist information is to be considered confidential until such time as all associated contracts with an item are executed and the information is published for public viewing. Divulging details regarding the above confidential information will result in discipline and may result in dismissal. IC 4-2-6-9 prohibits state employees from participating in decision making in certain circumstances such as those in which the employee or a family member would have a potential financial interest in the outcome. Scorers shall abide by the ethical requirements set forth in IC 4-2-6-9.

All scoring documents will be published to the Internet for public information upon selection or, in the case of items requiring cost proposals with Letter of Interest submissions, subsequent to notice to proceed. This scoring documentation will then become important information to the submitting consultants for obtaining feedback on their Letters of Interest regarding INDOT's evaluation of their qualifications, past performance and capabilities. The consultants will be relying on your scoring to focus their improvement activities. Accurate evaluation without regard to personal relationships is a must to obtain the improvement in performance desired by INDOT and the consultant.

I have read and understand the Scorer's Training Guide available for review at: <http://www.in.gov/indot/2730.htm> prior to scoring the Letters of Interest for RFP {rfp_nbr} and I have completed the scoring guidance knowledge check, when applicable. I understand the importance of using due diligence in determining scores for each Letter of Interest associated with the items that I will be scoring and I understand the confidential nature of the information and materials.

Signed: _____

Printed Name: _____

Date: _____

Exhibit 3 – Standard Selection Scoresheet

ScoreSheet ID: 1203

Evaluation Criteria Rated by Scorers				
Category	Scoring Criteria	Score	Weight	Weighted Score
Capacity of Team to do Work	Evaluation of the team's personnel and equipment to perform the project on time.		5	
	Availability of more than adequate capacity that results in added value to INDOT.	1		
	Adequate capacity to meet the schedule.	0		
	Insufficient available capacity to meet the schedule.	-3		
Team's Demonstrated Qualifications	Technical expertise: Unique Resources & Equipment that yield a relevant added value or efficiency to the deliverable.		15	
	Demonstrated outstanding expertise and resources identified for required services for value added benefit.	2		
	Demonstrated high level of expertise and resources identified for required services for value added benefit.	1		
	Expertise and resources at appropriate level.	0		
	Insufficient expertise and/or resources.	-3		
Project Manager	Rating or predicted ability to manage the project, based on: experience in size, complexity, type, subs, documentation skills.		20	
	Demonstrated outstanding experience in similar type and complexity.	2		
	Demonstrated high level of experience in similar type and complexity.	1		
	Experience in similar type and complexity shown in resume.	0		
	Experience in different type or lower experience.	-1		
	Insufficient experience.	-3		
Project Understanding and Approach	Appraisal of essential project understanding and approach in relation to service/product efficiency (cost, time) and effectiveness (quality).		15	
	Demonstrates an exceptional level of understanding of the project (intent, actions, challenges, etc.) and an outstanding project approach	2		
	Demonstrates a strong understanding of the activities required for this project and a solid project approach.	1		
	Demonstrates a satisfactory understanding of the project and an adequate project approach of activities required for similar projects.	0		
	Did not adequately demonstrate sufficient project understanding or approach.	-3		
Weighted Sub-Total				

Evaluation Based on Previous Performance				
Category	Scoring Criteria	Score	Weight	Weighted Score
Budget	Budget score average overall.		10	
Constructability	Constructability score average overall. (No data available at this time.)		10	
Quality	Quality score averages for similar work.		10	
Responsiveness	Responsiveness score average overall.		10	
Schedule	Schedule score average overall.		10	
Weighted Sub-Total				

The scores assigned above represent my best judgment of the consultant's abilities for the rating categories.

Weighted Total:
Signed: _____
Date: _____

Exhibit 3 - Consultant Selection Rating Form Guidelines

The scoring scale used for selection rating is as follows:

- +2 Outstanding Qualifications
- +1 Highly Qualified
- 0 Qualified
- 1 Slightly Below Desired Qualification
- 3 Insufficient Qualification

The scoring form is divided into two parts, Evaluation Criteria to be Rated by Scorers at the top of the sheet and Evaluation Ratings to be Assigned from Office of Contracts Data Sources at the bottom. Explanation of the two parts is provided below.

Evaluation Criteria to be Rated by Scorers

Capacity of Team to do Work

Scoring as described with the listed criteria on the scoring form. Above standard scoring is to only occur for more than adequate capacity when the additional capacity will result in added value to INDOT.

Team's Demonstrated Qualifications

Scoring as described with the listed criteria on the scoring form. Above standard scoring is to only occur when unique expertise or resources will result in added value to INDOT.

Project Manager

Scoring as described with the listed criteria on the scoring form.

The historical performance rating for the identified Project Manager should be evaluated using the same criteria as identified for Past Performance above. What if no data in system?

Approach to Project

Scoring as described with the listed criteria on the scoring form. For on-call type contracts this approach would be in general as toward the planned approach to assigned work.

Signature

Scorers are to sign and date each evaluation completed.

Evaluation Ratings to be Assigned from Office of Contracts Data Sources

Past Performance

Past performance ratings will be input directly into the forms from the consultant performance database.

Exhibit 4 – Example Scoring Tabulation

SRC Tabulation for RFP:1602 Item #:01														Back to Item Details				
Selection Review Committee																		
Owner Office			Central Office / Engineering Services & Design Support / Environmental Services							# of Firms Recommended to be Selected			1					
Contract Duration (years)			2							Max Contract Amount			\$250,000.00					
Step 1 Tabulation																		
# of Firms to be Selected			1		# of Alternates			2		Print Tabulation 								
Eliminated	Selection	Firm Name	SAA*	Priority	Team Rank	Final Rank	Ties	Total Score	Total Score After SAA	Rank Total	Rank Total After SAA	Crystal Rehder			Kristi Todd			Julie
												Score	Score After SAA	Rank After SAA	Score	Score After SAA	Rank After SAA	
	Selected	Hydrogeology, Inc.	0	1	1	1		245	245	8	8	70	70	1	70	70	1	45
	Alternate	AECOM Technical Services, Inc.	0	5	2	2		185	185	11	11	0	0	4	70	70	1	70
	Alternate	American Structurepoint, Inc.	0	4	3	3		100	100	12	12	45	45	2	0	0	4	90
	Not Selected	Michael Baker International, Inc.	0	4	4	4		60	60	19	19	5	5	3	45	45	3	45
	Not Selected	Parsons Brinckerhoff, Inc.	0	3	5	5		-35	-35	21	21	-10	-10	5	0	0	4	75
	Not Selected	KERAMIDA Environmental, Inc.	0	1	6	6		-100	-100	22	22	-45	-45	6	0	0	4	0
<p>*Selection Review Committee Availability Adjustment (SAA) - the top 5 ranked firms and firms ranked within the top half of firms submitting for an item will be scored by the Selection Review Committee (SRC) according to the following criteria:</p> <p>+10 or +20 : Firms with apparent availability that will result in added value to INDOT will receive 10 or 20 bonus points will be added to the score totals of each scorer. Added value to INDOT could be in the form of the speed of services delivery or in the form of quality of service due to the availability of highly qualified personnel.</p> <p>+0 : Firms with apparent availability to deliver contract services to meet the desired schedule with no added value will not receive an adjustment.</p> <p>Firms with questionable resource availability to deliver contract services will be eliminated from selection consideration and a comment of explanation will be documented on the selection tabulation form. After SAA determination is complete the firm scores will then be re-ranked accordingly for each scorer and the rank totals for each firm will be recomputed.</p>																		
Selection Review Committee Signatures																		
Adams, Scott			Approved on 03/15/2016 08:50 AM															
Fowler, Russell			Approved on 03/17/2016 11:04 AM															
Johnson, Todd			Approved on 03/15/2016 08:43 AM															
Poturalski, James																		
Tidd, Mark			Approved on 03/15/2016 11:27 AM															
Commissioner or Designee Selection Approval																		
Brandye Hendrickson			Approved on 03/18/2016 09:31 AM															

Exhibit 5 – Step 1, Technical Approach Scoresheet

Scoresheet

ScoreSheet ID: 1403

Evaluation Criteria Rated by Scorers				
Category	Scoring Criteria	Score	Weight	Weighted Score
Capacity of Team to do Work	Evaluation of the team's personnel and available capacity to perform on time.		5	
	Availability of more than adequate capacity that results in added value to INDOT.	1		
	Adequate capacity to meet the schedule.	0		
	Insufficient available capacity to meet the schedule.	-3		
Team's Demonstrated Qualifications	Technical expertise: Unique Resources & expertise that yield a relevant added value or efficiency to the deliverable.		15	
	Demonstrated outstanding expertise and resources identified for required services for value added benefit.	2		
	Demonstrated high level of expertise and resources identified for required services for value added benefit.	1		
	Expertise and resources at appropriate level.	0		
	Insufficient expertise and/or resources.	-3		
Project Manager	Rating or predicted ability to manage the project, based on: experience in size, complexity, type, subs, and documentation skills.		20	
	Demonstrated outstanding experience in similar type and complexity.	2		
	Demonstrated high level of experience in similar type and complexity.	1		
	Experience in similar type and complexity shown in resume.	0		
	Experience in different type or lower experience.	-1		
	Insufficient experience.	-3		
Approach to Project	Understanding and Innovation that gives INDOT cost and/or time savings.		15	
	High level of understanding and viable innovative ideas proposed.	2		
	High level of understanding of the project.	1		
	Basic understanding of the project.	0		
	Lack of project understanding.	-3		
Weighted Sub-Total				

Evaluation Ratings Assigned from Office of Contracts Data Sources				
Category	Scoring Criteria	Score	Weight	Weighted Score
Budget	Budget score average overall.		10	
Constructability	Constructability score average overall. (No data available at this time.)		0	
Quality	Quality score averages for similar work.		10	
Responsiveness	Responsiveness score average overall.		10	
Schedule	Schedule score average overall.		10	
Weighted Sub-Total				

The scores assigned above represent my best judgment of the consultant's abilities for the rating categories.

Weighted Total:

Signed: _____

Date: _____

Exhibit 6 – Step 2, Business Approach Scoresheet

Selection Rating for RFP - No: _____, Item No. _____

Scoresheet Type: 5

Consultant Name: _____

Services Description: _____

Evaluation Criteria Rated by Scorers					
Category	Scoring Criteria	Scale	Score	Weight	Weighted Score
Public Acceptance for the Proposed Project Approach	Evaluation of the team's ability to build public acceptance to the proposed project approach and of the team's ability to carry out a strategic, cost effective communications program.			10	
	High confidence in ability to build public acceptance of approach	1			
	Satisfactory confidence in ability to build public acceptance of approach	0			
	Low confidence in ability to build public acceptance of approach	-1			
Management of Land Acquisition, RR & Utility Coordination, and Environmental Mitigation Plans	Evaluation of the team's ability to manage Land Acquisition, RR & Utility Coordination, and Environmental Mitigation activities in a manner that will save time and/or money.			10	
	High confidence in ability to effectively manage described activities	1			
	Satisfactory confidence in ability to effectively manage described activities	0			
	Low confidence in ability to effectively manage described activities	-1			
Optimizing the Use of Available Funds	Team's ability to deliver the Maximum amount of Completed Interstate Highway miles on I-69 within the available budget while meeting all environmental requirements			10	
	Outstanding confidence in ability to deliver the project for the lowest cost while satisfying requirements	2			
	High confidence in ability to deliver the project for the lowest cost while satisfying requirements	1			
	Medium confidence in ability to deliver the project for the lowest cost while satisfying requirements	0			
	Low confidence in ability to deliver the project for the lowest cost while satisfying requirements	-1			
Innovative Strategies	Innovations in Project Management, Constructability, Design, and the Value Engineering efforts that gives INDOT cost and/or time savings while meeting all requirements			20	
	Outstanding level of demonstrated, implementable ideas	2			
	High level of demonstrated, implementable ideas	1			
	Medium level of demonstrated, implementable ideas	0			
	Low level of demonstrated, implementable ideas	-1			
Project Management Team	Project Manager and Key Project Staff demonstrate, through successful experiences on projects of similar or greater complexity, that they are the BEST team to deliver this project			15	
	The BEST Management Team based on experience in similar type and complexity	2			
	The Second BEST Management Team based on experience in similar type and complexity	1			
	The Third Best Management Team based on similar type and complexity	0			
Weighted Sub-Total					

The scores assigned above represent my best judgement of the consultant's abilities for the rating categories.

Weighted Total:

Signed: _____

Title: _____

Date: _____

CONSULTING CONTRACT
EDS # A249-

This Contract ("this Contract") is made and entered into effective as of the date of the Indiana Attorney General signature affixed to this Contract by and between the State of Indiana ("State"), acting by and through the Indiana Department of Transportation ("INDOT"), and

Three horizontal lines representing a signature or stamp area.

(the "CONSULTANT"), [an individual residing in the State of _____] [a corporation/limited liability company organized under the laws of the State of _____].

WITNESSETH

WHEREAS, INDOT wishes to hire the CONSULTANT to provide services required to _____

WHEREAS, the CONSULTANT has extensive experience, knowledge and expertise relating to these Services; and

WHEREAS, the CONSULTANT has expressed a willingness to furnish the Services in connection therewith.

NOW, THEREFORE, in consideration of the following mutual covenants, the parties hereto mutually covenant and agree as follows:

SECTION I SERVICES BY CONSULTANT. The CONSULTANT will provide the Services and deliverables described in Appendix "A" which is attached to and made an integral part of this Contract.

SECTION II INFORMATION AND SERVICES TO BE FURNISHED BY INDOT. The information and services to be furnished by INDOT are set out in Appendix "B" which is attached to and made an integral part of this Contract.

SECTION III TERM. The term of this Contract shall be from the date of the Attorney General signature affixed to this Contract until _____.

SECTION IV COMPENSATION. INDOT shall pay the CONSULTANT for the Services performed under this Contract in accordance with Appendix "D" which is attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed \$_____.

SECTION V NOTICE TO PROCEED AND SCHEDULE. The CONSULTANT shall begin the work to be performed under this Contract only upon receipt of the written notice to proceed from INDOT, and shall deliver the work to INDOT in accordance with the schedule contained in Appendix "C" attached to and made an integral part of this Contract.

SECTION VI GENERAL PROVISIONS

"Subconsultants" as used in this contract refers to a subcontractor of the CONSULTANT performing services under this contract.

1. Access to Records. The CONSULTANT and any SUB-CONSULTANTS shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for the purpose of making inspection, audit, examination, excerpts and transcriptions by the recipient and sub recipient, as those terms are defined in 2 CFR §200.86 and §200.93 respectively, INDOT, the Federal Highway

Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States or any of their duly authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, INDOT may release or make available to the agency any working papers from an audit performed by INDOT of the CONSULTANT and its SUB-CONSULTANTS in connection with this Contract, including any books, documents, papers, correspondence, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

2. Assignment; Successors.

A. The CONSULTANT binds its successors and assignees to all the terms and conditions of this Contract. The CONSULTANT shall not assign or subcontract the whole or any part of this Contract without INDOT's prior written consent, except that the CONSULTANT may assign its right to receive payments to such third parties as the CONSULTANT may desire without the prior written consent of INDOT, provided that the CONSULTANT gives written notice (including evidence of such assignment) to INDOT thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

B. Any substitution of SUB-CONSULTANTS and/or disadvantaged business enterprises must first be approved and receive written authorization of INDOT's the Consultant Selection Review Committee and INDOT's Economic Opportunity Division Director, respectively, or their respective designee.

3. Audit. The CONSULTANT acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et seq. and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Contract.

4. Authority to Bind Consultant. The CONSULTANT warrants that it has the necessary authority to enter into this Contract. The signatory for the CONSULTANT represents that he/she has been duly authorized to execute this Contract on behalf of the CONSULTANT and has obtained all necessary or applicable approval to make this Contract fully binding upon the CONSULTANT when his/her signature is affixed hereto.

5. Certification for Federal-Aid Contracts Lobbying Activities.

A. The CONSULTANT certifies, by signing and submitting this Contract, to the best of its knowledge and belief after diligent inquiry, and other than as disclosed in writing to INDOT prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT, the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

i. No federal appropriated funds have been paid, or will be paid, by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contracts, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. The CONSULTANT also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be

subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

6. Changes in Work. The CONSULTANT shall not commence any additional work or change the scope of the work until authorized in writing by INDOT. The CONSULTANT shall make no claim for additional compensation or time in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may be amended, supplemented or modified only by a written document executed in the same manner as this Contract. The CONSULTANT acknowledges that no claim for additional compensation or time may be made by implication, oral agreements, actions, inaction, or course of conduct.

7. Compliance with Laws.

A. The CONSULTANT shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. If the CONSULTANT violates such rules, laws, regulations and ordinances, the CONSULTANT shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Contract shall be reviewed by INDOT and the CONSULTANT to determine whether formal modifications are required to the provisions of this Contract.

B. The CONSULTANT represents to INDOT that, to the best of the CONSULTANT'S knowledge and belief after diligent inquiry and other than as disclosed in writing to INDOT prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT:

- i. *Required State of Indiana Payments.* Neither the CONSULTANT nor the CONSULTANT'S principal(s) are presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the CONSULTANT agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the CONSULTANT. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the CONSULTANT becomes current in its payments and has submitted proof of such payment to INDOT.
- ii. *State of Indiana Actions.* The CONSULTANT has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending and agrees that it will immediately notify INDOT of any such actions. During the term of such actions, CONSULTANT agrees that INDOT may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.
- iii. *Professional Licensing Standards.* The CONSULTANT, its employees and SUBCONSULTANTS have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Contract.
- iv. *Work Specific Standards.* The CONSULTANT and its SUBCONSULTANTS, if any, have obtained, will obtain and/or will maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for INDOT.
- v. *Secretary of State Registration.* If the CONSULTANT is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
- vi. *Debarment and Suspension of CONSULTANT.* Neither the CONSULTANT nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State and will immediately notify INDOT of any such actions. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the

CONSULTANT or who has managerial or supervisory responsibilities for the Services.

- vii. *Debarment and Suspension of any SUBCONSULTANTS.* The CONSULTANT's SUBCONSULTANTS are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The CONSULTANT shall be solely responsible for any recoupment, penalties of costs that might arise from the use of a suspended or debarred SUBCONSULTANT. The CONSULTANT shall immediately notify the State if any SUBCONSULTANT becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the SUBCONSULTANT for work to be performed under this Contract.

C. *Ethics.* The CONSULTANT and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth in Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et seq.*, the regulations promulgated thereunder. If the CONSULTANT has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the CONSULTANT shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Contract. If the CONSULTANT is not familiar with these ethical requirements, the CONSULTANT should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig>. If the CONSULTANT or its agents violate any of the Ethical Standards, INDOT may, at its sole discretion, terminate this Contract immediately upon notice to the CONSULTANT. In addition, the CONSULTANT may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44.1-1/4 and under any other applicable state or federal laws.

D. *Telephone Solicitation.* As required by IC 5-22-3-7: (1) the CONSULTANT and any principals of the CONSULTANT certify that (A) the CONSULTANT, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the CONSULTANT will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law. (2) The CONSULTANT and any principals of the CONSULTANT certify that an affiliate or principal of the CONSULTANT and any agent acting on behalf of the CONSULTANT or on behalf of an affiliate or principal of the CONSULTANT: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

E. *Violations.* In addition to any other remedies at law or in equity, upon CONSULTANT'S violation of any of Section 7(A) through 7(D), INDOT may, at its sole discretion, do any one or more of the following:

- i. terminate this Contract; or
- ii. delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract; or
- iii. bar the CONSULTANT from contracting with the State of Indiana.

F. *Disputes.* If a dispute exists as to the CONSULTANT's liability or guilt in any action initiated by the State of Indiana or its agencies, and INDOT decides to delay, withhold, or deny work to the CONSULTANT, the CONSULTANT may request that it be allowed to continue, or receive work, without delay. The CONSULTANT must submit, in writing, a request for review to INDOT. A determination by INDOT under this Section 7.F shall be final and binding on the parties and not subject to administrative review. Any payments INDOT may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

8. Condition of Payment. The CONSULTANT must perform all Services under this Contract to INDOT's reasonable satisfaction, as determined at the discretion of INDOT and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. INDOT will not pay for work not performed to INDOT's reasonable satisfaction, inconsistent with this Contract or performed in violation of federal, state, or local law (collectively, "deficiencies") until all deficiencies are remedied in a timely manner.

9. Confidentiality of State Information.

A. The CONSULTANT understands and agrees that data, materials, and information disclosed to the CONSULTANT may contain confidential and protected information. Therefore, the CONSULTANT covenants that data, material, and information gathered, based upon or disclosed to the CONSULTANT for the purpose of this Contract, will not be disclosed to others or discussed with third parties without INDOT's prior written consent.

B. The parties acknowledge that the Services to be performed by the CONSULTANT for INDOT under this Contract may require or allow access to data, materials, and information containing Social Security numbers and maintained by INDOT in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the CONSULTANT and INDOT agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by the CONSULTANT, the CONSULTANT agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract.

10. Prompt Payment. The CONSULTANT agrees to pay each subconsultant under this Contract for satisfactory performance of its contract no later than ten (10) business days from the receipt of each payment the CONSULTANT receives from INDOT. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of INDOT. The explanation from the CONSULTANT shall be made in writing to INDOT. This clause applies to both DBE and non-DBE subconsultants. Failure to comply with this clause shall constitute a material breach of this Contract and may result in sanctions under this Contract.

11. [Reserved]

12. Delays and Extensions. The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the Services specified in this Contract. Such delays, if any, shall be compensated for by an extension of time for such period as may be determined by INDOT subject to the CONSULTANT's approval, it being understood, however, that permitting the CONSULTANT to proceed to complete any services, or any part of them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of INDOT of any of its rights herein. In the event of substantial delays or extensions, or change of any kind, not caused by the CONSULTANT, which causes a material change in scope, character or complexity of work the CONSULTANT is to perform under this Contract; INDOT at its sole discretion shall determine any adjustments in compensation and in the schedule for completion of the Services. CONSULTANT must notify INDOT in writing of a material change in the work immediately after the CONSULTANT first recognizes the material change.

13. DBE Requirements.

A. Notice is hereby given to the CONSULTANT and any SUB-CONSULTANT, and both agree, that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification and failure to promptly cure such breach, may result in termination of this Contract or such remedy as INDOT deems appropriate. The referenced section requires the following assurance to be included in all subsequent contracts between the CONSULTANT and any SUB-CONSULTANT:

The CONSULTANT, sub recipient or SUB-CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

B. The CONSULTANT shall make good faith efforts to achieve the DBE percentage goal that may be included as part of this Contract with the approved DBE SUB-CONSULTANTS identified on its Affirmative Action Certification. Any changes to a DBE firm listed in the Affirmative Action Certification must be requested

in writing and approved by INDOT's Economic Opportunity Division.

14. Disputes

A. Should any disputes arise with respect to this Contract, the CONSULTANT and INDOT agree to act promptly and in good faith to resolve such disputes in accordance with this Section 14. Time is of the essence in the resolution of disputes.

B. The CONSULTANT agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the CONSULTANT fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs (including reasonable attorneys' fees and expenses) incurred by INDOT or the CONSULTANT as a result of such failure to proceed shall be borne by the CONSULTANT.

C. If a party to this Contract is not satisfied with the progress toward resolving a dispute, the party must notify the other party of this dissatisfaction in writing. Upon written notice, the parties have ten (10) business days, unless the parties mutually agree in writing to extend this period, following the written notification to resolve the dispute. If the dispute is not resolved within ten (10) business days, a dissatisfied party may submit the dispute in writing according to the following procedure:

- i. The parties agree to resolve such matters through submission of the dispute to the Commissioner of the Indiana Department of Administration (or his or her designee) ("IDOA Commissioner"). The submission shall include a written description of the dispute, any supporting documentation and each party's respective recommended resolution of such dispute. The IDOA Commissioner shall make a written decision and mail or otherwise furnish a copy thereof to the CONSULTANT and INDOT within ten (10) business days after presentation of such dispute for action. The IDOA Commissioner's decision shall be final and conclusive unless either party provides a written notice of appeal to the Commissioner within ten (10) business days after receipt of the IDOA Commissioner's decision. Within ten (10) business days of receipt by the IDOA Commissioner of a written request for appeal, the IDOA Commissioner may reconsider its decision. The IDOA Commissioner may then choose to reconsider the determination and make a separate determination or may request that the parties submit to a mediation procedure. If the IDOA Commissioner chooses not to reconsider its decision or fails to respond within ten (10) business days, then the dispute may be submitted to an Indiana court of competent jurisdiction.
- ii. The State may withhold payments on disputed items pending resolution of the dispute.

15. Drug-Free Workplace Certification.

A. The CONSULTANT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the Indiana Department of Transportation and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the CONSULTANT in the State of Indiana has been convicted of a criminal drug violation occurring in the CONSULTANT's workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Contract payments, termination of this Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

B. In addition to the provisions of the above paragraphs, if the total Contract amount set forth in this Contract is in excess of \$25,000.00, the CONSULTANT hereby further agrees that this Contract is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been

fully executed by the CONSULTANT and made a part of the contract or agreement as part of the contract documents.

- C. The CONSULTANT certifies and agrees that it will provide a drug-free workplace by:
- i. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CONSULTANT's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - ii. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CONSULTANT's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
 - iii. Notifying all employees in the statement required by subparagraph 15.C.i above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CONSULTANT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
 - iv. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision 15.C.iii(2) above, or otherwise receiving actual notice of such conviction;
 - v. Within thirty (30) days after receiving notice under subdivision 15.C.iii(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
 - vi. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs 15.C.i through 15.C.v above.

16. Employment Option. If INDOT determines that it would be in the State's best interest to hire an employee of the CONSULTANT, the CONSULTANT will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

17. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of fire, natural disaster, acts of God, acts of war, terrorism, civil disorders, decrees of governmental bodies, strikes, lockouts, labor or supply disruptions or similar causes beyond the reasonable control of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give written notice to the other party of the occurrence of the Force Majeure Event (with a description in reasonable detail of the circumstances causing such Event) and shall do everything reasonably possible to resume performance. Upon receipt of such written notice, all obligations under this Contract shall be immediately suspended for as long as such Force Majeure Event continues and provided that the affected party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. If the period of nonperformance exceeds thirty (30) days from the receipt of written notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

18. Funding Cancellation Clause. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of SBA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive. The CONSULTANT may seek recovery from the State for any amounts unpaid for Services rendered or goods delivered through the date of cancellation.

19. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana. The parties acknowledge that the governing law includes I.C. 8-23-2-12.5. The CONSULTANT consents to the jurisdiction of and to venue in any court of competent jurisdiction in the State of Indiana.
20. **IC 8-23-2-12.5.** With respect to liability and indemnification issues, this Contract is subject to IC 8-23-2-12.5.
21. **Indemnification.** The CONSULTANT agrees to indemnify the State of Indiana, INDOT, and their agents, officials, and employees, and to hold each of them harmless, from claims and suits including court costs, attorney's fees, and other expenses caused by any negligent act, error or omission of, or by any recklessness or willful misconduct by the CONSULTANT and/or its SUB-CONSULTANTS, if any, under this Contract, provided that if the CONSULTANT is a "contractor" within the meaning of I.C. 8-23-2-12.5, this indemnity obligation shall be limited by and interpreted in accordance with I.C. 8-23-2-12.5. INDOT shall not provide such indemnification to the CONSULTANT.
22. **Independent Contractor.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or of the other party. The CONSULTANT shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.
23. **Insurance - Liability for Damages.**
- A. Subject to I.C. 8-23-2-12.5, the CONSULTANT shall be responsible for the accuracy of the Services performed under this Contract and shall promptly make necessary revisions or corrections resulting from its negligence, errors or omissions without any additional compensation from INDOT. Acceptance of the Services by INDOT shall not relieve the CONSULTANT of responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities. The CONSULTANT shall have no liability for the errors or deficiencies in designs, drawings, specifications or other services furnished to the CONSULTANT by INDOT on which the Consultant has reasonably relied, provided that the foregoing shall not relieve the CONSULTANT from any liability from the CONSULTANT'S failure to fulfill its obligations under this Contract, to exercise its professional responsibilities to INDOT, or to notify INDOT of any errors or deficiencies which the CONSULTANT knew or should have known existed.
- B. During construction or any phase of work performed by others based on Services provided by the CONSULTANT, the CONSULTANT shall confer with INDOT when necessary for the purpose of interpreting the information, and/or to correct any negligent act, error or omission. The CONSULTANT shall prepare any plans or data needed to correct the negligent act, error or omission without additional compensation, even though final payment may have been received by the CONSULTANT. The CONSULTANT shall give immediate attention to these changes for a minimum of delay to the project.
- C. The CONSULTANT shall be responsible for damages including but not limited to direct and indirect damages incurred by the State as a result of any negligent act, error or omission of the CONSULTANT, and for the State's losses or costs to repair or remedy construction. Acceptance of the Services by INDOT shall not relieve the CONSULTANT of responsibility for subsequent correction.
- D. The CONSULTANT shall be required to maintain in full force and effect, from the date of the first authorization to proceed until INDOT's acceptance of the work product, at least the following minimum coverage. The CONSULTANT must obtain insurance written by insurance companies authorized to transact business in the State of Indiana and licensed by the Department of Insurance as either admitted or non-admitted insurers.
- E. The State of Indiana, INDOT, its officers and employees assume no responsibility for the adequacy of limits and coverage in the event of any claims against the CONSULTANT, its officers, employees, sub-

consultants or any agent of any of them, and the obligations of indemnification in Section 21 herein shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified, to the fullest extent of the law.

F. The CONSULTANT shall furnish a certificate of insurance and all endorsements to INDOT prior to the commencement of this Contract. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the CONSULTANT. Failure to provide insurance as required in this Contract is a material breach of Contract entitling INDOT to immediately terminate this Contract.

I. Professional Liability Insurance

The CONSULTANT must obtain and carry professional liability insurance as follows: For INDOT Prequalification **Work Types** 1.1, 12.2-12.6, 12.8 the CONSULTANTS shall provide not less than \$250,000.00 professional liability insurance per claim and \$250,000.00 aggregate for all claims for negligent performance. For **Work Types** 2.2, 3.1, 3.2, 4.1, 4.2, 5.5, 5.8, 5.11, 6.1 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 – 10.4, 11.1, 13.1, 14.1 – 14.5, the CONSULTANTS shall carry professional liability insurance in an amount not less than \$1,000,000.00 per claim and \$1,000,000.00 aggregate for all claims for negligent performance. The CONSULTANT shall maintain the coverage for a period ending two (2) years after substantial completion of construction.

II. Commercial General Liability Insurance

The CONSULTANT must obtain and carry Commercial / General liability insurance as follows: For INDOT Prequalification **Work Types** 2.1, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 -10.4, 11.1, 13.1, 14.1 - 14.5, the CONSULTANT shall carry \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate. Coverage shall be on an occurrence form, and include contractual liability. The policy shall be amended to include the following extensions of coverage:

1. Exclusions relating to the use of explosives, collapse, and underground damage to property shall be removed.
2. The policy shall provide thirty (30) days notice of cancellation to INDOT.
3. The CONSULTANT shall name INDOT as an additional insured.

III. Automobile Liability

The CONSULTANT shall obtain automobile liability insurance covering all owned, leased, borrowed, rented, or non-owned autos used by employees or others on behalf of the CONSULTANT for the conduct of the CONSULTANT's business, for an amount not less than \$1,000,000.00 Combined Single Limit for Bodily Injury and Property Damage. The term "automobile" shall include private passenger autos, trucks, and similar type vehicles licensed for use on public highways. The policy shall be amended to include the following extensions of coverage:

1. Contractual Liability coverage shall be included.
2. The policy shall provide thirty (30) days notice of cancellation to INDOT.
3. The CONSULTANT shall name INDOT as an additional insured.

IV. Watercraft Liability (When Applicable)

1. When necessary to use watercraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT, or any SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the watercraft shall carry watercraft liability insurance in the amount of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable. Coverage shall apply to owned, non-owned, and hired watercraft.

2. If the maritime laws apply to any work to be performed by the CONSULTANT under the terms of the agreement, the following coverage shall be provided:

- a. United States Longshoremen & Harbor workers
- b. Maritime Coverage - Jones Act

3. The policy shall provide thirty (30) days notice of cancellation to INDOT.

4. The CONSULTANT or SUB-CONSULTANT shall name INDOT as an additional insured.

V. Aircraft Liability (When Applicable)

1. When necessary to use aircraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT or SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the aircraft shall carry aircraft liability in the amount of \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage shall apply to owned, non-owned and hired aircraft.

2. The policy shall provide thirty (30) days notice of cancellation to INDOT.

3. The CONSULTANT or SUB-CONSULTANT shall name INDOT as an additional insured.

24. Progress Reports. The CONSULTANT shall submit progress reports to INDOT upon request. The report shall be oral, in person or by phone, unless INDOT, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring INDOT that work is progressing in line with the schedule and that completion can be reasonably assured on the scheduled data.

25. Merger and Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

26. Non-Discrimination

A. This Contract is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the CONSULTANT or any subcontractor.

Under IC 22-9-1-10 CONSULTANT covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, or status as a veteran.

B. The CONSULTANT understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the CONSULTANT agrees that if the CONSULTANT employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CONSULTANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONSULTANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as

a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, income status, limited English proficiency, or status as a veteran.)

C. During the performance of this Contract, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

1. Compliance with Regulations: The CONSULTANT shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, and the Federal Highway Administration Title 23, CFR Part 200 as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
2. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, age, national origin, religion, disability, ancestry, income status, limited English proficiency or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, age, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.
4. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, documents, papers, correspondence, records, accounts, other sources of information, and its facilities as may be determined by the recipient, the sub recipient, the Indiana Department of Transportation, the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States or any of their duly authorized representatives, to be pertinent to ascertain compliance with such Regulations, orders and instructions, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses furnish this information, the CONSULTANT shall so certify to the recipient, the sub recipient, the Indiana Department of Transportation, the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States or any of their duly authorized representatives as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives may determine to be appropriate, including, but not limited to: (a) withholding payments to the CONSULTANT under the Contract until the CONSULTANT complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraph C, Section 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

D. The CONSULTANT shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the CONSULTANT may request the United States of America to enter into such litigation to protect the interests of the United States of America.

27. Notice to Parties: Any notice, request, consent or communication (collectively a "Notice") under this Agreement shall be effective only if it is in writing and (a) personally delivered; (b) sent by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by a nationally recognized overnight delivery service, with delivery confirmed and costs of delivery being prepaid, addressed as follows:

- A. Notices to the State shall be sent to:
Contract Administrator
Indiana Department of Transportation
100 N. Senate Avenue, Room N725
Indianapolis, IN 46204

With a copy to:
Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 N. Senate Avenue, Room N758
Indianapolis, IN 46204

- B. Notices to the CONSULTANT shall be sent to:

or to such other address or addresses as shall be furnished in writing by any party to the other party. Unless the sending party has actual knowledge that a Notice was not received by the intended recipient, a Notice shall be deemed to have been given as of the date (i) when personally delivered; (ii) three (3) days after the date deposited with the United States mail properly addressed; or (iii) the next day when delivered during business hours to overnight delivery service, properly addressed and prior to such delivery service's cut off time for next day delivery. The parties acknowledge that notices delivered by facsimile or by email shall not be effective.

C. As required by IC 4-13-2-14.8, payments to the CONSULTANT shall be made via electronic funds transfer in accordance with instructions filed by the CONSULTANT with the Indiana Auditor of State.

28. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by INDOT, (3) RFP document, (4) the CONSULTANT's response to the RFP document, and (5) attachments prepared by the CONSULTANT. All of the foregoing is incorporated fully by reference.

29. Ownership of Documents and Materials. All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the CONSULTANT prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the CONSULTANT assigns and transfers any ownership claim to INDOT and all such materials ("Work Product") will be the property of INDOT. The CONSULTANT agrees to execute and deliver such assignments or other documents as may be requested by INDOT. Use of these materials, other than related to contract performance by the CONSULTANT, without INDOT's prior written consent, is prohibited. During the performance of this Contract, the CONSULTANT shall be responsible for any loss of or damage to any of the Work Product developed for or supplied by INDOT and used to develop or assist in the Services provided herein while any such Work Product is in the possession or control of the CONSULTANT. Any loss or damage thereto shall be restored at the CONSULTANT's expense. The CONSULTANT shall provide INDOT full, immediate, and unrestricted access to the Work Product during the term of this Contract. The CONSULTANT represents, to the best of its knowledge and belief after diligent inquiry and other than as disclosed in writing prior to or contemporaneously with the execution of this Contract by the CONSULTANT, that the Work Product does not infringe upon or misappropriate the intellectual property or other rights of any third party. The CONSULTANT shall not be liable for the use of its deliverables described in Appendix "A" on other projects without the express written consent of the CONSULTANT or as provided in Appendix "A". INDOT acknowledges that it has no claims to any copyrights not transferred to INDOT under this paragraph.

30. Payments. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the CONSULTANT in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or Services that are the subject of this Contract except as permitted by IC 4-13-2-20.

31. Penalties, Interest and Attorney's Fees. INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, IC 5-17-5, I. C. 34-54-8, and I. C. 34-13-1.

32. Pollution Control Requirements. If this Contract is for \$100,000 or more, the CONSULTANT:

- i. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
- ii. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
- iii. Stipulates that, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.

33. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

34. Status of Claims. The CONSULTANT shall give prompt written notice to INDOT any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping INDOT currently advised as to the status of such claims. The CONSULTANT shall send

notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, IN 46204-2249

35. Sub-consultant Acknowledgement. The CONSULTANT agrees and represents and warrants to the State of Indiana, that the CONSULTANT will obtain signed Sub-consultant Acknowledgement forms, identical to the form attached as Appendix “E” of this Contract, from all SUB-CONSULTANTS providing Services under this Contract or to be compensated for Services through this Contract. The CONSULTANT agrees to provide signed originals of the Sub-consultant Acknowledgement form(s) to INDOT for approval prior to performance of the Services by any SUB-CONSULTANT.

36. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification or Amendment thereof.

37. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.

38. Termination for Convenience.

A. INDOT may terminate, in whole or in part, whenever, for any reason when INDOT determines that such termination is in its best interests. Termination or partial termination of Services shall be effected by delivery to the CONSULTANT of a Termination Notice at least fifteen (15) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of termination. INDOT will not be liable for Services performed after the effective date of termination.

B. If INDOT terminates or partially terminates this Contract for any reason regardless of whether for convenience or for default, in such event, all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Contract, shall be delivered within ten (10) days to INDOT. In the event of the failure by the CONSULTANT to make such delivery upon demand, the CONSULTANT shall pay to INDOT any damage (including costs and reasonable attorneys’ fees and expenses) it may sustain by reason thereof.

39. Termination for Default.

A. With the provision of twenty (20) days written notice to the CONSULTANT, INDOT may terminate this Contract in whole or in part if (i) the CONSULTANT fails to:

1. Correct or cure any breach of this Contract within such time, provided that if such cure is not reasonably achievable in such time, the CONSULTANT shall have up to ninety (90) days from such notice to effect such cure if the CONSULTANT promptly commences and diligently pursues such cure as soon as practicable;
 2. Deliver the supplies or perform the Services within the time specified in this Contract or any amendment or extension;
 3. Make progress so as to endanger performance of this Contract; or
 4. Perform any of the other provisions of this Contract to be performed by the CONSULTANT;
- or

(ii) if any representation or warranty of the CONSULTANT is untrue or inaccurate in any material respect at the time made or deemed to be made.

B. If INDOT terminates this Contract in whole or in part, it may acquire, under the terms and in the manner INDOT considers appropriate, supplies or services similar to those terminated, and the CONSULTANT will be liable to INDOT for any excess costs for those supplies or services. However, the CONSULTANT shall continue

the work not terminated.

C. INDOT shall pay the contract price for completed supplies delivered and Services accepted. The CONSULTANT and INDOT shall agree on the amount of payment for manufactured materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause (see Section 14). INDOT may withhold from the agreed upon price for Services any sum INDOT determine necessary to protect INDOT against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of INDOT in this Contract are in addition to any other rights and remedies provided by law or equity or under this Contract.

E. **Default by INDOT.** If the CONSULTANT believes INDOT is in default of this Contract, it shall provide written notice immediately to INDOT describing such default. If INDOT fails to take steps to correct or cure any material breach of this Contract within sixty (60) days after receipt of such written notice, the CONSULTANT may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination, including reasonable attorney fees and expenses *if Ordered by a court*, provided that if such cure is not reasonably achievable in such time, INDOT shall have up to one hundred twenty (120) days from such notice to effect such cure if INDOT promptly commences and diligently pursues such cure as soon as practicable. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of such termination. The CONSULTANT agrees that it has no right of termination for non-material breaches by the State or INDOT.

40. Travel. No expenses for travel will be reimbursed unless specifically permitted under the scope of Services or consideration provisions of this Contract. Expenditures made by the CONSULTANT for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular.

41. Waiver of Rights. No rights conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver or excuse is approved in writing and signed by the party claimed to have waived such right. Neither INDOT's review, approval or acceptance of, nor payment for, the Services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to INDOT in accordance with applicable law for all damages to INDOT caused by the CONSULTANT's negligent performance of any of the Services furnished under this Contract.

42. Work Standards/Conflicts of Interest.

A. The CONSULTANT shall understand and utilize all relevant INDOT standards including the Design Manual, where applicable, and other appropriate materials and shall perform all Services in accordance with the standards of care, skill and diligence required in Appendix "A" or, if not set forth therein, ordinarily exercised by competent professionals doing work of a similar nature.

B. The CONSULTANT agrees to comply with the "Indiana Department of Transportation Consultant Conflict of Interest Policy" (Conflict of Interest Policy) attached hereto as Appendix "F". Failure to comply with the Conflict of Interest Policy may be grounds for INDOT to terminate this Contract under either Section 38 (Termination for Convenience) or Section 39 (Termination for Default) at INDOT's discretion.

43. No Third-Party Beneficiaries.

This Agreement is solely for the benefit of the parties hereto. Other than the indemnity rights under this Contract, nothing contained in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto) any rights, benefits or remedies of any kind or character whatsoever.

44. Employment Eligibility Verification

The Consultant affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The Consultant shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Consultant is not required to participate should the E-Verify program cease to exist. Additionally, the Consultant is not required to participate if the Consultant is self-employed and does not employ any employees.

The Consultant shall not knowingly employ or contract with an unauthorized alien. The Consultant shall not retain an employee or contract with a person that the Consultant subsequently learns is an unauthorized alien.

The Consultant shall require his/her/its sub-consultants, who perform work under this contract, to certify to the Consultant that the sub-consultant does not knowingly employ or contract with an unauthorized alien and that the sub-consultant has enrolled and is participating in the E-Verify program. The Consultant agrees to maintain this certification throughout the duration of the term of a contract with a sub-consultant.

The State may terminate for default if the Consultant fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

45. [Reserved]

46. Assignment of Antitrust Claims.

The CONSULTANT assigns to the State all right, title and interest in and to any claims the CONSULTANT now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

[Remainder of Page Intentionally Left Blank]

Exhibit 7 Standard Contract Terms

Version 07-24-2015

RFP: **

Non-Collusion. The undersigned attests, subject to the penalties for perjury, that he/she is the CONSULTANT, or that he/she is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the CONSULTANT attests to compliance with the disclosure requirements in IC 4-2-6-10.5

In Witness Whereof, the CONSULTANT and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

CONSULTANT

STATE OF INDIANA
Department of Administration

President

Lesley A. Crane, Commissioner (For)

Date: _____

Date: _____

State Budget Agency

Jason D. Dudich, Director (For)

STATE OF INDIANA
Indiana Department of Transportation
Recommended for approval by:

Date: _____

Steven Duncan, Director
Contract Administration

Approved as to Form and Legality:

Date: _____

Curtis T. Hill, Jr.,
Attorney General of Indiana (For)

Executed By:

Joseph McGuinness, Commissioner
Indiana Department of Transportation (For)

Date Approved: _____

Date: _____

Prepared by:

Exhibit 8

**Consultant Contracts
Profit Calculation Worksheet**

<u>Additives</u>	<u>% Add</u>	<u>Select</u>	<u>Base =</u>
	<u>On</u>		7.00%
Complexity			
Low	0.0		
Low/Mid	0.5		
Mid	1.0		
Mid/High	1.5		
High	2.0		0.00%
Cost			
>\$10,000,000	0.0		
>\$2,000,000 & <=\$10,000,000	0.5		
>\$500,000 & <=\$2,000,000	1.0		
<=\$500,000	1.5		0.00%
Duration			
<3 years	0.0		
>=3 years & <5 years	0.3		
>=5 years	0.7		0.00%
Overhead			
>190%	0.0		
>180% & <=190%	0.7		
>160% & <=180%	1.4		
>120% & <=160%	2.1		
<=120%	2.8		0.00%
		Calculated Total	7.00%
Minimum Possible Rate			
7.0%			
Maximum Possible Rate			
14.0%			

Exhibit 8 - Complexity Levels

Low:

- On-call contracts that do not include preparation of construction plans.
- Traffic Data Collection and Forecasting
- Environmental Document Preparation –CE/Section 4(f)
- Environmental Services 5.4 to 5.12
- Topographic Survey Data Collection
- Right of Way Plan Development
- Training
- Construction Inspection
- Shop Plan Review
- Non-bridge inspection services
- Bridge Load Capacity Rating and other Bridge Analysis/Testing
- Operational staffing (such as for TMC dispatch)
- Assistance Program Services

Low/Mid:

- On-call contracts that include preparation of construction plans.
- Systems Planning
- Non-Complex Traffic Capacity and Operations Analysis
- Non-Complex Roadway Design
- Level 1 Bridge (inspection and design)
- Traffic Design 10.1 to 10.6
- Subsurface Utility Engineering

Mid:

- Environmental Document Preparation -EA
- Traffic Safety Analysis
- Studies requiring special expertise.

Mid/High:

- Level 2 bridge (inspection and design)
- Complex Traffic Capacity and Operations Analysis
- Complex Roadway Design

High:

- Environmental Document Preparation -EIS
- Multilevel interchange design
- Level 3 bridge (inspection and design)

Exhibit 9 – Early Notification Letter

	INDIANA DEPARTMENT OF TRANSPORTATION	
	<i>Driving Indiana's Economic Growth</i>	
100 North Senate Avenue Room Nxxx Indianapolis, Indiana 46204	PHONE: (317) xxx-xxxx FAX: (317) xxx-xxxx	Eric Holcomb, Governor Joe McGuinness, Commissioner

DATE

CONSULTANT NAME
c/o Consultant Contact Name
Consultant Street Address
Consultant City, State Zip

Re: Identify Project
Consultant Contract No. _____

Dear Mr./Ms. Consultant Contact Last Name:

With regard to the above-referenced contract number and pursuant to Chapter 9 of INDOT's Professional Services Contract Administration Manual ("Manual"), this letter serves as written notification that INDOT has determined that CONSULTANT NAME committed errors and/or omissions ("E & O") with regard to its duties, obligations and responsibilities under that contract, CONSULTANT NAME breached its agreement with INDOT and/or CONSULTANT NAME was negligent. Of particular concern, triggering significant damages to INDOT, was CONSULTANT NAME's failure to perform its duties, obligations and responsibilities correctly and/or timely with regard to _____ [INSERT HERE TYPE OF SERVICE, SUCH AS RIGHT OF WAY DELIVERY, THAT WAS NOT PERFORMED CORRECTLY/TIMELY]. CONSULTANT NAME should have avoided the E & O and any resulting costs/damages to INDOT.

INDOT seeks to recover its costs and damages from CONSULTANT NAME for its E & O. INDOT anticipates that CONSULTANT NAME's E & O may result in damages to INDOT in an amount over \$_____. The damages suffered by INDOT are continuing and a final dollar amount of the damages has not yet been determined.

INDOT requests that you acknowledge, in writing, receipt of this letter within five (5) calendar days.

As you know, CONSULTANT NAME may request an Assessment Review Meeting with me (the Project Manager) and/or a Staff Review.

At an Assessment Review Meeting, I will discuss with you my conclusions regarding CONSULTANT NAME's responsibility for the E & O and the costs/damages incurred by

INDOT as a result of the E & O. During that meeting, you will have the opportunity to respond to my conclusions.

As a result of that meeting, I may reaffirm my conclusions or reconsider my conclusions. Within fifteen (15) calendar days of the meeting, I will issue a letter to CONSULTANT NAME summarizing the discussion and summarizing my conclusions [reaffirmed or modified as a result of the discussions].

If CONSULTANT NAME disagrees with my conclusions, following an Assessment Review Meeting, or if it waived the opportunity for an Assessment Review Meeting, it may request a Staff Review.

If CONSULTANT NAME does not request an Assessment Review Meeting or a Staff Review Meeting, in the proper format and/or within the time requirements of the Manual, INDOT will consider the opportunity to request such meetings waived. INDOT may, at any time, initiate a collection process for the amount of damages suffered.

INDOT's E & O policy is described in more detail in Chapter 9 of the Manual. You also may contact me with any questions regarding the E & O process.

Sincerely,

PM Name
INDOT Project Manager

cc:

_____, INDOT Deputy Commissioner of Capital Program Management
_____, INDOT Deputy Commissioner of Operations
_____, INDOT Director and Chief Engineer of Construction Management
_____, INDOT _____ District Construction Director
_____, INDOT Chief Legal Counsel
_____, INDOT _____ District Capital Program Management Director