

ATTACHMENT 1. LOCAL PUBLIC AGENCY GUIDELINES

Introduction: Wyoming Department of Transportation (WYDOT) Operating Policy 40-1, Consultant Services Agreements, implements policy and procedures necessary to meet state and federal requirements for consultant procurement and administration. That policy and the related procedures are presented in this document, including attachments.

Since that policy and the related procedures are intended primarily for WYDOT internal use, the guidelines in this attachment provide directions to a template policy that Local Public Agencies (LPAs) can adopt as their own. LPAs can also modify the template or develop their own policy as long as they meet the following requirements and WYDOT approves the final policy.

Policy Requirements: In general, state DOTs and LPAs must use qualification-based selection procedures (Brooks Act, 40 USC 1102(2)) when acting as contracting agencies to procure engineering and design-related services for a construction project using federal funds (23 USC 112(b)(2), 2 CFR 200, and 23 CFR 172).

Requirements applicable to engineering and design-related services contracts using federal funds include the need for a written policy identifying procedures for each method used to procure engineering and design-related services. WYDOT procedures have been approved by the Federal Highway Administration (FHWA) through Operating Policy 40-1, Consultant Services Agreements.

Subrecipient (LPA) procedures must be approved by the federal funds recipient, generally the state DOT. Therefore, WYDOT has developed a pre-approved template policy for LPAs available on the WYDOT Web site at www.dot.state.wy.us by selecting the blue *Business with WYDOT* tab, then “Local Public Agencies,” and then “Template Policy.” Sample forms are also available on the Web site for consultant selections and performance appraisals.

If an LPA chooses to develop an original policy or modify the template policy, the new policy must be approved by WYDOT in accordance with WYDOT policy and contain written policies and procedures related to procuring and administering consultant services as stated in 23 CFR 172.5(c).

The LPA will pass-through to their selected consultant and subconsultant firms all Department pass-through requirements to ensure compliance with state and federal regulations, and terms and conditions of the funding program.

The LPA will monitor consultant activities with a full-time public employee certified by the Department to ensure that agreement work is complete, accurate, and in compliance with applicable terms and conditions. The certified public employee may be in responsible charge of multiple projects and/or the LPA’s other staffing requirements.

The monitoring by an LPA employee in responsible charge of an executed agreement will provide administration of all government agency activities to include:

1. The continual evaluation of the consultant's performance, deliverables, and compliance with terms and conditions. An independent consultant may be used to provide assistance for technical review and acceptance of engineering or architectural services, or deliverables and/or other supporting management roles.
2. Monitoring progress of work and compliance with schedules or completion dates.
3. Determining the extent to which the consultant who is responsible for the professional quality, technical accuracy, and coordination of services may be reasonably liable for costs resulting from errors or deficiencies in design furnished under its contract. (23 CFR 172.9(c)(x))
4. Ensuring consultant billings and payments are in accordance with the agreement.
5. Reviewing and gaining approval for needed agreement modifications.
6. Project documentation.
7. Project close-out.

The LPA, when the consultant services specified in the agreement are completed and accepted, will evaluate the consultant's performance. This evaluation should consider such factors as the consultant's performance on specific elements of work, promptness in meeting schedules and deadlines, cooperation with the agency, and overall performance in delivery of the agreement terms and conditions. The Department's Form CS-4, *Consultant Performance Review*, may be altered and used to complete the consultant's performance evaluation. A memorandum will be prepared and provided to the consultant with the completed evaluation, and request consultant comments on the evaluation. The completed consultant evaluation will be made part of the required project documentation.

Audits: Instead of performing their own audits of engineering and design consultants, contracting agencies (state DOTs and LPAs) are required to accept indirect cost rates established by a cognizant federal or state agency for a 1-year applicable accounting periods, if such rates are not currently under dispute. (23 CFR 172.11(b)(1))

If an LPA chooses a consultant that lacks a cognizant audit performed by a federal or state agency, the LPA needs to contact the WYDOT Internal Review Services manager to determine if an audit is needed. If so, Internal Review Services will work with the consultant to determine

what to do to complete an audit for use on the LPA's project. An audit report or comparable correspondence will be provided to the LPA to use in negotiating the agreement. If rates appear unreasonable, it will be up to the LPA to negotiate reasonable rates. It should be noted that these audits can be time consuming and Internal Review Services should be contacted immediately upon selection of the consultant.

Consultants in a Management Role: Contracts for a consultant to act in a management role for the contracting agency for services directly related to a construction project shall be approved by WYDOT and FHWA before the consultant is hired. (23 CFR 172.7(b)(5))

References:

Operating Policy 40-1, Consultant Services Agreements.

2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

23 CFR 172, Procurement, Management, and Administration of Engineering and Design Related Services.

23 USC 112(b)(2), Contracting for Engineering and Design Services.

40 USC 11, Sections 1101-1104, Selection of Architects and Engineers.