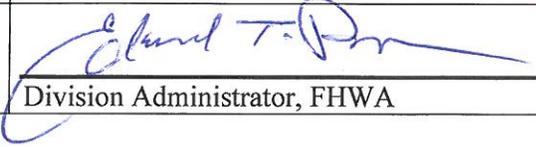


**POLICIES AND PROCEDURES FOR PROCUREMENT AND
ADMINISTRATION OF MAJOR
PROFESSIONAL OR SPECIALIZED
SERVICES CONTRACTS**

NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION



APPROVED	 <hr/> Director of Technical Services	Date 6/30/16
APPROVED	 <hr/> Division Administrator, FHWA	Date 6/30/2016
Adopted by North Carolina Board of Transportation: June 30, 2016		

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TABLE OF CONTENTS

<u>CHAPTER</u>	<u>PAGE NUMBER</u>
1. INTRODUCTION AND PURPOSE	1
2. DEFINITIONS	2
3. ROLES AND RESPONSIBILITIES	4
4. CERTIFICATION AND PREQUALIFICATION	7
5. PROCUREMENT METHODS	8
6. PROCUREMENT PROCESS	10
a. Request for approval to solicit letters of interest	
b. Selection committee	
c. Selection of Firm	
d. Negotiation of contract	
e. Execution of contract	
f. Contract provisions	
g. Subcontracting	
7. CONTRACT ADMINISTRATION	16
a. Types of contracts	
b. Payment methods	
c. Contract amendments	
d. Monitoring and evaluation of work	
e. Invoice procedures and retainage	
f. Final payment	
8. SPECIAL CIRCUMSTANCES	21

1. INTRODUCTION AND PURPOSE

These policies and procedures are established as a guide for the preparation, execution and administration of contracts for professional or specialized services that exceed \$50,000 and which are executed in connection with the planning, design, maintenance, repair, and construction of transportation infrastructure and are obtained by the North Carolina Department of Transportation (NCDOT) in accordance with G.S. 136-28.1(f) and 23 CFR 172, as applicable. The implementation of this document will ensure that a qualified Firm is obtained through an equitable selection process and that the prescribed work is properly accomplished in a timely manner and at a reasonable cost.

These policies and procedures were developed in accordance with the following requirements:

- (1) General Statute Section 136-28.1 (f);
- (2) General Statute Sections 143-64.31, 143-64.32, and 143-64.33;
- (3) 23 Code of Federal Regulations Part 172 entitled “Procurement, Management, and Administration of Engineering and Design Related Services”;
- (4) General Statute Chapter 55B;
- (5) General Statute Chapter 89C;
- (6) 19A NCAC 02E.0700;
- (7) General Statute 147-64.7; and
- (8) 2 CFR 200 (except where inconsistent with 23 CFR 172).

The policies and procedures were specifically developed to provide detailed guidance for the implementation of Article 19A NCAC 02E.0700, Professional or Specialized Services, as found in the North Carolina Administrative Code. Additionally, NCDOT, as a direct recipient of Federal Aid Highway Funds, must comply with all applicable rules and regulations pertaining to the use of said funds. Therefore, NCDOT agrees to maintain written policies and procedures for the procurement, management, and administration of professional services and specialized services contracts, including those related to planning, environmental analyses, engineering and design. As such, the Federal Highway Administration (FHWA) shall approve the written policies and procedures, including all revisions, to assess compliance with applicable requirements. Unless a subgrantee uses this policy, NCDOT shall approve written policies and procedures, including all revisions to such policies and procedures, of a subgrantee to assess compliance with applicable requirements.

All NCDOT personnel involved with contracts for professional or specialized services shall comply with General Statute 133-32 (Gifts and Favors Regulated); the North Carolina Department of Transportation Personnel Manual, Section 8, entitled “Discipline, Appeals & Grievances”; and the most recent policy on Ethical Conduct as adopted by the Board of Transportation.

Due to the diversity of contract types, some portions of these policies and procedures may not be fully applicable to all situations. The Professional Services Management Unit (PSMU) shall be responsible for determining when deviations from these procedures are justified. The PSMU shall also be responsible for documenting, in writing, any deviation from these policies and procedures and obtaining FHWA approval if needed.

Subgrantees shall follow the policies and procedures when utilizing professional or specialized services, unless said subgrantee is using its own policies and procedures approved by NCDOT. When subgrantees administer Federal-aid funds (as with Bridge Replacement projects), the subgrantees shall obtain NCDOT approval, in writing, prior to contracting with a Firm.

2. DEFINITIONS

The following definitions are for the purpose of clarifying and describing words and terms used herein.

Agreement/Contract – A generic term for any number of document types referred to herein, i.e. Limited Services Contract, Limited Services Agreement, Project-Specific Contract, etc.

Contract Amendment – A formal agreement which modifies the terms of the original contract, or any subsequent supplemental agreement(s).

Contract Initiator – The individual(s) responsible for requesting approval from the Division or other Business Unit to solicit proposals for professional or specialized services. The Contract Initiator will be a Unit Head or equivalent level of management, or his/her designee.

Cost Per Unit of Work – A method of compensation based on an agreed cost per unit of work which may include labor, overhead, fee (profit margin) and other non-salary direct costs.

Cost-plus-Overhead-plus-Profit (Cost-Plus) – A method of compensation based on the actual allowable and documented cost for labor, overhead, cost of capital, and other non-salary direct costs incurred by the Firm performing the work plus fee. This contracting type replaces the previous “Cost plus Fixed Fee” contract type.

Cost Proposal – A detailed submittal specifying the number of workdays required and the compensation requested for the performance of the specific scope of services as defined by NCDOT.

Disadvantaged Business Enterprise (DBE) – A for-profit small business concern-- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals that own it.

As used in this document, the term Disadvantaged Business Enterprise (DBE) is as defined above for Federally-funded projects. The term DBE, as used in this document, takes on the meaning of Disadvantaged Minority-owned Business/Business Enterprise (MBE) and Disadvantaged Women-owned Business/Business Enterprise (WBE) for state-funded projects.

Firm – Also referred to as “Consultant”, “Subconsultant”, “Professional or Specialized Services Firm (PSSF)”, “Prime Firm”, “Contracting Firm”, or “SubFirm”. A private agency, corporation, organization, business or individual offering qualified professional or specialized services.

Fee (Operating Margin, Profit Margin or Profit) – A percentage applied to cost-plus-overhead that represents the operating margin (profit) for a Firm on any particular contract or task order. The establishment of a fee (profit margin) shall be project specific and shall take into account the size,

complexity, duration and degree of risk involved in the work. If a fee higher than the standard fee is utilized, it must be justified by the Firm and approved in writing by the Professional Services Management Unit, or its delegate. This must occur prior to the cost proposal submittal.

Letter of Interest (LOI) (Proposal) – An expression of interest by a Firm for performing specific services as advertised by NCDOT..

Limited Services Contract (LSC) (or Agreement) (LSA) – An “as-needed basis” contract established for a maximum dollar amount for professional or specialized services to be performed during a specified contract period, generally not to exceed an initial three year term, but may have time provisions to extend the contract to a lifespan of up to five years. As needed, during the contract period, a scope of services, schedule, and total compensation are negotiated with the Firm for the performance of an individual assignment (or task order) of professional or specialized service, as defined by the Agreement. The scope of services, schedule, and compensation for each individual assignment are documented in a Notice to Proceed. NCDOT may elect to utilize up to the maximum amount of the Agreement during the contract period or may elect not to negotiate with the Firm for any services during the contract period.

Lump Sum – A fixed price including labor, overhead, non-salary direct costs, and fee for the performance of specific services.

Multiphase Contract – A contract where the solicited services may be divided into phases, whereby the specific scope of work and associated costs may be negotiated and authorized by phase(s) as the project progresses.

Non-Salary Direct Costs – Charges, except for labor, which are customarily job or project related, including but not limited to, travel, document reproduction, subsistence, etc. Phones, computer usage, tablets (or other personal computing devices), Data Plans, and Wi-Fi costs are not allowed to be billed directly as these charges are recovered through Overhead.

Overhead – A Firm’s indirect costs, stated as a percentage of direct labor, including general administrative expenses plus employee fringe benefits. Fringe benefits may include employer’s portion of FICA, comprehensive health insurance, group life insurance, unemployment contributions to the state, vacation, sick leave, holidays, workers’ compensation and other such benefits.

Professional or Specialized Services – Services such as, but not limited to, project management, construction engineering and inspection, feasibility studies, planning and environmental (human and natural) surveys and studies, preliminary engineering, design engineering, design, redesign, engineering, surveying, mapping, geotechnical investigations, architectural related services, visualization, simulation studies, technical assistance and transportation services studies. Also, professional services of an architectural or engineering nature, as defined by North Carolina law, which are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide the services with respect to a highway construction project.

Professional Services Management Unit (PSMU) – The unit responsible for the advertisement, selection, contract preparation, and execution of professional or specialized services contracts between the Department and Professional or Specialized Services Firms.

Project Manager – The individual responsible for oversight of the project work after the contract is executed.

Project-Specific Contract – A contract between NCDOT and consultant for the performance of services and defined scope of work related to a specific project or projects. The fully-executed Project-Specific Contract represents the full scope of services required by NCDOT.

Purchase Order (PO) – A “contract” that represents a Task Order or Work Order assignment given to a Firm, generally under a Limited Services Contract. Generally, a PO is a Notice to Proceed to perform services (related to project(s), scope(s) of services, period of time), to be completed for a NCDOT Business Unit or Division, and can be paid under any of the terms listed in the section “Payment Methods” of this document.

Scope of Services – All services, actions, and physical work required by NCDOT to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies, and materials except as specifically stated.

Small Professional Services Firm (SPSF) – A Firm that meets size standards defined by the Small Business Administration regulations, 13 CFR Part 121 under the North American Industrial Classification System. The SPSF program is a race, ethnicity, and gender neutral program designed to increase the availability of consulting opportunities for small businesses on federal and state funded contracts.

Specific Rate(s) of Compensation – A method of compensation based on an agreed cost per hour of work including labor, overhead, and fee (profit margin). Non-salary direct costs are charged and reimbursed separately.

Subgrantee – A local government, public authority, profit or non-profit legal entity which receives Federal-Aid funds through NCDOT.

Termination Clause – A contract clause which allows NCDOT to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.

3. ROLES AND RESPONSIBILITIES

NCDOT shall sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of professional and specialized services, reimbursed in whole or part with Federal Aid Highway Funds, as follows.

The Technical Services Director is responsible for:

- Obtaining the approval of the Secretary of Transportation on award of professional and specialized services contracts and approving contract executions, supplementals, and amendments;
- Approving emergency procurements;
- Approval of Sole Source contract requests; and
- Ensuring the organizational capacity and resources exist to manage and administer the procurement of engineering and design related consultant services.

The Professional Services Management Unit (PSMU) is responsible for:

- Preparing and maintaining written policies and procedures for the procurement, management, and administration of professional and specialized services, and ensuring its coordination and approval by the FHWA and adoption by the North Carolina Board of Transportation;
- Establishing a procedure for estimating the level of effort, schedule, and costs of needed consultant services and associated agency staffing and resources for management and oversight in support of project authorization requests submitted to FHWA for approval;
- Procuring engineering and design related consultant services in accordance with applicable federal and state laws, regulations, and approved policies and procedures;
- Soliciting Letters of Interest, qualifications, or proposals from prospective consultants;
- Preventing, identifying, and mitigating conflicts of interest for employees of both the contracting agency and consultants and promptly disclosing in writing any potential conflict to NCDOT and FHWA, as applicable;
- Verifying prequalification status of consultants submitting Letters of Interest or proposals (which further verifies suspension and debarment actions and eligibility of consultants as determined through the prequalification process);
- Determining, based upon this policy and the size and complexity of a project, the need for additional discussions or interviews following submission and evaluation of Letters of Interest or proposals;
- Negotiating contract modifications;
- Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate;
- Providing consultation, training and support, as needed, for Business Units/Divisions or other users to ensure consistent application of this document; and
- Resolving disputes in the procurement, management, and administration of engineering and design related consultant services.

The Business Unit / Division is responsible for:

- Ensuring that adequate staffing is available to serve in responsible charge of projects to monitor and administer consultant service contracts. The Business Unit (including Divisions, Branches, Units, and/or any other similar designations that may be used by NCDOT) is responsible for managing, and administering professional and specialized services in accordance with applicable federal and state laws, regulations, and approved policies and procedures, including but not limited to:
 - Preparing scopes of work;
 - Preparing the in-house estimate;
 - Establishing elements of contract costs, validating indirect cost rate(s) for application to contracts, and assuring consultant compliance with federal cost principles;
 - Ensuring consultant costs billed are allowable in accordance with federal cost principles and consistent with the contract terms including the acceptability and progress of the consultant's work;
 - Monitoring the consultant's work and compliance with the terms, conditions, and specifications of the contract;

- Evaluating and participating in decisions for contract modifications;
- Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;
- Ensuring the correct usage of proposed subconsultants per the selected Firm's Letter of Interest;
- Preparing a consultant's performance evaluation when services are completed and using and/or supplying such performance data to the PSMU for use in future evaluation and ranking of consultant(s) to provide similar services;
- Closing-out contracts or purchase orders;
- Retaining supporting programmatic and contract records;
- Determining the extent to which the consultant responsible for the professional quality, technical accuracy, and coordination of services may be reasonably liable for costs resulting from error and omission in the work furnished under its contract; and
- Initiating, implementing, and terminating POs under LSCs.

The Consultant Utility Rail and Turnpike Unit (CURT) of the Office of Inspector General is responsible for:

- Conducting audits (formal examinations) in accordance with professional standards of a consultant's accounting systems, incurred cost records, and other cost presentations to test the reasonableness, allowability, and allocability of costs in accordance with federal cost principles (as specified in 48 CFR part 31);
- Establishing or accepting indirect cost rates for consultants in accordance with federal cost principles and in accordance with 23 CFR 172.11;
- Reviewing procurement documents to ensure that established rates are being utilized; and
- Establishing consultant direct salary or wage rates based upon an objective assessment of the reasonableness of proposed rates.

The Consultant is responsible for:

- Accounting for costs appropriately and maintaining records. The records should, include supporting documentation that is adequate to demonstrate costs claimed have been incurred are allocable to the contract, and comply with federal cost principles;
- Ensuring the correct usage of proposed subconsultants per the selected Firm's Letter of Interest;
- Updating indirect cost rates on an annual basis in accordance with the consultant's annual accounting period and in compliance with federal cost principles;
- Certification of final indirect costs in accordance with 23 CFR 172(b)(3); and
- Ensuring that prequalification information is updated in accordance with the requirements prescribed by NCDOT's prequalification requirements.

The Office of Civil Rights is responsible for:

- Procuring, administering, and managing contracts for DBE Supportive Services and OJT Supportive Services, as necessary to meet approved program objectives;

- Adhering to these Policies and Procedures in the procurement process;
- Developing and implementing process steps to address issues that are apropos to the Office of Civil Rights;
- Ensuring that proposals are solicited from such qualified sources as will assure the competitive nature of the procurement with a conscientious effort to utilize the services of qualified disadvantaged or minorities or women's enterprises;
- Developing a process to ensure that consultants are qualified to perform the scope of services;
- Working with the CURT Unit to establish direct salary and wage rates for proposed consultants; and
- Assuming all other roles of the Professional Services Management Unit and the Business Unit/Division as outlined above.

4. CERTIFICATION AND PREQUALIFICATION

NCDOT is committed to ensuring that all North Carolina businesses have the opportunity to participate in professional and specialized services contracts. NCDOT shall ensure that Disadvantaged Business Enterprises (DBE) have opportunity to participate in the performance of contracts financed in whole or in part with federal funds; and Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) have opportunity to participate in the performance of contracts financed with non-federal funds.

When DBE program participation goals cannot be met through race-neutral measures, additional DBE participation on engineering and design related service contracts may be achieved in accordance with NCDOT's FHWA approved DBE program by the use of an evaluation criterion in the qualifications-based selection of consultants or the establishment of a contract participation goal. However, the use of quotas or set-asides for DBE consultants is prohibited.

In an effort to ensure that participation goals are met through race-neutral measures, NCDOT strongly encourages the use of Small Professional Services Firms and gives consideration to consultants that commit to the use of SPSFs in the performance of contracts.

The List of Prequalified Private Consulting Firms (The Directory of Firms) is provided as an informational source for prime contractors, subcontractors, and consultants as well as local and federal agencies.

Certification

The Directory of Firms is a real-time consolidated list of Firms that have been certified through North Carolina's Unified Certification Program as Disadvantaged Business Enterprises (DBE), Airport Concession Disadvantaged Business Enterprises (ACDBE), Small Professional Services Firms (SPSF), Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and/or Small Business Enterprises (SBE). Certification information is maintained by the Department.

Prequalification

NCDOT maintains a List of Prequalified Private Consulting Firms (The Directory of Firms) that have been approved to perform professional or specialized services. Firms must be prequalified to perform the specific discipline of work or service it will be performing on the project for NCDOT. Prequalification by NCDOT does not relieve the Firm of responsibility for determining if the subconsultants selected are, in fact, qualified to perform the work for which it is engaged.

A Firm may be considered for the List of Prequalified Private Consulting Firms by furnishing NCDOT with information describing the Firm's area(s) of expertise, experience, present activities, and financial qualifications. This may be accomplished by submitting a Private Consulting Firm Qualifications application, proof of registration with the North Carolina Secretary of State's Office, the North Carolina Board of Registration for Professional Engineers and Land Surveyors, if applicable, and any other additional information as requested. Applications must be completed online at <https://connect.ncdot.gov/business/consultants/Pages/default.aspx> . Once it is determined by review of aforementioned information that the Firm has the required expertise, resources, and staff to perform the services for NCDOT, the Firm will be added to the List of Prequalified Private Consulting Firms.

A Firm which is not on the List of Prequalified Private Consulting Firms must submit the required information prior to submitting its Letter of Interest for any advertised project.

In order for a Firm to remain on the List of Prequalified Private Consulting Firms, it will be required to renew its application and provide any other information as requested by NCDOT prior to the Firm's renewal date each year.

Firms that do not provide this updated information annually, as requested, will be removed from the List of Prequalified Private Consulting Firms.

5. PROCUREMENT METHODS

The procurement of professional and specialized services funded by either State or Federal Aid Highway Program funds shall be conducted in accordance with one of four (4) methods:

a) Competitive negotiation (qualifications-based selection) procurement

The Department will use a competitive negotiation method for the procurement of engineering and design related services when either State or Federal Aid Highway Program funds are involved in the contract. The solicitation, evaluation, ranking, selection, and negotiation will comply with the qualification-based selection procurement procedure for architectural and engineering services as described/defined in those legal references given in Section 1. "INTRODUCTION AND PURPOSE".

b) Small Purchasing Threshold Procurement

NCDOT shall comply with the state's small purchase threshold for the procurement of engineering and design related services when either State or Federal Aid Highway Program funds are involved in a contract that does not exceed \$50,000. The following restrictions shall apply to the use of this procurement method:

- i. The scope of work, project phases, and contract requirements shall not be broken down into smaller components solely to permit the use of small purchase procedures.
- ii. A minimum of three Firms must be reviewed. In cases where only two qualified Firms respond to the solicitation, NCDOT may proceed with evaluation and selection as long as the solicitation did not contain conditions or requirements which arbitrarily limited competition. NCDOT may pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to compete again under a new solicitation.
- iii. Negotiated contract costs must pass the allowability test for federal cost principles.
- iv. The full amount of any contract modification or amendment that would cause the total contract amount to exceed \$50,000 is ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if it is modified or amended above the established small purchase threshold.

c) Non-competitive procurement – EMERGENCY CONDITIONS

When an emergency occurs, these procedures, or portions thereof, may be waived by the Secretary of Transportation or his/her designee pursuant to G.S. 136-28.1(e). In an emergency, a professional/specialized Firm may be selected, negotiations conducted, and a contract executed at the direction of the Director of Technical Services or designee as necessary to address the emergency conditions.

When Federal-Aid Highway funds are used in the contract, the Director of Technical Services or designee shall submit justification for emergency selection and receive approval from FHWA before proceeding with the procurement of services, if required by FHWA.

d) Non-competitive procurement – SOLE SOURCE

These procedures, or portions thereof, may be waived by the Technical Services Administrator, or his/her designee, for the sole source selection of a Firm under any of the following conditions:

- a. Sole source selection may be used when the service is available only from a single source;
- b. Sole source selection may be used after solicitation of a number of sources, competition is determined to be inadequate; or
- c. Sole source selection may be used when it has been determined that there is an emergency which does not permit time to conduct contract negotiations.

Sole source selection may only be used when it is in the public interest and economically advantageous to NCDOT. Selection of a sole source Firm will be contingent upon satisfactory negotiation for the service.

When Federal-Aid Highway funds are involved, the PSMU/Business Unit/Division shall submit justification for sole source selection and receive approval from FHWA prior to proceeding, if required by FHWA.

6. PROCUREMENT PROCESS

Generally, all competitive procurements for professional or specialized services will follow prescribed steps to ensure consistency, transparency and equity in the process. Following are the high-level steps that are used to solicit and award contracts (i.e. Limited Services Agreements, Project-Specific Contracts, and Multiphase Contracts) to qualified Firms:

- A. Solicit Letters of Interest (LOI)
- B. Assemble the Selection Committee
- C. Select the Firm(s)
- D. Negotiate the Contract
- E. Execute the Contract

(Note: Sections A, B, C do not necessarily apply to POs under LSCs.)

A. Solicit Letters of Interest (LOI)

The Contract Initiator is responsible for determining when professional or specialized services are needed. If the Business Unit Head or Division Engineer agrees with the Contract Initiator that justification exists, he/she will approve the use of a professional or specialized services Firm. Upon determining need, the Contract Initiator shall request approval from the PSMU to solicit Letters of Interest (LOI). The request shall be in writing and shall include the type of services and specific justification for the services to be performed by a professional or specialized services Firm, such as (1) lack of manpower, (2) lack of expertise, or (3) other reasons. A copy of the request shall be maintained by the Contract Initiator's Business Unit Head or Division Engineer, or his/her designee.

The PSMU, or its representative, shall be responsible for preparing the request for LOI. The request shall contain information describing the location of the project(s) (if applicable); the types and scopes of services that reflect a clear, accurate, and detailed description of the technical requirements for the services to be rendered; shall specify length of contract and the method(s) of payment, the estimated procurement schedule, and shall indicate the evaluation criteria to be used in the selection process, along with the respective weights and each evaluation factor.

Letters of Interest will be solicited to determine the Firms interested and capable of performing professional or specialized services within the desired time period. Solicitation shall be by published advertisement in the North Carolina Purchase Directory. This is maintained by the Department of Administration (<http://ncadmin.nc.gov/businesses/vendors-state-contracts>) and the Connect NCDOT website (<https://connect.ncdot.gov/letting/Pages/Private-Engineering-Firm-Advertisements-.aspx>).

Solicitation for interest may also be by direct contact to selected Firms from the List of Prequalified Private Consulting Firms found in the Directory of Transportation Firms. When NCDOT elects to send the request for LOI via direct mail, the request will be mailed the day before the scheduled advertisement.

The LOI shall be submitted to the PSMU by the date designated in the advertisement, usually two (2) weeks following the date of the advertisement. Deviation from prescribed terms in the advertisement may result in an automatic disqualification of the Firm for the advertised work, unless such instance is waived by the PSMU.

A copy of the advertisement and LOI submitted by the selected Firm and the first and second alternate shall be maintained by the PSMU.

B. Assemble the Selection Committee

The Selection Committee will consist of a Chairperson and at least two (2) other members with experience in the type of service(s) to be contracted. The Chairperson will be the Professional Services Unit Manager or his/her designee. The other members may be Business Unit representatives, Division representatives, or other stakeholder representatives. All will be appointed on a case-by-case basis. When federal funds are used as compensation for solicited services, a representative of the FHWA will be invited to sit with the committee. A representative of the CURT Unit of the Office of Inspector General and the OCR/Business Development Specialist will be notified and invited to sit with the Selection Committee. No employee of the contracting agency shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, could be involved. Based on the input from the Selection Committee, the Chairperson will be responsible for the final decision on the approval of a professional or specialized services Firm.

The Selection Committee shall evaluate consultant proposals based on the criteria established and published within the public solicitation. While the contract is with the consultant, proposal evaluations shall consider the qualifications of the consultant and identified subconsultants within the proposal as it pertains to the scope of work and established criteria.

C. Select the Firm(s)

Evaluation of the interest expressed by qualified Firms is based on the evaluation factors and respective weights specifically stated in the solicitation, and any other data pertinent to the contract under consideration. This may include past performance, applicable work experience, present workload, project team, staffing capabilities, capacity, etc.

Criteria used for evaluating, ranking, and selecting consultants to perform professional and specialized services must assess proven, demonstrated competence and qualification for the type of professional services solicited.

Qualifications-based factors may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capability, workload capacity, and past performance.

- Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from use in evaluation criteria.
- In-State or local *preference* shall not be used as a factor in the evaluation, ranking, and selection phase.

The following non-qualifications based evaluation criteria are permitted as follows and provided the combined total of these criteria do not exceed a nominal value of 10 percent of the total evaluation criteria to maintain the integrity of a qualifications-based selection:

- A local *presence* may be used as a nominal evaluation factor where appropriate. This criteria shall not be based on political or jurisdictional boundaries and may be applied on a project-

by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

- The participation of qualified and certified Disadvantaged Business Enterprise (DBE) subconsultants may be used as a nominal evaluation criterion where appropriate in accordance with 49 CFR Part 26 and the Department's FHWA-approved DBE program.
- NCDOT has an overall DBE goal which is established once every three years for federally-funded projects. NCDOT also has overall MBE and WBE goals which are also established once every three years for state funded projects. Project goals may be set on professional services projects to help meet overall goals. The Firm, subconsultant, and subfirm shall not discriminate on the basis of race, religion, color, creed, national origin, age, disability/handicap or sex in the performance of a contract.

The Selection Committee shall review and evaluate all responsive LOI submittals. For Limited Services Contracts, the NCDOT Selection Committee may, at the agency's discretion, choose any number of Firms to provide the services solicited. For Project-Specific Contracts, or Multiphase Contracts, the Selection Committee may, at NCDOT's discretion, shortlist a minimum of three (3) Firms to be interviewed from those deemed most qualified (except where fewer than three (3) are available). These Firms shall be listed in descending order of preference based on the Selection Committee's review and analysis of the Letters of Interest. The Committee may elect to interview all or some of these Firms prior to establishing the order of preference.

After reviewing qualifications, if Firms are equal on the evaluation review, the qualified Firms with proposed SPSF (Small Professional Services Firm) participation will be given priority consideration in the procurement of professional and specialized service contracts.

When several projects are under consideration simultaneously, a Firm shall be selected for each project and two (2) alternates may be selected for the entire group at the discretion of the Selection Committee.

When selecting Firms for Limited Services Agreements, alternates need not be selected.

The PSMU shall notify the Firm(s) chosen by the Selection Committee and request salary rates, overheads, etc., and request a meeting to review the scope of services.

A copy of the evaluation of the Firms and the results of the Selection Committee meeting shall be maintained by the Professional Services Management Unit.

D. Negotiate the Contract

This section is tailored to negotiating a Limited Services, Project-Specific or Multiphase Contract. The process is similar for negotiation of Purchase Orders assigned under Limited Services Contracts. PSMU's duties regarding its functions for negotiation/execution of POs under LSCs have been divested to the Business Units/Divisions if they so choose to perform those duties.

A meeting with the selected Firm shall be scheduled to discuss the scope of the proposed services. The discussions will vary depending upon the Firm's familiarity with NCDOT methods, policies, standards, etc. For Firms unfamiliar with NCDOT requirements, the meeting should include review and discussion of the following:

- (a) Copies of examples of similar work;
- (b) Standards, specifications, manuals, etc. to be used;
- (c) Policies followed by NCDOT for the type of work involved;
- (d) A contract in draft form;
- (e) Methods of payment;
- (f) Procedures for invoicing;
- (g) Standard forms to be used;
- (h) Fiscal requirements;
- (i) Consultant Utility Rail and Turnpike Unit requirements, and
- (j) Items and/or services to be provided by NCDOT.

A representative of the Firm shall keep minutes of the scoping meeting and will submit a copy to the PSMU/Business Unit/Division. The minutes shall be reviewed for completeness, accuracy, and confirmation of mutual understanding of the scope of services. The minutes shall be approved by signature of the PSMU/Business Unit/Division and an approved copy will be returned to the Firm.

Once the details of the scope of services are resolved, the PSMU/Business Unit/Division, or its representative, shall prepare a cost estimate for the work.

The in-house estimate will be used in evaluating reasonableness of the selected Firm's cost proposal. The in-house estimate must use reasonable wage rates based on the classification, experience, and responsibilities for the proposed work. If wage rate benchmarks have not been established, then NCDOT will use the Consultant's actual rates for the estimate.

The in-house estimate must be completed prior to opening the cost proposal submitted from the selected Firm.

The format used for preparing the in-house estimate will vary from project to project, and work area to work area, depending on the type and scope of services required. Typically, the format will include an estimate of the workdays required by classification, the direct labor cost, the overhead cost, the fee (profit, or operating margin) and the necessary direct expenses.

The Firm will prepare a cost proposal for performing the required services. The Firm's cost proposal shall be supported by a breakdown of the workdays required to perform each of the services contained in the contract and the salary range/rate for each classification of personnel utilized. The Firm's cost proposal must include supporting documentation for payroll additives, direct costs, indirect costs, fee, and overhead, as described.

Upon receipt of the Firm's cost proposal, the PSMU/Business Unit/Division, or its designee, shall review the submitted material, compare the in-house estimate with the cost proposal, and determine

both the reasonableness of the proposal and the areas of substantial difference which may require further discussion and negotiation.

The application of negotiation parameters (i.e., in-house and consultant mandays within prescribed tolerances) with PSMU / Business Unit / Division approval and/or in-house and consultant cost within prescribed tolerances with PSMU / Business Unit / Division approval, are used to determine if further negotiation is necessary. These parameters are not designed to limit the value of the contract, but rather serve as a checkpoint to ensure the scope of services is mutually understood.

A pre-negotiation audit shall be prepared by the CURT Unit to provide necessary data to affirm the Firm has an acceptable accounting system, adequate and proper justification for the various rates charged to perform the work, and is aware of NCDOT's cost eligibility and documentation requirements. A pre-negotiation audit and the resultant audit report are required for all contracts, (i.e. Limited Services Agreements, Project-Specific Contracts, and Multiphase Contracts), expected to exceed \$250,000 (\$50,000 if the procurement is by a subgrantee). This requirement does not apply to Purchase Orders issued under Limited Services Contracts. For contracts less than \$250,000, a pre-negotiation audit may be required when there is either insufficient knowledge of the Firm's accounting system, previous unfavorable experience regarding the reliability of the Firm's accounting system, procurement of new equipment or supplies for which cost experience is lacking, or as required by the PSMU/Business Unit/Division. Subgrantees that do not have resources or expertise for performing a pre-negotiation audit may contact the CURT Unit for assistance.

The use of an independent audit, an audit performed by another State/Federal agency, or an audit performed by another local government agency is acceptable.

Pre-negotiation audits may be waived when sufficient data is available to permit reasonable comparisons with the cost proposal.

A Firm's cost proposal will not be considered acceptable until the pre-negotiation audit has been performed, if required, by the CURT Unit. When the pre-negotiation audit has been completed, negotiations with the consultant may begin. The negotiations shall satisfactorily conclude all points of difference and shall address and resolve any comments submitted by the CURT Unit.

The Business Unit/Division shall use all resources available to conduct effective negotiations including, but not limited to, the refined scope of services, the evaluation factors and its relative importance, the in-house cost estimate, and the pre-negotiation audit and audit report.

Negotiations shall be conducted separately for mandays and for any of the dollar amounts for elements of cost, fee, and overhead except for contracts involving cost per unit of work and specific rates of compensation.

When a joint venture of Firms desire to enter into a contract with NCDOT, the joint venture will designate a representative to act as the sole authority for the purpose of negotiation.

If the Firm's original cost proposal (excluding indirect cost rate) is greater than 50% above the comparable in-house estimate and it is determined the Firm understands the scope of work, the PSMU/Business Unit/Division may choose to not enter into negotiation with the selected Firm. The selected Firm will be provided written notice of this intent, after the Technical Services Director's or designee's approval. The PSMU/Business Unit/Division will begin scoping and negotiation with the Firm chosen as first alternate.

The PSMU/Business Unit/Division shall maintain records of negotiations to document negotiation activities and to set forth the resources considered. This record shall include the minutes of the scoping meeting, a record of the original in-house estimate and any revisions, the final in-house estimate, a record of the Firm's original cost proposal and each subsequent submittal, the final cost proposal, the request for a pre-negotiation audit, the audit report, and the response to the pre-negotiation audit.

E. Execute the Contract

Upon completion of final negotiations, the Firm shall execute the contract through NCDOT-approved means.

After award by the Secretary of Transportation and approval by the Technical Services Director or designee, the PSMU will execute the contract. The PSMU will transmit a fully-executed contract to the Firm with a written notice to proceed and shall retain one original contract in the project file.

F. Contract Provisions

The PSMU will provide the official template for contracts to ensure that all contracts and subcontracts include the following provisions, either by reference or by physical incorporation into the language of each contract or subcontract, as applicable:

- a) As applicable, when the method of payment is other than a lump sum, the contract shall specify a maximum amount payable which shall not be exceeded unless adjusted by a contract modification;
- b) Administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and provide for such sanctions and penalties as may be appropriate;
- c) Notice of NCDOT's requirements and regulations pertaining to reporting;
- d) NCDOT requirements and regulations pertaining to copyrights and rights in data;
- e) Access by the NCDOT the North Carolina State Auditor and the Auditor's authorized representatives, the subgrantee, FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of its duly authorized representatives to any books, documents, papers, and records of the Consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
- f) Retention of all required records for not less than 3 years after NCDOT makes final payment and all other pending matters are closed;
- g) Standard DOT Title VI Assurances (DOT Order 1050.2);
- h) Disadvantaged Business Enterprise (DBE) assurance, as specified in 49 CFR 26.13(b);
- i) Prompt pay requirements, as specified in 49 CFR 26.29 and in accordance with NCDOT's FHWA approved DBE Program Plan;
- j) Determination of allowable costs in accordance with federal cost principles;
- k) NCDOT requirements pertaining to Consultant errors and omissions;
- l) NCDOT requirements pertaining to conflicts of interest, as specified in 23 CFR 1.33 and the requirements of 23 CFR 172;

- m) A provision for termination for cause by NCDOT including the manner by which it will be effected and the basis for settlement. Termination of a contract may become necessary for various reasons. Some of these reasons could include unavailability of federal and/or state funding, major delays in completing the necessary environmental documentation, removal or adjustment of the project from NCDOT's Transportation Improvement Program, change in the Firm's project team, and poor or unacceptable performance of the Firm;
- n) All contracts and subcontracts exceeding \$100,000 shall contain, either by reference or by physical incorporation into the language of each contract, a provision for lobbying certification and disclosure, as specified in 49 CFR Part 20; and
- o) Certification of Eligibility under the Iran Divestment Act (pursuant to G.S. 147-55 et seq., 147-86.58 and 147-86.59).

G. Subcontracting

A Firm must gain approval from the PSMU for any change in Subconsultant Firm or subconsultant utilization prior to that change. PSMU will notify the Business Unit/Division of all approved changes. This may include a Firm choosing to self-perform a particular scope of work, or not utilizing a proposed subconsultant, as indicated in the Letter of Interest.

The responsibility for procuring a subconsultant and assuring the acceptable performance of the work lies with the contracting Firm. It shall be the responsibility of NCDOT to schedule any meeting or make requests for substantive contact with a subconsultant through the contracting Firm. The contracting Firm should be a part of any such meeting or contact. The contracting Firm will be informed of any instruction, directive, or review of the subconsultant(s) work made by NCDOT. Also, the contracting Firm will be responsible for submitting the proper supporting data to the PSMU for all work that is proposed to be subcontracted.

7. **CONTRACT ADMINISTRATION**

A. Types of Contracts

(1) Limited Services Contract (LSC) or Limited Services Agreement (LSA)

A Limited Services Contract is a contract for the performance of services for any number of projects, under task or work orders issued on an as-needed basis, for an established contract period. The procurement of a LSC shall follow the competitive negotiation process. This type of contract is suitable where a specialized service is needed on a substantial number of projects over a specified period of time, the character of the specialized service can be reasonably defined and understood by NCDOT and the contracting Firm, but the number of individual projects makes the selection of Firms and the negotiation and execution of contracts for the service(s) on each individual project time prohibitive.

Limited Services Contract will generally be negotiated as described in the Negotiation of Contract section. The negotiations will primarily deal with allowable costs for the personnel to be utilized with supporting documentation for payroll additives, direct costs, indirect costs, fee, and overhead.

The LSC is an “as-needed basis” contract established for a maximum dollar amount for professional or specialized services to be performed during a specified contract period, generally not to exceed five (5) years (which includes the initial period plus all possible contract extensions). As needed during the contract period, a scope of services, a schedule and total compensation are negotiated with the Firm for the performance of an individual assignment of professional or specialized services, as defined by the Agreement. The scope of services, schedule, and compensation for each individual assignment are documented in a Notice to Proceed. NCDOT may elect to utilize the maximum amount of the Agreement during the contract period, or may elect not to negotiate with the Firm for any services during the contract period.

Negotiations under Limited Services Agreements shall also be conducted for each individual assignment at the time the Business Unit/Division determines that the use of the professional or specialized services of the contracting Firm is needed.

Project assignments may be awarded to Firms holding Limited Services Contracts after considering a Firm’s outstanding workload with NCDOT, recent project assignments, or through examination of the qualifications of the Firms relative to the nature of the task order work to be negotiated.

The PSMU/Business Unit/Division will notify the Firm and schedule a meeting to discuss the scope of proposed services for the individual assignment. A representative of the Firm shall keep minutes of the meeting, which shall be submitted to the PSMU/Business Unit/Division for approval by signature. A copy of the approved minutes will be returned to the Firm.

The PSMU/Business Unit/Division shall prepare an in-house estimate of the cost to perform the scope of services. The estimate will be used in evaluating the reasonableness of the Firm’s cost proposal. The in-house estimate must be completed prior to receiving the cost proposal from the Firm.

The Firm will prepare a cost proposal for performing the required services. Upon receipt of the Firm’s cost proposal, the Business Unit/Division, or its designee, shall review the submitted material, compare the in-house estimate with the cost proposal, and determine both the reasonableness of the proposal and the areas of substantial difference. Any negotiation needed shall satisfactorily conclude all points of difference. At the consensus point and conclusion of the process, the Firm will be issued a written notice to proceed.

If negotiations cannot be successfully concluded then they will be terminated. The Firm will be notified in writing and another Firm under a Limited Services Agreement will be contacted.

The Business Unit/Division will maintain records of the negotiations for three (3) years after completion of the contract. For design contracts, the records shall be kept for three (3) years after completion of the contract or until the project is completed, whichever occurs last.

(2) Project-Specific Contract

A Project-Specific Contract is between NCDOT and a Consultant for the performance of services and defined scope of work related to a specific project or projects. The fully-executed Project-Specific Contract represents the full scope of services required by NCDOT.

The procedural steps necessary to execute a Project-Specific Contract are the same as the LSC, i.e., the Request for Letters of Interest is approved by the Business Unit's/Division's approval authority; the advertisement is prepared and advertised; the Selection Committee is convened; the Consultant is selected; negotiations commence; the contract is executed; and the Notice to Proceed is given. See the Section on "Limited Services Agreements" for detailed procedures.

All interactions with the CURT Unit (i.e. auditing) and the Contractual Services Unit (i.e. prequalification) must occur. All records shall be kept for three (3) years after completion of the contract or until the project is completed, whichever occurs last.

(3) Multiphase Contract

A Multiphase Contract is a contract where the solicited services may be divided into phases, whereby the specific scope of work and associated costs may be negotiated and authorized by phase(s) as the project progresses.

The procedural steps necessary to execute a Multiphase Contract are the same as the LSC, i.e., the Request for Letters of Interest is approved by the Business Unit's/Division's approval authority; the advertisement is prepared and advertised; the Selection Committee is convened; the Consultant is selected; negotiations commence *for the phase(s) that will be executed*; the contract is executed; and the Notice to Proceed is given *for the phase(s) that were negotiated*. See the Section on "Limited Services Agreements" for detailed procedures.

B. Payment Methods

Each contract type will have at least one payment method for the scope of work, including Lump Sum, Cost-plus-Overhead-plus-Profit (Cost-Plus), Cost per Unit of Work, or Specific Rate(s) of Compensation. A single contract may contain different payment methods as appropriate for compensation of different elements of work.

1. Lump Sum – This type of contract is suitable when the amount and character of required services can be reasonably defined and clearly understood by both NCDOT and the contracting Firm. This can be a single lump sum fee negotiated initially or a lump sum contract consisting of task orders as the scope evolves by task assignments.
2. Cost-plus-Overhead-plus-Profit (Cost-Plus) – This type of contract is suitable where the general magnitude of services is known but the scope of services or period of performance cannot be defined clearly and NCDOT needs more flexibility in expediting the work without excessive amendments to the contract.
3. Cost per Unit of Work – This type of contract is suitable where the magnitude of services is uncertain but the character of services is known and the cost per unit can be determined accurately.

4. Specific Rate(s) of Compensation – This type of contract is suitable where the magnitude of services is uncertain but the character of services is known and a cost per hour can be determined.

C. Contract Amendments

A Contract Amendment is a formal agreement which modifies the terms of the original contract, or any subsequent supplemental agreement(s). Contract amendments are required for any modification in the terms of the original contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the services; or significantly change the conditions under which the services are required to be performed. Each contract shall contain procedures for contract modification(s) and will define what changes are permitted by mutual agreement of the parties involved and the changes that can only be made by means of a contract amendment.

The contract amendment shall clearly outline the changes made and determine a method of compensation. Overruns in the cost of work shall not warrant an increase in the fee (profit) portion of a cost-plus-overhead-plus-profit contract. Significant changes to the scope of services may require adjustment of the fee (profit) portion of a cost-plus-overhead-plus-profit contract or in the fee (profit) portion of a lump sum contract.

The PSMU/Business Unit/Division may, without a contract amendment, authorize changes involving details of clarifications, changes in time schedules, and other changes of a minor nature which do not cause a significant change in the scope of services or a change in the amount of compensation.

No work is to be performed by the contracted Firm on additional or disputed items of work until the contract amendment is executed and/or the dispute is resolved.

Contract amendments shall be processed using the same procedures as described for original contracts described earlier in this document. NCDOT may add to a contract only the type of services and work included within the scope of services of the original solicitation from which a qualifications-based selection was made. For any additional professional and specialized services outside of the scope of work established in the original request for Letters of Interest, NCDOT will:

- Procure the services under a new solicitation;
- Perform the work itself using staff; or
- Use a different, existing contract under which the services would be within the scope of work.

Though not required to formally approve contract amendments, FHWA may be provided a copy of the executed agreement when National Highway System funds are involved. Any controversial contractual or administrative issues should be coordinated with FHWA prior to settlement.

D. Monitoring and Evaluation of Work

The Project Manager's responsibilities shall include ensuring that the work being pursued is complete, accurate, and consistent with the terms of the contract; scheduling and attending progress meetings with the Firm where necessary; being involved in decisions leading to contract

modifications; being familiar with the qualifications and responsibilities of the Firm's staff; visiting the project and/or Firm's offices on a frequency that is commensurate with the magnitude, complexity and type of work; and assuring that costs billed are consistent with the acceptability and progress of the Firm's work.

The Project Manager shall prepare written interim and/or final performance evaluation reports for all contracts except those awarded contracts of \$50,000 or less. The report should include, but not be limited to, an evaluation of such items as the quality of work, timely completion of the work, and conformance with established policy.

Copies of the interim and/or final performance evaluations shall be sent to the Firm for its review and/or comments immediately following the appropriate milestone or completion of the contract. The PSMU shall receive copies of all interim and/or final evaluations. Any written comments by the Firm shall be attached to the final evaluation report submitted to the Project Manager.

E. Invoice Procedures and Retainage

Invoices may be created for partial payment or final payment against a purchase order line item. Consultants submit invoices for payment in increments that may be based on the completion of tasks, milestones or a specific time span, as may be required in the contract. The Firm will be required to provide a written progress report with its invoice for each calendar month or other contract period as designated in the contract during which work is in progress. The progress report shall describe the work performed during the period covered by the invoice. The prime Firm will also report subconsultant payments with each invoice using form DBE-IS.

The Business Unit/Division will process and recommend all invoices for payment. Upon recommendation from the Business Unit/Division, the CURT Unit and NCDOT's Fiscal section will approve the invoice for payment.

NCDOT has the right to retain a percentage of the contract fee for all partial payments earned until all work in the contract is completed. However, at the discretion of the Division Engineer/Branch Manager or his/her designee, the retainage may be eliminated, reduced or released on any work that has been completed and accepted by the state prior to final audit.

F. Final Payment

When it is determined that the work is complete, the final invoice shall be reviewed by the Project Manager and the Division Engineer/Branch Manager, or designee. Final invoice refers to the last invoice from the Consultant when all services for the purchase order have been completed. The final invoice requires additional considerations before processing, as any withholdings (which may include retainage) must be released or transferred before executing the final invoice for a purchase order.

When a Consultant satisfactorily completes the service, the retainage is released to the Consultant. However, if the service did not meet the specifications on the agreement, withholdings are not paid to the Consultant. Instead the amounts are transferred from the temporary withholding account to either a permanent account or back to the purchase order, thus reducing the total cost of the agreement.

When it is determined that the work is complete, the final invoice shall be reviewed by the Division Engineer/Branch Manager or his/her designee and forwarded to the CURT Unit of the OIG for approval. When a contract is terminated by NCDOT, the final payment shall be for that portion of work satisfactorily performed in accordance with the contract.

When the Business Unit processes the final invoice, it must set the final invoice indicator to prevent further processing, cancel open commitments, and validate that withholdings have been resolved.

8. SPECIAL CIRCUMSTANCES

General Engineering Services Consultant (GESC)

NCDOT may choose to retain one or more Firms to provide professional and specialized services under a General Engineering Services Consultant (GESC) Contract (or Management Consultant Contract). The GESC may provide services that include, but are not limited to, providing oversight of an element of a highway program, function, or service on behalf of NCDOT or may involve managing or providing oversight of a project, series of projects, or the work of other consultants on behalf of NCDOT. These Firms may support NCDOT's programs and projects across all modes and programs. The GESC contract may be executed as a Limited Services Agreement, Project-Specific Contract, or Multiphase Contract; NCDOT's need dictates the type of contract used.

In a non-authoritative GESC relationship with NCDOT, the GESC will be responsible for supporting the development and/or furtherance of one or more projects. GESC usage in a management support role does not relieve NCDOT of responsibilities associated with the use of Federal Aid Highway Funds, and will be generally limited to large projects or circumstances where unusual cost or time constraints exist, unique technical or managerial expertise is required, and/or an increase in NCDOT staff is not a viable option.

The GESC does not have the authority to determine scope, manage the selection of other consultants (except the subconsultants on its own GESC team), or other tasks that are the responsibility of NCDOT or other contracted consultant teams. The GESC may serve in a support and advisory role to the Business Unit or Division.

Firms who are selected to be a GESC may be assigned to work on one or more projects, as well as specific program functions. Project-specific duties may differ from project to project.

The solicitation and contract will include applicable restrictions to ensure no conflict of interest, equity, etc.

When Federal Aid funds participate in a GESC the following guidelines shall be used in the procurement of the GESC:

- NCDOT will ensure that adequate staffing is provided to administer and monitor any GESC that includes a management support role;
- NCDOT will ensure that when more than one Federal-aid project utilizes the GESC, the costs for services will be distributed consistent with the agency's cost principles; and

- NCDOT shall seek and receive approval from FHWA before utilizing a Firm to act in a management support role for the agency.