

NCDOT- Division of Aviation

Summary of Procurement Requirements for Professional Services for Airport Grant Projects (Architecture, Engineering & Planning)

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Introduction & Overview:

For Sponsors undertaking federal and/or state funded airport projects, there are many legal requirements related to the procurement of professional services including architecture, engineering, and planning. While none of these requirements are new, they are fairly complex and it was suggested that a summary document including highlights of the legal requirements would assist Sponsors and consultants with a better understanding of the process. In addition, each Sponsor is encouraged to contact their DOA Airport Project Manager for technical assistance.

The required professional services procurement process includes:

- Selection of a consultant,
- Negotiation of fees with the consultant,
- Overhead labor and rate auditing, and
- Approval of a contract for professional services.

While this document covers some of the key highlights, Sponsors and consultants must refer to the following primary reference documents to insure that all requirements are met:

- FAA AC 150/5100-14E *Architectural, Engineering, and Planning Services for Airport Grant Projects*
- NCGS 143-64-31 *Mini Brooks Act*
- 48 CFR Part 31 *Contract Cost Principals and Procedures*
- Title 2 CFR Part 200 *Procurement and Contracting Under AIP Airports*
- FAA Order 5100.38D *AIP Handbook*
- North Carolina Program Guidance Handbook

FAA AC 150/5100-14E outlines - among many other things – the detailed process and requirements for procuring architectural, engineering, and planning professional services. Among the requirements are qualifications-based selection and fee negotiation including independent fee estimates. The AC defers to a North Carolina law called the Mini Brooks Act for rules on qualifications-based selection. The requirements of the Mini Brooks Act are summarized briefly below under “Consultant Selection.” The AC then describes a requirement for fee negotiation between the Sponsor and consultant. Sponsors are not allowed by federal and state law to seek competitive “bids” for professional services, therefore the laws provide for a next step of fee negotiation. Fee negotiation is a method to insure that the Sponsor receives the services sought for a reasonable fee. This is summarized briefly below under “Fee Negotiation including Independent Fee Estimate.”

In addition, both the FAA and the NCDOT require any consultant who desires to enter into a contract with a sponsor on a federally or state funded airport project to comply with standardized financial reporting procedures. The NCDOT requires the consultant to secure approval of audited overhead and labor rates from the NCDOT's External Audit Branch. It is highly recommended that this approval be secured early in the scoping and negotiation process so that it does not hold up concurrence by the DOA. More information is provided below in "Audited Overhead and Labor Rates."

Consultant Selection: Every Sponsor must insure that the selection of their consultant (for many aviation sponsors this occurs only once every 5 years when a Master Contract* is solicited) is performed in accordance with both the North Carolina Mini Brooks Act and AC 150/5100-14E. Both of these documents include many specific requirements for consultant selection and should be referenced by the Sponsor during the selection process. One of those requirements is for the Sponsor to utilize a qualifications-based selection process for architectural and engineering services via a fair, objective, and open process. The AC defers to the North Carolina's Mini Brooks Act on qualifications-based selection requirements. The Sponsor must keep written records of the selection process (including compliance with both the AC and the Mini Brooks Act) and provide this information including a copy of the advertisement to the DOA Airport Project Manager (APM) for review and concurrence.

**Note: Some Sponsors only undertake a consultant selection process once every 5 years, entering into a "Master Contract" for upcoming projects within that time frame. Individual projects – or phases within projects – are then undertaken over the 5 year period as "work authorizations" or "task orders" under the umbrella of the Master Contract. In this scenario, the requirements of qualifications-based selection must be followed once - for selection of the consultant for the Master Contract. The requirements for both negotiation and independent fee estimates then apply to each "work authorization" or "task order" under the Master Contract. When undertaking consultant selection for a Master Contract, it is important for the Sponsor to include information about all of the projects they plan to undertake under the Master Contract within the five year period - so that those projects will qualify to be handled as subsequent "work authorizations" or "task orders."*

However, should the Sponsor desire to hire a different consultant for a project outside the Master Contract or desire to switch to a new consultant for their Master Contract, a new qualifications-based selection process is required.

Fee Negotiation including Independent Fee Estimate: As part of the fee negotiation process, FAA AC 150/5100-14E requires the sponsor to conduct and document a price or cost analysis for each negotiated contract. This analysis includes the preparation of an independent fee estimate. The independent fee estimate is designed to provide information to assist the Sponsor in negotiating fees with the chosen consultant. This can most easily be achieved by negotiating the contract in three stages: first a scoping stage in which the Sponsor works with the consultant and DOA to define the project and produce a detailed written description of the proposed work and the resulting consultant's scope of work. Second, the Sponsor obtains an

independent fee estimate of the consultant's work scope from another firm or party. Finally, the selected consultant provides the cost portion of their proposal to the Sponsor and fee negotiations begin.

The AC allows independent fee estimates to be prepared in a number of ways. The requirements on the type of independent fee estimate needed for each contract varies based upon the expected monetary value of the contract. Below are descriptions of the type of independent fee estimates required for different contract values, per the AC:

- For contracts with a value expected to exceed \$100,000, the independent fee estimate is required to be detailed and to include direct labor hours, labor rates, general and administrative overhead, non-salary expenses and a reasonable profit;
- For contracts with a value expected to be less than \$100,000, a less detailed fee comparison process is allowed, such as comparing the fees with those on similar previous projects;
- For contracts with a value expected to be less than \$10,000, only a written record of negotiations is required.

More details on the specific requirements of negotiation and independent fee estimates are included in AC 150/5100-14E which should be consulted by the Sponsor. The AC further requires the Sponsor to keep written records of both negotiations and independent fee estimates.

FOR ALL NEWLY AWARDED GRANT PROJECTS AS OF FEB 2016: For professional services contracts that exceed \$100,000 in value, the Division of Aviation (DOA) requires submittal of the fee analysis conducted (including independent fee estimate) to the APM during the review and concurrence process.

FOR ANY PREVIOUSLY AWARDED GRANT PROJECTS (PRIOR TO FEB 2016): A 60 day grace period is granted to the above requirement to allow for any professional services contracts that are already being negotiated at this time. After May 1, 2016, contracts from previously awarded grants will be subject to the same requirement as stated in the paragraph above - to submit records of the fee analysis conducted for review and concurrence by APM staff.

The Division of Aviation is available - upon request - as a resource to conduct or assist Sponsors with an independent fee estimate on behalf of an airport, prior to the airport's fee negotiations with their consultant. In many cases, the costs of the independent fee estimate can be reimbursed through the grant.

In addition, the DOA may conduct its own independent fee analysis (and/or independent fee estimate) as it deems necessary in some instances including higher value contracts, unusually high fees for a particular type of project, and/or auditing purposes.

Sponsors are reminded that the DOA will only reimburse for reasonable and eligible costs. Therefore, executing a contract prior to DOA concurrence may place a Sponsor at risk for partial reimbursement only.

Audited Overhead and Labor Rates: Consultants must secure annual approval of audited overhead rate and labor rates by the NCDOT's External Audit Branch. The consultant should work directly with the External Audit Branch to secure approval as quickly in advance of (or during) the scoping process as possible, providing documentation to the Sponsor and to the APM. The consultant should then use those same rates in subsequent proposals and invoices. Note that the Division of Aviation is currently working with the NCDOT External Audit Branch on a process to streamline the audited overhead and labor rates requirements. Updates will be provided as they become available.