

Network for Success Local Programs Workshop



Consultant Procurement Breakout Session # 2

Shailendra G. Patel, P.E.

Director, Alternate Project Delivery Office

Judson Brown, CPA

Director, External Audit

October 24, 2012

Jeff Hetzer – Moderator

Alternative Project Delivery Office

Presentation Outline

- **Objective**
- **Federal Requirements**
- **State Requirements**
- **Locality Administration Guide**
- **Procurement Process**
- **Types of Contracts**
- **Types of Compensation**

Network for Success Local Programs Workshop



Consultant Procurement Breakout Session # 2

Shailendra G. Patel, P.E.

Director, Alternate Project Delivery Office

October 24, 2012

PROCUREMENT OBJECTIVE

The objective of the total consultant acquisition process is the selection of a well-qualified firm at a fee which is fair, competitive, and reasonable to both the agency/locality and the consultant.

THE BROOKS ACT

The Brooks Act, named for the former Congressman Jack Brooks, is the 1972 law that established quality-based-selection (QBS) as the procurement process to select architects and engineers for design contracts with the federal government.

Under the act, A/E contracts are negotiated and awarded on the basis of demonstrated competence and qualifications, as opposed to the price.

(Non-binding estimates prior to final selection are not permissible)

FEDERAL REQUIREMENTS

Federal Reference – 23 CFR 172

Title VI requirements

Disadvantaged Business Enterprise (DBE) Program

Federal Immigration Reform and Control Act of 1986

Requires a pre-award audit, to include a Federal Acquisition Regulation audit (FAR), prior to award for consultant services valued over \$200,000

FEDERAL REQUIREMENTS

FHWA Order 4470.1A requires Contractor Cost Certification for indirect cost rates from the official of an A/E firm

The certificate shall be submitted to VDOT/locality

- with a pre-award audit submittal for each contract and with an yearly audit submittal

STATE REQUIREMENTS

Competitive Negotiations (VPPA) - § 2.2 - 4301

Debarment Certification

Small, Woman-owned and Minority owned business program

Licensed to conduct business in Commonwealth of Virginia (Registered with State Corporation Commission)

Offices offering or practicing professional services must be registered with the Department of Professional and Occupational Regulation (DPOR)

Licensed Virginia PE in charge of design



COMPETITIVE NEGOTIATIONS PROCESS (VPPA)

Issuance of a written RFP

Public notice of the RFP (Newspaper Advertisement)

Short list (three to four firms)

Technical presentations

Rank firms (selection)

Owner's Estimate

Fee Proposal

Negotiate

Contract Award

OWNER'S ESTIMATE

Man-hours to perform each task and subtask identified in the Scope of Work

Distribution of the man-hours to the various employee classifications required for the project

Direct expenses required for the project

Services provided by sub-consultants or vendors

OWNER'S ESTIMATE

Number of alternate designs or locations to be evaluated

Level of detail required

Numbers and types of meetings to be attended (citizen information meeting, public hearing, public workshop, elected officials, local staff, etc.)

Numbers of reports and/or presentations required

Schedule for project services

FEE PROPOSAL

Scope of services to be performed

Work effort required (both quantity and level of personnel required)

Distribution of work among levels of personnel

Delineation of work to be provided by consultant, sub-consultants

FEE PROPOSAL

Cost of services

Wage rates, overtime, etc. (or billing rates for some services)

Overhead costs (no cap)

Direct expenses and sub-consultant costs

Net fee (OH capped at 156%)

Method of compensation/type of contract

TYPES OF CONTRACTS

Project Specific Contracts

Preferred contract type for most of the projects

Multiphase Contracts

Suitable for projects requiring design services to be completed in phases; must be noted in the RFP

TYPES OF CONTRACTS

On-call/Term/Retainer/Multiple Projects Contracts

Similar types of services on various projects

Limited scope

Compressed schedule

Small projects

Emergency

Term Contracts are limited to \$500,000/per term renewable for four additional one-year term each (the other code restriction with respect to the value of each task may apply)

Unused funds/fees can't be carried over to next year

Supplement Agreements are not permitted

TYPES OF COMPENSATION

Lump Sum - This method of payment is appropriate only if the extent, scope, complexity, character and duration of the work required can be established to a degree that just compensation can be determined and evaluated by all parties at the time of negotiations

Well defined scope of work

Short time frame/schedule

Risk?

TYPES OF COMPENSATION

Cost Plus a Net Fee - By this method, the consultant is reimbursed for his actual costs up to maximum compensation payable and receives a predetermined fixed amount as a net fee

When the extent, scope, complexity, character and duration is not clearly defined

When owner does not have significant experience or knowledge to permit an evaluation of the consultant's proposal as required to support a lump sum amount

TYPES OF COMPENSATION

Specific Rates of Compensation (Fixed Billable Rates) -

By this method, the consultant is paid at an agreed and supported specific fixed hourly or daily rate for each class of employee directly engaged in the work

The rates of pay include the consultant's estimated costs (average cost for the classification), overhead and net fee.

This method is most applicable to limited services term contracts.

Locally Administered Projects Manual

- **Must follow VDOT's 2009 Manual for the Procurement and Management of Professional Services (FHWA approved)**
- **The Manual is available on VDOT website:
<http://www.virginiadot.org/business/gpmps.asp>**
- **Otherwise, develop and utilize your own procurement guidelines that are approved by VDOT and FHWA.**
- **Federal Reference – 23 CFR 172**

Locally Administered Projects Manual

- **As the recipient of the state or federal funds, all applicable federal and state requirements, including state and federal procurement and civil rights laws apply in regard to Local Administration.**
- **Recommend coordination with VDOT during consultant procurement to ensure that all requirements are met.**
- **A Request for Proposals must be reviewed by VDOT Civil Rights Division prior to advertisement.**

Locally Administered Projects Manual

- **Requires a pre-award audit, to include a Federal Acquisition Regulation audit (FAR) prior to award for consultant services valued over \$200,000.**
- **VDOT will also review the consultant qualifications and scope of services for environmental work prior to award.**

VDOT Selection & Evaluation criteria

- **Firm/Team's experience in similar type services – 25%**
- **Personnel's experience in similar type services – 40%**
- **Qualifications of Project Manager – 5%**
- **Organizational Capability – 20%**
- **Present workload – 10%**

CONFLICTS OF INTEREST

VDOT policy doesn't allow firms or individuals to work for the department and a private developer on the same project at the same time

In order to conduct the VDOT procurement process in a manner that avoids impropriety and the appearance of impropriety, Consultant shall not include in its Proposal the name of any person as a member of Consultant's team if that person is employed by VDOT at the time the Proposal is submitted.

ETHICS IN CONTRACTING

Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct

The general rule is to strictly avoid any conflict of interest or even the appearance of a conflict of interest

Network for Success
Local Programs Workshop



QUESTIONS???

Network for Success

Local Programs Workshop



Consultant Procurement Breakout Session # 2 Federal Program Requirements

Judson D. Brown, CPA

External Audit Director, VDOT

October 24, 2012

Consultant Procurement

PRE-AWARD EVALUATION PROCESS

- Introduction
- Accounting System
- Direct Labor
- Payroll Burden & Overhead Rates
- Non-Salary Direct Costs
- Net Fee
- Contingency
- Maximum Total Compensation
- Memorandum of Agreement



Consultant Procurement

PRE-AWARD EVALUATION PROCESS

Introduction

- Consultants selected to perform professional engineering *design* services for VDOT should familiarize themselves with the 2009 Manual for the Procurement & Management of Professional Services updated July 1, 2011.
- The manual is available at <http://www.virginiadot.org/business/gpmmps.asp>
- Consultants should review Chapter 4, with close attention paid to sections 4.4 Consultant's Fee Proposal & 4.9 Pre-Award Audit Evaluation
- Once selected the prime consultant should submit a package to the VDOT Contracting Officer that includes the cost proposals for them and all of their sub-consultants that provide a breakdown of all costs and documentation supporting their proposed costs.



Consultant Procurement

PRE-AWARD EVALUATION PROCESS

Accounting System

- Ability to record & report financial data in accordance with Generally Accepted Accounting Principles (GAAP) & Federal Acquisition Regulations (FAR) cost principles.
- Ability to accumulate & segregate reasonable, allowable, & allocable costs thru use of a job-order cost accounting system.
- Record keeping to ensure costs billed will be supported by adequate documents, in compliance with contract terms & conditions, & federal regulations & state laws.
- Procedures to retain accounting records & source documentation as required by the contract terms & conditions.
- System of internal controls to provide reasonable assurance that assets are safeguarded, financial data records & statements are reliable, and errors & irregularities are promptly discovered, reported & corrected.

Consultant Procurement

PRE-AWARD EVALUATION PROCESS

Direct Labor

- Listing of the proposed average hourly rates per classifications including the employee names and hourly pay rates used to determine the average hourly rates per classification supported by actual payroll registers for each employee proposed.
- A calculation showing how the escalation was derived with a breakdown of escalation amount per year of contract performance. Escalation is limited to **0.50%** in the first year/term of the contract and **1%** for all subsequent years/terms.
- Principals, partners, executives, etc. salaries are considered administrative, and should be included in the overheads. If a principal, partner, etc. elects to perform technical services, they can bill at the comparable rate to the technical activity or function being performed.

Consultant Procurement

PRE-AWARD EVALUATION PROCESS

Payroll Burden & Overhead Rates

- FAR audit approval letter from the ECA, or an audit performed in accordance with the FAR by an independent CPA firm or cognizant government agency no older than 18 months.
- In the absence of a FAR audit we will allow up to 75% for the overhead rate to be used for negotiation and billing based upon supporting documentation submitted by the consultant.
- The FAR audit requirement is waived for sub-consultant's whose cost proposal amount is less than \$200 thousand. The consultant is still required to submit documentation in support of their proposed overhead rate.

Consultant Procurement

PRE-AWARD EVALUATION PROCESS

Non-Salary Direct Costs

- Reimbursement for costs proposed by the consultant for employees on travel status are limited to the VDOT Travel Policy for lodging, per diem, and company owned or personal vehicle mileage.
- Leased vehicle costs proposed for **construction inspection services** by the consultant should be based upon written bid quotes. Mileage reimbursement is limited to 27 cents per mile and is allowed for project miles only (***no commuting miles***).
- All rates developed in-house and proposed by the consultant should be supported by proper source documentation.
- All other direct costs proposed by the consultant should be reasonable, based upon actual cost estimates, and in accordance with VDOT policy.



Consultant Procurement

PRE-AWARD EVALUATION PROCESS

Net Fee

- The net fee rate proposed by the consultant should be reasonable, within VDOT policy, and negotiated with written documentation to justify any net fee rate proposed over 10%.

Consultant Procurement

PRE-AWARD EVALUATION PROCESS

Contingency

- The contingency rate proposed by the consultant for *design services* should be reasonable, within VDOT policy, and computed properly with written documentation to justify any contingency rate proposed over 5% of loaded labor and direct expenses.
- The contingency rate proposed by the consultant for *construction inspection services* should be reasonable, within VDOT policy, and computed properly with written documentation to justify any contingency rate proposed over 10% of loaded labor and direct expenses.



Consultant Procurement

PRE-AWARD EVALUATION PROCESS

Maximum Total Compensation

- The consultant Maximum Total Compensation (MTC) should include the total of all costs, net fee, and contingency. MTC should be reasonable, in accordance with VDOT policy, and supported by proper source documentation.

Memorandum of Agreement

- The prime consultant's net fee and MTC are carried from the cost proposal to the Letter of Agreement (LOA). The sub-consultant's MTC is carried from their cost proposal to the non-salary direct costs section of the prime consultant's cost proposal.

Consultant Procurement

PRE-AWARD EVALUATION PROCESS

Questions???