



FDM 8-5-1 Selection Process

May 15, 2024

This section outlines a portion of consultant contracting process. It is expected that the procedures outlined in all sections of chapter 8 will be followed by all parties to ensure the integrity of the consultant contracting process. Failure to follow these processes could lead to disciplinary issues for staff or could lead to consultants being ineligible to work on DOT projects. The Department takes policy adherence very seriously and not only expects staff and consultants to follow policy but also to notify the WisDOT Contract Manager or Chief Statewide Consultant Engineer of known violations of stated policies.

1.1 General

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

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

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

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

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

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

To preserve fair and open competition, WisDOT has directed all of its staff to direct all consultant inquiries pertaining to upcoming projects, concerns about workload, available staff, and general capabilities to **regions'** consultant services unit supervisors. **The** consultant services unit supervisor may decide appropriate response.

During an ongoing solicitation all consultant questions about a project must be **submitted thru the Masterworks application during the Question-and-Answer period. Answers to these questions will be posted for open viewing.**

Project solicitation questions outside of the Question-and-Answer period shall be directed to Bureau of Project Development Consultant Services Section. No consultant questions shall be directed to any other WisDOT staff during a solicitation preview, ongoing solicitation, or period between solicitation close and selection posting. No project information will be shared during this time, except by the Bureau of Project Development Consultant Services Section.

1.2 Intergovernmental and Interagency Agreements

There are no solicitation requirements for intergovernmental agreements. WisDOT may contract with municipalities, regional planning organizations, state agencies (including the UW System) without conducting a competitive process.

Municipalities and Regional Planning Organizations

WisDOT may contract with municipalities and regional planning organizations using either regular contracts or master contracts and work orders.

Selection

Regular contracts: Complete form DT1515 and email to DOTConsultantServicesApproval@dot.wi.gov. No fixed fee is assigned.

Master contracts: Initiated by the Department.

Work orders: Initiated by Department regions/bureaus.

Negotiation

Negotiate in accordance with [FDM 8-10-1](#).

Amendments

Amend contracts and work orders in accordance with [FDM 8-25-15](#).

Contract Approval

Submit in accordance with [FDM 8-20-1](#).

1.3 Solicitation of Interest

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

Consultant Services solicits for interest for consultant services on specific projects on the WisDOT Internet web site at:

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

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

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

Since one of the options to provide design consulting services is to have a separate contract with the project design firm, in the future the following note should be provided on all design solicitations:

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

The questionnaire may also be in the form of a Request for Proposal or an expanded version of a notice of interest questionnaire. In that case, the period for NOI submittal may exceed the normal time-period given in regular solicitations. If a Request for Proposal Questionnaire is used, see [FDM 8-5-40](#) for an example.

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

1.4 Non-Roster Solicitations

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

1.5 Selection Authorization

The selection process should include the following steps:

1. Development of the short list-
 - a. A short list of at least three qualified consultants to potentially be awarded a contract is based upon:
 - i. Consultant responses to solicitations of interest.
 - ii. Roster of Eligible Engineering Consultants, Consultant Report ([FDM 8-5-45](#)), and Consultant Performance Evaluations ([FDM 8-25-5](#)).
 - iii. Other relevant information as appropriate. This may include interviews, RFPs, survey questionnaire, direct inquiries regarding staff availability and experience, interest, policies, and qualifications. Contacts with former clients may also be made.
 - b. If a request for proposal (RFP) is used, see [FDM 8-5-40](#) for guidance.
2. Selection of a recommended consultant
 - a. Each of the consultants on the short list will be evaluated and ranked based on the information noted above.
 - b. For design/related services contracts.
 - i. Recommendations for the top consultants are made by a committee that may include:
 - DTSD Region/Bureaus: a committee including the region Consultant Services Unit Supervisor or Central Office project manager, staff from other regions/bureaus, Chief Statewide Consultant Engineer, Federal Highway Administration, and/or other interested members of the affected community.
 - ii. For contracts estimated at \$2,000,000 or more, all consultants on the recommended short list will be interviewed prior to ranking.
 - Recommended interview lists and interview panels are approved by DTSD Consultant Services Section.
 - The Chief Statewide Consultant Engineer, or appropriate designee, takes part in the interview process. In addition, projects with an estimate of \$5 million or more will have a member from a different region or bureau involved in the interviews to provide a broad perspective.
 - c. For construction engineering services contracts
 - i. DTSD will coordinate an interview schedule at a central location for all transportation regions.
 - ii. Region staff make selection recommendations based on the information noted in (1) above.
3. Selection approvals
 - a. The Division Administrator or delegate approves selections.
 - b. Selections may be made and approved prior to the project ID being authorized for charges in the Financial Integrated Improvement Programming System (FIIPS;) but, the contract may not be authorized until the project ID(s) is(are) authorized for charging in FIIPS. See [FDM 8-20-1](#) and [FDM 8-20-5](#) for contract approval and authorization procedures. Any services completed prior to contract authorization are not eligible for reimbursement. WisDOT staff shall not direct work without an executed contract as this is contrary to federal code and state law, possibly subjecting the authorizer to discipline up to and including termination.
4. Selection documentation
 - a. The selection process, ranking of consultants, list of the selection committee including the chairperson and reason(s) for selecting the preferred consultant must be documented and records retained for four years after the project is closed in accordance with [Records Retention/Disposition Authorization](#); and 2 CFR 200, 333-337. Failure to properly retain records is a violation of law.
 - b. In the event any litigation, claim, negotiation, audit, or other action involving these records has

commenced prior to expiration of **four** years, the records must be retained until all issues are resolved.

- c. For contracts where formal interviews are conducted, the selection committee's final composite rating and recommendation(s) resulting from those interviews should be retained **in the project file in accordance with the applicable RDA. Failure to properly retain records is a violation of law.**

5. Selection notification

- a. Firms are notified of selections for solicited projects via the WisDOT Internet site:

<https://wisconsin.gov/Pages/doing-business/eng-consultants/selections/default.aspx>

- b. The preferred, or first ranked, consultant will be invited by WisDOT to formally discuss the required services. The invitation may include a brief outline of the scope of the project, its schedule, and a request for a written response. **The Department shall not share their delivery cost estimate or any information relating to the same.**
- c. If the invitation is declined, the second ranked consultant should be notified in the same manner.

FDM 8-5-2 Length of Contracts

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2.1 Project Contracts

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

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

2.2 Period Contracts

Some contracts require services to be provided or available for a fixed period. Program management, traffic operations, staffing contracts, and master contracts fit within the category of "period contracts." **Unlike project contracts, services may not continue after the completion date unless extended by amendment.**

2.3 Length of Contracts

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

The contract period for "period contracts" should be consistent with guidelines for contract periods published by the Department of Administration (DOA) in the State Procurement Manual section **PRO-206**, Length of Contracts. Period contracts should not exceed a total of three years of contracts including permitted contract extensions and renewals. Often the period contracts are renegotiated and renewed on an annual basis. Period contracts from the same solicitation should not overlap.

Exceptions to the three-year guideline may be made when there is significant investment required by either the State or the consultant and the requirements of the DOA **PRO-206** are met. Period contracts exceeding three years must be approved by the Administrator of the Division of **Business Management** prior to advertising or soliciting interest for the contract.

Specialty master contracts are subject to the three-year maximum for period contracts noted above. Full-service design master contracts shall not exceed 2 years.

2.4 Contract Extensions

Contract extensions may be granted to consultants on "project contracts" for delays not attributable to the consultant. Contract extensions should be granted in the form of an amendment.

The services covered by the amendment must be negotiated, submitted, and authorized in accordance with [FDM 8-10-1](#), [FDM 8-20-1](#), and [FDM 8-25-15](#).

The consultant shall not commence services or incur costs covered by the amendment prior to receiving written authorization. Any services performed and/or costs incurred prior to authorization are not eligible for payment and shall not be added to current contract charges, amendments, or future contracts.

Additional contracts may be granted on "period contracts" only when potential contract renewals were disclosed

in the solicitation of interest or other advertisement for the contract. Renewals of period contracts should be contracted through a new contract, not an amendment. All period contract amendments must be signed and approved by the WisDOT Contract Manager. This includes time only or no cost amendments. The total contract period including renewals shall not exceed 3 years unless the contract meets the requirements for longer contract periods established in DOA [PRO-206](#). Renewals of contract periods for “period contracts” can only be approved if the Department has completed an interim performance evaluation of the consultant.

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

2.5 Administrator’s Approval for Exceptions

Extensions of period contracts periods may be requested in extraordinary circumstances. A justification must be prepared and submitted to the [WisDOT](#) Contract Manager who will submit it to the Administrator of the Division of [Business Management](#) for approval.

FDM 8-5-3 Conflict of Interest

May 15, 2024

The Department takes policy adherence very seriously and not only expects staff and consultants to follow policy but also to notify the WisDOT Contract Manager or Chief Statewide Consultant Engineer of known violations of stated policies. This section contains some examples of conflicts of interest. It is not an all-inclusive list. Department and consultant staff are expected to act in an ethical manner and hold others to ethical standards. Failure to do so can lead to disciplinary actions including being prohibited from working on DOT jobs. If you have any questions on if something is permissible, reach out to the Chief Statewide Consultant Engineer.

3.1 Conflicts of Interest for WisDOT Employees

Due to the relatively subjective nature of the consultant selection and negotiation process, Department employees responsible for any phase of consultant contract administration must take special care to avoid conflicts of interest, the appearance of conflict of interest, [or abuse of authority](#). WisDOT employees are prohibited from accepting anything of value from consultants including [money or property, favor, service, payment, advance, forbearance, loan, future promise of employment](#), meals, tickets, imprinted clothing, and gifts. [WisDOT employees and consultants must review and understand relevant sections in Department handbooks and code of ethics:](#)

[State of Wisconsin Employee Handbook](#) - *must be a WisDOT employee to access this link.*

[Department of Transportation Employee Handbook Supplement](#) - *must be a WisDOT employee to access this link.*

[State Employee Code of Ethics](#)

[State Employee Handbook](#)

In consideration of these rules, consultants should not offer anything of value to WisDOT employees.

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

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

3.2 Employment of Current or Former WisDOT Employees by Consultants

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

regarding conflicts of interest and external employment.

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

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

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

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

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

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

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

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

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

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

3.4 Conflict of Interest for Consultants

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

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

1. Consultant firms affiliated with contractors through common ownership may not oversee the work of affiliated contractors under construction engineering contracts. However, it may be permissible for a

consultant to work on a project when the Department supplies project engineer and the affiliated contractor is a subcontractor as long as staffing can be managed by the Department to ensure that the consultant is not overseeing/testing/inspecting work done by the affiliated contractor.

2. Consultants may not perform services for contractors on projects for which they prepared the plan, specifications and estimate.
3. It is not permissible, without prior written approval from **Chief** Statewide Consultant Engineer, for a consultant to work for both WisDOT and a construction contractor on the same project. Consultants may not perform staking for contractors when under contract with WisDOT to perform construction-engineering services. [Attachment 3.1](#) shows limited opportunity for consultants to perform testing services for contractors when under contract with WisDOT.
4. Consultants hired to manage local programs and or administer contracts of other consultants may be restricted from competing for certain contracts relating to the programs they manage. Special contract provisions may also be required to maintain confidentiality of certain scheduling and cost information.
5. Consultants under retainer to act as the municipal engineer may not compete for DOT related contracts that impact the municipality. See [FDM 8-5-55](#) for additional conflict of interest rules pertaining to consultants in management roles.
6. Consultants may have contracts with other clients (e.g. utility companies, other units of government and abutting land owners) whose interests may conflict with the objectives of a particular WisDOT project. It is the consultant's responsibility to avoid conflicts of interest and disclose conflicts to WisDOT as soon as they arise.
7. Consultants hired to manage or inspect the work of a contractor may have other contractual relationships with contractors that are independent of the WisDOT contract. While these relationships are not automatically assumed to represent a conflict of interest by WisDOT, the consultant needs to ensure that relationships with WisDOT contractors in no way impair the consultant's ability to fulfill its responsibilities under WisDOT contracts.
8. It is not permissible for a consultant to prepare an independent engineering study of a local bridge (per Trans 213) and then to perform design activities on the project.
9. On Local Program projects, it is permissible for a consultant to prepare grant applications under a separate contract funded by the municipality and be eligible to compete for the design work on any or all projects for which the same consultant prepared the grant application(s) through the Qualifications Based Selection (QBS) process. A municipality shall either:
 - a. use a one-step QBS process with the scope of work to include the grant application and the design services, if authorized; or
 - b. use a two-step QBS process with the scope of work for the first selection for the preparation of the grant application(s) and the second selection for the actual design(s).

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

LIST OF ATTACHMENTS

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

FDM 8-5-5 Sole Source Contracting

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

- Uniqueness: **The service is available only from a single source. Consultants providing similar services must be considered.**
- Emergency: **When risk of human suffering or substantial property damage requires immediate action.**
- Inadequate Response: **A solicitation results in inadequate qualified competition.**

Email DOTConsultantServicesApproval@dot.wi.gov prior to initiating a sole source request with the scope of the project, preliminary estimate, and justification of sole source need. The Chief Statewide Consultant Engineer will assign a fixed fee.

5.1 Selection Approval

The origin of the request determines the approval process.

- WisDOT Regions/Bureaus: Submit selections in Masterworks for approval by the originating Region/Bureau's director, Division Administrator, and Chief Statewide Consultant Engineer; or delegates.
- Municipalities – Complete and submit DT1515 to the Department Local Program Project Manager in accordance with [FDM 8-5-20](#).

FHWA must also approve if federal funds are used on the contract.

5.2 Negotiation

Negotiate in accordance with [FDM 8-10-1](#).

5.3 Amendments

Notify the Chief Statewide Consultant Engineer at DOTConsultantServicesApproval@dot.wi.gov prior to beginning amendment negotiations. Amend contracts in accordance with [FDM 8-25-15](#).

5.4 Documentation/Contract Approval Process

Maintain supporting selection documentation in accordance with [FDM 8-5-1](#). Contracts are approved in accordance with [FDM 8-20-1](#).

FDM 8-5-10 Small Purchase Contracting

May 15, 2024

Small purchase procedures may be used by WisDOT Regions/Bureaus and municipalities for consultant contracts with an initial amount less than \$200,000.

Email DOTConsultantServicesApproval@dot.wi.gov prior to initiating a small request with the scope of the project and preliminary estimate. The Chief Statewide Consultant Engineer will assign a fixed fee.

10.1 Solicitation of Consultants

The originator will:

1. Develop the scope and estimate for the project.
2. Develop a list of criteria to use in ranking responses. Bidding is not allowed.
3. Contact consultants capable of completing the services. At least three consultants capable and willing to complete the services must be ranked on the request.
4. Document and maintain all communication with consultants.
5. Rank consultant qualifications based on the established criteria.
6. If fewer than three consultants are qualified contact the Statewide Consultant Engineer DOTConsultantServicesApproval@dot.wi.gov in accordance with [FDM 8-5-5](#).

10.2 Selection Approval

The origin of the request determines the approval process.

- WisDOT regions/bureaus: Submit selections in Masterworks for approval by the originating region/bureau's director, division administrator, and Chief Statewide Consultant Engineer; or delegates.
- Municipalities – Complete and submit DT1515 to the Department Local Program Project Manager in accordance with [FDM 8-5-20](#).

FHWA must also approve if federal funds are used on the contract.

10.3 Negotiation

Negotiate in accordance with [FDM 8-10-1](#).

10.4 Maximum

The initial contract shall not exceed \$200,000. Solicit other contracts in accordance with [FDM 8-5-1](#).

10.5 Amendments

Amend in accordance with [FDM 8-25-15](#). Contract totals, with amendments, may not exceed \$250,000 without approval from the Chief Statewide Consultant Engineer. Contact DOTConsultantServicesApproval@dot.wi.gov with amendment scope, estimate, and justification prior to initiating amendments that may cause the contract to exceed \$250,000.

FHWA may withdraw all federal aid for contracts amended above the federal small purchase threshold of \$250,000.

10.6 Documentation/Contract Approval Process

Maintain supporting selection documentation in accordance with [FDM 8-5-1](#). Contracts are approved in accordance with [FDM 8-20-1](#).

FDM 8-5-15 State Design and Related Services

May 15, 2024

15.1 Solicitation

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

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

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

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

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

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

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

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

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

15.2 Selection

A diverse selection committee, headed by the Consultant Unit Supervisor and including members of their region/bureau (as well as others, if appropriate), the **Chief** Statewide Consultant Engineer (or **designee**), Federal Highway Administration, and/or members of the affected communities, develop a short list of at least **three**

qualified consultants (where there are **three** firms considered qualified for the work) based primarily on a review of consultant NOI written in response to WisDOT's solicitation of interest.

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

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

15.3 Interviews

Interviews must be conducted when the estimated engineering services costs, including possible staged contracts and amendments, are greater than \$2,000,000. Interviews may be conducted for contracts with estimates less than \$2,000,000 if the selection committee determines interviews would be beneficial. When interviews are conducted the interview panel/selection committee (panel) reviews the NOIs received from the solicitation and creates a shortlist of at least three consultants to be interviewed, if at least three qualified firms have submitted NOIs. The shortlist typically does not exceed five firms. The shortlist must be approved by the Chief Statewide Consultant Engineer.

The panel is chaired by the consultant unit supervisor, or designee, and includes the Chief Statewide Consultant Engineer, or designee; region/bureau project staff; and staff with technical expertise. Solicitations with estimates above \$5,000,000 must have a committee member from a different region or bureau to provide technical expertise and new perspective. Representatives from the Federal Highway Administration and/or members of effected communities may attend with approval of the Chief Statewide Consultant Engineer. The panel must be approved by the Chief Statewide Consultant Engineer and typically has five voting members.

The interview format, including style, length, and location, is set by the region/bureau, must be the same for all consultants interviewed, and is approved by the Chief Statewide Consultant Engineer.

Panel members shall prepare written notes and rankings. All written material shall be retained in accordance with WisDOT RDAs.

15.4 Selection Approval

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

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

For those solicitations originating from DTIM, the Division of Transportation Investment Management (DTIM) management team submits its recommended short lists to the **Chief Statewide Consultant Engineer**. The DTIM Administrator approves those selections.

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

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

15.5 Documentation

The selection process, ranking of consultants, names of selection committee members including the chairperson and reason(s) for selecting the preferred consultant must be documented and records retained **in region/bureau project files**. In the event any litigation, claim, negotiation, audit, or other action involving these records has commenced prior to expiration of **four years in accordance with the applicable RDA**, the records must be retained until all issues are resolved.

For contracts **with interviews**, the selection committee's final composite rating and recommendations resulting from interviews **must be retained in region/bureau project files in accordance with the applicable RDA**. The State Agency RDA documents can be found here: <https://publicrecordsboard.wi.gov/Pages/Agency/RDAList.aspx>.

15.6 Contract Approval

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

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

15.7 Contract Amendments

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

15.8 Web Resources

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

LIST OF ATTACHMENTS

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

FDM 8-5-20 Local Design

May 15, 2024

Municipalities must comply with consultant solicitation, selection, and approval requirements in accordance with FHWA regulations in 23 CFR 172 and WisDOT procedures in this chapter when using federal aid. WisDOT is responsible for ensuring compliance with regulations and procedures. Municipalities may request compliance assistance or clarifications from their region's WisDOT Local Program Project Manager.

Staged contracts are required for projects with an anticipated EIS or EA. The Statewide Consultant Engineer may also require staged contracts for complex and/or high-cost projects that will not have an EIS or EA. If staged contracts are required, subsequent contracts will not be approved or authorized until the environmental document is approved.

Transparency contracts may be negotiated with the design consultant to improve communication during project construction. See [FDM 8-1-10](#).

20.1 Cost Estimate

Municipalities must prepare an engineering cost estimate for each project. The municipality may request that WisDOT assist with preparation or review of the estimate.

20.2 Solicitation

Municipalities must announce a solicitation of interest for engineering services when using federal aid.

Solicitation options include:

1. Preferred: WisDOT Roster of Eligible Engineering Consultants: <https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rqistr/roster.aspx>
 - a. A list of email addresses may be requested from the WisDOT Local Program Project Manager
2. WisDOT Website: <https://wisconsindot.gov/Pages/doing-bus/eng-consultants/solicitations/default.aspx>
 - a. WisDOT Local Program Project Manager will assist municipalities with publication requirements.
3. Newspaper advertisement - Any established local or state newspaper.
4. Municipality's website
5. The municipality's established and maintained roster of engineering consultants:
 - a. Must contain at least 10 firms.
 - b. Must include all interested and qualified firms, without exclusion based on geographic area or other impermissible factors.
 - c. All firms must be contacted. Subsets based on geography or other factors are not allowed.
 - d. A copy of the roster used must be documented in the project file.
6. Sole Source: See [FDM 8-5-5](#).
7. Small Purchase (contract less than \$200,000): See [FDM 8-5-10](#).

20.3 Consultant Selection Committee

The municipality must establish a selection committee with a chair and at least two additional voting members (e.g., Town Board, Highway Committee or Public Works Committee.) The committee must establish objective criteria (e.g., staff availability, staff qualifications and similar work experience) to evaluate consultants' responses. The committee is responsible for evaluating NOIs, interviews, other information and reference checks based on the established criteria. The committee develops a short list of at least three eligible consultants able to complete the services.

20.4 Selection

Selections for engineering services for federal aid projects must be made based on consultant qualifications alone. Price proposals or bids may not be solicited or obtained.

Ranking Without Interviews

For contracts with engineering costs estimated less than \$2,000,000, including possible staged contracts and amendments, interviews are not required. The consultant selection committee evaluates the NOIs, reference checks, and other information received against the established criteria and ranks a shortlist of at least the three most qualified consultants.

Ranking With Interviews

Interviews must be conducted when the estimated engineering services costs, including possible staged contracts and amendments, are greater than \$2,000,000. Interviews may be conducted for contracts with estimates less than \$2,000,000 if the selection committee determines interviews would be beneficial. The requirement to attend an interview must be included in the solicitation. When interviews are conducted the selection committee reviews the NOIs received from the solicitation and creates a shortlist of at least three consultants to be interviewed, if at least three qualified firms have submitted NOIs. The shortlist typically does not exceed five firms. The shortlist must be approved by the Chief Statewide Consultant Engineer.

The municipality must notify consultants of their interview times. Consultants must be given at least 10 business days' notice to prepare for interviews. Interviews are generally 35-45 minutes in length depending on project complexity. All consultants interviewed must be asked the same project questions. Follow up questions to clarify consultant answers may be asked.

The interview panel is the municipality's selection committee with the WisDOT Local Program Manager and/or Statewide Consultant Engineer, or delegate(s), as optional members. An interview rating sheet evaluating the consultant's answers to each question posed and overall impression must be completed by each member of the interview panel.

The interview panel ranks the consultants in order of preference based on evaluations of the interviews, NOIs, reference checks, and other submitted information. [Attachment 20.1](#) is a sample consultant interview rating sheet. The municipality then notifies all consultants in writing of the selection of the preferred consultant after the Department approves the selection.

20.5 Selection Approval

Contracts less than \$50,000 – Municipalities submit consultant rankings and selected consultant using form DT1515 to the WisDOT Local Program Project Manager, who will forward to the consultant unit supervisor. The consultant unit supervisor will assign a fixed fee and approve the request on behalf of the Chief Statewide Consultant Engineer. The region's consultant unit sends a copy of the approved form to: DOTConsultantServicesApproval@dot.wi.gov. Department region offices will notify municipalities upon approval.

Contracts greater than \$50,000 – Municipalities submit their consultant rankings and selected consultant using form DT1515 to the WisDOT Local Program Project Manager, who will forward to DOTConsultantServicesApproval@dot.wi.gov. The Chief Statewide Consultant Engineer will assign a fixed fee and approve the request. Department region offices will notify municipalities upon approval.

20.6 Documentation

The municipality must retain documentation of the selection process, initial cost estimate, consultant ranking, reasons for the stated consultant ranking and consultant selection team as part of the municipality's permanent project file in accordance with 23 CFR 172. The record must be retained for three years after project completion. Failure to document will jeopardize federal aid. [Attachment 20.1](#), [Attachment 20.2](#), and [Attachment 20.3](#) provide examples of consultant selection documentation letters and consultant interview rating sheet.

20.7 Contract Negotiations

Unless declined, the Chief Statewide Consultant Engineer and WisDOT local program must be included in all negotiations with estimates greater than \$2,000,000.

Upon request, the WisDOT local program contact may assist with negotiations with estimates less than \$2,000,000. The WisDOT local program contact reviews the contract scope for completeness.

Contract negotiations are done in accordance with [FDM 8-10-15](#). Negotiation should be substantially complete within two meetings, depending on project complexity. If an agreement cannot be reached, the municipality will notify the WisDOT local program project contact. The WisDOT local program project contact may assist with negotiations or ask the Chief Statewide Consultant Engineer for approval to end negotiations with the current consultant and start negotiations with the next highest ranked consultant. The municipality must notify the consultant that negotiations have been terminated. Negotiations may not be reopened after termination.

20.8 Contract Approvals

Contracts are approved in accordance with [FDM 8-20-1](#).

Contracts less than \$3,000 require the approval of the WisDOT consultant unit supervisor, municipality, and consultant.

Contracts greater than \$3,000 require the approval of the WisDOT Contract Manager, municipality, and consultant.

After WisDOT approves the contract, the municipality may send a notice to proceed to the consultant. The consultant shall not commence services or incur costs prior to receiving an executed contract and written authorization to proceed. Any services performed and/or costs incurred prior to authorization are not eligible for payment and shall not be added to current contract charges, amendments, or future contracts.

20.9 Contract Amendments

Amend contracts in accordance with [FDM 8-25-15](#).

Amendments less than \$50,000 and have new contract maximum less than twice the original contract value require the approval of the WisDOT consultant unit supervisor, municipality, and consultant.

Amendments greater than \$50,000 or have a new contract maximum greater than or equal to twice the original contract value require the approval of the WisDOT Contract Manager, municipality, and consultant.

Amendments that expand the original scope of the contract may also require approval of the WisDOT Contract Manager; discuss amendments that may expand the contract scope with the WisDOT Local Program Project Manager.

Services in the amendment may not proceed until the amendment is approved by the Department.

20.10 Potential Conflicts of Interest

Consultants must avoid conflicts of interest in accordance with [FDM 8-5-3](#) and [FDM 8-5-55](#). Contracts fully funded by the municipality are exempt from these requirements, but all participants are expected to conduct themselves in an ethical manner consistent with their professional duties. Other requirements may apply.

20.11 Contract Documents

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

Contract supporting documents: <https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/contracts/supp-doc.aspx>

20.12 Progress Report/Performance Evaluation

Consultants must include a progress report with each invoice submitted to WisDOT. See [FDM 8-25 Attachment 1.1](#).

When the contract is completed WisDOT prepares a performance evaluation in accordance with [FDM 8-25-5](#) with input from the municipality. WisDOT provides a copy of the performance evaluation to the municipality.

LIST OF ATTACHMENTS

Attachment 20.1	Consultant Interview Rating Sheet
Attachment 20.2	Sample Selection Letter
Attachment 20.3	Sample Non-Selection Letter

FDM 8-5-25 Construction Engineering

May 15, 2024

25.1 Solicitation

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

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

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

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

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

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

DTSD region staff prepare the appropriate documents for each construction package, while local program managers assemble local construction package information. The Chief Statewide Consultant Engineer, and DBM-Web Support Unit review these documents (due one month prior to the solicitation) before publication.

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

25.2 Interviews

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

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

25.3 Selection Approval

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

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

- Anticipated scheduling of work activities
- Probable staff assignments
- Previous performance - quality and timeliness
- Capacity to handle additional work

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

The region selection committee then submits their recommendations to the **Chief** Statewide Consultant Engineer. The region Consultant Unit Supervisors, DTSD Local Program/Consultant Section Chief, and **Chief** Statewide Consultant Engineer review the recommended firms' current WisDOT workload and examine how key consultant staff are distributed to projects around the state. See [Attachment 25.1](#) for selection approval process.

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

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

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

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

25.4 “Turn-Key” Engineering

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

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

25.5 Documentation

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

25.6 Contract Approval

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

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

25.7 Contract Amendments

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

25.8 Web Resources

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

LIST OF ATTACHMENTS

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

FDM 8-5-30 Master Contracts

May 15, 2024

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

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

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

Services under master contracts may not be started until the work order is fully executed.

30.1 Full Service Masters

Full service engineering master contracts may include all of the services or an individual service, which could normally be included within the scope of a normal contract for design or construction engineering. Work orders may be issued to perform full scope design or construction engineering services on a project or just a small task or subpart of the work on the project. To the extent that firms with full service contracts are qualified, work orders may be issued for design or construction related specialties.

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

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

30.2 Statewide Specialty Master Contracts

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

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

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

30.3 Master contract work types

Types of work typically performed under master contracts include:

Type of Work	State Wide Specialty	Full Service Design	Full Service Construction
Business Opportunity & Equity			
Technical Assistance	X		
One on One Mobilization	X		
Legal Assistance	X		
Outreach and Marketing Services	X		
Structures			
Bridge Deck Surveys	X		
Shop Inspection of Structural Steel	X		X

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

Type of Work	State Wide Specialty	Full Service Design	Full Service Construction
Program Management			
Local Program Management	X		

30.4 Solicitation and Selection

30.4.1 Full Service Design and Statewide/Region Specialty Masters

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

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

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

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

30.4.2 Full Service Construction Engineering

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

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

30.5 Negotiation and Pricing

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

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

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

30.6 Master Contract Periods & Limits

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

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

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

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

Work orders may not be executed after the expiration date of the master contract, but the project work included

on the work order does not need to be completed before the master contract expiration date.

30.7 Master Contract Groups

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

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

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

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

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

30.8 Master Contract Group Work Order Maximum

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

Example:

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

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

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

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

30.9 Master Contract Group Approval Guidelines

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

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

30.10 Limitations on Master Contract Usage

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

30.11 Impacts of Work Orders on Contract Selection

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

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

30.12 Monitoring Master Contract Balances

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

30.13 DBE Goals and Usage

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

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

30.14 Work Order Documents

Documents are available at:

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

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

30.15 Work Order Selection

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

30.16 Web Resources

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

FDM 8-5-40 Request for Proposal

May 15, 2024

40.1 Definition

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

40.2 When to Use an RFP

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

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

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

40.3 Qualification Based Selection

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

40.4 When to Use QBS

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

40.5 Solicitation Options

Available options for solicitation of RFPs include:

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

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

40.6 Process

1. Determine if a Request for Proposal is the appropriate solicitation method to be used as a result of additional information being requested which cannot be accomplished through the bimonthly design Notice of Interest Questionnaire.
2. Determine what the project and funding source is and determine if QBS applies.
3. General interest is solicited for performing the work via advertisement. Responding consultants are ranked based on evaluation of their qualification statements submitted with their letters of interest. Proposals are then requested from the three highest ranked firms. Proposals are then scored; however, contract pricing is not included if QBS applies.
4. If QBS does not apply, proposals are then scored and may include contract price.
5. Approval must be received from the **Chief** Statewide Consultant Engineer (DTSD regions/bureaus) or DTIM Administrator (DTIM bureaus), regardless of the project's dollar level, prior to negotiations with the selected proposer.
6. When requesting a proposal, be sure to allow sufficient time for consultants to prepare and submit their proposals.
7. Agencies must retain all documentation of the proposal, evaluation and selection of the consultant **in region/bureau project files**.
8. Approval of written contracts resulting from the RFP process must be in accordance with FDM approval procedures.

40.7 Guidelines for an RFP

See [Attachment 40.1](#)

40.8 Example of an RFP

See [Attachment 40.2](#)

LIST OF ATTACHMENTS

Attachment 40.1	Guideline for a Request for Proposal
Attachment 40.2	Sample Request for Proposal

FDM 8-5-45 Eligible Consultants

May 15, 2024

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

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

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

Instructions for completing the form are included **in Masterworks**.

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

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

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

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

45.1 Roster of Eligible Engineering Consultants

WisDOT's "Roster of Eligible Engineering Consultants" provides an alphabetical listing of all registered and qualified consultants without ranking. Transportation regions and local units of government use this roster during the selection process described in [FDM 8-5-55](#). The roster is updated and published on the Internet at:

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

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

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

Firms on the Roster must submit an updated version of **the Consultant Report** to WisDOT by February 28 of each even-numbered year to remain eligible for construction and design engineering contracts. Firms not on the Roster can submit **a Consultant Report** at any time to gain eligibility, if the rest of the registration process is completed.

The information published on the Roster is based on the submitted **Consultant Report**. Consultants who wish to change their address, e-mail address, or contact information must re-submit the entire **Consultant Report** to WisDOT.

The firm e-mail address provided on **the Consultant Report** is used for general communications and special notifications. **WisDOT uses an email distribution list to inform consultants of new notices, policy updates, training availability, solicitations, and other information.**

Consultants will receive an e-mail receipt when **their Consultant Report has been approved in Masterworks**. Firms not listed on the Roster published at the web should send inquiries about their eligibility status to DOTConsultantServicesApproval@dot.wi.gov.

45.2 Certificates of Insurance

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

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

45.3 Web Resources

WisDOT staff can view the current **Consultant Report** for each firm on the Roster of Eligible Engineering Consultants in **Masterworks**.

FDM 8-5-47 Consultant Financial Report

May 15, 2024

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

Consultants must submit a **CFR** annually to the Department in order to be an eligible consultant under [FDM 8-5-](#)

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

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

47.1 Submittal of Forms

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

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

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

Submittal of the CFR is performed in Masterworks:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/contracts/masterworks.aspx>

CFR instructions includes directions for creating the CFR and submitting it in Masterworks. These instructions are available in Masterworks as well as on the WisDOT website:

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

Mailed, emailed, or any other submittal method of the CFR outside of Masterworks will not be accepted.

47.2 Startup Firms

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

47.3 Firms with Changes in Entity

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

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

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

47.4 Acceptance

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

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

Indirect cost rates submitted on **the CFR** are considered unaudited and are subject to **audit or other evaluations** upon contract submittal. **Indirect cost rates established by a cognizant agency that are in dispute are not considered accepted until the dispute is resolved.**

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

May 15, 2024

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

The program started with the Surface Transportation Assistance Act of 1982. The act set an aspirational national goal of placing at least 10% of federal highway and transit funds with persons who qualify as disadvantaged small business operators. A subsequent act in 1987 included women. Federal regulation 49 CFR

Part 26 for the Disadvantaged Business Enterprise Program became effective March 9, 1999. The regulations substantially revised annual DBE goal planning and related methodologies from their previous versions. A flowchart summarizing the tasks and responsibilities for solicitations and contracts with DBE goals is included as [Attachment 50.1](#).

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

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

50.1 DBE Qualifications Criteria

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

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

50.2 DBE Certification Process

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

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

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

50.3 DBE Goal Setting on Federally Funded Consultant Contracts

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

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

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

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

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

The Office of Business Opportunity & Equity Compliance (OBOEC) and the **Chief** Statewide Consultant Engineer, together with industry stakeholders, are committed to evaluate the status of DBE participation data on a regular basis to determine if annual or interim adjustments to race/gender conscious or race/gender neutral

measures are necessary.

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

50.4 State and Local DBE/MBE/WBE Requirements

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

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

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

50.5 DBE Commitment Form (DT1029) and Instructions

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

50.6 Termination or Reduction of Services of DBE Subconsultant

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

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

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

50.7 Commercially Useful Function (CUF) Monitoring

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

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

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

LIST OF ATTACHMENTS

Attachment 50.1	Flowchart for Solicitations and Contracts with DBE Goals
Attachment 50.2	Instructions for DT1029 Form
Attachment 50.3	Examples of Various Scenarios

FDM 8-5-55 Consultants in Management Roles

May 15, 2024

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

55.1 Federal Approval

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

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

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

55.2 Consultant Management Roles in Local Government

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

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

55.3 WisDOT Approval

The **Chief** Statewide Consultant Engineer and the Contract Manager must approve the request prior to submitting it to FWHA for approval.

LIST OF ATTACHMENTS

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