**Local Public Agency Guidelines**

**Introduction**: Wyoming Department of Transportation (WYDOT) Operating Policy 40-1, Consultant Services Agreements, identifies procedures necessary to meet federal and state requirements for consultant selection and administration. Since that policy is intended primarily for WYDOT internal use, these guidelines 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 qualifications-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] 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 procedures regarding the following items related to procuring consultant services:

1. Preparing a scope of work, evaluation factors, and cost estimate;

2. Soliciting proposals;

3. Evaluating and ranking proposals, and a documented basis for selection;

4. Negotiating the amount to be paid;

5. Monitoring the consultants work and preparing a performance evaluation when the work is completed; and

6. 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, Section 172.9[a]).

**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 in accordance with the Federal Acquisition Regulation (48 CFR 31) for 1-year applicable accounting periods, if such rates are not currently under dispute (23 CFR 112[b] and 23 CFR 172, Section 172.7).

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 Program manager to determine if an audit is needed. If so, Internal Review will work with the consultant to determine what to do to complete an audit for use on the LPAs 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 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, Section 172.9[d]).

**References**:

Operating Policy 40-1, Consultant Services Agreements

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

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

23 CFR 172, Administration of Engineering and Design Related Service Contracts

48 CFR 31, Contract Cost Principles