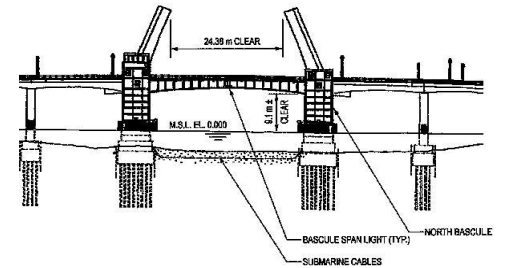


# DESIGN CONSULTANT MANAGEMENT MANUAL



DESIGN CONSULTANT MANAGEMENT BUREAU

OFFICE OF DESIGN

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

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# INTRODUCTION

Consultants play a major role in delivering the Department's annual design program. Many, if not most, of the Department's major projects are designed by these private firms. Under management by Department professionals, consultants provide about one-half of the construction dollar value of projects let each year. The success of the Department in achieving its yearly letting goal is directly related to the contributions made not only by these firms, but also by consultant managers who provide consultants with the day-to-day guidance and support necessary to work within the expectations and standards of the Department.

This Manual is intended to provide basic information on the design consultant management process for both consultant managers and for consultants. It is expected to be the primary design consultant management reference for design consultant managers and consultants and is written to provide staff with the basic information needed to do the job properly. Both consultants new to working with the Department, and firms with many years of experience, will find the information contained in this Manual valuable.

Chapter 1 provides a general description of the process by which consultants undertake NYSDOT design work. Subsequent chapters provide a more detailed look at the major elements encountered on most projects.

This edition will be updated as procedures change and as comments are received from users. Your comments are welcome and encouraged. All users in both the Department and the consultant community are encouraged to send suggestions on improving this document to the address below:

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## 1. GENERAL INFORMATION

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### 1.1. PROCESS OVERVIEW

Consultants are retained by the Department to supplement in-house design resources. Generally, consultants perform design and/or project scoping tasks for which there is insufficient Department staff or which require certain unique skills that are not available in-house.

Department staff determines which projects require consultant assistance, perform the consultant selection process, detail the work to be performed, negotiate terms of the contract, monitor consultant work performance and administer contractual issues. In order to perform this consultant oversight function, the Department has a staff of experts in various engineering disciplines, contract administration, and finance. These groups, working in concert, are the principal players in the consultant management process. The design consultant acquisition and management process is shown in Figure 1.

Generally, design consultants perform work in one or more of the following areas:

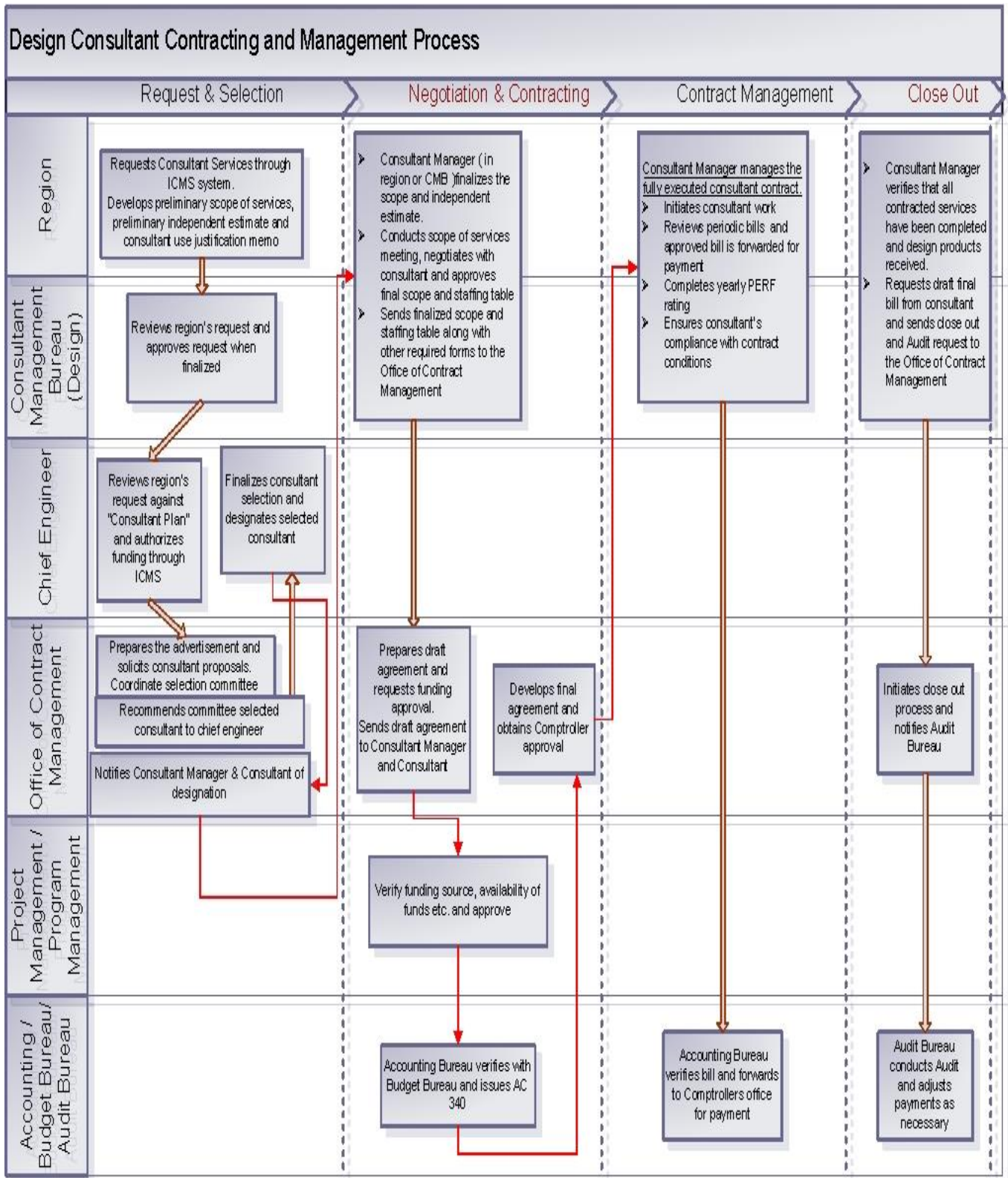
- Project Scoping
- Preliminary Design of Transportation Facilities
- Final Design of Transportation Facilities
- Construction Support
- Constructability Review
- Value Engineering

A consultant that has assisted with project scoping may be designated for design as long as proper controls are followed to assure that all scoping documents and decisions are Department products. These controls, as specified in the [Project Development Manual](#), include:

*“The project manager and project developer are always Department staff. Full reliance is not placed on the consultant or an outside agency to scope a project or prepare a completed scoping document as such a document is a Department product requiring broad based Department input and oversight. Likewise, scope related decisions cannot and will not be the assigned task of a consultant or outside agency. Department staff is solely responsible for scoping recommendations / decisions as a result of scoping activities.”*

Constructability reviews and value engineering are usually performed by consultant firms that have not been engaged in design activities on the project. That way, project details can be viewed from an independent perspective.





**FIGURE 1- DESIGN CONSULTANT ACQUISITION AND MANAGEMENT PROCESS**

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### **1.1.1. REQUEST FOR CONSULTANT SERVICES**

The process starts when a Region or Main Office program area determines that not all of its design/design support program can be produced with their staff. In order to accomplish the work, the program area identifies individual projects, or types of projects, as candidates for consultant services. The criteria for this selection are based on staffing requirements, the amount of time available for design, and the possible need for technical expertise beyond what is available in-house.

Requests for consultant services are prepared using the Office of Contract Management's Integrated Contract Management System (ICMS). This system provides for the on-line preparation and submission of the Consultant Services Request document and the draft and final versions of project advertisements. Presently, ICMS is used to prepare requests for consultant services under conventional original agreements and certain umbrella agreements (i.e. Regional Design Service Agreements). Requests for consultant services under supplemental agreements will continue to be processed outside of ICMS.

A request for consultant services is prepared via ICMS by the regional office or program area seeking assistance. When the request is received by the Office of Contract Management, both they and the Consultant Management Bureau, perform a quality/completeness review to ensure that all necessary information has been provided. This review also assures that the project is on the Department's program and that funding has been authorized.

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### **1.1.2. CONSULTANT SELECTION**

The Office of Contract Management performs administrative tasks with the intent of selecting the most qualified firm for the assignment. This often includes: placing an advertisement for interested consultants to send in proposals, confirming funding approvals, establishing consultant selection committees, drafting agreements and obtaining final contract approvals from the NYS Attorney General and the Office of the State Comptroller.

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### **1.1.3. CONSULTANT MANAGER**

Each consultant design project is assigned a consultant manager. The consultant manager may be located in a regional office or in the Main Office. The consultant manager's responsibilities are as follows:

- Assist in preparing the advertisement.
- Prepare consultant scope of services.

- Develop an estimate of project complexity.
- Prepare Department's independent staffing estimate of effort required. The estimate is both a Federal and State requirement and is used as a benchmark when evaluating the consultant's estimates during negotiations.
- Negotiate staffing levels (hours by title by task) with the consultant, along with all direct non-salary costs that are anticipated to be necessary to complete the scope of services.
- Maintain documentation of negotiations.
- Submit negotiated, final proposal to the Office of Contract Management for processing.
- Monitor agreement processing.
- Oversee consultant's timely and satisfactory performance of work in accordance with the consultant agreement.
- Coordinate consultant's work with appropriate Regional and Main Office functional units.
- Monitor progress versus contract expenditures and schedule.
- Review and approve consultant invoices.
- Negotiate extra work and prepare associated supplemental agreements.
- Obtain necessary contract close-out documents when work is completed.
- Evaluate the consultant's performance and file with the Office of Contract Management.

Each of these functions will be described in detail in subsequent chapters of this Manual.

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#### **1.1.4. DEFINING THE CONSULTANT'S WORK: THE SCOPE OF SERVICES**

Concurrent with consultant selection, the consultant manager, whether located in the Consultant Management Bureau or in a region, prepares the draft scope of services. This is a detailed list and description of tasks which the consultant will be expected to perform. It eventually will become the core element of the agreement between the State and the consultant. After completing the draft scope, the consultant manager prepares an independent estimate of the staffing required to accomplish each task and an estimate of the complexity of design. The consultant selection and scope preparation work, when completed, leads to the formal designation of a consultant.

A scope of services meeting is then scheduled with the designated consultant. At this meeting, the consultant, the Region, the Office of Contract Management (including the Civil Rights Unit), the Consultant Management Bureau, and, if applicable, other appropriate Main Office Functional Units, send representatives to review the details of the project, explain contract requirements, explain what tasks the consultant is expected to perform, what tasks the State shall perform, and review the materials that will be available at the start of work.

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### 1.1.5. NEGOTIATIONS

Using information from the scope of services meeting and the draft scope of services, the consultant then prepares and submits a first proposal to the consultant manager, the contract analyst and the designated Civil Rights Unit representative. The proposal contains the following: proposed staffing (hours by title by task); direct non-salary costs; proposed changes to the draft scope of services; a list of technical assumptions about project requirements; and, a proposed number of staff-hours related to training disadvantaged and minority individuals.

The consultant manager then compares the independent estimate with the consultant's proposal and discusses any differences with the consultant. The contract analyst and Civil Rights Unit representative also conduct preliminary reviews of financial data and cost elements, D/M/WBE participation, and any necessary provisions for training. With the submission of these comments to the consultant, a negotiation process takes place.

When agreement is reached the consultant submits a final proposal (i.e. - a proposal satisfactory to the Department). The contract analyst verifies that the consultant's proposal includes appropriate and accurate data, checks wage rates, audited overhead rates, and direct non-salary costs. If the consultant's proposal is within the Department's bottom-line cost estimate, the contract analyst then develops a formal agreement and arranges for funding approvals. If not within the bottom-line estimate, cost negotiations are conducted by the contract analyst.

The agreement will consist of standard boilerplate articles, a signature page, the executive summary, location map, scope of services, standard State and Federal provisions, exhibits (A - titles, salaries and staffing for the prime consultant; B - direct non-salary costs and subconsultant costs; C - cost summary; D - sample cost control report; E - additional standard provisions), a funding breakdown, and prevailing wage information.

After the agreement is fully executed (signed by the State Comptroller), the consultant manager conducts a "Get-Start" Meeting with appropriate Department staff and the consultant. This meeting formally initiates the consultant's work effort. The consultant is provided with all project materials that will be used in design and usually includes available mapping, reports, and survey data. If the Get-Start Meeting is held prior to the agreement being fully executed, then this is referred to as an "early start" (See [Section 4.2. Procedure for Starting Design Work Prior to Final Approval of the Agreement](#)). "Early Starts" are granted only occasionally on a case by case basis.

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### **1.1.6. THE CONSULTANT AT WORK**

As the work progresses, the consultant manager's responsibilities include a general oversight of the consultant's progress. Acting as the Department's consultant liaison, the consultant manager monitors work progress, provides the consultant with materials necessary to perform the work, distributes work products within the Department for review, coordinates review comments, oversees the resolution of internal conflicts, and answers the consultant's questions about procedures and policies. The consultant manager must be fully aware of the project requirements and of the consultant's progress.

Each month, the consultant submits payment invoices, progress statements, and cost control reports. The consultant manager reviews each of these, and if satisfactory, obtains their supervisor's approval of the invoice and submits the necessary copies to the Contract Payment Unit for consultant reimbursement. If problems are encountered, the consultant manager seeks resolution with the consultant.

During the course of work, the consultant may be requested to perform tasks which are not included in the scope of services. This is referred to as "extra work". When this occurs, the consultant is to notify the consultant manager prior to performing the work. The consultant manager, acting in concert with the program area liaison, decides if the work is necessary, confirms that the tasks are not included in the original scope of services, and subsequently directs the consultant to submit an extra work proposal. The consultant manager then negotiates with the consultant to reach agreement on staffing and direct non-salary costs. The consultant manager contacts the program area liaison to determine the availability of funds for the extra work.

Every six months, the consultant manager evaluates the consultant's performance. This performance evaluation, or rating, is used by selection committee members when considering new consultant designations. Performance evaluations should also be submitted any time there is significant change in the consultant's performance, either better or worse.

The effective management of consultants is vital for producing high-quality design products within reasonable schedules. The appropriate level of involvement by in-house staff in the management of consultants is a balance between no involvement and total control of consultant's planning and decision making. Consultants are licensed professional engineers and have been selected through a qualification-based procurement process and should be expected to deliver designs with minimum direction. However, Department staff should ensure that the consultants are making progress towards meeting the schedule and following the Department's requirements. In addition, department's Design Consultant Project Manager should coordinate review of consultant

deliverables within NYSODT and with organizations outside of NYSDOT, such as FHWA. Consultants are expected to have their own individual QA/QC plan and Department staff should only be performing spot checking. Appendix 1 provides additional guidance on various tasks performed by Design staff on a consultant designed projects.

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### **1.1.7. AGREEMENT CLOSE-OUT**

When the consultant's work effort as defined in the agreement is completed, the consultant manager initiates agreement close-out. Essentially, the close-out process ensures that all consultant work was completed, and all pertinent project materials prepared by the consultant, were submitted to the State.

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### **1.1.8. CONVENTIONAL AGREEMENTS VERSUS REGIONAL DESIGN SERVICE AGREEMENTS**

There are essentially two primary types of design consultant agreements -- Conventional Agreements and Regional Design Service Agreements (RDSAs). Conventional agreements are processed for individual projects which are identified prior to consultant selection. Major projects, and those aimed at specific groups of consultants (such as the Consultant Base Preservation Effort, or "Small Firm" consultant program) are processed as conventional agreements.

Several routine projects with consultant services valued at less than \$1.0M each, may be assigned under an RDSA. For these projects, a "parent" agreement has been executed without any specific project assignments. When a program area identifies a project eligible to be designed by an RDSA consultant, there is no need to go through the entire designation process. Rather, it can be assigned to a specific RDSA by the Office of Contract Management. Although it saves time in processing, the consultant manager must still prepare an independent staffing estimate and consultant scope of services. Negotiations are conducted in the same manner as for conventional agreements. However, wage rates and overhead are determined only once at the initiation of the RDSA.

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### **1.1.9. CONFIDENTIALITY OF INFORMATION**

Certain information developed during the course of a consultant's work is considered to be confidential between the firm and the Department. The most obvious example of confidential information is the estimated construction cost of a project at PS&E. There are several less obvious examples, including:

- **Specific information developed or used in the consultant selection process.**

This includes a firm's performance evaluations, opinions expressed during committee meetings, the results of an evaluation of the expression of interest packages and even the identification of members of a particular evaluation committee until the work has concluded and the consultant has been designated. This is confidential because the work of the consultant selection committee is to be performed without influence from others and the information provided by consultants is not to be shared with other consultants since this could affect business relationships and create competitive business related problems.

- **Information about a firm's salary rates and personnel practices.**

In a competitive business climate, Department personnel must not engage in any activity that assists one firm at the expense of another. Disclosing detailed salary information about one firm to another, and even providing this information to employees within a firm, is improper. Remember that consultant firms are businesses and we have no authority to interfere with business relationships and competitive hiring issues.

- **Consultant performance evaluations.**

The consultant performance evaluations that are developed by the consultant managers are to be used by the Department and the individual consultant. This information is not to be conveyed to any third party.

- **Future designations and consultant workloads.**

Never convey designation information during the selection process. Only the Chief Engineer can approve a designation. Until this happens, no one can be assured that a specific project will be assigned to a specific consultant. Budget issues, business concerns, workloads, selection committee recommendations, and past consultant performance are all considered by the Chief Engineer when making a designation.

The Department is steadfast when implementing this policy of prohibiting discussions about new designations. If, during the designation process, contact is made between a consultant and a Department staff person (other than an authorized member of the Office of Contract Management) concerning an ongoing designation, the Department staff person is required to report the contact and, under most circumstances, the firm will be declared ineligible for work on that project. Consultants with questions or concerns about designations must only discuss these topics with authorized personnel from the Office of Contract Management.

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## 2. CONSULTANT REQUEST, SELECTION, AND DESIGNATION

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### 2.1. REQUEST FOR CONSULTANT SERVICES

The preparation and submission of a request for consultant services by the region/program area initiates the design consultant acquisition process (DCAP). Requests for Architectural and Engineering consultant services are prepared using the Office of Contract Management's [Integrated Contract Management System \(ICMS\)](#). ICMS is able to accommodate requests for consultant services for all currently identified projects and work types. ICMS supports Process I selections (evaluation and scoring of factors by committee members) and Process II selections (evaluation and scoring of factors first by an automated system and then by committee members). ICMS can also accommodate requests where special factor questions and/or oral presentations are to be used in the selection of a consultant. The information required for completing ICMS is necessary for the following reasons:

- Confirms the type of consultant agreement for the project.
- Identifies the office and individual responsible for the project.
- Enables the consultant manager to begin preparation of the consultant scope of services and the independent staffing estimate.
- Begins the designation process.
- Ensures that a reasonable level of funding has been authorized by the region.
- Identifies potential project- related problems.
- Identifies division of work between NYSDOT staff and consultant staff.

The ICMS forms are menu-driven and for the most part, self explanatory. If required information is not available or easily obtained, it should be noted in the request.

There may be rare instances when ICMS does not appear to adequately accommodate a request for consultant services for a typical services or new work or project type. In those instances, the Region/Program Area should contact Contract Management for assistance.

In order to proceed with a consultant request, an approved Attachment A or B funding form for the project must be obtained and submitted to the Office of Contract Management. An explanation of the required use of these forms can be found at [Budget Bulletin B-1184](#).



A required item necessary for processing a consultant request and not currently included in ICMS is the *Consultant Justification memorandum*. Instructions for completing this memorandum are on the Consultant Management Bureau web site. The completed Consultant Justification memorandum can be e-mailed to the Consultant Management Bureau, or inserted on page 4 (Supporting Information) on the ICMS form. See [justmemo.doc](#) for the instructions and sample memos or navigate to Office of Design, *Policy and Procedures Manual*, download [Page, 5.1 Guidelines for Selecting Projects to be designed by Consultant](#).

One of the most common problems associated with requesting a consultant via ICMS is the timeliness of the request. For a project being progressed by a conventional agreement, allow at least nine months between the submission date and the desired consultant get-start date. A six month period should be anticipated for an RDSA eligible project. There is very little slack time in the process and late submissions run considerable risk of not having a consultant available by the desired get-start date.

The status of the project for federal involvement is an important entry in ICMS. FHWA allows States which have approved procedures to act on their behalf in granting project approvals, a process known as Certification Acceptance Exemption (formerly known as Certification Acceptance). Projects which involve federal funds, not processed in this manner must be approved by FHWA, and are classified as, Non-Exempt (formerly known as Non-Certification Acceptance). Non-Exempt project agreements must be approved by FHWA prior to any work being performed or federal reimbursement is jeopardized. The status of a particular project is determined by the highway system classification on which it is located and the estimated construction cost. Non-Exempt projects are generally limited to the Interstate system, but may include projects of national significance as determined by FHWA.

The following are helpful tips when inputting a request via ICMS:

- Keep your cursor to the far right when scrolling up or down -- if you scroll through one of the data fields on the form, it will change a selection in the field and you may not realize it.
- ICMS times a user out after 30 minutes. If you have not saved your work, you will lose it after the 30 minutes and you will have to start over with inputting. Thus, the user should periodically scroll down the far right side of the screen and click the save box. In order to avoid being timed-out, the user may want to first type the input information as a WORD document and then copy and paste into the proper ICMS data field.
- If the user has two or more consultant requests that are similar, the user can log onto ICMS, and then minimize the application and log onto ICMS a second time. This gives the user the opportunity to copy and paste from one form to another.

Consultant Management Bureau staff is available to assist in answering questions regarding consultant requests.

After the region/program area completes the consultant request and it is approved, the Office of Contract Management will then send an advertisement e-mail notification out to the preparer of the consultant advertisement. The preparer of the advertisement should pay special attention to the project description since consulting firms make a decision on whether to apply for the project based on the description, and also on which subconsultants may be utilized in cases where the prime does not have expertise in a specialty area. Weights for the special questions come from the weight in 1A. The weights (%) in front of the factors with Ms and Es in front of them, when added together, must equal 100 % (Ms+Es=100%). As guidance, very few projects ever exceed a total of 15% for all the Es when the % weights for the Es are added together.

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## **2.2. CONSULTANT SELECTION**

### **2.2.1. INTRODUCTION**

The Office of Contract Management administers the consultant selection process. One of their primary functions is to initiate and develop agreements with private design firms. In support of this role, the consultant manager must maintain open communication with them and support their efforts.

The submission of the ICMS electronic forms or HC-190 initiates the consultant selection process for a design project. This Section provides an overview of Contract Management's function, and describes the selection process for both conventional agreements and regional design service agreements (RDSA's).

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### **2.2.2. THE ROLE OF THE OFFICE OF CONTRACT MANAGEMENT**

The Office of Contract Management serves a key role in obtaining design services from private engineering firms. These services include: term agreements for surveying services (TASS); design of transportation systems (highway, bridges, railroads, etc.); construction inspection; bridge inventory & inspection; environmental term agreements; and construction support services (design support during construction).

Two Units of the Office of Contract Management perform this activity, the *Designation Unit*, and the *Consultant Negotiation Management Unit*.

The *Designation Unit* processes regional/program area requests for design services by advertising the Department's need to obtain consultant services, administering the process used to select the most qualified firm from those indicating an interest, and maintaining the consultant evaluation system.

The *Consultant Negotiation Management Unit* develops the actual agreement that incorporates the general agreement requirements (boiler plate articles), and they insert both the consultant manager's scope of services and the agreement cost components. They also obtain the necessary approvals required to execute the agreement and provide contractual assistance throughout the duration of the agreement. Further, they process supplemental agreements and close-out the agreement after the consultant work is completed. ([See Section 3.11. Role of Office of Contract Management](#) for a more detailed explanation of their role).

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### **2.2.3. SELECTION PROCESS**

There are essentially two different types of consultant agreements for design services--- **conventional agreements** and **regional design service agreements** (RDSA). Conventional agreements are processed for individual projects and are requested either via ICMS (electronic) or using an HC-190 (non-electronic). Larger, moderately complex or complex projects, and those aimed at specific groups of consultants such as the *Consultant Base Preservation Program* (also known as the "Small" firm program), are usually processed as conventional agreements.

Several routine projects that are generally each less than \$1.0 million in design cost may be assigned under an RDSA. For these projects, a "parent agreement" is first executed without any specific project assignments. When a region/program area identifies a project eligible to be assigned to an RDSA, there is no need to go through the entire designation process thus saving processing time. Rather, it can be assigned by Contract Management to a specific RDSA. Also, items such as wage and overhead rates are negotiated only once with the "parent" agreement, again saving time. The consultant manager's tasks (i.e. scope of services and independent estimate preparation, negotiations, monitoring, invoicing, close-out) are essentially the same as for a conventional agreement.

#### **Conventional Agreements**

Consultant selection begins after the consultant request has been approved and an advertisement has been prepared. The advertisement is published in the *NYS Contract Reporter* and requests consultants interested in providing design services for a particular project to submit a letter of interest. For A/E contracts, Contract Management sends a Request for Qualifications (RFQ) to the consultants that have submitted letters of interest, and requests that they submit their qualifications in a formal *expression-of-interest (EOI)*. For non A/E contracts, Request for Proposals (RFP) are sent to consultants.

The EOI is submitted electronically and consists of the following standard forms: Section I, NYSDOT Form 255 and Section II, NYSDOT Current Workload Disclosure form (CONR386). This information is required for the prime and each proposed subconsultant. A description of the services the

subconsultants are to perform and their proposed percentage of participation are provided. NYS Disadvantaged/Minority/Women's Business Enterprise (D/M/WBE) certifications for each applicable firm are included in the EOI if appropriate.

After the EOIs are received, Contract Management determines whether the One or Two Committee process is appropriate and establishes a consultant selection committee(s). One committee is used for most routine or moderately complex projects. Two committees may be used for unique or complex projects. Contract Management and committee members utilize ICMS when reviewing and scoring the EOIs.

- **One Committee Process:** The committee member (typically three to four members, SG 27 and above for projects greater than \$1.0million; SG 24 and above for projects less than\$1.0 million)) review the consultant's expression- of- interest and complete a rating form for each firm. Contract Management analyzes the rating forms, conducts committee meetings as necessary to resolve rating conflicts and develops a list ranking the consultants in their order of qualification.
- **Two Committee Process:** The use of this has been minimized in recent years due to the increased cost burden it puts on the consultant teams with only one winning firm. The first committee's task is to develop a short-list indicating generally, the three most qualified firms. This short-list is submitted to Executive Management for approval (additional firms may be added before approval). Once the short-list is approved, Contract Management requests the selected firms to prepare and submit a technical proposal and, if deemed necessary, asked to make an oral presentation. The second committee (typically three to four members, SG 27 and above) is assigned the task of selecting the most qualified firm after reviewing the technical proposals (and oral presentation in selected situations).

After the selection committee(s) determines their choice of firms, Contract Management reviews other selection factors (i.e. work load, past performance) and then develops a list ranking the consultants in their order of qualification. The list and recommendation for designation are submitted to executive management for review and approval.

### **Regional Design Service Agreements**

This type of agreement allows the Department to retain a consultant to provide design services for multiple, small scale, routine or moderately complex projects, on a regional basis, in a fairly rapid manner.

A *parent agreement* is established with the consultant that allows them to receive future project assignments within the assigned region. The total value of a parent agreement (i.e., the total of all project assignments plus any supplemental agreements) is not to exceed a certain pre-defined threshold--- usually \$4.0 million. Some parent agreements may have lower values, depending on regional needs. Projects can be assigned to the parent agreement until approximately 80% of the total value is reached. As an example, for a parent agreement with a \$2.5 million limit, assignments can be made until the total design cost of all of the projects is \$2.0 million. The remaining \$0.5 million is reserved for future supplemental agreements. The Department is not obligated to fill the parent agreements to the maximum limit. Separate agreements are developed for each project assignment made to the parent agreement that define the scope and design cost estimate for each individual assignment

Consultant selection for an RDSA parent agreement follows the same process as for a one-committee conventional agreement, except that negotiations are limited to salary and overhead rates.

Once the parent agreement is in place, individual project assignments can be made. When the region is ready to initiate a particular project within an RDSA, they submit a request for consultant services via ICMS. Processing is the same as for a conventional agreement, except the signatures of both the NYS Comptroller and NYS Attorney General are not required. Thus, the process generally moves quicker than for a conventional agreement.

Another option for securing consultant services is by means of a *purchase order*. The types of services that may be covered by a purchase order should be one-time in nature with a one-time payment upon completion. The cost of the services should be no greater than \$50,000. Contract Reporter advertising requirements would apply if the services are over \$15,000. Additional information pertaining to the use of purchase orders can be obtained at (<https://www.dot.ny.gov/bids-and-lettings/commodities-and-services/general-info>).

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### **2.3. CONSULTANT DESIGNATION**

Designation of a consultant is an executive management decision. Likewise, should it become necessary, any termination or de-designation of a consultant must be approved by executive management (i.e. Chief Engineer).

After executive management reviews the ranked list of consultants, they make the final determination as to which consultant will be designated for the project. The designation determination is then forwarded to the Designation Unit of the Office of Contract Management.

The Designation Unit's initial tasks after consultant designation include: notifying the consultant of their selection, providing them with a copy of the draft scope of services and scheduling a scope of services meeting.

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## **2.4. CIVIL RIGHTS COMPLIANCE FOR DESIGN CONSULTANTS**

The Office of Civil Rights has a primary mission to take affirmative action steps to ensure that all citizens have equal access to employment in projects that are sponsored by the Department. This access is made through recruitment, training and promotion of the disadvantaged, minorities and women.

Regarding the Department's Engineering Division, the Office of Civil Rights serves a principal role in ensuring that the consultant design program complies with NYSDOT policies and both federal and state laws regarding affirmative action.

The two key programs administered by the Office of Civil Rights that involve consultant services are: The *Disadvantaged / Minority / Women Business Enterprise (D/M/WBE) Program* and *The Training Program*. The consultant manager and the Office of Contract Management's Civil Rights Units are mutually involved with these programs as follows:

### **D/M/WBE Consultant Program**

NYSDOT has established expectations for D/M/WBE firms to participate in the Department's consultant program. The Civil Rights Unit monitors compliance with these expectations of work to be performed by D/M/WBE firms. They also determine firm eligibility and maintain a directory of certified D/M/WBE firms.

In response to the Department's request for consultant design services, the prime consultant firms include within their *Expression- of- Interest*, the name(s) of the D/M/WBE firm(s) they want as subconsultants, the general tasks to be performed by each firm, and the percentage of the agreement to be completed by each firm. This information is evaluated and used in the selection of the consultant. In addition, the Department gives consideration to disadvantaged firms as prime consultants.

At the scope of services meeting, the prime consultants are instructed to provide detailed descriptions of the tasks to be performed by the D/M/WBE subconsultants. These tasks are to be meaningful and consequential *Commercially Useful Functions (CUFs)* as defined by the Department. The estimated cost to complete these tasks should equal or exceed the proposed percentage indicated in the prime consultant's *Expression- of- Interest*.

CUFs assignments, which make up the vast majority of subconsultant assignments, result in subconsultants being more visible and participating in the mainstream of project activities and being present at scoping, negotiating, get-start, and progress meetings related to the CUF. These assignments result in Department staff being more aware of the work of subconsultants. This does not however alter the present system of contracting between the State and the prime consultant by which the prime is responsible for delivery of all work of the project, in compliance with the requirements of the State.

As part of the negotiation process, the consultant manager reviews the D/M/WBE subconsultant(s) section of the proposal to ensure the tasks and estimated cost meet the above conditions.

Further, the consultant manager monitors the progress of D/M/WBE consultant throughout the duration of the agreement. If a problem occurs regarding the participation or performance of the D/M/WBE consultant(s), the consultant manager should notify the Civil Rights Unit in order to obtain assistance in resolving the problem.

### **Training Program**

NYSDOT requires prime consultants to provide on-the-job training to minorities, women and other disadvantaged persons for Department projects for select types of work tasks whose estimated staffing levels exceed predetermined limits. A guide indicating the number of people to be trained and the duration required is shown in the *Guidelines for Determining Training Requirements* located in the [New York State Department of Transportation Consultant Engineer's Training Catalog](#).

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## **2.5. SERVING ON A CONSULTANT SELECTION COMMITTEE**

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### **2.5.1. BACKGROUND**

The Department's consultant selection process is based on an evaluation of the consultant's past performance, experience, staff capabilities and their understanding of the project. This information is collected from Department records and from data provided by consultants in response to advertisements placed in the media. A committee of Department staff is assembled to review and rate each firm's qualifications.

If you are selected to serve on a selection committee, you will be provided the following information electronically via the *Integrated Contract Management System (ICMS)* for each firm:

- Consultant performance evaluations for projects with similar types of work performed by the firm within the last three years.

- An *Expression of Interest* from the consultant consisting of the following:

Section I - NYSDOT Form 255, "Architect-Engineer and Related Services Questionnaire for Specific Project", for the prime firm and an additional form for each subconsultant. This is specific to the project and contains a brief resume of each key staff person proposed to work on the project. It also gives each firm the opportunity to list relevant projects that they have worked on, and to present a brief description of how they propose to undertake the work.

Section II, - Form CONR 386, and "Current Workload Disclosure" for the prime firm and each subconsultant. This provides data on each firm's workload.

- A description of the project showing specific design features and requirements. This includes a copy of the advertisement and/or the request for proposal, and, if available, the draft scope of services.
- Rating sheets for each firm, to be completed and returned to Contract Management via ICMS.

Instructions for completing the rating sheets, and schedule dates will be provided with the above materials.

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### **2.5.2. GENERAL CONSIDERATIONS**

The overall objective of the committee work is to select the most qualified firm for the assignment which means that the rater must differentiate between the firms. The following guidelines should be considered:

- Maintain the confidentiality of the assignment. This avoids outside pressure to rate certain firms in a biased way. It is the policy of the Department that details of the assignment must not be discussed with anyone except representatives of Contract Management.
- Read the background materials provided, including the advertisement and scope of services to fully understand the project.
- Use personal experience with the firms to guide your judgment.
- Remember to question materials provided by the consultant. Use good judgment.
- Spread out the numerical limits of your rating. Don't rate in a narrow range of values.



- Check the location of the offices(s). Can the work be performed efficiently from these locations?
- Have an open mind about the assignment.
- Write a brief overview about each firm and the rating. This will help when a committee meeting is held to discuss the outcome.

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### **2.5.3. USING CONSULTANT PERFORMANCE EVALUATIONS**

Performance evaluations are the only source of information about the firms that are provided to committee members. They are the only independent record available from which to assess how a firm has performed on previous assignments. The following questions should be considered during a committee member's review of performance evaluations:

- Is the work covered by the performance evaluation similar to that which will be performed on the project? Evaluations of similar work are the best indicator of how well a firm will perform.
- Are there existing ratings for the firm? If the firm has no rating, a value of "7" is assigned to "NYSDOT Performance Rating" on the evaluation sheet.
- Are the staff and managers rated in the evaluation still with the firm? Are they part of the proposed "project team"?
- Are the ratings current? If the work was accomplished several years ago, the capabilities of the firm may have changed.
- Are the ratings consistent? One time occurrences of outstanding or poor work may not be representative of a firm's overall capability.

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### **2.5.4. REVIEWING THE CONSULTANT'S EXPRESSION OF INTEREST -NYS 255 PROPOSAL**

The consultant's proposal should explain their proposed approach to accomplish the work. Although great detail should not be expected, a familiarity with the project should be evident. Addressing the following questions may be useful to committee members:

- Does the firm demonstrate a good understanding of the project objectives?
- Is the proposal specific and does it explain how the firm will accomplish the work? Or is it generic and merely re-state information from the advertisement?

- Is the proposal reasonable?
- Is the type and amount of work allocated to subconsultants reasonable?

The information provided by the consultant will show staff experience and experience of the firm in general. It will also show resumes of proposed staff members. Remember that principals and vice-presidents rarely do the work. Therefore, concentrate on staff positions. Ask the following:

- Is the staff appropriate for the work?
- Are staff members included in the consultant performance evaluations?
- Check on staff experience. Is it sufficient?
- How long has the staff been with the firm?
- Have the firm and proposed staff completed projects of equal or larger magnitude in the recent past?
- How many years does each proposed staff member have with the firm?

Further, the proposal should identify specific work areas to be performed by subconsultants. The committee members should evaluate each subconsultant based on the firm's qualifications for the particular work that they will perform. The following is a guide for that evaluation:

- Each subconsultant should be examined in the same manner as the prime consultant. Can they competently perform their part of the project?
- Have they done the assigned work before?
- Is the work appropriate for the subconsultant?
- Have the prime and subconsultants worked together before?
- Where is their office(s) located? Can the work be performed efficiently from the proposed locations?

### 3. SCOPE OF SERVICES AND NEGOTIATIONS

An effective and successful design consultant agreement requires communicating the Department's needs to the selected consultant through a well documented scope of services, and an agreement between the Department and the consultant regarding the effort required to complete the required services. The final scope of services and staffing table become part of the legally binding contract between the Department and the consultant. It is important to clarify the scope of services as best as possible through technical assumptions to avoid misunderstanding and to manage any likely extra work as design progresses.

Negotiation between the consultant manager and the consultant will help refine the scope of services and reach an agreement about the effort, appropriate titles required to complete the services needed from the consultant, project complexity and any required direct non- salary costs (DNSC). At the end of negotiations the aim should be to have a meeting of minds between the consultant manager and the consultant regarding all aspects of the consultant agreement.

Figure 2, below, illustrates the scoping and negotiations work flow. Subsequent sections of this chapter provide more details and guidance regarding these two important steps during the consultant contracting process. The [Consultant Management QC Checklist Part 1- Consultant Acquisition](#) covers this topic and is an excellent tool to ensure compliance with all the associated process requirements and details.

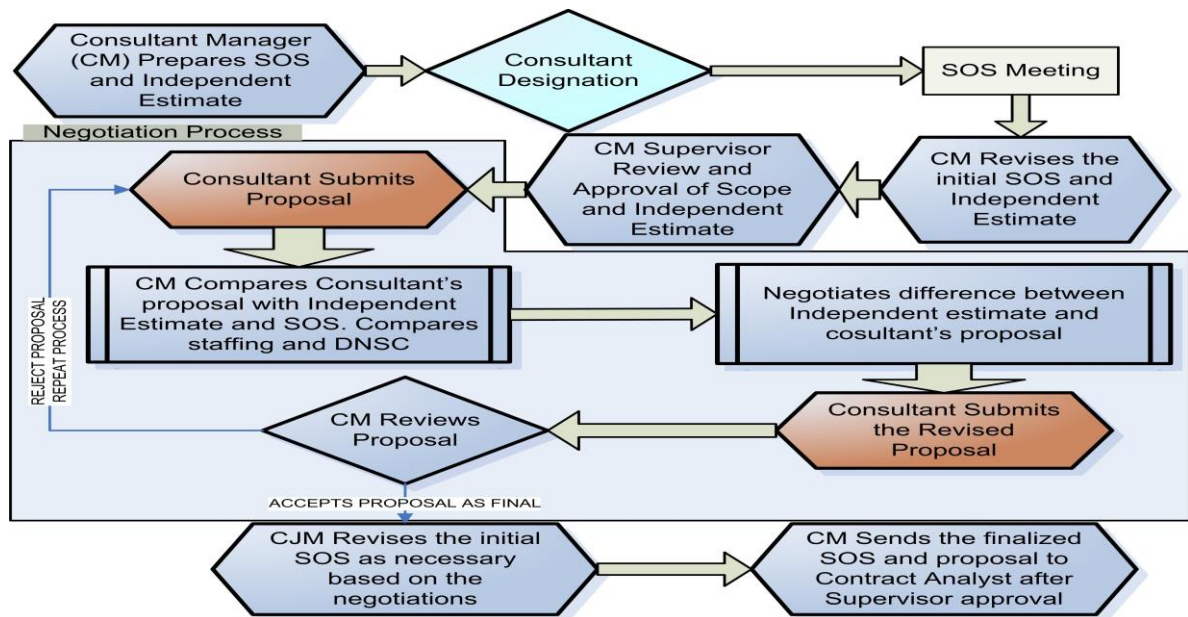


FIGURE 2 - SCOPING AND NEGOTIATION WORK FLOW

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### 3.1. SCOPE OF SERVICES

The scope of services in the consultant agreement specifies the services and products to be provided by the consultant, and also lists items that will be provided by the Department which are required to complete the consultant's tasks.

The consultant manager prepares the scope of services based on available project information and in close consultation with appropriate job managers and specialists (regional design manager, region environmental contact, Structures Division, etc.).

The scope of services must reflect work consistent with specific project requirements in accordance with applicable policies and procedures. When preparing a scope of services the focus is on clarity of intent; the scope may change during the course of the project but if the original scope is precise/specific and detailed, the necessary changes will be made without argument and uncertainty. This precision is vitally important as a backdrop for comparing the originally anticipated work with the actual work as it occurs, so that extra work can be easily identified and defined. The scope of services acts as the documentation of the mutual understanding between the consultant and the Department of the project details and the design tasks along with the technical assumptions.

The following steps should be followed when preparing a scope of services for an original agreement:

1. Assemble all available information pertaining to the project and consultant services needed. As a minimum, the documents to be collected consist of details provided at the time of consultant request through the Integrated Contract Management System (ICMS) and project documents (e.g., IPP, Design Reports).
2. Become familiar with the project by reviewing project documents and visiting the project site.
3. Obtain a copy of the "[\*Base Scope of Services \(BSOS\)\*](#) and General Instructions. The *Base Scope of Services (BSOS)* is a useful tool which provides descriptions for most tasks which may be required for NYSDOT design projects. However, it is not a substitute for engineering judgment or project familiarity. Not all tasks included in the BSOS will be required on every project. Furthermore, the consultant manager should add new project specific tasks required to be completed by the consultant. Indiscriminate use of the BSOS should be avoided.
4. Develop a first draft of the scope of services, following the *BSOS General Instructions* and referring to the information provided along with the consultant request. When sufficient information is not available to foresee the design process and associated tasks, assume the most likely scenario based on the consultant manager's experience and judgment. When choosing which tasks to include, assume the most likely work scenario wherever information is lacking. Choosing which tasks to include requires professional judgment, experience with similar situations, and knowledge of the project, the specific

task, and the design process. Whenever the uncertainty is too great for a confident choice, consult others within the Department having the specific expertise.

5. Always involve the regional environmental contact in customizing the environmental tasks (Section 5000) and involve the Structures Division as necessary on bridge projects..
6. [\*The Consultant Management QC Checklists- Part 1 - Consultant Acquisition\*](#) is a useful tool for reviewing the completeness of this first draft.
7. Review this first draft with appropriate job managers and specialists as noted above to refine it into a consistently worded and formatted scope of services suitable for estimating, negotiating, and including in the consultant agreement.
8. Continue to refine the scope of services during the negotiation to reflect agreed- upon changes. If necessary attach technical assumptions regarding circumstances and means of accomplishing tasks. The final scope becomes the legal basis for the agreed-upon staffing hours and direct non-salary cost items.
9. If the scope of services is for a federally classified Non-Exempt (Major) project, it should be forwarded at this time to the appropriate FHWA area engineer for FHWA review and approval. Additional procedures guidance for FHWA Major Projects can be found in the [FHWA MAJOR PROJECTS.RTF](#) document.

**The Department prepares the scope of services and maintains control of all edits.** Do not relinquish control to the consultant. The consultant may assist in preparing portions of the scope of services, or making agreed- upon changes to the Department's original scope of services, but a scope of services for undertaking a NYSDOT project and committing NYSDOT resources should never be prepared by a consultant.

Scopes of Services for supplemental agreements are prepared in a similar process. However, additional project information and design details are available to help define the scope of services with more certainty. ([See Section 4.8, Extra or Additional Work and Supplemental Agreement](#))

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### **3.1.1. EXECUTIVE SUMMARY**

A brief summary must be provided as a preamble to the scope of services for all consultant agreements. This summary should include, but not necessarily be limited to, a brief discussion of:

- The history of the project, including its connection with an overall program where applicable.
- The present status of the project.
- A brief description of the work included in the scope of services, and the need for the work. Include the steps in the design process that the consultant agreement will accomplish and any additional steps that will be required to complete the project.
- The projected P.S. &E. date and the estimated cost of construction.

- Any other pertinent information that would aid the reviewer in understanding the project.

The consultant manager usually prepares the executive summary. It should be only one or two pages in length and as self-explanatory and non-technical as possible.

Regarding supplemental agreements, the executive summary should indicate why the existing consultant agreement needs to be supplemented. A concise explanation of a change in scope, complexity, or character of the work is required.

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## **3.2. INDEPENDENT ESTIMATE AND PROJECT COMPLEXITY**

An independent staffing estimate is required to support the allocation of capital funds for engineering agreements and is necessary documentation for Federal or State audits. It is the basis for review of the consultant's initial proposal and subsequent negotiations (see [Section 3.7, Contract Negotiations](#)). Without an independent estimate the consultant manager cannot effectively negotiate the engineering agreement. Documented assumptions and adjustments are invaluable as future reference when evaluating and negotiating extra work claims. From time to time both State and Federal auditors review individual project files for evidence of compliance with applicable policies and procedures of the organization. This estimate is developed through a detailed analysis of the tasks required to be completed by the consultant. It serves as documentation of the State's initial negotiating position. Independent estimates are one of the auditor's prime interests.

The consultant manager prepares an independent staffing estimate of the consultant's effort in completing the scope of services, and makes a determination of the complexity of the work to be completed by the consultant. Completion of a detailed independent staffing estimate is vital to the successful and timely completion of the consultant contracting process. Careful efforts in preparing the Department's estimate will go a long way toward assuring a quality product. This requires a consultant manager with expertise in design procedures, familiarity with the project, and sound engineering judgment. The consultant manager's careful review of the project requirements during the preparation of the independent estimate also enables clear guidance to the consultant on what is expected, resulting in a quality product. All assumptions regarding schedule, complexity, methodology, reviews, product submissions or other factors are considered part of the independent staffing estimate and must be part of the archived written record.

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### **3.2.1. PREPARATION OF THE INDEPENDENT ESTIMATE**

The consultant manager prepares the initial independent estimate based on the first draft of the scope of services and *before the scope of services meeting*. After the meeting, the consultant manager revises the estimate based on any scope changes resulting from the scope meeting discussion. Since

the independent estimate is the basis for negotiations, it must be completed before the consultant's first proposal is received.

The consultant manager prepares the independent estimate on a task -by- task basis with the assistance of specialists within the Department's functional groups as necessary. For example, a region survey section can provide guidance on staffing requirements, methodology, and production rates for field survey work. Similar assistance can be obtained from regional landscape, traffic and safety, environmental analysis, and the regional structures units for work in those disciplines. Other Department consultant managers with experience in managing similar projects can also provide additional help and guidance. The consultant manager then incorporates this information in producing an overall estimate. The consultant manager's supervisor reviews the estimate and attests to its reasonableness for use as a basis for negotiation. Further, during the course of negotiations, the consultant manager adjusts the independent estimate to reflect the documented changes and assumptions adopted when negotiating the final proposal.

The staffing estimated for each task in the project scope of services should be organized according to ASCE grades for engineering titles and NICET grades for non-engineering titles. These grades are described at the following ([http://www.asce.org/uploadedFiles/Leadership\\_Training\\_-\\_New/ASCEEngGuide\\_Web.pdf](http://www.asce.org/uploadedFiles/Leadership_Training_-_New/ASCEEngGuide_Web.pdf) and <http://www.nicet.org/certificants/information.cfm>). Consultants operate in the private market and often use titles and salary rates which differ from those used by the State. The following are the typical titles used for design consultant agreements:

- Principals and Managers of firms - ASCE grades VII - IX
- Engineers and other professionals - ASCE grades I - VI
- Drafters, detailers, and technicians - NICET grades I-IV
- Scientists, economists, or other professional experts - estimated ASCE grade equivalents
- Technical Editors, writers, typists and word processor operators - no grade equivalents
- Trainee and Trainer

During the development of the initial independent estimate, the consultant manager should prepare an estimate of all anticipated direct non-salary cost (DNSC) items. Examples of typical DNSC cost items are: travel, photocopying, telephone, express and regular mail, insurance, expendable items and specialty subcontractors. The assumptions should be included in the estimate (i.e. number of field trips and the distance to the project site, estimated number of copies of a report and the number of pages per copy). The costs assigned these items are later reviewed by Contract Management for compliance with state and federal guidelines.

The consultant manager should obtain their supervisor's endorsement of the initial independent estimate before entering into negotiations. During negotiations, the consultant manager should revise

the estimate as necessary and document the reasons for the revisions. Upon completion of negotiations, the consultant manager should obtain their supervisor's endorsement of the final estimate prior to acceptance of the consultant's final proposal.

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### **3.2.2. DETERMINATION OF THE COMPLEXITY OF CONSULTANT SERVICES**

The *complexity* of the required consultant services is used to determine the appropriate overhead rate for the consultant. The consultant manager provides the contract analyst with a determination of the complexity of consultant services. Guidelines to be used for determining project complexity are can be found in the [COMPLEXITY DETERMINATION.rtf](#) document.

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### **3.3. CONSULTANT SCOPE OF SERVICES MEETING**

The designation letter sent by the Department to the consultant specifies a date, time and location for the scope of services meeting. Along with the designation letter, the consultant is provided with the Department's draft scope of services, the computer file for the proposal, and prevailing wage information. The scope of services meeting generally occurs within a week or two following consultant designation and is an opportunity to discuss details of the work, project schedule, and the Department's administrative requirements. The scope meeting is both a technical and administrative meeting. Attendees generally include the consultant manager, contract analyst, representatives from the region, and if applicable, from the Structures Division. If other groups have a particular interest in the project, they may also be invited. It is important to present the consultant with a complete description of the work and to identify any special concerns and design features unique to the project. Therefore, attendance should include those individuals that may possess that special knowledge.

The scope of services meeting is usually held in the Main Office, although meetings for individual Regional Design Services Agreement (RDSA) assignments are often held in the region. The contract analyst assigned to the project will contact the consultant manager to discuss who will chair the meeting and who will prepare the meeting agenda ([SCOPE-MTG-AGENDA.rtf](#)).

Representatives from the Office of Contract Management Civil Rights Unit attend the scope meeting and present requirements for training and compliance with D/M/WBE requirements. This usually precedes the technical portion of the meeting.

The contract analyst provides information on administrative and financial aspects of the agreement, as well as establishes a processing schedule for agreement processing activities through the final execution of the agreement by the Office of the State Comptroller. If the scope meeting is held in the region, the contract analyst will usually not attend, and the administrative aspects should be covered by the consultant manager.



At the scope meeting, the consultant manager and consultant agree on a date for submission of the firm's first (initial) proposal. Normally, the submission is within two weeks of the date of the scope of services meeting. The consultant manager should insist that the firm make this and all submissions required during negotiations on a timely basis. Lack of timeliness on the firm's part may result in de-designation. Further, as part of the scope meeting, the consultant manager is responsible for presenting an overview of the proposed project, including specific work limits, type of work involved, present conditions, materials available to the consultant - including mapping and reports, schedule requirements, and unique features or constraints. The Department and the consultant discuss in detail the required consultant tasks, technical assumptions, deliverables, direct non-salary costs, and project schedule. Measures that help define the work effort are discussed and agreed upon (e.g., number of test pits and borings, coverage of surveys, quantities of direct non-salary items). This should be done in as much detail as possible in order to permit the consultant to estimate the design effort and prepare the first proposal. The consultant may present cost reduction methods for discussion with the Department.

The consultant prepares minutes of the scope of services meeting, and sends copies to each attendee within seven to 10 days of the meeting. The consultant manager coordinates comments and requests any necessary revisions from the consultant.

After the scope meeting, the consultant is expected to prepare the first (initial) proposal using information obtained from the meeting, along with the draft scope of services. The proposal includes consultant tasks, staffing requirements by title by task, direct non-salary costs and a simple bar chart showing their projected schedule.

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### **3.4. CONSULTANT'S FIRST (INITIAL) PROPOSAL**

The consultant submits their first (initial) proposal after the scope of services meeting. Using all of the information available about the project and presented at the scope meeting, the consultant prepares the first proposal by:

- Reviewing the draft scope of services and editing individual tasks if necessary. Any changes to the draft scope discussed at the scope meeting must be clearly marked and presented to the consultant manager with an explanation.
- Preparing a list of technical assumptions (if needed) to be added to the contract. These assumptions further clarify and explain the intent of individual tasks.
- Developing a staffing table, showing each task, the staff titles proposed and the number of staff hours associated with each task.
- Listing the direct non-salary costs (DNSC) associated with the project. This includes equipment purchases, subcontractor costs, travel costs and printing.

- Assessing the complexity of the project according to the guidelines shown in [Section 3.2.2](#). The consultant manager also assesses and confirms the project complexity with the consultant.
- Contacting the consultant manager (or designated contact person) for resolution of any questions that arise during proposal preparation.

The proposal should be submitted electronically, in PDF format, directly to the consultant manager, the regional design manager, the contract analyst, and Contract Management's Civil Rights Unit representative. The proposal should include the following for the prime and each subconsultant:

- Technical assumptions
- Salary schedules, with titles and ASCE/NICET grades
- Staffing tables with tasks, titles, and hours
- Summary of Direct Non-Salary Costs, (DNSC)
- Summary page listing the Direct Technical Labor, (DTL), DNSC, estimated overhead, estimated fixed fee, and total amounts
- Any supporting materials requested at the scope of services meeting that require review by the consultant manager or other involved parties

The items listed above are included in a typical proposal for a *cost plus fixed fee* agreement. If the agreement is a *specific hourly rate* agreement, the proposal would only include salary schedules, DNSC, and any additional costs for specialized equipment or machinery required for the project.

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### **3.5. TIMELINESS OF SUBMITTING PROPOSALS**

The consultant manager and the consultant should agree upon dates for the submission of the initial proposal and all subsequent revisions. The amount of time scheduled for negotiations should be commensurate with the scope of work. The consultant manager should insist that these mutually agreed upon dates are met. Further, processing of the consultant agreement after negotiations can take anywhere from two to six months and all involved parties should be cognizant that overall contracting process time has an impact on the project design schedule. Time is of the essence in getting the consultant's work under way and meeting project schedules. Until an agreement is fully executed, the consultant's designation is tentative, and firms that are non-responsive to the schedule should be reminded of this. If a consultant is not providing adequate attention to schedule, then the consultant manager should discuss the situation with their supervisor, and subsequent actions such as notifying the consultant's executive management, preparing a formal letter documenting the inaction, etc. may have to be taken. Similarly, the consultant manager should complete their reviews in a timely manner.

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### **3.6. REVIEW OF CONSULTANT PROPOSAL**

The consultant manager reviews the consultant's proposal by comparing it to the consultant manager's independent estimate. This includes checking for compliance with and completeness of the following:

- Format and content of the proposal is acceptable.
- Tasks are correct and technical assumptions are reasonable.
- Staffing effort for each task is reasonable.
- Distribution of hours by title and task is acceptable.
- DNSC reflect project requirements and are reasonable.
- Project complexity agrees with the consultant manager's complexity assessment.

Since each project is unique and has its own set of technical assumptions and complexities, the consultant manager must exercise *engineering judgment* in evaluating proposals. Any differences between the independent estimate and the consultant's proposal must be approved by the consultant manager and documented in the *Negotiations and Agreement File (White)*. If the consultant agreement is managed through the Main Office, the consultant manager will contact the regional design manager for their comments on the proposal. The consultant manager will also advise the regional design manager of any changes to the proposal or the independent estimate resulting from the negotiation process.

If the consultant manager has identified any areas of the proposal that do not reasonably correspond to their independent estimate and / or the original scope of services, the consultant is contacted and the areas of concern are discussed and resolved through negotiations. Although rare, if the consultant manager recommends approval of the first proposal, it certifies that the tasks, assumptions, staffing effort, title distribution, and DNSC, as submitted, are *reasonable and necessary to complete the assignment*.

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#### **3.6.1. REVIEW OF DIRECT NON SALARY COSTS**

The prime consultant and each subconsultant should submit their own summary sheet of direct non-salary costs (DNSC), included in the proposal. The consultant manager must ensure that all DNSC are reimbursable and project specific. Typical DNSC items include, but are not limited to:

- Travel per diem
- Lodging
- Vehicle mileage or rental car and gas purchase
- Printing costs

- Insurance premiums
- Subcontracted items such as soil boring operation, hazardous material investigation, underground utility location service, and project labor agreement related work.

Items such as personal computers and survey equipment are not considered project specific, but rather tools of the trade, and are covered by the firm's overhead allowance. All items listed in the proposal must be necessary to perform project tasks and estimated costs should include current reimbursable rates. Listed quantities should equate to those listed in the scope of services and/or be the best estimated number based on available information. All costs for subcontractors or unusual items should be listed separately and be a reasonable estimated cost for that service or item. If any DNSC is found to be unreasonable or unnecessary, then they should be removed from the proposal or discussed during negotiations.

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### **3.7. CONTRACT NEGOTIATIONS**

The agreement between the consultant and the State is developed through negotiations. The objectives of this process are to: ensure that all of the project requirements are clearly understood by the consultant, that the work will be performed in the most efficient manner, and the cost and staff effort allocated for the work is reasonable.

Negotiations begin after the scope of services meeting and after the consultant submits the first (initial) proposal to the consultant manager.

*A Procurement Lobbying Law* was enacted by NYS in 2006 to limit the potential for impropriety in State procurement processes. During the period between a request for services and final approval of a service agreement, the Law allows only "Designated Contact Persons" to negotiate ("to influence the procurement"). These contacts can include the consultant manager, contract analyst, and the consultant's project manager. Each is required to thoroughly document their incremental and collective negotiated changes to the original scope of services and to the independent estimate.

Negotiations require the same level of technical knowledge needed to prepare the consultant scope of services and the independent estimate. Prior to the start of negotiations, the consultant manager should:

- Make a list of the tasks to be discussed.
- Evaluate the consultant's assumptions.
- Discuss the work with other experienced staff.

Negotiations are conducted in many different ways. If possible, conduct negotiations through the use of e-mail or over the telephone. This is usually possible for simple tasks which do not require too many

engineering assumptions (i.e., number of meetings, staffing levels required for project familiarization, direct non-salary costs).

A few e-mail exchanges or telephone calls might resolve some issues, while a meeting might be required to resolve others. This is a communication process that involves professional judgment and knowledge. Any tasks which have a large difference in staffing and/or duration (between the consultant manager's estimate and the consultant's proposal) should be negotiated in person.

The consultant manager and the consultant must document all communication to show the transition from the independent estimate to the final negotiated proposal. (Most objectives of New York State's Procurement Lobbying Law are fulfilled when negotiated decisions are thoroughly documented.) When comparing proposals, the consultant manager may discover that proposed staffing for some tasks are considerably below the level estimated in the independent estimate. In this situation, it is important for the consultant manager to determine that the consultant clearly understands the tasks and the method for accomplishing the work.

The consultant manager must also look at the titles being used for the individual tasks. For example, in most cases consultant principals do not perform engineering/design tasks. However, a principal in a small firm could also be a designer, but in this case he/she would be functioning in a salary appropriate for the job being performed. The title and staffing table should reflect this.

Direct non-salary costs should be reasonable in quantity and unit cost. Some types of direct non-salary costs such as mileage, per diem, and lodging expenses are set by pre-established NYS rates. Other expenses such as the quantity and costs associated with copying, telephone usage, and mailings are based on the consultant manager's judgment and experience. The contract analyst will subsequently review these rates for consistency with the NYS Comptroller's guidelines.

During negotiations, either the consultant's or the consultant manager's estimate (or both) are adjusted until the figures agree. This is where a well- documented independent estimate facilitates the negotiation. For tasks where the hours differ, both parties explain the assumption on how the task will be performed and their reasoning behind the estimated hours. Confidence in one's assumptions and knowledge of staffing will help the consultant manager reach an agreeable settlement.

If at any time during negotiations a new subconsultant is added to the team, the consultant manager should notify the contract analyst so that necessary administrative and pre-award requirements can be completed without delaying the processing of the agreement. The consultant manager also has responsibility to assure that the subconsultant can perform the tasks being assigned to them and that D/M/WBE commitments are being met.

The project complexity rating is also negotiated - according to the reference materials shown in [Section 3.2.2](#).

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### **3.8. IMPASSE**

The State and consultant can reach an impasse over an item in the proposal, or over the entire project proposal. If the impasse is over an item, it should be large enough to warrant the time and effort to resolve it. The consultant manager should notify his supervisor and the firm's upper management of the impasse issue, as well as the regional design manager and Office of Contract Management if the impasse will affect the schedule.

When working to resolve the impasse issue, the consultant manager should invite upper management and department experts to the meeting, since their presence tends to weigh heavily on productive negotiating. If the impasse item can be performed or furnished by others, including state forces, it should be reassigned and removed from the scope of services. If the work item can be performed in a different manner that eliminates or reduces the need for the impasse item, the scope and technical assumptions should be revised accordingly. If the issue revolves around costs, the consultant should be reminded that all work is to be performed in a timely and cost efficient manner and poor cost management will be reflected on their performance evaluations.

If a mutually agreeable total project estimate cannot be reached through negotiations the consultant manager has the option of requesting that the firm's tentative designation be withdrawn. This is a very critical decision, with consequences to the consultant, and it must not be used as leverage during negotiations. Before any mention is made to the consultant about the possibility of de-designation, the situation must be discussed with the consultant manager's supervisor, the Director of the Consultant Management Bureau and the Director of the Office of Contract Management.

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### **3.9. FINAL PROPOSAL**

Once an agreement has been reached relative to the project's complexity, scope, staffing hours, and direct non- salary costs, the consultant manager requests the prime consultant to prepare and transmit the final proposal. After review of the submission to ensure consistency with negotiations, the consultant manager consolidates and arranges chronologically, all documentation material into the Negotiations and Agreement File (White). This documentation is transmitted by memo to the section supervisor. A sample transmittal memo is shown in the [MEMO TO SUPERVISOR AT END OF NEGOTIATIONS.rtf](#) document..

After obtaining the supervisor's approval of the negotiations file, the consultant manager transmits the final proposal to the Office of Contract Management (Att: contract analyst). This transmittal will include the final scope of services including technical assumptions, staffing tables, executive summary,

complexity rating (for the consultant and sub consultants), estimated mid point of the proposed tasks, a small map showing project location, and completion schedule. The consultant's proposal is submitted in electronic and/or paper format as required by the contract analyst and guidance provided by Contract Management. The consultant manager also sends a copy to Contract Management's Civil Rights representative and to the prime consultant. A sample memo is shown in the [REACHED-AGREEMENT.rtf](#) document.

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### **3.10. EXECUTED CONSULTANT AGREEMENT**

The consultant agreement is a legally binding contract between the Department and the consultant. Consultant managers should familiarize themselves with the entire contract document to ensure full compliance with all the requirements. Some of the sections of the contract document are standard language for all contracts however this does not minimize the importance of these clauses. Consultant managers have the responsibility to ensure that the consultant adheres to all the requirements of the agreement, not just completion of the scope of services in accordance with the negotiated staffing and direct non- salary costs.

While each agreement should be considered unique, typical design consultant agreements contain the following: First Page, Articles, Signature Page, Executive Summary, Location Map, Schedules, Exhibits, General Provisions and Wage rates. The contents of the contract document are organized in the following manner

- First Page - Shows the State Comptroller contract number, signature date
- Articles 1- 25
  - Article 1 - Standard Practice requirements
  - Article 2 - Provision for Payment
    - IA - Direct Technical Salaries. Not to exceed maximum hourly rates and subject to audit. Principals and professionals time reimbursed if they also charge similarly to other projects in same manner.
    - 1B - Overtime. Needs prior approval from the State and is subject to audit.
    - II A - DNSC. Subject to audit.
    - IIB - Subcontractor.
    - IIC - Subconsultant
    - IIIA - Overhead - Maximum overhead rate set in this section
    - IV - Fixed Fee
    - V - Maximum Amount Payable (MAP)
    - VI - Limit of funds
    - VII - Trainee

▪ VIII - Completion Date

- Article 3 - Contract Documents - Identifies/lists documents included in the contract.
- Article 4 - Right to inspect consultant's accounting and office
- Article 5 - Partial Payments. Consultant shall be paid monthly progress payments. Invoices are subject to approval of the State's representative. Requirement to include sub consultants invoices in a timely manner.
- Article 6 - Final Payment
- Article 7 - Extra Work
- Article 8 - Liability: Consultant shall be responsible for all damages to life and property due to negligence, errors or omissions of the prime or sub or sub contractors.
- Article 9 - Worker's Compensation and Liability Insurance: Requires the consultant to maintain coverage for work completed by prime and sub for work required under this agreement
- Article 10 - Data sharing: All data with Consultant or State should be shared without expense to either party
- Article 11 - Disposition of Plans, Estimates and Other data
- Article 12 - Damages and Delays
- Article 13 - Termination
- Article 14 - Notices
- Article 15 - Notice of Bankruptcy, Venue, Audit
- Article 16 - Death or Disability of the Consultant
- Article 17 - Code of Ethics
- Article 18 - Independent Contractor
- Article 19 - Covenant against contingent fees
- Article 20 - Transfer of Agreement
- Article 21 - Proprietary Rights
- Article 22 - Subcontractor/ Subconsultants
- Article 23 - Certification required by 49CFR, Part 29
- Article 24 - Certification Required by 40CFR 1506.5 (c)
- Article 25 - Certification for federal aid contracts
- Article 26 - Responsibility of the consultant engineer
- Article 27 - Security and Confidentiality of Information
- Article 28 - Vendor Responsibility
- Article 29 - Compliance with Consultant Disclosure
- Signature Page - Signatures by Office of Contract Management (recommended by), Department of Transportation, Consultant, Attorney General and the State Comptroller
- Executive Summary



- Location Map
- Schedule A-B
  - Schedule A - Scope of Services including technical assumptions
  - Schedule B - Standard Clause for all New York State contracts
- Exhibits A-E
  - Exhibit A - Prime consultant salary schedule and staffing table
  - Exhibit B - Prime consultant estimate of DNSC and all sub consultant salary schedule, staffing table and DNSC
  - Exhibit C - Summary showing all estimated costs
  - Exhibit D - Sample Cost Control Report
  - Exhibit E - Allowable overhead and direct reimbursement under FAR principles and other NY state policies and guidelines such as Per Diem, New York State Business promotion, Omnibus Procurement Act and maximum annual individual compensation.
- Funding Breakdown - Table showing various funding sources used. This is provided for informational purpose only and is not technically a part of the legal agreement.
- General Provisions covering workers of public work contracts
- Prevailing wage rates

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### **3.11. FINAL AGREEMENT APPROVAL PROCESS- ROLE OF OFFICE OF CONTRACT MANAGEMENT**

Upon receiving the approved final proposal from the consultant manager, the steps completed by Contract Management for developing a draft agreement are:

- a) Bottom Line figure calculation: The contract analyst will evaluate the firm's cost proposal (labor rates, overhead, direct costs, fee, etc.) and compare it to the Department's fair and reasonable total estimated cost (often referred to as "the bottom line") utilizing industry-wide labor and overhead data which has been computed based on the first phase staffing agreement. If the firm's proposal is below the "bottom line," it will become the basis for the estimated costs that appear in the agreement. If the firm's proposal is above bottom line, the firm is advised of cost component(s) which are above industry averages and given a reasonable time to adjust any cost component(s) the firm determines it will change to meet the "bottom line."
- b) Civil Rights Unit Review: The Office of Contract Management's Civil Rights Unit reviews the final proposal for compliance with training and D/M/WBE requirements.
- c) Funding Verification: Contract Management contacts the Program Management Bureau to verify that the funding is approved and available. Upon completion of this step, Form AC340 will be issued by the Accounting Bureau signifying funding approval.

- d) Compliance Verification: Contract Management ensures that all the forms required from the consultant by New York State and Federal laws, such as Vendor Responsibility and Attachment A or B, are submitted and satisfy NYSDOT requirements.
- e) Agreement Preparation: Preparation of the draft and final consultant agreement for signature by the Department, Office of the State Comptroller, and consultant.

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### **3.11.1. THE BOTTOM LINE FIGURE CALCULATION**

The *Bottom Line Figure* is the sum of the Department's determination of fair and reasonable direct labor, overhead, DNSC and fixed fee costs. It is calculated as follows:

1. Direct Labor:
  - Labor hours as agreed to by the consultant and consultant manager.
  - Salary rates applied using industry data on file with Contract Management.
  - Salaries for principals, officers, and professional staff shall not exceed the salary of NYSDOT's Chief Engineer.
2. Overhead Rate
  - Overhead for surveying, civil engineering, and multi-discipline firms is based on the negotiated complexity of services provided and percentiles from industry data on file. The complexity rating is classified as either routine, moderately complex, or complex ([See Section 3.2.2 for Complexity Determination](#)). Overhead may be further modified if it is determined that there is special value to the Department from certain component costs of the firm's overhead rate that are high in relation to industry norms.
  - Overhead for specialty firms is determined by reviewing data on file with Contract Management for similar specialty firms. In cases where the pool of available data is too small, an analysis of audited rates, industry norms, the firm's unique methods of doing business, specialized equipment and expert personnel will be performed by Contract Management.
3. Direct Non-salary Costs:
  - Review of the consultant manager's approved figures with verification using State Comptroller's rates, where applicable.
4. Fixed Fee:
  - Determine a fair and reasonable fixed fee using current practice.

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### **3.11.2. COST NEGOTIATIONS**

Cost negotiations are only required if the cost of the consultant's approved proposal is higher than the Department's fair and reasonable *Bottom Line Figure*. The consultant may only revise its

proposed reimbursement rate for overhead, fixed fee, and salary, including salary increases. The consultant may not revise the consultant scope of services or staffing table in order to lower the cost of the proposal and meet the Department's bottom line. Any approved scope of services revision will cause a revision in the Department's bottom line.

The consultant is given an opportunity to revise its proposal to meet the bottom line during negotiations with Contract Management. After one or two proposals and/or after a reasonable period of time for negotiations (as determined by the Department) have passed without agreement, the Department will consider that negotiations are at an impasse and after de-designation of the firm, will officially begin negotiations with the next most qualified firm.

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### **3.11.3. APPROVAL BY THE CIVIL RIGHTS UNIT**

The Office of Contract Management's Civil Rights Unit reviews the final proposal for compliance with both trainee and D/M/WBE requirements. Further, they ensure the consultant has submitted the required civil rights forms: AARP-43, AAP-44, Part 1 from the D/M/WBE firms, and the Schedule of Payments, with proof that all subconsultants have received a copy of each form.

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### **3.11.4. VERIFICATION OF THE REQUIRED DOCUMENTS, ACCOMPANYING THE FINAL PROPOSAL**

The contract analyst verifies that all the forms accompanying the proposal are completed properly and signed by the appropriate personnel. Some of the items checked by the contract analyst are: consultant manager's approval signature, consultant's completed vendor responsibility forms, direct non-salary cost and procurement lobby law forms. "*CONSULTANT MANAGEMENT QC CHECKLISTS, PART 1 - CONSULTANT ACQUISITION*" provides a list of critical items checked by the contract analyst.

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### **3.11.5. VERIFICATION OF FUNDING AVAILABILITY**

The contract analyst verifies with the Accounting Bureau that the funding is available for payment and that form AC340 is completed and approved.

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### **3.11.6. DRAFT AND FINAL AGREEMENT DISTRIBUTION**

Upon receiving the consultant's final proposal from the consultant manager and receiving funding approval, the contract analyst compiles the draft agreement. Paper and/or electronic copies of the draft agreement, along with signature pages, are distributed to the consultant and consultant manager for their review and approval. When approving the draft agreement, the consultant and consultant manager have an opportunity to correct errors and submit minor changes if necessary.

Consultant manager's have five business days to send the signed draft agreement with any revisions back to the contract analyst. The contract analyst incorporates those changes into the draft-final agreement. The draft-final agreement is then submitted to the Office of the State Comptroller for execution. The contract analyst then distributes copies of the executed agreement to the consultant and consultant manager.

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## 4. CONSULTANT AT WORK

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### 4.1. PROJECT FILES AND DOCUMENTATION

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#### 4.1.1. INTRODUCTION

For each consultant agreement, the consultant manager creates and maintains three files. These files are known as the *Negotiations and Agreement (White)*, *Progress Invoices (Green)* and *Project Technical Correspondence (Red)* files. Though the color scheme is arbitrary, a standard way of organizing project files is necessary for a number of reasons. These include:

- Enabling the consultant manager and others (when the consultant manager is unavailable) to quickly locate documents.
- Providing both State and Federal auditors with concise and organized files so they can easily establish a "paper trail" for contract negotiations during audits.
- Dividing the project documents for archiving purposes. Contractual material (negotiation documents and invoices) is separated and retained for a shorter period than regular project correspondence. See the [Section 5.3 File Archiving](#) for more details.

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#### 4.1.2. GENERAL ORGANIZATION

Department files collectively form the official record of important actions that occur, including direction given to the consultant. Therefore, files must be complete, all corresponding parties and references must be clearly identified, and it must be organized to permit easy retrieval of information. The content and identification of each file is as follows:

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#### 4.1.3. NEGOTIATIONS AND AGREEMENT FILE (WHITE FILE)

For the original agreement and all subsequent supplemental agreements, this file contains the agreement and all documentation relating to consultant acquisition and negotiations. It is the official negotiation record and provides a basis for further changes to the agreement. It will typically contain the following items (filed chronologically) required to document the negotiations process:

- Integrated Consultant Management System (ICMS) printed report including advertisement

- Consultant designation letter.
- Consultant's Expression of Interest package.
- Draft and final scope of services.
- Department's Independent Staffing Estimate and related data.
- Scope of services meeting minutes.
- Consultant's proposals and related data.
- Notes, explanations and negotiation meeting minutes (if applicable) regarding resolution of significant differences between the Department's staffing estimate and the consultant's proposal of the hours required to complete the major items of work.
- Approved copies of the original agreement and all supplemental agreements.
- All correspondence related to extra work including Consultant Out-of-Scope Work Requests (COWRs).
- Any other correspondence, email messages, phone logs, or other documents pertaining to the terms of the agreement such as time extensions and approval of subconsultants.
- An index on the inside left sleeve of the each folder listing all correspondence chronologically is useful. (A blank index is supplied in exhibit "A" of this section. It is suggested that the front page of all correspondence be numbered to match the index. It is encouraged to keep this same type of index for all files).

Upon completion of negotiations for both original agreements and supplemental agreements, the consultant manager should consolidate all materials, and write a memo to his/her supervisor documenting the negotiation process, and indicating that agreement has been reached. After the supervisor's review and approval, a memo will be sent to the Office of Contract Management along with the proposal package indicating that agreement has been reached. A copy of this cover memo should be sent to the consultant.

Any project related data that will be useful to the progression of work should be "cross referenced" or "copied". Several folders may be used, especially for large projects where there is a potential for supplemental agreements. Separate "White Files" for the original agreement and each supplemental agreement will better organize the material. The supplemental agreement files will

contain records of negotiation (including proposals, scopes of service, independent estimates) as well as the executed supplemental agreement.

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#### **4.1.4. PROGRESS INVOICE FILE (GREEN FILE)**

This file contains the file copy of all progress invoices and support data submitted by the consultant, such as overtime requests, and comments and corrections on previous invoices. Detailed information is outlined in [Section 4.5, Consultant Invoicing and Project Reporting](#). Also, the consultant manager may find it convenient to include an extra copy of the consultant's current maximum hourly rates and titles which is found in the agreement (White File). These rates are always referred to when checking invoices.

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#### **4.1.5. PROJECT CORRESPONDENCE FILE (RED FILE)**

This file contains copies of work related project correspondence generally filed in chronological order. An index in the front of each folder denoting the date, sender, recipient and subject of each transaction is encouraged. The index is keyed to a numbered identification placed on the lower right hand corner of each piece of correspondence.

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#### **4.1.6. CROSS FILING**

Material pertaining to more than one filing category should be entered in all appropriate files and cross-referenced in each.

Note: See [Chapter 5 Agreement Close-out](#) for details on procedures associated with file archiving.

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### **4.2. PROCEDURE FOR STARTING DESIGN WORK PRIOR TO FINAL APPROVAL OF THE AGREEMENT (EARLY STARTS)**

*Note: The following Section covers consultant work performed prior to the full execution of a consultant agreement. Under certain circumstances, such as budget restrictions, the Department may not permit consultants to perform such work. Therefore, the consultant manager must determine current policy before taking any action related to "early starts".*

In unusual circumstances, notably to meet a tight schedule, the consultant may request to start work after negotiations are complete but prior to final approval of the agreement by the NYS Attorney General and the Office of the State Comptroller. The conditions and procedures which generally apply to this action are as follows:

- FHWA approval, if required, has been obtained.
- Form AC 340, Contract Encumbrance Request, has been executed, and for federal aid projects, Form PR 1240, Letter of Approval and/or Authorization, has been executed.
- Consultant and Department have signed the draft Agreement.
- All required insurances are obtained by the consultant.

If these conditions have been met, the consultant may begin work at their risk, and the following procedures will apply:

- Consultant must submit a letter to the consultant manager requesting permission to start at risk.
- Consultant manager verifies that the above conditions have been met. If any conditions have not been met, and the need to start work is great, the consultant manager contacts the contract analyst to discuss options.
- Consultant manager prepares confirmation memo from the Consultant Management Bureau Director to the Chief Engineer confirming need for an early start.
- Upon Chief Engineer approval, the consultant manager issues written notice to the consultant to begin work at risk. The following statement should be included in the notice: *“In the event that, for some unforeseen circumstance the Agreement is never fully executed, there will be no contractual basis for payment to the consultant for work performed on the project.”*
- Consultant manager, in conjunction with the contract analyst, schedules the Get Start meeting and work begins.
- Consultant can begin accumulating charges against the project effective on the date of the consultant's signature on the draft agreement, the date of the AC 340, or the date of the PR 1240, whichever is later.
- Consultant cannot submit a request for payment until after the draft agreement has been signed by the Comptroller signifying full execution of the (final) agreement.

Conformance to the above conditions minimizes the risk to the consultant. Under certain circumstances, it may be possible to start even earlier. If such a need exists, the consultant manager should discuss the situation with his or her immediate supervisor and with the contract analyst in order to ensure that the risk is minimized.

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### **4.3. GET-START MEETING**

After the consultant agreement has been fully executed (or an “early-start” has been authorized, see [Section 4.2, Procedure for Starting Design Work prior to Final Approval of the Agreement](#)), the



consultant and Department staffs meet to initiate the start of work on the project. By now the consultant will have a good understanding of the project, the expectations of the Department, the resources available to assist in the design effort and the schedule dates for major events. The "Get-Start" is the first "working meeting" and is usually the first instance where consultant costs can be billed to the project. The consultant is responsible for preparing and distributing meeting minutes. The meeting is usually held in the regional office where resource material is available to give to the consultant. Also, representatives from different regional groups can attend portions of the meeting to convey information to the consultant.

At the conclusion of the Get-Start meeting, the consultant is instructed to develop a more detailed schedule in a format that allows an easy comparison of "actual" to "scheduled" progress on both a percent complete and calendar basis. The consultant manager will review the schedule and contact the consultant with comments after obtaining concurrence from affected regional groups. A typical Get-Start Meeting Agenda is shown in the [GET-START-MTG-AGENDA.rtf](#) document.

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## **4.4. TECHNICAL REVIEW COORDINATION**

### **4.4.1. RESPONSIBILITIES**

Work done by consultants requires Department review for accuracy, completeness and adherence to standards. While the consultant manager has the responsibility for coordinating this technical review, many different regional and Main Office functional units of the Department perform the actual reviews. If the consultant manager is located in the Main Office, the consultant manager, and the regional design manager must clearly establish at the beginning of work how technical review comments will be conveyed to the consultant. To maintain flexibility, this should be tailored to the project and the Department personnel involved. Everyone, including the consultant, should know exactly what their responsibilities are and understand how the review process will work for the project.

Regardless of how the information is conveyed, there must be:

- A single voice from the Department. The consultant cannot be expected to receive direction from more than one source.
- Three-way communication. The consultant manager, regional design manager, and the consultant must all be informed about information that influences the consultant's work.

The consultant manager has the responsibility for assuring: that the documents are received on schedule, that all appropriate reviewers are given an opportunity to comment, that the comments are received in a timely manner, and that internal conflicts are resolved before forwarding the comments to the consultant. Departmental reviewers have a responsibility to complete their work

in accordance with reasonable schedule dates, in support of the project schedule. Additional time should be allocated for the resolution of internal conflicts.

Once all the functional units have made their comments on a particular document, the regional design manager and the consultant manager resolve any comments that conflict. This is done by making contact with the groups that issued the conflicting comments, discussing any problems, and resolving the issues that are in conflict. If a rapid resolution cannot be made, a meeting may be held.

The consultant manager and the consultant must be alert for comments that require the consultant to perform tasks that are not fully identified in the consultant scope of services. Refer to the section [4.8. Extra or Additional Work Requests and Supplemental Agreements](#) for additional guidance on how to actively negotiate and authorize the start of such work.

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#### **4.4.2. THE REVIEW PROCESS**

Typically, the regional design manager and the consultant manager will do an initial review of any major document submission from the consultant. After a second submission (if necessary), they both will distribute the document to the appropriate regional office functional units and Main Office functional units.

The consultant manager, in coordination with the regional design manager, should ensure that the document is distributed properly, and that the review schedule is known to all reviewers. In addition, the consultant manager will prepare comments and forward them to either the regional design manager, or in some cases, directly to the consultant.

Specifics of the review process where federal funds are involved are described in the Department's [Project Development Manual](#).

The consultant manager and the regional design manager should check each resubmission from the consultant to ensure that all comments have been addressed. On major submissions sometimes it will be necessary that a formal comment resolution memo be drafted by the consultant, identifying each comment and stating how it was resolved.

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#### **4.4.3. SUMMARY**

The technical review function is a coordinated effort between the consultant manager and regional design manager. The consultant manager and regional design manager should confirm

which of them will take the review lead. It is imperative that the Department speaks with one voice to the consultant.

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## **4.5. CONSULTANT INVOICING AND PROGRESS REPORTING**

### **4.5.1. OVERVIEW**

Consultants are reimbursed for their work on a monthly basis. Payment is requested in an invoice package which is assembled by the prime consultant and submitted to the consultant manager. The invoice details project expenditures, including: subcontractor and subconsultant costs, direct non-salary costs, direct technical labor, overhead and fixed fee. In addition, a cost control report and a progress report accompany the invoice to document the consultant's work progress during the month and to evaluate the cumulative rate of project expenditures.

These invoices must be reviewed by the consultant manager who is the person most familiar with both the project progress and the consultant agreement. The review has three principal objectives --- the first is to confirm the overall reasonableness of charges, the second is a more detailed check for compliance with the provisions of the agreement, and the third is to evaluate work progress vs. the project schedule and budget. If no significant problems are identified, the consultant manager will then recommend approval by his/her supervisor. The approved package is submitted to the Department's Contract Payment Unit in a format described later in this section.

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### **4.5.2. THE INVOICE PACKAGE**

The following documents make up a complete consultant invoice package: (copies can be obtained at the hyperlink for each form:

1. [Consultant's Payment Request - Form FIN 421](#). This shows the summation of costs for the project during the invoicing period. It is the form which contains both the consultant's signature and the Department's approval signature of the invoice. Payment is made from data on this form.
2. [Consultant's Payment Request \(Reverse\) - Form FIN 421 \(Reverse\)](#). This lists all assignments for the agreement by PIN (9 digits), with a summation of costs expended and funds remaining.
3. [Consultant's Payment Request Continuation - Form FIN 422a](#). Prepared for each PIN, this is a detailed breakdown of costs for current and prior charges. It serves to "keep track" of expenditures by category.
4. [Consultant's Payroll Abstract - Form FIN 423](#). This shows the employee's name, title, hourly rate and hours worked on each PIN. It provides documentation for Direct Technical Labor charges.

5. Summary of Direct Non-Salary Costs. A list of all out-of-pocket project related costs. It includes travel charges, equipment purchases, rentals, subcontractor costs, etc. It documents and categorizes how non-salary funds are being spent. DNSC should be broken down by nine-digit PIN.

6. [Consultant Payment History - Form AAP-7](#). This provides the payment history of subconsultants as per Consultant Instruction 06-06. It allows the Department to monitor the prime consultant's payments to the individual subconsultant. One form should be included for each subconsultant included in the invoice.

The original and one copy of the invoice package should be submitted to the consultant manager for review and processing. A complete invoice package should also be included for each subconsultant with billable charges. There needs to be an original signature on each copy of the FIN 421 submitted by the prime consultant and the subconsultant. If the consultant manager is located in the Main Office, an additional copy of the invoice package should be sent to the regional design manager.

After a consultant has finished all of their assigned work, they will submit a Draft-Final Invoice (an original and three copies) to the Consultant Management Bureau. This is the last invoice submitted by the consultant. Along with approving the draft-final invoice for payment and submitting the invoice package to the Payment Unit, the consultant manager will also submit a copy of the invoice to the Office of Contract Management with a request to initiate the final audit.

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### **4.5.3. SUPPORTING DOCUMENTATION**

One set of the following supporting information must accompany each invoice submission from the consultant to the consultant manager. In the unusual event that no monthly invoice is submitted, the consultant must still submit the supporting information. (Note: these items are for use by the consultant manager and are usually not included in the invoice package that is submitted to the Contract Payment Unit.)

1. Monthly Progress Report- This is a consultant's monthly statement of achievements, schedule status (ahead, behind, etc.), budget outlook, planned achievements for the following month, and items or actions needed from the Department. It is usually in letter format, with explanations provided, as necessary. This Report is submitted for each PIN in the agreement.

2. [Cost Control Report](#)- Details of this report are included in Exhibit D of the consultant design agreement. It is both a summary of expenses to-date and a projection of costs to complete the project. Consultant managers and consultants use this to assess the fiscal status of the design agreement. After the Get Start meeting and prior to the first invoice, the consultant should

prepare a draft shell of the cost control report to include all of the tasks and subtasks to be tracked in as much detail as the consultant manager requires. This Report is submitted for each PIN in the agreement.

3. Progress Schedule Chart- This is a graph showing key dates and progress. It is a graphical representation of the progress vs. schedule and should be prepared for each PIN in the agreement.

Other optional supporting documentation may include:

- Receipts for Direct Non-Salary Costs - backup material often used for verifying travel expenses, large purchases, rental costs and subcontractor costs.
- Timesheets - often requested with the first invoice to see how the consultant bills hours.
- Overhead adjustment calculations - used when the consultant's overhead changes and adjustments need to be made to past overhead charges.

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#### **4.5.4. EVALUATION OF PROGRESS VERSUS EXPENDITURES**

The progress report and cost control report are used to analyze progress versus expenditures and provide the basis for recommending approval of the consultant's invoice. They represent the basic tools necessary to manage the fiscal and schedule aspects of the consultant's work.

The "percent phase complete" column of the cost control report indicates the estimated overall progress to date as a percentage of the total effort. It should be a deliberate estimate of the amount of work completed as documented in the progress report.

Consultant deliverables such as draft or final reports, ADPs, PS&E, etc., should be identified in the Design Progress Schedule. Each of these submissions has a percent complete associated with it, and should be compared with the cost control report to monitor progress. The "cost to date" column totals and the "budget" column totals of the cost control report can be used to determine the comparable percentage relative to the monetary aspects of the contract. The two percentages should be reasonably consistent or a satisfactory explanation provided before job managers recommend approval of the consultant's request for payment. Information in the "budget + authorized extra work" column may help to explain any significant differences.

The consultant's progress estimate should compare with the monetary amount accrued. If a firm is over budget and behind schedule it may be difficult to correct. As the work progresses, there is less of an opportunity to perform more efficiently to bring schedule and budget back in line. Also,

the first few invoices for any project are normally slightly behind in progress versus payment, but this is to be expected. This happens because consultants are familiarizing themselves with the project, and are therefore not as productive during this period.

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#### **4.5.5. REVIEW OF CONSULTANT INVOICES**

The consultant manager should refer to the following checklists for thorough guidance on reviewing consultant invoices:

*[Consulting Invoicing Checklist from Consultant Management QC Checklists Part 2 Consultant at Work](#)*

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#### **4.5.6. DIRECT TECHNICAL LABOR**

The major component of the consultant's invoicing is labor. The hours and other costs reported by the consultant can only be judged on their reasonableness for the work accomplished. This ultimately corresponds to a satisfactory product (as described in the scope of services) for a reasonable cost (as established by the design agreement's maximum amount payable). Checking the mathematical extension of hours, rates, etc. does little to ensure reasonableness of costs.

The consultant manager should review the titles and wage rates shown in the invoice package to ensure that the exact titles are provided for in the agreement and that the salaries do not exceed the approved maximum rates. Amounts above the maximum are the responsibility of the consultant and cannot be billed directly, or included in overhead. Occasionally the work may require a title not currently included in the agreement. The consultant should contact the Office of Contract Management requesting that a title(s) be added after providing justification to the consultant manager. The title(s) and corresponding maximum rate(s) will be incorporated by letter into the agreement after the consultant manager concurs with the need for the new title (consultant manager submits approval letter to Office of Contract Management).

The maximum hourly rates are shown in the agreement (usually as Exhibit "A") for each year of work. If the work extends beyond the years in the agreement, the firm must submit new maximum rates each year to the Office of Contract Management. After review, new rates will be incorporated by letter, with copies forwarded to the Office of the State Comptroller, the consultant and the consultant manager.

The consultant manager should be satisfied that the work accomplished by each title is appropriate for that level within the organization (i.e., you would not expect to pay a principal at his/her normal salary rate for performing drafting tasks). When a higher title person performs

work below that which is expected for the title, the salary rate is adjusted downward by the consultant manager to the appropriate level.

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#### **4.5.7. DIRECT NON-SALARY COSTS**

The invoice package must include a record of out-of-pocket expenses including the cost of subcontractors during the billing period. It should be organized by expense category (per diem, meals, air fare, car rentals, etc.) and identify personnel who incurred the expense. Each item of expense must include the date and purpose. Subcontractor invoices should be included here unless they are specified in the agreement, in which case they are shown on the "Subcontractor" line of FIN 422a.

The consultant manager should review the direct non-salary costs to be sure that the items and amounts billed are appropriate under the terms of the agreement. Expense invoices, receipts, etc., for direct non-salary costs should not be included in the monthly submission unless specifically requested by the consultant manager. However, the consultant's expense file should cross reference the invoices to the specific bill in order to simplify the final audit. Reimbursements for travel expenses are limited to rates and conditions approved by the Office of the State Comptroller.

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#### **4.5.8. SUBCONSULTANT INVOICES**

Subconsultants are reimbursed through the prime consultant. Each subconsultant invoice is submitted as a part of the prime consultant's invoice, and payment is made to the prime. It is then the responsibility of the prime to pay the subconsultant. Article 5, "Partial Payments", of NYSDOT's consultant agreements, states that a schedule shall be established for invoicing between the prime and subconsultant, and that invoices will be submitted to the State by the prime for the subconsultant even if the prime has no charges. Additionally, it establishes a time frame for the prime consultant to submit subconsultant invoices to the Department and for the prime to pay the subconsultant after receipt of funds.

If subconsultants were required to estimate their salary costs, direct non-salary costs, overhead, etc. as part of the consultant's direct non-salary costs, their request for payment to the prime consultant must be itemized in the same manner as the prime consultant's request to the Department and included with the invoice. All parts of the subconsultant invoice should be checked to the same extent as the prime consultant's invoice.

The budgeted amount shown for the subconsultant should conform to the funding breakdown shown in Exhibits "B" and "C" of the agreement. The level of participation of subconsultants should be approximately equal to the established goal and reflect all changes in project scope

and complexity that arise during the term of the contract including extra work added by supplemental agreements.

The budgeted amount for subconsultant services should not be changed or reallocated by the prime consultant without approval of the Department. When D/M/WBE subconsultants are involved, their share of the work, based on direct technical labor cost, should match the defined share in the agreement.

In the situation where a supplemental agreement is being processed and firms are working at risk (with an approved COWR but without a fully executed supplemental agreement for the work), the funds earmarked for a subconsultant should not be used to make progress payments to the prime consultant, except when:

- there are no outstanding charges from the subconsultant, and
- the subconsultant is not incurring additional costs on project tasks, and
- the subconsultant is advised and agrees with the proposal to continue making progress payments from remaining resources while the SA is being prepared.

If there is a change in the scope of services during the life of the agreement that significantly reduces the effort that a subconsultant is scheduled to perform and the subconsultant cannot perform other services, the prime consultant should immediately contact the consultant manager to seek approval of a reduction in their goal commitment for the agreement. If the subconsultant is a D/M/WBE subconsultant, the overall D/M/WBE percent goal must be maintained. This can be done by giving them other work, or by shifting work to another D/M/WBE subconsultant, or adding another D/M/WBE to perform the work.

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#### **4.5.9. OVERHEAD AND FIXED FEE**

The estimated overhead rate for each firm (at the time the agreement is executed) is included in Article 2, "Provision for Payment", under Item III of the Agreement. A firm's overhead rate is subject to change each year and therefore, a revised billing rate is provided by the Contract Audit Bureau each year when new financial information is provided by the consultant. The maximum rate that can be reimbursed, however, is limited by Article 2, so invoices should be checked carefully by the consultant manager to ensure that the consultant is reimbursed properly. If the overhead rate changes for a particular year, an overhead credit or charge may be needed by the consultant. In this case the consultant should prepare overhead adjustment calculations, which justify the credit or charge, and submit it with the invoice.



The actual overhead rate for each accounting period in the agreement (each fiscal year) is also determined at final audit, and the consultant may have to repay the Department if more overhead has been reimbursed than determined by the final audit.

The consultant manager should check the invoiced claimed partial fixed fee amount and ensure that the total fixed fee invoiced to date does not exceed the total negotiated fixed fee as shown in the Agreement. Also, the consultant manager should check the partial fixed fee calculation to ensure that the consultant is using the Department's approved partial fixed fee equation which can be found at

<https://www.dot.ny.gov/divisions/engineering/design/consultant-management/repository/Partial-Fixed-Fee-Calculation.rtf>

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#### **4.5.10 APPROVAL AND PROCESSING PROCEDURES**

Upon completing the review of a consultant's invoice the consultant manager should:

- If the invoice is correctly prepared, recommend payment as submitted, or
- If minor errors are found, have the consultant make corrections on the next invoice or make corrections to the invoice and forward it for payment with a copy of the correction to the consultant, or
- If major errors are encountered, discuss the problem with the consultant and have them send in a corrected invoice. Often only portions of the invoice need to be corrected and resubmitted.

It is the Department's intent to be reasonably accommodating in the approval and processing of consultant invoices. In the instance of minor omissions or errors that can easily be annotated on the invoice, the reviewer can elect to make the changes and forward the corrected invoice for payment (the right hand column of FIN 421 is for this purpose). A copy of the amended invoice should be sent to the consultant for use in preparing subsequent requests for payment. Corrections that would adjust the payment to increase the amount requested by the consultant cannot be made using this procedure. The amount of an invoice may only be decreased; it can never be increased by anyone other than the consultant. If the invoice is revised, all calculations affected by the change should also be revised and initialed by the person making the change. As in all cases involving adjustments to invoices, the consultant manager must discuss specific situations with the consultant.

Adjustments to payments after the draft-final invoice is submitted to the consultant manager are difficult. If the amount of the draft-final invoice needs to be increased, it must be returned to the consultant for correction, even if the amounts are small.

After reviewing an invoice, if the consultant manager recommends payment, then the consultant manager should write "Reviewed and recommended for payment" on the original and one copy of the prime's FIN 421, initial this statement, and forward the entire invoice package to their supervisor for signature of the two sets (original and one copy).

When the approved invoices are returned from the supervisor, the consultant manager should:

- Prepare an [invoice approval memo](#).
- Submit the approved invoice package (one original) to the Contract Payment Unit. The invoice package includes the approval memo plus the following relevant forms for the prime consultant and any included subconsultants: FIN 421, FIN 421Reverse, FIN 422a, FIN 423, Summary of DNSC, and AAP-7.
- Keep a file copy of the invoice package for future reference. This copy of the invoice package should also include the progress report, cost control report, and supporting documents, which are not submitted to the Contract Payment Unit. Upon completion and close out of the project, the file copy is archived in the invoice file (Green file).

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#### **4.5.11. OVERTIME TIME CHARGES**

Although overtime is usually not anticipated for NYSDOT design projects, there are occasions when it is in the best interest of the Department to authorize its use. The policy requires written authorization from the consultant manager before a consultant can incur such charges. The authorization of overtime should be granted by the consultant manager only after discussing the use with his/her immediate supervisor, and the Director of the Consultant Management Bureau (or regional functional group). Keep in mind that the authorization is simply an approval for the consultant to bill at the overtime rate instead of the normal salary rate. The difference between the two is called the premium portion for overtime. Since funds will not usually be added to the agreement to compensate for the higher salary rates, both the consultant manager and the consultant must use discretion when deciding to work overtime.

If overtime has been authorized, the consultant manager should refer to "salary schedules" in the agreement to determine the overtime rates for each job title. When reviewing the invoice, the consultant manager should note the following in regard to overtime:

1. Consultant's employees may work overtime at the firm's convenience if the employees are paid their normal hourly rate for each overtime hour worked and/or the premium portion is not billed.
2. A higher (premium) rate can be paid for overtime in order to meet a deadline or if overtime is the least expensive way to get the task done.
3. The higher (premium) rate is only paid if prior approval is obtained from the consultant manager.
4. The premium portion of the direct technical salary is charged in Item IB, "Overtime Premium" line of FIN 422a, and overhead is not applied to this portion.
5. Additional funds are not added to the agreement to cover authorized overtime. The excessive use of premium rate overtime may deplete agreement funds before all work is completed.

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#### **4.5.12 TIME REQUIREMENTS**

The Merchandise Inventory Request (MIR) date is the day on which a complete and correct invoice package is received by the consultant manager. If the invoice is not complete, or it contains errors, then the MIR date is established only after the consultant manager has received all complete and corrected invoice forms. Once all invoicing forms are determined by the consultant manager to be correct, the consultant manager then enters the MIR date on all copies of the FIN 421. Since documentation must be maintained in the project records to support MIR date determinations, all invoices should be date- stamped when received by the consultant manager's office.

The State must pay interest to the consultant if invoice payment has not been made to the consultant within 30 calendar days of the MIR date. In order to avoid payment of interest, the consultant manager should approve and submit invoices to the Contract Payment Unit within 10 business days of the MIR date.

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#### **4.5.13. DRAFT - FINAL INVOICE**

After completing all of their assigned work, and at the direction of the consultant manager, the consultant should prepare and submit a draft-final invoice (annotated as such). The draft-final invoice is considered to be the consultant's last invoice and is used to begin the final audit process. The draft-final invoice is processed by the consultant manager in the same manner as other invoices.

If the consultant exceeded the “Maximum Amount Payable” it should be shown by the consultant on “FIN 421 Reverse, Consultant Payment Request Reverse” and “FIN 422a, Consultant Payment Request Continuation”. Any amount over the MAP should be shown as a separate line on FIN 421 Reverse and subtracted out, so the total amount requested on FIN 421 Reverse is not over the MAP. This format allows the auditors to consider any unbilled charges during the final audit.

An extra copy of the draft- final invoice is submitted by the consultant to the consultant manager and, upon reviewing it, the consultant manager submits it to the Office of Contract Management under cover of a request for final audit memorandum. Contract Management then in turn requests that the Contract Audit Bureau perform a final audit.

Consultant managers should refer to [Chapter 5, Agreement Closeout](#) for more details on closeout procedures.

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## **4.6. CONSULTANT PERFORMANCE EVALUATIONS**

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### **4.6.1 PURPOSE**

Consultant performance evaluations are an objective evaluation of a firm's project performance primarily intended to assist in the selection of "most qualified" firms for future assignments of a comparable nature. These evaluations reflect regulatory requirements of Federal Acquisition Regulations (48 CFR Part 31) and NY State Finance Law (Sect.136). While not intended as a substitute for normal monitoring and control of ongoing projects they frequently serve as a secondary tool for project managers.

Evaluations of consultant performance are required to be submitted at the time an agreement is closed- out (FINAL) and at least once per year (INTERIM) on the anniversary of the Office of the State Comptroller approval of the agreement. Additional INTERIM evaluations should be prepared whenever a major milestone is reached or a significant change in the firm's performance is noted. The overall objective is to have up-to-date, accurate performance information in the database used for consultant selection.

Consultant performance evaluations often serve the secondary purpose of offering a forum for discussion where the Department's consultant manager and the consultant firm can exchange views on project performance. This open yet structured process can promote meaningful discussion which supplements normal project direction and facilitates progress of the design

assignment. All consultant performance evaluations are classified as confidential documents and access must be restricted to authorized managers or program units.

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#### **4.6.2 RESPONSIBLE PARTIES**

*CONSULTANT MANAGER* - The consultant manager, having primary responsibility for administration of a consultant agreement, prepares INTERIM or FINAL Performance Evaluations. The consultant manager is responsible for ensuring that functional groups (Main Office or Region) involved with the project and associated consultant services, are offered the opportunity to have input on the rating. The consultant manager prepares the numerical rating and narrative description and obtains its endorsement from their immediate supervisor prior to formal filing. The consultant manager's numerical rating must reflect the consensus of all parties providing input.

*PROCEDURAL CONTROL*- The Office of Contract Management has been assigned procedural control of the Consultant Performance Evaluation System (CPES), a web-based application, for all NYSDOT Program Areas. As the official repository of performance evaluations, Contract Management maintains the Department- wide database used to store and retrieve performance data for selection committee use or general management reviews. They are responsible for keeping the information confidential and reminding all regions, management staff, and selection committee members that the evaluations and any summary thereof, are confidential. Contract Management is also responsible for the distribution of the performance evaluation to the firm and receiving any formal response or comment (CONR 387) for incorporation into the Department's database. Additionally, Contract Management monitors all consultant agreements on at least a quarterly basis to ensure timely compliance with the filing requirements and to advise agreement administrators of those agreements coming due for evaluation. Contract Management is also responsible for the development and maintenance of programs used for the electronic filing of evaluations (i.e.CPES) and retrieval of data for selection committee use.

*QUALITY CONTROL*- It is incumbent upon supervisors to ensure that the evaluations contain fair and accurate descriptions of a firm's project performance. All evaluations should be compiled keeping sight of their ultimate use as a tool for selection committees. Supervisors should encourage preparers to take full advantage of the narrative (comment section) so as to fully outline the rationale for ratings given in each category of the evaluation.

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### 4.6.3 PREPARATION OF CONSULTANT PERFORMANCE EVALUATIONS

The process for preparing consultant evaluations is as follows:

The Office of Contract Management notifies the program area of the need to complete a consultant performance evaluation for a particular consultant agreement. The program area's consultant evaluation liaison then notifies the consultant manager's supervisor and/or the consultant manager of the need to prepare an evaluation.

- The consultant manager prepares consultant evaluations electronically using the Department's Consultant Performance Evaluation System (CPES) which is maintained and administered by the Office of Contract Management. For consultant agreements for design services, the Consultant Manager uses the "[Design Consultant Scoring Criteria](#)" table to evaluate the performance of the prime and sub consultants under various scoring categories used in CPES. The consultant manager prepares draft evaluations (interim or final) for the prime consultant and all subconsultants associated with a particular consultant agreement that performed work during the evaluation period. When preparing subconsultant evaluations, the consultant manager may inquire with the prime consultant regarding the subconsultant's timely delivery of products, adherence to schedule, quality of work, etc.; however, the consultant manager should never ask the prime consultant to evaluate the subconsultant, nor provide numerical ratings of the subconsultant(s).

If little or no work was completed by a consultant during the evaluation period, then the "No Ratable Work" option which exists within CPES should be chosen.

- The consultant manager discusses the draft evaluations with the appropriate regional/Main Office liaison and reaches a consensus on the numerical ratings and narrative. If a consensus cannot be obtained, then the consultant manager's and regional liaison's narratives can be shown separately in the CPES narrative section, and the numerical ratings entered in CPES can be an average of the regional liaison and consultant manager's numerical ratings.
- The consultant manager verifies that the Main Office Structures Group will or will not provide an evaluation for structural design work. If an evaluation for structural work is necessary, then the Structures Group will prepare the evaluation in the CPES and submit it to the Office of Contract Management.
- After discussing the draft evaluation with the appropriate regional liaison, the consultant manager submits/discusses the draft evaluation. The consultant manager revises the

evaluation to reflect their supervisor's comments and submits a draft-final evaluation electronically via CPES to their supervisor for formal approval.

- The consultant manager's supervisor reviews the evaluation and then electronically approves and submits the evaluation to the Office of Contract Management. If the supervisor has "last minute" concerns, then the evaluation is returned electronically by the supervisor to the consultant manager since the supervisor cannot directly make revisions to the evaluation. The consultant manager revises and resubmits the evaluation to their supervisor.
- Remember that all performance evaluations are considered confidential. Consultants have an opportunity to comment on their evaluations after they receive them, but seldom are evaluations revised.

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#### **4.6.4 POINTS OF EMPHASIS**

Preparers of evaluations should be mindful of certain entries which can be sources of confusion. These include:

- Some firms have had corporate reorganizations resulting in name changes. The consultant agreement could have been executed using a different firm name. The evaluation should use the name the firm currently is doing business as so that selection committees will have access to updated information on their performance.
- Office of Contract Management records frequently identifies only the prime consultant in an agreement. The consultant manager must prepare evaluations for the prime and all subconsultants working under that agreement. These should all be filed at the same time.
- Contract value, staff hours, and % of total entries should be carefully considered before entering data. These fields serve two purposes. First, the contract value is a measure of the overall magnitude of the project assignment requiring consultant services and thus reflects the total value of the agreement. Second, both staff hours and % of total are measures of the role that an individual firm plays in the assignment (agreement). Percent of total for agreements with multiple subconsultants should always add up to one hundred percent or if they do not, then an explanation for lower amounts should be provided in the "comments" field when the evaluations are submitted.

*RATING SCALE*- The evaluation process utilizes a 0-10 numerical scale and six descriptive categories for the numerical scale. The Consultant Manager uses the ["Design Consultant Scoring Criteria"](#) table to find performance description under various descriptive categories that matches with the actual performance of the Consultant that is being rated, and selects the numeric score

that is associated with the performance description. Use of this Criteria Table will prevent unsubstantiated consultant performance ratings and bring consistency among various staff involved in rating of design. Following are some additional guidance to be considered while completing a performance evaluation for a consultant:

- A rating of **5** means capable/qualified performance expected based on the scope of the contract.
- In all cases, please make sure that the evaluations are documented with notes. Irrespective of the rating given, comments shall be provided to support the rating given. If necessary, include a couple of examples and be quantitative. This will help the consultants to improve upon their performance next time by correcting their deficiencies and provide additional information to future consultant selection committee members.
- While completing evaluations, make sure that you list the names of the Project Manager, and consultant's other key staff under key personnel list. Please describe their technical and general performance as well as responsiveness to requests from the Project Manager during the project.
- The evaluation shall include the recommendation in the end which clearly states if you would recommend hiring this firm again for future similar projects.

*PERFORMANCE FACTORS EVALUATED-* An overall evaluation by major type of work or assignment serves as the summary of the ratings given on general categories of performance (ALL CONSULTANTS section) and the project work products (DESIGN CONSULTANTS). This overall rating also serves as the sorting mechanism when it is necessary to obtain evaluation data for similar major work types on a future assignment. For example, if a new assignment for highway design is being offered for consultant services then the previous evaluations in the highway design category over the past three years for each interested firm is recalled from the database and used by the selection committee. Several major work types require specific work to be performed to be eligible for an overall evaluation. For example, design survey necessary for project purposes may be less complicated or detailed than survey required in a TASS Agreement and thus would not merit a separate "survey" evaluation. Another example--- preparing a project scoping report is generally less complicated than performing a corridor study or modal alternative analysis and thus would not merit a separate "planning and development" evaluation.

*SUBCONSULTANT EVALUATIONS-* Perhaps the hardest firms to evaluate are subconsultants. Nevertheless, subconsultants must be evaluated in order that complete information is available in the selection process for "project teams". Subconsultant firms are a large portion of the performance evaluation workload for a consultant manager but the project deliverables come through the prime consultant and most direct contact on project tasks, schedule, or contract



matters is with the prime consultant. The consultant manager must make a concerted effort to obtain information regarding a subconsultant's performance. Some input can be obtained from progress reports, project deliverables, regional staff, and the prime consultant. In situations where the consultant manager needs project deliverables in order to ascertain subconsultant performance, they can request that the subconsultant send an extra copy of all work products developed for the prime directly to them. It may be difficult to obtain this material "after the fact", therefore the consultant manager must anticipate the need for such submissions and make the request in a timely manner. It is improper to ask the prime consultant to actually evaluate their subconsultant for you. It is acceptable to inquire about the subconsultant's performance in different areas such as timeliness, adherence to schedule, quality of work, or contractual issues but, DO NOT ask the prime consultant for a numerical rating of the subconsultant.

*NARRATIVE SECTION* - The Rater input sheet is perhaps the most powerful element of the entire evaluation. Consultant managers compiling evaluations can describe a firm's performance on all aspects of the project in great detail. This assists the selection committee members to absorb the evaluator's impression of a firm's abilities and the strengths or weaknesses of either key staff or the firm in general. Firms can draw constructive suggestions as well as positive feedback from the verbal description more readily than the numerical scores. Detailed descriptions of factors considered in evaluating the performance of a firm serves to establish a clear reference frame and minimize arguments or misunderstandings. The narrative is particularly important when the numerical ratings represent the differing views of several evaluators.

*DOCUMENTATION*- The Consultant Performance Evaluation System (CPES) does not mandate separate files documenting a firm's performance on all aspects of a project or assignment. The consultant manager's project files should contain information on all factors contributing to the assessment of performance. It is however recommended that a consultant manager keep an informal "performance file" containing pertinent pieces of correspondence such as response times for submissions, staffing difficulties, product quality, and cost control. This is a matter of individual preference, but in the context of interim performance evaluations on an annual basis, it serves to ensure that all aspects of performance in that period are considered in the evaluation. It's normal practice for an underachieving firm to have been given notice during the course of the project work of the Department's dissatisfaction. The formal CPES evaluation should not come as a surprise to the firm.

#### *MULTIPLE ASSIGNMENT AGREEMENTS -*

Consultant managers must be cognizant of when an agreement has multiple assignments that are being managed by different consultant managers. If all the consultant managers elected to

prepare ratings without selecting an assignment number, only the last rating filed would be used in the selection process. Therefore, each consultant manager should prepare a rating for each assignment that they are managing under the multiple assignment agreements. If all assignments in a multiple assignment agreement are being managed by the same consultant manager, the consultant manager has the option of filing a rating for each assignment or preparing one rating for the entire agreement. If the work on all of the assignments is being performed by one consultant team, a single rating for the agreement may be appropriate. However, in situations where the assignments are being performed by different consultant teams and there is a significant difference in the performances of the teams, it may be desirable to prepare separate ratings for each assignment. Please note that the consultant manager should stay with whatever option they select for the duration of the agreement in order to ensure that ratings are considered appropriately in the selection process.

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## **4.7 DEALING WITH POOR CONSULTANT PERFORMANCE**

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### **4.7.1 INTRODUCTION**

For projects involving consultants, the day-to-day relationship between consultants and the Department begins at the scope of services meeting and ends with contract acceptance and closeout. During this period there is a potential for problems to develop involving both the technical and managerial aspects of a consultant's work. Typical problems that may occur include: late product submissions; poor quality of products; excessive Department oversight; and overbilling. Even if a problem seems small, it should not be ignored. Things often get worse because small problems can result from a basic misunderstanding about what is expected. While this section presents general guidance for the resolution of problems, remember that each situation is unique and may require a unique solution.

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### **4.7.2 PROBLEM RESOLUTION**

Once a problem is recognized, the first step is to investigate the situation. The consultant manager should decide how serious it is, how it can be corrected, its impact on other elements of the project (including cost and schedule), and the responsibility of the consultant. In most situations, the consultant manager will need to alert the regional design manager (or, if the consultant manager is located in a region, the Consultant Management Bureau liaison). Contacting the consultant's project manager to discuss possible solutions will usually resolve the problem.

In the event that resolution cannot be achieved, the consultant manager must decide if the problem results from poor or conflicting information provided to the consultant. Then, clear direction must be given to the consultant to correct the problem. If it appears that the consultant is performing poorly and informal discussions with the consultant's project manager are not resolving the situation, put your concerns in writing and be sure to notify your supervisor and the consultant's management (usually a principal in the firm). Clearly state the problem and your expectations. If the problem is serious, begin to document the situation for future reference. Save unsatisfactory submissions and document all discussions. This will be of great value if further action against the consultant becomes necessary. A meeting between management level individuals from both the Department and the consultant may be necessary to resolve the issue.

Allegations of poor consultant performance can have serious consequences to the firm, the consultant's staff, and the progress of the project. Therefore, it is the responsibility of the consultant manager to thoroughly and professionally investigate the problem, to determine its impact on the project, and to determine the responsibility of the consultant and the Department. *Objectivity, fairness and professionalism must never be compromised in these situations.*

When a contractual issue is involved, contact the contract analyst and if a D/M/WBE firm is implicated, contact the Civil Rights Unit representative. In the event that action is needed by other Department units, it is the consultant manager's responsibility to contact the appropriate staff and decide how the situation should be resolved. The consultant manager should then follow up to ensure that appropriate action has been taken.

If all other attempts have failed, consider completing an interim performance evaluation on the firm. It will be used by the Department when selecting consultants for other projects and can have an effect on the future work of the firm. If an interim rating is submitted and the situation is later resolved, another evaluation to reflect improved performance should be completed. Be fair and reasonable. There are very few major problems that will remain unresolved if the above steps are taken. As a last resort, termination may be considered but only for the most serious problems. *If termination seems the only solution, the Office of Contract Management must be consulted prior to any such discussions with the consultant.* The decision to terminate a consultant for poor performance is made by *executive management* after a review of all facts pertinent to the situation.

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### **4.7.3 COMPENSATION**

The consultant manager has responsibility to ensure that payment to a consultant is consistent with the value of the work performed. When clearly unsatisfactory work has been performed, it is

possible to deny payment of a portion (or all) of the monthly consultant bill, pending correction of the problem. Denial of payment is an extreme measure that should never be done for small or insignificant problems. Supervisory approval must be obtained before taking such action. The need to redo, or revise, completed tasks can result from either poor direction from the Department, poor performance by the consultant, or an unexpected change in design conditions or standards. Many of the problems encountered during design result from a combination of these factors. Therefore, the consultant manager must carefully consider all of the circumstances before deciding how to proceed. However, *in no case shall a supplemental agreement be processed to reimburse the consultant for correction of the firm's design errors.*

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#### **4.7.4 COMMUNICATIONS**

Many problems can be prevented by maintaining good communication between the consultant and the Department. The consultant manager should always:

- Carefully prepare the consultant scope of services so that tasks are well defined and understood.
- Negotiate in good faith to determine the reasonable effort needed to accomplish tasks. The consultant manager and the consultant project manager are professionals and *all aspects of their relationship must be held to the highest professional standards.*
- Provide the consultant with needed Department policy and guidance. This includes checking to ascertain that the most current manuals, design standards and other resources are in the possession of the consultant.
- Conduct frequent discussions and / or correspondence between offices. *Make known special design considerations and situations before the work is performed.* Close communication is vital for success. Ask questions during the course of work about progress and problems. This includes discussing project status periodically with the regional design manager (if applicable), especially in the context of scope changes/extra work.

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#### **4.7.5 SUBCONSULTANT ISSUES**

In typical design projects, the State has a written contract with the prime consultant, not the subconsultant. The subconsultant performs work under a separate agreement with the prime. *There is no contract between the subconsultant and the State.* Therefore, when problems involving subconsultant work are encountered, *work through the prime consultant when attempting to resolve the situation.* Copy the subconsultant on all correspondence and be sure that the subconsultant is invited to attend all meetings related to the issue. Remember, the successful completion of work is the contractual responsibility of the prime consultant. Because of this contractual relationship, differences between the prime and the subconsultant should be resolved by the two firms without Department intervention, unless a D/M/WBE firm is involved. In

that situation, the Office of Contract Management's Civil Rights Unit representative should be contacted for assistance *before* the situation becomes critical. The Civil Rights Unit may assist in resolving the problem.

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#### 4.7.6 SUMMARY

Treat problems with consultant design activities in the same manner as problems in other areas of our professional work. Determine what happened, be certain that your expectations are reasonable, that proper instructions were given, listen to explanations, and notify those groups and individuals whose work is influenced by the problem. If it seems that resolution will be difficult, involve management and document the problem. Consider completing an interim performance evaluation. Only as a last resort should termination be recommended to Contract Management and executive management.

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### 4.8. EXTRA OR ADDITIONAL WORK REQUESTS AND SUPPLEMENTAL AGREEMENTS

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#### 4.8.1 INTRODUCTION

During the course of performing work identified in the original consultant agreement, consultants are often directed to perform work that is not included in the established scope of services. This usually results from the addition of new tasks or the modification of existing tasks due to a change in scope, complexity, or character of the work. New or revised tasks assigned to a consultant as a part of an ongoing project are categorized as either extra work or additional work. The consultant manager, using information from the consultant, determines the validity of the consultant's new work claim. If the claim is valid, the consultant manager must make a determination concerning eligibility for additional fixed fee. Negotiations are then conducted between the consultant manager and the consultant over the specific tasks, appropriate staffing requirements (staffing table) and the direct non-salary costs. The extra work policy is formally outlined in *Article 7, Extra Work*, in the consultant agreement.

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#### 4.8.2 EXTRA WORK

*Extra work* is a **significant change** in the scope, complexity or character of the work as negotiated and provided for in the original scope of services (and previously approved supplemental agreements). Scope changes are new work or changes in work quantities which change the services and actions required of the consultant (e.g., number of public information meetings, etc.). Complexity changes result from work that is more difficult to perform than originally anticipated and scoped (e.g., changing from a routine highway project to a moderately complex bridge project). A change in character pertains to performing work in a manner different from that which

was anticipated at the time the agreement was negotiated. Extra work results from significant changes to these factors - changes that increase the degree of consultant risk, consultant investment, project complexity, duration, or overhead.

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### 4.8.3 ADDITIONAL WORK

*Additional work* is a **minor change** in the scope, complexity, or character of the work as negotiated and provided for in the original scope of services (and previously approved supplemental agreements). It is based on the FHWA concept of reasonable and justified cost overruns, but may also include new work of a minor nature. Additional work does not significantly increase the degree of consultant risk, consultant investment, project complexity, duration, or overhead (e.g., the scope of services calls for 20 ROW maps, but 22 are required).

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### 4.8.4 FIXED FEE

When making the distinction between extra work and additional work, the consultant manager is in essence, determining if *fixed fee* will be added to the agreement. Fixed fee is a dollar amount, established by negotiation, to pay the consultant for profit and costs not reimbursable as overhead, direct non-salary costs or direct technical labor. The amount of fixed fee allocated to an agreement is based on the degree of consultant risk, consultant investment, project complexity, duration and overhead. If work is added to an agreement that has little or no effect on these factors (*additional work*) the fixed fee for the agreement will not be adjusted. However, if the work is determined to be *extra work*, fixed fee will be increased.

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### 4.8.5 REMOVING TASKS FROM AN AGREEMENT

When evaluating extra or additional work, the consultant manager should also evaluate the scope to determine if any tasks originally included are no longer expected to be performed by the consultant. Based on progress of the project, it may be decided that certain tasks, or levels of effort for tasks, need to be eliminated or adjusted downward. This deletion of work along with any extra work should be considered in determining the net effect, and may result in a *negative* or *zero-dollar* supplemental agreement.

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### 4.8.6 OVERRUN

During the course of work, the effort required to accomplish certain tasks may substantially exceed that which is provided for in the agreement. This is termed an overrun. Sometimes, overruns are identified during the progress of work, but are documented at the conclusion of the work. Overruns can be due to inefficiency, over staffing, inexperience, etc. The Department will

not increase the value of an agreement for these reasons. However, the value of an agreement will be increased if the Department concurs that the overrun is a result of extra or additional work.

One item which can cause an overrun is a revised overhead billing rate, which makes each hour of labor more expensive than originally estimated in the agreement. Consultants and consultant managers should be aware that an increase in overhead is not a justification for an overrun that exceeds the maximum amount payable, and that all work originally included in the agreement must be completed within the maximum amount payable unless substantial extra or additional work has been identified.

For these reasons, overruns should be identified as early as possible so that the Maximum Amount Payable is not exceeded. The consultant manager should also pay attention to the amount of work progressed to date vs. the cost to date, to identify overruns or anomalies.

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#### **4.8.7 COWR - CONSULTANT OUT-OF-SCOPE WORK REQUEST**

The Consultant Out-of-Scope Work Request (COWR) is a quick response form to be initiated by the consultant when extra or additional work is to be performed prior to the full execution of a supplemental agreement. If the work can be delayed until after a supplemental agreement is fully executed, the COWR form is not necessary. The COWR is to be approved by the Department, and if the project is an FHWA Major Project, then FHWA needs to also approve it before any out-of-scope work is performed by the consultant. The [COWR form](#) and [Guidance for completing the COWR](#) can be found on the Consultant Management Bureau website.

The consultant may begin work under the terms of the COWR, but only after the COWR is approved. The consultant is always working “at-risk” under the COWR. In the unlikely event that an agreement or supplemental agreement for the work cannot be executed, there is no contractual basis for payment.

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#### **4.8.8 SUPPLEMENTAL AGREEMENTS**

A supplemental agreement is an agreement that supplements or changes the original agreement. The supplemental agreement may be used to add (or subtract) direct technical labor, direct non-salary costs, or fixed fee to the contract. Usually the supplemental agreement will add funds to the agreement and increase the maximum amount payable due to additional or extra work. However, if work tasks are removed or reduced, it could be a negative or zero-cost supplemental agreement. In this case, the deleted work should be identified by title and task, and the fixed fee adjusted accordingly (the revised fixed fee will be calculated by the Office of Contract Management).

The supplemental agreement may be built into or implied by the original agreement. For example, environmental term agreements often start out with a base term of three years, and then two additional one-year periods may be added or supplemented based on need and performance. Design agreements are often set up such that the original agreement is for phases I-IV work (preliminary design) and then phases V-VI work (final design) is added by supplemental agreement, as stated in the advertisement or the original agreement.

If the supplemental agreement deletes work as well as adds new work, the net effect could be a negative or zero-dollar supplemental. For these cases, the deleted work should be identified by title and task, and the fixed fee adjusted accordingly (the fixed fee calculation will be performed by the contract analyst).

If an extension of time is necessary to complete the work contained in the supplemental agreement, a time extension can be added to Article 4 of the supplemental agreement boilerplate. A time extension request separate from Article 4 must be used to extend the expiration date of a Regional Design Services Agreement (RDSA).

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#### **4.8.9 PROCESSING EXTRA OR ADDITIONAL WORK**

The steps listed below should be followed when processing an extra or additional work request.

An abbreviated version of these steps can be found in the [Extra or Additional Work/Supplemental Agreements checklist](#) which is included in *“Consultant Management QC Checklists, Part 2 Consultant at Work”* and located on the Consultant Management Bureau webpage.

##### **1. Consultant notifies the Department that extra or additional work is required.**

The consultant shall immediately notify the consultant manager if the firm believes that they are required to perform work that is not included in the original scope of services. This may result from the addition of new tasks or the modification of existing tasks because of a change in scope, complexity or character of the work. The consultant manager will direct the consultant to submit a formal Consultant-Out of scope Work Request (COWR) and a written proposal to the consultant manager when extra or additional work is to be performed prior to the full execution of a supplemental agreement. A written, but informal summary estimate is sufficient when time is critical, but a formal submission is required as soon as possible. The consultant's written proposal will include a proposed scope of services, a table of estimated staffing titles and hours required to accomplish the work and associated direct non-salary costs. If the consultant expects that the work should be classified as extra work, then justification should be provided. The consultant shall include established overhead rates and an estimate of fixed fee (if applicable). The actual amount of fixed fee, if any, will be established later in the process by Contract



Management. Copies of all proposals from the consultant must also be submitted to both Contract Management's Civil Rights Unit, and the appropriate contract analyst in Contract Management, following the process described in [Consultant Instruction CI 11-01](#).

**2. The consultant manager determines if the request is appropriate.**

The consultant manager determines if the work is included in the current agreement (original plus approved supplemental agreements) or if it is extra work or additional work (i.e., a determination of fixed fee eligibility). If the consultant manager concludes that the work is already in the current agreement, the consultant is so notified. The consultant may provide additional justification and request that the decision be reconsidered. If the consultant manager classifies the work as additional work, the consultant may submit additional information and request that the classification be reconsidered. Using that information, the consultant manager then reaches a decision concerning fixed fee applicability.

**3. Consultant manager verifies the scope of services and prepares an independent estimate.**

The consultant manager in coordination with the program area manager will verify the proposed scope of services and discuss the scope with the consultant. The consultant may offer technical assumptions which will- fine tune the scope. The consultant manager will then prepare an independent estimate of the hours, staffing and overall cost before negotiations with the consultant, and, if possible, before obtaining the consultant's formal proposal. The independent estimate should always be prepared, even if a COWR form is used.

**4. Consultant manager and consultant finalize scope and estimated cost.**

After the consultant manager receives the COWR from the consultant and reviews the proposed scope of services and independent staffing estimate, they then contact the consultant and finalize the scope of services. Other regional and/or Main Office units may have an interest in the work, or be able to provide assistance in the review of the consultant proposal. It is the responsibility of the consultant manager to determine if contact with these groups should be made and to follow through, as appropriate, during the negotiations process.

The consultant manager and consultant then negotiate a reasonable staffing effort along with any and direct non-salary costs necessary to accomplish the extra work.

**5. Consultant manager obtains FHWA approval (if appropriate)**

If the project is classified as a Major Project (Non-Exempt) as defined by 23 CFR 172.9(c), then the consultant manager forwards the COWR to FHWA for their concurrence. Under no circumstances

should work be started on new tasks associated with a Major Project without FHWA approval (or non-federal aid funding has been obtained).

#### **6. Consultant manager obtains COWR funding approval**

Upon becoming aware of any extra or additional work to be done which will necessitate a supplemental agreement and an increase in MAP, the consultant manager should immediately request that the project manager and the RPPM confirm that adequate funds are available. The RPPM's office needs to approve and sign the COWR ensuring that they have earmarked funds for the extra work

#### **7. Consultant manager approves COWR and directs consultant to start work.**

After the extra or additional work is negotiated and approved by the consultant manager, the consultant manager then directs the consultant to begin the work. If the COWR is not approved, then the consultant should not begin work on any of the extra or additional work tasks.

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### **4.8.10 PROCESSING A SUPPLEMENTAL AGREEMENT**

A judgment must be made by the consultant manager as to when to initiate a supplemental agreement. Consideration should be given to not burdening the processing system with many small supplemental agreements. However, an undue financial burden may be placed on the consultant when a supplemental agreement is not in place and existing funds are insufficient to reimburse the firm for completed work. Regardless of the fiscal status of the project, a supplemental agreement should be considered when the amount of work (either COWR(s) and/or future identified work) accumulates to a threshold of \$250,000., or 20% of the current MAP, whichever is less. This includes the total direct technical labor, direct non-salary costs, overhead, and fixed fee. In multi-PIN agreements (e.g., RDSA) this applies to each PIN. A supplemental agreement may be prepared for lower thresholds if it will prevent the consultant from experiencing a financial burden.

The following steps should be followed when processing a supplemental agreement:

1. The consultant condenses all previously approved COWRs into a draft supplemental agreement proposal which includes the negotiated scope of services, staffing tables (including exhibits), a table of direct non-salary costs, and signed PLL forms, and submits the proposal package to the consultant manager. The consultant manager reviews the proposal and confirms consistency with previously approved COWRs.

2. The consultant manager prepares a [CONR 390c](#) for funding approval and submits to the RPPM. (For non- architectural/engineering projects the consultant manager submits to the Division Director a [HC-190NSA](#) for funding approval and signature). The RPPM approves the CONR390c and submits it to the Office of Finance. The Office of Contract Management must have a signed CONR 390c or HC-190NSA prior to processing the supplemental agreement.
3. The consultant manager prepares and submits either an Attachment A or B (depending on the fund source) per instructions contained in [Budget Bulletin B-1184](#). The Office of Contract Management must have an approved Attachment A or B prior to processing the supplemental agreement.
4. The consultant manager submits the draft supplemental agreement proposal and supporting documents (i.e. independent staffing estimate, negotiations correspondence, etc.) to their supervisor for approval.
5. Upon supervisor approval, the consultant manager prepares an executive summary and cover memorandum, and submits the supplemental agreement final proposal package to the Office of Contract Management for processing. The approved Attachment A or B should also be included. A separate copy of the final proposal should be submitted to the Civil Rights Unit (Office of Contract Management),
6. After receiving the supplemental agreement final proposal from the consultant manager, the Office of Contract Management will prepare a draft supplemental agreement and distribute to the consultant and consultant manager for review. Contract Management then obtains formal approvals (signatures) from the Department, consultant, FHWA (if project is Non-Exempt/ Major Project), NYS Attorney General, and the NYS Comptroller. Upon receiving NYS Comptroller approval, the supplemental agreement is considered “fully executed”.

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## **4.9. ADDING NEW SUBCONSULTANTS AND SUBCONTRACTORS TO ONGOING DESIGN CONTRACTS**

During the course of consultant design work, the consultant team may need to use other subconsultants or subcontractors. This usually occurs when assigned tasks fall outside of the experience and expertise of the consultant team. The following is a guide for use in these circumstances.

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### **4.9.1. EARLY COORDINATION WITHIN THE DEPARTMENT**

If doing the work as a part of the existing contract is appropriate, and a new subconsultant or subcontractor is needed, the prime consultant notifies the consultant manager of the need to add

either a subconsultant or subcontractor. The consultant manager should then contact the contract analyst in the Office of Contract Management and confirm the method of selecting and hiring a new subconsultant or subcontractor. The consultant manager in consultation with the contract analyst determines whether a subconsultant or subcontractor is appropriate. This early contact will confirm that the method of selecting and hiring the new firm is consistent with current Department policies and Comptroller's regulations.

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#### **4.9.2. SUBCONSULTANT VS. SUBCONTRACTOR SERVICES**

The procedure used to select, hire and pay for the services of a *subconsultant* and a *subcontractor* are different. The consultant manager, in consultation with the contract analyst, must determine which type of firm is needed for the proposed work.

- **Subconsultant** tasks in design agreements generally are professional services requiring a license under the Education Law of this State such as a professional engineer, landscape architect, or land surveyor. Examples of subconsultant services include: the production of a report which contains an analysis or interpretation of data; the development of a set of plans; the preparation of a map that includes real property boundaries; performing retaining wall design; determining the level of service for an existing highway; and developing a maintenance and protection of traffic scheme. Under the Education Law, these services may not be obtained by competitive bids or price quotes. On occasion, other types of professional services are required for projects. For example, it may be necessary to hire an economist to determine the influence of a project on the local economy, or to engage the services of a professional public relations firm to interact with a local community. While these services are not always covered by provisions of the Education Law, they are still considered to fall within the broad definition of subconsultant work.

- **Subcontractor** tasks are those *not requiring professional services*. This covers a very broad range of work such as: performing laboratory testing and analysis; printing; obtaining soil samples; and obtaining traffic counts. As a general guide, if all of the following apply, the proposed most likely can be considered as appropriate for a subcontractor:

- All competent service providers will achieve the same result (*a professional opinion or judgment is not required*).
- Performance of the tasks *does not require a professional license* under the NYS Education Law

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### 4.9.3. SUBCONSULTANT SELECTION AND APPROVAL

The consultant manager in coordination with the design liaison prepares a scope of services for the new task and presents it to the prime consultant. The consultant must then either:

- Demonstrate that they, or one of their subconsultants, have the experience and expertise to complete the new task, or
- Propose that a new subconsultant complete the new task.

If a new subconsultant is necessary, and the prime consultant was successful in using a particular subconsultant in the past for services similar to the new task, then the prime consultant may offer that firm for approval. If the prime consultant hasn't utilized a subconsultant for completing a task similar to the new task, then they can solicit proposals from subconsultants which would include resumes of proposed staff and previous experience of the proposed firm. The prime consultant should try to obtain at least three proposals. If the consultant is unable to solicit responses from three qualified firms, then the consultant should contact the Office of Contract Management for assistance in the solicitation outreach.

The prime consultant then reviews the subconsultant proposals and determines which one is most qualified to perform the new task. The consultant then submits a letter to the consultant manager recommending the use of a particular subconsultant. The letter should include a description of the proposed tasks and resumes of key staff.

For Non-Major (Exempt) Federal aid projects, and State funded projects, the consultant manager reviews the prime consultant's recommended subconsultant proposal and determines if it is acceptable. If it is acceptable, the consultant manager submits an approval letter, with the subconsultant's proposal attached, to the Office of Contract Management.

Contract Management will then check contractual aspects of the selection such as staff roster, overhead rates, etc. Only after this check is completed should the consultant manager authorize the prime consultant to inform the new subconsultant of their selection.

For Major (Non-Exempt) Federal aid projects, FHWA approval of the subconsultant is usually warranted prior to a new subconsultant being selected. Contract Management obtains FHWA approval upon receiving the consultant manager's approval letter.

Note: If the new subconsultant is replacing a D/WBE firm, then the new subconsultant must be a D/WBE firm.

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#### 4.9.4. SUBCONTRACTOR SELECTION AND APPROVAL

Subcontracts must adhere to the following direction:

- The prime consultant should solicit several quotes to ensure that the work is being performed in the most economical fashion.
- Section 163 of State Finance Law requires that contracts for services and commodities be awarded on the basis of lowest price or best value “to a responsive and responsible offerer”.
- The prime consultant should ensure the selected quote represents a fair and reasonable market value.
- Prior to making an award of a contract, the prime consultant shall make a determination of responsibility of the proposed contractor, and the subcontract must be approved by the Department Program Area administering the contract.

The following additional parameters apply if certain cost thresholds are exceeded:

**Subcontracts estimated in excess of \$50,000, but less than \$100,000:**

- The prime consultant is required to advertise the opportunity in the [NYS Contract Reporter](https://nyscr.ny.gov) (nyscr.ny.gov). Any firm can register and create a business account, register the company on the NYSCR business registry, submit ads for subcontractor services in the NYS Contract Reporter, and search the directory for subcontractors for government related contract needs.

**Subcontracts estimated at \$100,000 or more:**

- The prime consultant is required to advertise the opportunity in the [NYS Contract Reporter](https://nyscr.ny.gov) (nyscr.ny.gov). Any firm can register and create a business account, register the company on the NYSCR business registry, submit ads for subcontractor services in the NYS Contract Reporter, and search the directory for subcontractors for government related contract needs.
- Prior to making an award of a contract, a review of the apparent designee’s Vendor Responsibility Questionnaire via [OSC’s VendRep System](https://osc.state.ny.us/state-vendors/vendrep/vendrep-system) (osc.state.ny.us/state-vendors/vendrep/vendrep-system) is required, and a determination of responsibility of the proposed contractor must be made. This will require the apparent designee to have a certified questionnaire in the VendRep System. The Office of Contract Management has access to the VendRep system, and can review the apparent designee’s Questionnaire and make a responsibility determination on behalf of the Department and prime consultant.

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#### 4.10. AGREEMENT TIME EXTENSION

*Note: The contract time extension procedure is provided in the Manual of Administrative Procedures (M.A.P.), Section 7.1-1-4. The critical steps are outlined in this Section.*

Each consultant agreement expires at a time specified in the agreement. When it is unlikely that the consultant's work can be completed on schedule and by the agreement completion date, an agreement time extension is required. Consultant managers should monitor the completion dates for all of their consultant agreements and initiate requests for time extensions as needed (for multiple PIN or Regional Design Service Agreements, a schedule change for even one of the projects requires a time extension for the entire agreement.). Prior to initiating a time extension, the consultant manager should discuss and confirm the new revised schedule with the design manager. The procedure for obtaining a time extension is as follows:

- The consultant manager prepares a [CONR 392 "Request for Extension of Consultant Contract Completion Date"](#) memorandum and obtains signatures on the CONR 392 from the consultant manager, the prime consultant (authorized officer of the company), and either the Consultant Management Bureau Director / section supervisor or region depending on whether the CMB or the region is managing the consultant. Note that the "*Reasons*" section of CONR 392 must sufficiently explain to FHWA and the Office of the State Comptroller why the work required by the agreement will not be completed by the current completion date. If the justification is lengthy, use additional pages to explain the circumstances.
- The consultant manager obtains FHWA approval of the time extension if the project is categorized as an FHWA Major Project.
- The consultant manager submits the CONR 392 to the Office of Contract Management for processing.
- Upon receiving Office of the State Comptroller approval of the CONR 392, the Office of Contract Management notifies the consultant and the consultant manager of the new agreement completion date.
- The consultant manager files a copy of the approved CONR 392 in the Negotiations and Agreement file (White File).

A contract time extension must be in effect until the consultant has completed all work and been paid for all reimbursable expenses. Recommended time extension completion dates for typical projects are as follows:

- a. Design (Phase I-IV only) - Three months after the estimated date of design approval.
- b. Design (Including Phases V and VI) - Three months after the scheduled letting date.
- c. Other types of contracts - The best estimate of when all tasks under the agreement will be completed.

Time Extensions may also be processed as part of a supplemental agreement. (See [Section 4.8, Extra or Additional Work Requests and Supplemental Agreements.](#))

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## **4.11. CONSTRUCTION SUPPORT SERVICES**

### **4.11.1. BACKGROUND**

Construction support services (CSS) agreements are necessary only on an occasional basis since design consultants, as professionals, are expected to clarify or explain the intent of plans they have prepared and answer significant questions, regardless of whether a construction support agreement exists. The design firm is expected to correct any errors or omissions in their work at no charge.

Typically, the design consultant is retained to provide support services during the construction phase for moderately complex or complex projects, where the consultant will be able to provide a significant contribution to the successful completion of the project. These support services may be desirable for projects which involve: variable field conditions requiring field changes, extensive shop drawing reviews, or unique or complex construction requiring additional design tasks. Using knowledge gained from the design phase, the design consultant may perform these tasks in a uniquely efficient manner.

*However, it is not ethical, nor consistent with NYSDOT policy, to use the consultant's design agreement to retain firms indefinitely through the construction phase.* The design portion of the agreement should be closed out within three to four months after the project letting. This enables an audit of the design work to be performed and the firm to receive final payment for design.

If a CSS agreement is warranted, the design consultant can be retained quite easily. The process should be started as early as possible, preferably at the Advanced Detailed Plans stage, but no less than four months before the letting.

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### **4.11.2. PROCESS**

After the design work has been completed, and assuming CSS is required, the design consultant manager will usually transition the management of the consultant from Design to Regional Construction. However, some CSS agreements are managed by the Consultant Management Bureau (design consultant manager) --- it's usually dependent on workload and regional preference. The design consultant manager should take the lead in initiating a dialogue with the regional construction group in order to confirm who will take the lead on managing the CSS effort.



The CSS scopes of services and a cost estimate are prepared by either the regional construction group or the design consultant manager. If the CSS effort is managed by the regional construction group, then the preference would be for that group to prepare the scope and estimate. These types of scopes are usually quite brief - a generic example, which should be modified to be as project specific as possible, is found in the [base Scope of Services](#), under the *Project Management and Miscellaneous Work* section, available on the Consultant Management Bureau 's website. The cost estimate is an order-of-magnitude maximum, as a detailed estimate for this type of work is not usually possible.

The CSS consultant manager discusses the CSS scope with the consultant and solicits a proposal from the consultant. After negotiating with the consultant, the CSS consultant manager should contact the regional program manager who then in turn contacts their RPPM to secure funding for the CSS work. The CSS consultant manager then initiates a CSS supplemental agreement.

Depending on the complexity and amount of CSS needed, there are two methods of securing an agreement.

- For minor CSS work, (*less than 400 hours*), the CSS can be estimated as an amount of hours and added to a design supplemental agreement. If added to a design supplemental agreement, the CSS consultant staffing and cost exhibits should be separate from the design exhibits along with separate funding PINs. This format will enable the design portion of the agreement to be closed-out while the CSS effort continues. This agreement is typically a “cost plus overhead and fixed fee” agreement.
- For major CSS involvement (*400 hours or more*), a monetary amount is chosen and a stand-alone CSS supplemental agreement is prepared. This type of supplemental agreement will usually contain specific hourly rates as opposed to cost plus fee.

After one of the above methods is chosen, the CSS consultant manager should refer to [Section 4.8.Extra or Additional Work Requests and Supplemental Agreements](#) for guidance pertaining to processing a supplemental agreement.

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## 5. AGREEMENT CLOSEOUT

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### 5.1. OVERVIEW

After the consultant has completed all services defined in the consultant agreement, the agreement must be ended. This process is commonly referred to as the *agreement closeout* and it initiates a final audit of agreement expenses. Because the close out of an agreement has a financial impact on the consultant, it should be accomplished by the consultant manager in a timely manner. The process starts when the following conditions have been fulfilled:

- All tasks in the agreement have been completed.
- No tasks are to be added to the agreement (i.e., there are no pending supplemental agreements).
- All work defined in the consultant agreement has been received from the consultant and accepted, and no further consultant involvement is expected. A consultant is obligated to answer reasonable questions about the design and to correct errors at no cost, even after the agreement has been closed out.
- When design services are completed and the consultant is to provide construction support services, the design portion of the agreement should be accepted and closed out.

The above conditions apply to most agreements, however for multi-PIN agreements (such as RDSA's) or for agreements involving the early completion of all work assigned to a subconsultant, an acceptance of work may be initiated *prior to the completion of all tasks in the agreement*. This is referred to as *partial acceptance* and has its advantages including:

- Initiates an audit on the subconsultant(s) after their work is completed, thereby allowing the subconsultant to receive the entire fixed fee without waiting for the prime (and possibly other subconsultants) to complete project work. This is done through the submission of a draft final bill after the acceptance of work has been approved. They do not have to wait for all work performed by others to be completed. The prime consultant does however have to assume responsibility for any changes that might need to be made to the subconsultant's work.
- For multi-PIN agreements, the acceptance of work for individual PINs allows payment of the entire fixed fee for the prime and all subconsultants (as above) and is important in maintaining timely project documentation. It is sometimes difficult to obtain an acceptance of work on PINs that have been completed for long periods of time.

The close-out procedures (see 5.2 below) are the same regardless of whether it's a partial or full agreement closeout. However, if a partial closeout is being pursued, then the *partial acceptance memo* should be used ([PARTIAL-ACCEPTANCE-OF-WORK.DOC](#)),

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## 5.2. CLOSEOUT PROCEDURES

The general procedure for contract closeout is covered in section 7.1-1-4 of the *Manual of Administrative Procedures*. However, the following steps describe design agreement closeout as it pertains to the design consultant manager:

1. The consultant, usually at the direction of the consultant manager, writes to the consultant manager indicating all contractual services performed under the agreement have been completed and all required records and materials (as described in the agreement) have been turned over to the proper Department unit via paper copies and/or electronically. This includes posting all necessary documents to *Project Wise*. In addition, if any equipment, furniture and supplies were acquired with funds paid to the consultant, it is the Department's policy to recover them in accordance with Section 2.4-7-3 of the M.A.P. The consultant must submit to the consultant manager the appropriate form, and the process described in the M.A.P. must be followed.
2. The consultant manager obtains concurrence in writing from the relevant Department unit responsible for the project (i.e., regional design office) that all contractual services performed under the agreement have been completed and all required records and materials (as described in the agreement) have been turned over to the proper Department Unit.
3. The consultant manager prepares an *Acceptance of Consultant Work* memo ([ACCEPTANCE OF CONSULTANTS WORK.doc](#)). This memo is signed by the consultant manager and their supervisor, and verifies that all of the services provided by the consultant are acceptable. If not already completed, the consultant manager prepares a final performance evaluation for each consultant listed in the agreement.
4. After receiving the signed *Acceptance of Consultant Work* memo, the consultant manager requests an original and three copies of the draft final invoice from the consultant (the draft final invoice is the last invoice prior to a final audit covering all remaining expenses incurred by the consultant). In the case of multiple PIN agreements and RDSA's, the draft final invoice can not be submitted until work on all projects has been completed. For details in paying a draft final invoice see [Section 4.5, Consultant Invoicing and Progress Reporting](#).

5. The consultant manager reviews the draft final invoice and, if acceptable, prepares a *Request for Final Audit* memo ([REQUEST FOR FINAL AUDIT.doc](#)). The consultant manager submits the memo to the Office of Contract Management, along with one copy of the draft final invoice and the signed *Acceptance of Consultant Work* memo. The consultant manager also submits two copies of the draft final invoice to the Accounting Bureau Expenditures Unit for payment. At this point, the Office of Contract Management sends a copy of the draft final invoice with a request for final audit to the Contract Audit Bureau. Contract Management also transmits the acceptance memo to the Office of State Comptroller, FHWA (if federally funded), the Regional Planning and Program Manager, all appropriate Main Office Functional Units, and the consultant.

6. Following completion of the final audit, the consultant manager may be asked to verify that additional costs claimed by the consultant and identified in the final audit, were necessary for completion of work. Further, if the consultant is owed funds, The Office of Contract Management requests that the consultant prepare a final invoice which is submitted to the Expenditures Unit for payment. If funds need to be recovered, then the Office of Contract Management requests the Accounting & Fiscal Services Bureau to initiate recovery actions.

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### **5.3. FILE ARCHIVING**

Retention of agency records is governed by State Education Law and administered by the State Archives and Record Administration (SARA). Each state agency has an Agency Records Management Officer (ARMO) who plans, promotes, and monitors the agency records management program in consultation with agency program managers and SARA. The DOT's Records Management Officer is within the Administrative Services Division, Facilities Management, of the Main Office. For projects managed by the Consultant Management Bureau, follow the procedures outlined below. For projects managed in the Regions, contact the Regional Administration Officer for guidance.

1. After the final audit on a consultant agreement is completed and the consultant accepts the results, (up to several years after submission of the draft final invoice), all files should be sorted to remove unnecessary and duplicate documents. The negotiation and agreement (white) files are combined with the payment (green) files in the same box. The project correspondence (red) files must be boxed separately. Files are archived in standard-issue boxes (10"x12"x15") which must be filled, even if files for several different contracts are in the same box.

2. Label each box with the consultant agreement number (D#), all PINs included in the agreement, brief description for each project, dates of the first and last entries for each file, and type of file.

3. When the boxes are ready for pick-up, support staff will complete Form REC-1, Record Center Transfer List, fill out a spreadsheet and e-mail it to Records [Mgmt@dot.state.ny.us](mailto:Mgmt@dot.state.ny.us) notifying the ARMO that the boxes are ready for pick-up.

At this time the consultant manager's role in handling the boxed files is complete. For informational purposes, however, the files are transferred to the State Records Center, Building 21 of the State Office Campus. When the boxes are received at the Records Center, item #11 on Form REC-1 is completed which documents the location of the box, and the form is returned to the ARMO for inclusion in the Department's Master Inventory of Records. The ARMO sends the Consultant Management Bureau a copy of the completed REC-1 for the Records Inventory File. The negotiation and payment (green and white) files are retained for 10 years from the date of the last piece of correspondence, and then after 10 years are destroyed. The project (red) files are also retained for 10 years and then microfilmed by the State Education Department for permanent entry in the state archives.

To request the return of a box from the Records Center, complete Form REC- 2, Records Center Reference Request. Obtain the required information from the form REC-1 originally used to transfer the box to the Records Center. Send the completed Form in digital format to the ARMO at [Mgmt@dot.state.ny.us](mailto:Mgmt@dot.state.ny.us) for signature and submission to the Records Center. Additional administrative details pertaining to file transfers are provided in MAP 1.2-2 Records Management.

An electronic copy of all project contract documents should be posted on ProjectWise, the Department's file management system.

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## 6. APPENDIX

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## **APPENDIX I. RESPONSIBILITIES OF REGIONAL CONSULTANT PROJECT MANAGERS**

In order to bring consistency between various Regions and staff involved in Consultant Project Management, this document provides guidance on the level of involvement expected by department staff on the various tasks they perform, while involved in a consultant designed project.

Design Consultants play an essential role in the delivery of NYSDOT's capital program. The effective management of consultants is vital for producing high-quality design products within reasonable schedules. The appropriate level of involvement by in-house staff in the management of consultants is a balance between no involvement and total control of consultant's planning and decision making. Consultants are licensed professional engineers and have been selected through a qualification-based procurement process and should be expected to deliver designs with minimum direction. However, Department staff should ensure that the consultants are making progress towards meeting the schedule. In addition, department's Design Consultant Project Manager should coordinate review of consultant deliverables within NYSDOT and with organizations outside of NYSDOT, such as FHWA. Consultants are expected to have their own individual QA/QC plan and Department staff should only be performing spot checking.

Two primary roles for Design staff while interacting with the Consultants are Design Consultant Manager and Design Project Manager. Design Consultant Managers are primarily responsible for the procurement and management of the consultant agreement, while Design Project Managers are involved in the management of the technical and schedule aspects of the project and coordinating with internal and external stakeholders. It is possible to have the same staff perform both above two functions.

The following sections list various roles played by department staff, time spent on project management and typical tasks performed by design staff on consultant designed projects and provides expected level of involvement by staff on their tasks.

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### **6.1. ROLE OF DESIGN PROJECT MANAGER IN CONSULTANT DESIGNED PROJECTS**

- Coordinates design requirements with consultant.
- QA/Peer reviews consultant work products/deliverables for methodology used, adherence to Department standards and policy, reasonableness, constructability and presentation/understandability (varies greatly depending on size/complexity). Determine if the consultant team is skilled and performing adequate QC.
- Monitors and ensures project scheduling that includes all major milestones and enough activities to ensure the work is on schedule.
- Ensures project data and deliverables are stored in ProjectWise and information updated weekly.
- Coordinates decision-making actions.
- Coordinates with Regional and MO functional groups
- Coordinates with FHWA and other agencies.

## 6.2. ROLE OF DESIGN CONSULTANT MANAGER IN CONSULTANT DESIGNED PROJECTS

- Develop of Scope of Services
- Develop Independent Estimate for the Scope of Services
- Using an independent resource estimate, negotiates hours to complete tasks.
- Monitors consultant contract funding
- Review and approves invoices
- Coordinate with Consultant Management Bureau.
- Rates consultant performance and proactively addresses poor performance.
- Process Time Extensions and Supplemental Agreements as needed
- Final Acceptance of Consultant's work and Close out agreement
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## 6.3. TIME SPENT ON PROJECT MANAGEMENT FOR CONSULTANT DESIGNED PROJECTS

- Time and effort spent on activities will depend largely on project complexity.
- Reviews should be at a QA/peer level with spot checking and not involve reviewing all calculations. All written reports should be read completely.
- Coordination with various functional groups (some groups require more effort to coordinate).
- May require coordination with different Federal, State, or local agencies.

## 6.4. TYPICAL TASKS BY DESIGN STAFF ON CONSULTANT DESIGNED PROJECTS

Task	Description of Task	Typical design Staff responsible for the task
Request Consultant Services	Enter consultant request in ICMS. Critical Information required are: <ul style="list-style-type: none"> <li>• PIN</li> <li>• Construction Cost</li> <li>• Environmental Classification</li> <li>• Design services needed (Phases of Design and Tasks)</li> <li>• Consultant Justification Memo</li> </ul>	Section Manager Design Project Manager
Develop Draft Scope of Services	Develop initial list of tasks to be performed by consultant with preliminary level of project information	Design Project Manager Landscape Section Environmental group Survey Structures Traffic Section Manager
Scope Meeting	Discuss project objective. Tasks to be	Design Project Manager



	completed and who is responsible for various task.	Landscape Section Survey Structures Traffic Section Manager Regional Compliance Specialist Consultant Manager
Develop Independent Estimate	Develop independent estimate of the design effort.	Design Consultant Manager
Schedule	Develop a schedule for key deliverables and interim milestones including preliminary drafts.	Design Consultant Manager Design Project Manager Landscape Section Survey Structures Traffic Section Manager
Finalize Scope of Services and Negotiations	Finalize the tasks to be completed and negotiate the staff titles and hours needed to complete these tasks	Design Consultant Manager Design Project Manager
Performance Evaluations	Routinely evaluate consultant's performance	Design Consultant Manager Design Project Manager
Review and approve consultant invoices	Review consultant invoices for appropriateness of charges and compliance with contract requirements. Verify working documents and any final documents and supporting files are posted in ProjectWise weekly.	Design Consultant Manager
Budget and Schedule	Monitor the progress vs the schedule and maximum amount payable.	Design Consultant Manager
Process Supplemental Agreements	Monitor project scope changes, reviews and approves Consultant Out of Scope Work Requests (COWRs) and process supplemental agreements in a timely manner.	Design Consultant Manager
Progress Meetings	Attend progress meetings to discuss schedule and various technical aspects of the project. Different topics could have higher significance as project progresses. Participation from	Design Consultant Manager Design Project Manager Design Functional Groups

	various supporting groups will vary over the life of the project. These typically last about an hour and the frequency depends on the schedule constraints and size of the project.	
Review Interim Reports/ Analysis/ Design alternatives	Checks for overall format, content and reasonableness of findings, missing analysis etc.	Design Project Manager Design Functional Groups
Draft Design Report Review	Checks for overall format, content and reasonableness of findings, missing analysis etc.	Design Project Manager Design Functional Groups
Coordination with FHWA and other participating and cooperating agencies.	Coordinate milestone reviews, public involvement, permit issues etc. with other agencies.	Design Project Manager
Final Design Report Review	Checks for overall format, content and reasonableness of findings, missing analysis etc.	Design Project Manager Design Functional Groups
ROW Review	Checks for overall format, content and reasonableness of findings, missing analysis etc. Ensures that all required ROW is acquired prior to PS&E	Design Project Manager Design Functional Groups
Traffic Review	Checks for overall format, content and reasonableness of findings, missing analysis etc.	Design Project Manager Design Functional Groups
Utility Review	Checks for overall format, content and reasonableness of findings, missing analysis etc.	Design Project Manager Design Functional Groups
Estimate Review	Checks for overall format, content and reasonableness of findings, missing analysis etc.	Design Project Manager Design Functional Groups
ADP Review	Checks for overall format, content and reasonableness of findings, missing analysis etc. Distributes ADP to Regional Functional groups. Schedules and manages ADP review meetings.	Design Project Manager Design Functional Groups
PS&E Review	Checks for overall format, content and	Design Project Manager

	reasonableness of findings, missing analysis etc. Helps resolve all ADP comments. Reviews and distributes responses to ADP comments.	Design Functional Groups
Public Involvement	Coordinate venue selection, information materials and other logistics of the public involvement with consultant etc. Reviews and coordinates all public Involvement material review with Regional Public Involvement Group and Regional Director's office.	Design Project Manager Design Functional Groups
Construction Support	Coordinate with EIC and Consultant	Design Project Manager