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SECTION B NON-CERTIFIED LOCAL AGENCY

Chapter 12

Two-Tiered Consultant Selection

This chapter outlines consultant selection requirements for any local agency operating as a non-certified local agency and is applicable to all federal-aid projects on NHS (National Highway System) and Non-NHS routes. Consultant selection is an important element of federally funded project development and delivery performed with the use of consultant services.

In the sequence of project development, non-certified local agencies must contact ODOT's [Regional Local Agency Liaison](#) to ensure that all processes and necessary consultant services will be available to meet the proposed project timelines. The process of consultant selection is generally expected to take 45 days or longer. As a result, the non-certified agency should contact their ODOT Regional Local Agency Liaison as early as possible and prior to starting any work on the project.



A. OVERVIEW

Non-certified local agencies work closely with ODOT's Regional Local Agency Liaison in consultant selection activities. Local agencies that have become certified in consultant selection are authorized to use their own processes for federal-aid project delivery. Non-certified agencies may request ODOT's two-tiered consultant selection process or work with a certified local agency to solicit consultants to perform architectural, engineering, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Refer to [ORS 279C.125](#) for additional details regarding consultant selection for A&E Services.

If a non-certified local agency chooses to work with a certified local agency, then the certified local agency will use its own consultant selection processes, as previously approved by ODOT. It is important to note that non-certified local agencies choosing to work through another certified local agency, must first contact their ODOT [Regional Local Agency Liaison](#). The Liaison will work with the local agency to ensure that programming of the federal funds has occurred.

Since each certified local agency's processes may vary, the remainder of this chapter will address only ODOT's two-tiered consultant selection process for delivery of non-certified local agency federal-aid transportation projects.

B. ODOT's PROCESS AND APPLICABLE LAWS

1. Federal and State Law

Non-certified local agencies working through ODOT or a certified local agency for consultant selection shall follow all applicable federal laws, regulations and policies in the solicitation and award process of a project that contains federal funds. ODOT's two-tiered consultant selection process is based on the requirements of [ORS 279C.125](#).

2. ODOT'S Two Tiered Selection Process For Flex Service Contracting

When non-certified local agencies work through ODOT to procure A&E and related services, they may use the two-tiered selection process. In ODOT's Local Program, the two-tiered process is also known as a flex service contract. All of the Price Agreements and related contracts used in the process are state contracts. As a result, agencies using the two-tiered selection process must follow all the rules that apply to state agencies in the consultant selection process. This includes Quality Based Selection (QBS) rules prescribed in [ORS 279C.110](#) and [OAR 137-048-0130](#). ODOT's two-tiered consultant selection process has two distinct tiers (processes) for selecting consultants.

Tier 1: During this tier, ODOT prepares and processes appropriate solicitation documents for contracts or Price Agreements, establishes a list of qualified consultants and when applicable awards Price Agreements for A&E services. As previously noted, this work is performed in conformance with QBS rules and processes, therefore, in the Tier 1 selection phase of the process, price and cost factors must not be considered. Following ODOT's Tier 1 evaluation and selection, ODOT will provide a list of the selected consultants to local agencies for use in Tier 2. Where feasible, no fewer than three of the most qualified consultants will be selected in Tier 1. [\[ORS 279C.125\(2\)\]](#)

Tier 2: This tier is the non-certified local agency's responsibility. In this tier, the local agency or its representative makes an independent selection of an A&E consultant from the list of qualified firms selected by ODOT in Tier 1. Local agencies must establish a selection committee of no fewer than three individuals to select the consultant(s). Local agencies may authorize others, except ODOT staff, to represent them on the evaluation committee to perform evaluations and make selections. Any such authorization must be in writing. If ODOT representatives participate on the selection committee, they may only participate as "non-voting members" and will not count as one of the three required "voting" members. The ODOT representatives may only serve as technical experts, advisors or facilitators.

Further details regarding ODOT's two-tiered selection process can be found in the following section, Consultant Selection Process for Non-Certified Local Agencies – [Key Process Points](#). Note, local agencies certified in consultant selection, can also use the two-tier selection process upon request to the [Regional Local Agency Liaison](#).

C. CONSULTANT SELECTION PROCESS FOR NON-CERTIFIED LOCAL AGENCIES

ROLES AND RESPONSIBILITIES

Non-Certified Local Agency	Works with ODOT's Regional Local Agency Liaison to define project and retain consultant services, or after contacting their Regional Local Agency Liaison, the non-certified local agency may work through a certified local agency.
ODOT	Performs all activities related to consultant selection and administration of the consultant contract; and must meet all related state and federal requirements.

KEY PROCESS POINTS

The following activities depict the typical two-tiered process that ODOT and non-certified local agencies use to procure consultant services.

1. Identify and Define the Project

Using the criteria set forth by the appropriate funding program, projects are selected for inclusion in the Statewide Transportation Improvement Plan (STIP). ODOT will assess each project and determine if the project could be assigned under the Two-Tiered Price Agreement. See Chapter 3, Federal Funding Programs in Section A this *LAG Manual*, for more information regarding the STIP, funding programs and related required planning processes. Local agencies should contact the [Regional Local Agency Liaison](#) with any additional questions.

Requirement: The selected federal-aid transportation project must be included within the STIP.

2. Determine Consultant Need and Project Phases

ODOT's Regional Local Agency Liaison will work with the local agency to determine project scope and needed services.

With projects that cover two or more distinct phases such the design phase and the subsequent construction engineering phase, the ODOT Regional Local Agency Liaison will work with the non-certified local agency to define work for the project phase and determine corresponding costs.

3. Appoint Contract Administrator

In general, when local agencies work through ODOT for consultant selection, ODOT is the lead contracting agency. Most commonly, the ODOT Regional Local Agency Liaison will serve as the Contract Administrator. The Contract Administrator is generally responsible to ensure the

contractor's work is performed on time, within budget and work products and services are delivered through the duration of the contract.

Requirement: The Contract Administrator serves as an agent of the State.

4. Create Scope / Determine Deliverable and Timeline

ODOT, in conjunction with the non-certified local agency, will develop a contract including a scope of work -- a detailed description listing the products or services the consultant will provide and a schedule of when they must be delivered.

5. Prepare Cost Estimate

Working together, ODOT and the non-certified local agency shall determine who will prepare an independent, confidential cost estimate to ensure that consultant services will be obtained at a fair and reasonable price. The development of an estimate involves:

- Past experience from similar work;
- Percentage of cost of services compared to total project cost, for similar types of projects; and
- Detailed cost estimate
 - Direct labor costs
 - Indirect costs
 - General and administrative costs
 - Other direct costs
 - Subconsultant costs
 - Net fee

Additional information regarding cost estimates is available from ODOT's [Audit Guide](#).

Requirement: An independent cost estimate of professional services is required for every federal-aid transportation project.

6. Determine Two-Tier Consultant Selection Option

During Tier 2 of the two-tiered consultant selection process, two options for consultant selection are available. Local agencies may choose either Option A or B.

- **Option A** includes pre-scored consultant selection criteria on Work Order Contract selection forms for each Region. Some projects may require additional capacity summary information from the consultants.
- **Option B** allows the local agency to develop its own consultant selection criteria and to receive consultant responses that are specific to a project.

Further details regarding these two options are available within ODOT's *Quick Reference Guide* available by clicking on "Tier 2_Quick Reference" at ODOT's [Local Government Section website](#).

Note. Option B must be used for projects that will require an Environmental Assessment (EA) or an Environmental Impact Statement (EIS); National Environmental Protection Act (NEPA) processes.

7. Determine Evaluation / Selection Criteria

Local agencies must not consider pricing, cost, overhead or rate factors in the evaluation or selection phase of the two-tiered process. Local agencies may collaborate with ODOT in selecting criteria for Option A or developing the criteria for Option B. Multiple criteria must be considered for each selection/assignment.

Requirement: Consultants for A&E services must be selected using QBS selection criteria. [\[ORS 279C.110 \(3\)\]](#)

8. Establish Selection Committee

As noted above, an ODOT representative may only participate on the committee as a "non-voting" member and may serve as a technical expert, advisor or facilitator.

Requirement: A minimum of three "voting" members on the consultant selection committee is required.

9. Identify Disadvantage Business Enterprises (DBE) Program and Goals

Through the DBE program, nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of U.S. Department of Transportation (USDOT) assisted contracts, is required. At this point in the process, ODOT will assign a DBE goal.

Requirement:

The local agency, when participating in programs funded in whole or in part with funds made available by ODOT, shall comply with ODOT's DBE Program Document. For additional details, refer to Chapter 7, Civil Rights and Disadvantaged Business Enterprises, in the Non-Certified Section of this *LAG Manual*.

10. Consultant Negotiation Following Consultant Selection

As noted above, the non-certified local agency completes the selection process under either Option A or Option B. The non-certified local agency and ODOT's [Regional Local Agency Liaison](#) negotiate statement of work, schedule and costs with selected firm as follows:

- Consultant and ODOT/non-certified local agency develop a detailed statement of work for the project (normally phased development for preliminary engineering and construction engineering, with phases added via amendment);
- Following statement of work development, prepare (or contract out) the non-certified local agency's estimate, complete profit worksheet and develop negotiation position (including timeline for concluding negotiations), prior to receiving the consultant's estimate;
- Notify consultant of timeframe allowed for negotiations;
- Following receipt of consultant's estimate, negotiate statement of work, hours/classifications for each task, schedule and profit;
- Confirm that the labor rates for each classification on the consultant's estimate are within maximums allowed in Price Agreement rate schedules;
- Document negotiations with a [Record of Negotiations](#) form;
- If negotiations result in an agreement, ODOT's [Regional Local Agency Liaison](#) will obtain a Work Order Contract number and submits required documentation to the ODOT Procurement Office; and
- If an agreement cannot be reached within a reasonable and pre-determined timeframe, then send a notice terminating negotiations and document such actions in the file document file. Commence negotiations with second highest scoring firm and so on until satisfactory agreement is made.

D. CONTRACT ADMINISTRATION

The local agency supervises the consultant's daily work. Consultant contractors must submit invoices to the local agency and ODOT at the same time. ODOT reviews the invoice for timeliness, appropriate rate, charges and work. Upon satisfactory review and approval, ODOT remits payment for the invoice to the consultant.

Significant changes in contract scope or schedule require a contract amendment by ODOT.

E. CONTRACT CLOSURE

Upon completion of the work under the consultant contract, ODOT's [Regional Local Agency Liaison](#) and local agency will ensure that the consultant has complied with all terms and conditions of the contract and that all services to be performed under the contract have been completed prior to final payment of the consultant. The local agency should evaluate the consultant's performance and retain related documents in their records.