



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

ANANTH PRASAD, P.E.
SECRETARY

LAP BULLETIN: 02-14

Effective Date: July 23, 2014

To: District LAP Personnel in the offices of LAP Administration and District Procurement Offices

From: Lorraine Hunter, State Local Program Administrator

Copies: Carla Perry, Trey Tillander, Chad Thompson

Subject: Local Agency Program Continuing Services Contracts Procurement

The purpose of this bulletin is to release the revised **Sections 18.6** and **18.9, Chapter 18** of the LAP Manual for immediate use. **Section 18.6** identifies updated policies and procedures on how a local agency may procure a continuing services contract for use on professional services phases of federally funded projects. **Section 18.9** identifies the required forms a Local Agency or their consultant must submit when procuring a professional services contract with Federal-aid funding.

18.6 PROFESSIONAL SERVICES PROVIDED ON A CONTINUING BASIS

In accordance with **Section 18.2** of this chapter, the Local Agency must publicly announce each project in a uniform and consistent manner that exceeds the thresholds specified in Section 18.2. A project specific contract is the typical type of professional services contract between a Local Agency and the consultant. Project specific contracts provide for the performance of a fixed scope of work related to a specific project or projects. FHWA and state law also permit use of on-call type contracts (referred to in Florida as continuing contracts) when specialized services are needed for a number of different projects. In accordance with state law, continuing contracts for professional services will be restricted in use to services for projects in which the estimated construction cost of each individual project under the contract does not exceed \$2,000,000 each, or for each study activity when the fee for such professional service does not exceed \$200,000, or for work of a specified nature as outlined in the contract (ref. [Section 287.055\(2\)\(g\)](#), F.S.). Continuing contracts shall be limited in duration to a period not to exceed five (5) years per Department procedure, and a total

cumulative contract amount of \$1.5 million since federal law requires a reasonable maximum length of contract and maximum dollar amount of contract defined within the advertisement and contract provisions. Continuing contracts must include the required federal provisions contained in **Appendix I** of the Department's **Standard Professional Services Agreement** (Form 375-030-12), and all required federal forms as noted in **Section 18.9**. The required federal forms must be signed as part of the continuing contract and the applicable federal provisions must be a part of the original contract. These items cannot be added via an amendment, supplemental agreement or task work order. Existing contracts executed without the federal requirements, or new contracts where the federal requirements were inadvertently omitted will not be eligible for federal reimbursement.

18.6.1 Solicitations for Continuing Contracts

All requirements for Federal-aid Highway Program funded engineering and design-related services contracts shall be made by public announcement with evaluation and selection based on demonstrated competence and qualifications for the type of services required (as specified in 23 U.S.C. 112(b)(2)(A), 40 U.S.C. 1101, and 23 CFR 172.5(a)(1)).

A local agency may advertise and award for any eligible professional services phase the agency is Certified to perform in the Local Agency Program. Solicitations for professional services under continuing contracts must include the scope of work, clearly defined contract award procedures, the cost and time limits identified in the previous section, and reference the Federal provisions. Each continuing contract must be work type or phase specific.

Multiple work types or phases cannot be awarded under one contract. These types of multi-work type/multi-phase contracts are General Engineering Consultant (GEC) contracts, providing management and oversight of a major project or series of projects, and are not eligible for federally funded projects.

Multiple continuing contracts may be awarded under one single advertisement, but ranking and award of each contract must comply fully with all state and federal requirements. If multiple firms are to be procured through a single solicitation for specific on-call services, the procedures for assignment of task orders among the selected firms must also be defined in the solicitation and contract provisions. After the multiple contracts have been awarded (using qualification based selection process), task orders may be assigned to the selected, qualified firms on a the basis of proximity to project, staff availability at the time services are required, or through an additional qualifications based procedure with opportunity for discussions between the contracting agency and qualified firms for each specific task order. The procedures for awarding task orders among the selected firms shall be based on scope and qualifications, and **not** based on a bidding process or cost proposals. In accordance with Florida law, firms providing professional services under continuing contracts shall not be required to bid against one another (Section 287.055 (2)(g)).

18.6.2 Qualifications

A Local Agency may elect not to require consultants be pre-qualified by FDOT, and use other established qualifications definitions. If the consultant firm awarded the continuing is not FDOT prequalified, project tasks will not be eligible for reimbursement when the Federal-aid project is on the National or State Highway Systems, or for off-system Class C projects as defined in **LAP Bulletin 14-01**.

18.6.3 Scope of Services

The scope of services for a continuing contract shall identify the phase type to be performed. When utilizing the FDOT pre-qualification process, the Local Agency shall identify the types of work in accordance with Chapter 14-75.003, Florida Administrative Code. The tasks that may be potentially assigned under the phase type shall be clearly identified or listed in the scope. For example, a design scope may include design services, geotechnical, field surveying, traffic signal design, lighting design, etc. Known Federal-aid projects may be identified in the scope of services when advertised and new Federal-aid projects may be added by task work order after the continuing contract is awarded. New projects identified after contract award must include only those specific tasks identified in the original scope of the contract as awarded.

18.6.4 Independent Staff Hour Estimates and Negotiations

Continuing contracts typically establish classifications and rates of personnel to be included on the contract. Per [49 CFR 18.36 \(f\)\(1\)](#), the Local Agency must prepare independent staff-hour estimates before receiving bids or proposals for services associated with a task order. As identified and expanded in **Section 18.4**, negotiations may not be solely based on price. The Local Agency must also perform an analysis of the consultant's cost proposal. Records of negotiations shall be maintained by the Local Agency in accordance with [49 CFR 18.42](#) and should be available to FDOT and FHWA upon request.

Task orders on continuing contracts may be negotiated as either cost plus fixed fee, or lump sum method of payment.

18.6.5 Task Work Orders

Work Orders are provided to the Consultant on a continuing contract, to identify what work and services are required for specific projects. The accumulated total of issued task work orders may not exceed the \$1.5 million limit for federally funded continuing contracts. The project services to be rendered by the Consultant for each task work order will be completed within the time period specified in each task assignment, noting that all services performed under the contract must begin within five years from the execution date of the continuing contract. Approval is not required to extend continuing contracts beyond five years to complete task orders previously authorized before the end of the five year limit. The Local Agency shall seek approval from the District LAP Administrator for the continuing contract prior to execution. The District LAP

Administrator shall request Authorization prior to execution of each federally funded task work order.

Federally funded task work orders require fixed fee operating margin. Fixed fee operating margin is not required for state funded task work orders, although recommended to reduce contract complexity, and to ensure that no federally funded tasks are inadvertently established without fixed fee operating margin.

18.6.6 Local Agency Responsibilities

All state and federal requirements identified in **Chapter 18** are applicable to the procurement of continuing contracts. The Local Agency should refer to the [Professional Services Checklist Form 525-010-49](#) during the development, advertisement, negotiations, and award of the continuing contract. Each item identified on the Checklist will be submitted to the District LAP Administrator following the same process as a LAP project specific professional services advertisement and contract award. A Professional Services Checklist will not be applicable to project specific task work orders issued under an awarded continuing contract.

Disadvantaged Business Enterprise utilization data and payment reporting will be required of the consultant on each LAP project utilizing the established methods identified in **Chapter 14**.

18.6.7 Federalized Consultant Contracts

Local Agencies may choose to use a continuing contract with the federal terms on non-federally funded projects.

18.9 FORMS AND OTHER REQUIRED TERMS

A list of the applicable forms is provided below. The following forms are available in the [Department's Forms Library](#) and on the [LAP Website](#):

375-030-30	<i>Truth-In-Negotiation Certification</i> (for contracts valued greater than \$195,000)
375-030-32	<i>Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Federal Aid Contracts</i>
375-030-33	<i>Certification for Disclosure of Lobbying Activities on Federal Aid Contracts</i>
375-030-34	<i>Disclosure of Lobbying Activities</i> (as applicable)
375-040-40	<i>Appendix I- Terms for Federal-Aid Contracts</i> (includes required DBE, EEO and Title VI Appendix A provisions)

- 375-030-50 ***Conflict of Interest Certification*** (required for all Local Agency staff and Consultant staff involved in the selection process)
- 525-010-49 ***LAP Checklist for Federally Funded Professional Services Contracts***

The boilerplate contract must also contain the following provisions: a) public access to public records; b) E-Verify; c) Drug Free Workplace, d) Professional Liability Insurance.

Chapter 18 identifies the most common federal and state contract requirements for professional services procurement and contract award. The Chapter is not inclusive of all state and local laws, requirements, or policies. Where state law and federal law are in conflict, the Local Agency should follow the most restrictive requirement, except in cases where the state or local requirement is in direct violation of federal requirements (e.g., local preference ordinances).

If you have any questions regarding the contents of this Bulletin, please contact Lorraine Hunter at (850) 414-4383 or Lorraine.hunter@dot.state.fl.us.