



# **POLICIES AND PROCEDURES FOR PROFESSIONAL AND SPECIALIZED SERVICES CONTRACTS**

*Adopted February 2011*

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## 1. INTRODUCTION AND PURPOSE

The Alliance for Toll Interoperability (ATI) does not maintain staff capable of performing the functions required for the purpose of planning, implementing and maintaining a national toll interoperability program. It is recognized that these services can best be provided by the use of qualified professionals.

These policies and procedures are established for the following reasons:

- To guide the preparation, execution and administration of contracts for professional or specialized services.
- To ensure that qualified firms are obtained through an equitable and ethical selection process, and
- To ensure the prescribed work is properly accomplished in a timely manner and at a reasonable cost.

Due to the diversity of contract types, some portion of these policies and procedures may not be fully applicable to all situations. The President or his or her designee shall be responsible for recommending to the Chairman when deviations from these procedures are justified. The Board shall maintain responsibility for approving recommended deviations. The President or his or her designee shall also be responsible for documenting, in writing, any deviation from these policies and procedures, and for obtaining FHWA approval if needed.

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

- (Articles of Incorporation and Bylaws – need to refer to specific Chapter/Paragraphs)
- All ATI personnel involved with contracts for professional or specialized services shall comply with the Ethics Policy adopted by ATI in February 2011.

## 2. DEFINITIONS

**Contract Administrator:** The individual(s) responsible for administering a contract for professional or specialized services.

**Contract Amendment:** A formal amendment that modifies the terms of the original contract, or any subsequent supplemental agreements.

**Contract Negotiator:** The individual(s) responsible for negotiation a contract for professional or specialized services.

**Cost Per Unit of Work:** A method of compensation based on an agreed cost per unit of work which may include labor, overhead, fixed fee and other non-salary direct costs. The fee is calculated per project assignment and is fixed.

**Cost Plus Fixed Fee:** A method of compensation based on the actual allowable and documented cost for labor, overhead, and other non-salary direct cost incurred by the firm performing the work plus a pre-established fixed fee.

**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 ATI.

**Firm:** A private agency, corporation, organization, business or individual offering qualified professional or specialized services.

**Fixed Fee:** A dollar amount established for operating margin. If a fee used is higher than the specified fee, it must be justified by the firm and approved in writing by the Chairman or President prior to the cost proposal submittal.

**Letter of Interest (LOI):** An expression of interest by a firm for performing specific services as advertised by the authority.

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

**Non-Salary Direct Costs:** Charges, except labor, which are customarily job or project related, including but not limited to, travel, document reproduction, telephone, computer usage costs, which are not allowed to be billed directly.

**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:** Any services performed that require the firm or organization providing the service to hold special licenses, permits, or general specialized knowledge.

**Scope of Services:** All services, actions, and physical work required by ATI to achieve the purpose and objectives defined in a contract.

**Specific Rate(s) of Compensation:** A method of compensation based on an agreed cost per hour of work including labor, overhead and fixed fee. Non-salary direct costs may be charged and reimbursed separately.

**Termination Clause:** A contract clause which allows ATI 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. APPLICATION

These policies and procedures shall apply to all contracts for any professional or specialized services, for any dollar amount and are obtained by ATI pursuant to the documents listed in Section 1.

#### **4. REQUEST FOR APPROVAL TO SOLICIT LETTERS OF INTEREST**

The President or his or her designee is responsible for determining when professional or specialized services are needed. Upon determining that a need exists, the President or his or her designee shall request approval from Chairman, who shall present the need to the Board of Trustees for recommendation for solicitation of services. 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 firm such as (1) lack of manpower, (2) lack of expertise, or (3) other reasons. The President, or his or her designee, shall maintain a copy of the request.

#### **5. SELECTION COMMITTEE**

The Chairman will appoint a Selection Committee. The Selection Committee will consist of the Chairman, or his or her designee, the President or his or her designee and at least three other voting members with experience in the type of services to be contracted. The Chairman, or his or her designee, will act as the Chairperson for the Selection Committee. The other voting members will be chosen from a pool of designated members from the ATI membership. No designated member shall serve on consecutive Selection Committees unless no other members with expertise in the type of services to be contracted are available. When Federal funds will be used as compensation for solicited services, a representative of the Federal Highway Administration shall be invited to sit with the committee as an ex-officio "non-voting" member.

#### **6. SOLICITATION OF SERVICES**

The recommended process for Solicitation of Services is detailed in the following paragraphs. The ATI Board of Trustees, by vote, may elect to deviate from this standard process in the case of immediate need or other applicable reasons.

- a. Letters of Interest (LOI)** will be solicited to determine the firms which are interested in and capable of performing professional or specialized services. Solicitation shall be published, at the very least, as an advertisement on the ATI website. Solicitation may also be by direct mail to selected firms. When the President elects to send the request for LOI to specific firms in combination with a published advertisement, the request will be mailed the day before the scheduled advertisement.

The President, or his or her designee, shall be responsible for preparing the request for LOI. The request shall contain information

describing the project, the types and scopes of services that reflect a clear, accurate and detailed description of the technical requirements for the services to be rendered. LOIs shall be reviewed by the President or his or her designee, the Chairman or his or her designee and at least three (3) Board of Trustees. If it is elected to use the LOI's for evaluation and selection, the Selection Committee shall remain as the as the President, Chairman and three (3) original Board of Trustee members. Selection criteria to be used in the selection process shall be specifically stated along with the respective weights of each evaluation factor.

The LOI shall be submitted to the President, or his or her designee, by the date designated in the advertisement. Any deviation as to the number of pages or copies, place, date or time of delivery of these LOI, will result in automatic disqualification of the firm.

Copies of the advertisement and the LOI's submitted by the firm(s) shall be maintained by the President or his or her designee, unless the LOI responses are used for final selection of services, in which case, only copies of the LOI's submitted by the selected firm, and the first and second alternate shall be maintained.

Should the LOI be considered sufficient for selection of a firm for services, the President shall mail a request in writing, along with additional selection criteria, if any, to the firms for Pricing Information and continue through the selection process as stated in the Selection of Firm, Sub-Section C.

Release of a LOI does not guarantee an award for services, or a subsequent release of a Request for Proposals.

- b. Request for Proposals (RFP)** will be solicited if a determination is made that more than one (1) firm is capable of performing the services requested in the LOI. Solicitation shall be published, at the very least, as an advertisement on the ATI website. Solicitation may also be by direct mail to selected firms and must be provided to all firms previously responding to the LOI. When the Chairman elects to send the request for RFP to specific firms in combination with a published advertisement, the request will be mailed the day before the scheduled advertisement.

The President, or his or her designee, shall be responsible for preparing the request for RFP. The request shall contain information describing the project, the types and scopes of services that reflect a

clear, accurate and detailed description of the technical requirements for the services to be rendered; and shall specify the method(s) of payment. The evaluation criteria to be used in the selection process shall be specifically stated along with the respective weights of each evaluation factor.

The RFP shall be submitted to the President, or his or her designee, by the date designated in the advertisement. Any deviation as to the number of pages or copies, place, date or time of delivery of these RFP, will result in automatic disqualification of the firm for the advertised work.

The President or his or her designee may recommend selection by Best and Final Offer (BAFO).

A copy of the advertisement and the RFP submitted by the firm, which is ultimately selected, as well as first and second alternate, shall be maintained by the President or his or her designee.

**c. Selection of Firm**

The Selection Committee shall evaluate each firm responding to the request for RFP. The Selection Committee may select any number of firms deemed most qualified. It is recommended that at least three (3) firms shall be selected, except where less than three (3) firms are available. However, the total number of selected firms shall remain the discretion of the Selection Committee. The Chair of the Selection Committee may recommend the selection of more than, or less than, three (3) firms to the Board of Trustees.

These firms shall be listed in descending order of ranking based on the Selection Committee's selection criteria, and analysis of the RFP. The Committee may elect to interview all or some of these firms prior to establishing the ranking order based on the selection criteria. The President or his or her designee shall maintain a copy of the evaluation of firms.

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

Evaluation of the qualified firms expressing interest will be based on the evaluation factors and their respective weights as specifically

stated in the solicitation. Any other data pertinent to the contract under consideration such as past performance, applicable work experience, present workload, project team, staffing capabilities, or Disadvantaged Business enterprise may be considered also.

Disadvantaged Business Enterprise (DBE) firms shall be given consideration in the procurement of planning, engineering, design, and construction related service contracts. ATI is committed to supporting Federal Highways annual goals for DBE participation on all federally funded projects and to annual goals for Minority Business Enterprise (MBE) and Woman's Business Enterprise (WBE) participation on all State or Federally funded projects. Efforts will be made to reach these goals through the use of prime DBE firms; however, the selected firm, if not a DBE firm, may be requested to help ATI meet these goals through the use of qualified DBE subconsultant(s).

The President or his or her designee shall maintain the results of the Selection Committee meeting.

After authorization to proceed with negotiations is given by the Board of Trustees, the Contract Negotiator shall notify the firm chosen by the Selection Committee and request a meeting to review the scope of services.

## **7. NEGOTIATION OF CONTRACT**

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 the methods, policies, standards, etc. utilized by ATI. For firms unfamiliar with ATI's requirements, the meeting should include review and discussion of the following, if applicable and available:

- Copies of examples of similar work;
- Standards, specifications, manuals, etc. to be used;
- Policies used by ATI for the type of work involved;
- A contract in draft form;
- Methods of payment;
- Procedures for invoicing;
- Standard forms to be used;
- Fiscal requirements; and
- Items and/or services to be provided by ATI.

A representative of the firm shall keep minutes of the scoping meeting and will submit a typewritten copy to the Contract Negotiator. 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 Contract Negotiator and an approved copy will be returned to the firm.

Once the details of the scope of services are resolved, the Contract Negotiator, or his or her representative, shall prepare an estimate of the cost of performing the work "in-house".

The "in-house" cost proposal will be used in evaluating the acceptability of the selected firm's cost proposal for performing the services. The "in-house" cost proposal must be completed prior to opening the cost proposal from the selected firm.

The format used for preparing the "in-house" cost proposal 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 fixed fee (i.e. 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 scope of work and the salary range for each of the classifications of personnel to be utilized. The firm's cost proposal must include supporting documentation for payroll additives, direct costs, indirect costs, fixed fee, and overhead.

Upon receipt of the firm's cost proposal, the Contract Negotiator or his or her representative shall compare the "in-house" cost proposal with the firm's cost proposal and determine both the reasonableness of the firm's cost proposal and the areas of substantial difference which may require further discussion and negotiation.

An external audit by one of ATI's members' auditing branch, or a private auditing firm, shall prepare a pre-negotiation audit to ensure that the firm has an acceptable accounting system, adequate and proper justification for the various rates charged to perform the work, and is aware of ATI's cost eligibility and documentation requirements. A pre-negotiation audit and the resultant audit report are required for all contracts, including Limited Services Agreements.

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. When the pre-negotiation audit is completed, negotiations with the vendor may begin. The negotiations shall satisfactorily conclude all points of difference and shall address and resolve any comments contained in the audit report.

The Contract Negotiator shall use all resources available to conduct effective negotiations including, but not limited to the refined scope of services, the evaluation factors and their relative importance, the "in-house" cost proposal, and the pre-negotiation audit and audit report.

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

When a joint venture of firms desires to enter into a contract with ATI, 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 is more than 50% above the "in-house" cost proposal and it is determined the firm understands the scope of work, the Contract Negotiator may choose to terminate the negotiations process with the selected firm. The selected firm will be provided written notice of ATI's intent to cease the negotiation process. The President's recommendation, and subsequent approval of the Chairman, shall be obtained before negotiations are terminated. The Contract Negotiator will then begin procedures for scoping and negotiating with the firm chosen as first alternate.

The Contract Negotiator shall maintain records of negotiation to document negotiation activities and to set forth the resources needed. This record shall include the minutes of the scoping meeting, a record of the original "in-house" cost proposal and any revisions to the "in-house" cost proposal, the final "in-house" cost proposal, 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.

## **8. EXECUTION OF CONTRACT**

Upon completion of final negotiations, the firm shall execute a minimum of two (2) original contracts and shall also submit an electronic copy of the executed contract.

The contracts shall be placed on the agenda for the ATI Board of Trustees board meeting. The President or his or her designee will present the contract to the Board of Trustees for official award.

Upon approval by the ATI Board of Trustees, the Chairman of the Board will execute two (2) original contracts and transmit one original contract to the firm with a written notice to proceed. The President will retain one original contract for ATI's project files.

## **9. SUBCONTRACTING**

A Contracting Firm may subcontract portions, not to exceed 49%, of the work proposed in a contract only upon approval of the Chairman and the President, or his or her designee.

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 the President to schedule any meetings or make any requests for substantive contract with a subconsultant through the contracting firm. The Contracting Firm should be a part of any such meeting or contract. The Contracting Firm will be informed of any instruction, directive, or review of his subconsultant(s) work made by ATI. Also, the Contracting Firm will be responsible for submitting the proper supporting data to the President, or his or her designee for all work that is proposed to be subcontracted.

## **10. ADMINISTRATION OF CONTRACT**

The administration of the contract shall be the responsibility of the President. These duties include the review of invoices and recommendation for audit and/or payment to ATI's Chairman and Treasurer/Secretary.

The President or his or her designee shall be responsible for assuring that the firm performs such additional work as may be necessary to correct errors, omissions or negligence in the work required under the contract without undue delays and without additional cost to ATI in accordance with the contract.

## **11. CONTRACT AMENDMENTS**

Each contract shall contain procedures for contract modifications and will define the changes that are permitted by mutual agreement of the parties involved and the changes that can only be made by means of a contract amendment.

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.

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 fixed fee portion of a cost plus fixed fee contract. Significant changes to the scope of services may require adjustment of the fixed fee portion of a cost plus fixed fee contract or in the fixed fee portion of a lump sum contract.

The President or his or her designee may, without 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.

The Contracted Firm will perform no work on additional or disputed items of work until the contract amendment is executed and/or the dispute resolved.

Contract amendments shall be processed using the same procedures as described under Items 7 and 8. In addition, FHWA will not be required to formally approve contract amendments; however, they shall be provided a copy of the executed agreement when Federal funds are involved. Any controversial contractual or administrative issues should be coordinated with FHWA prior to settlement.

## **12. MONITORING AND EVALUATING WORK**

The President or his or her designee maintains the responsibility of 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 President or his or her designee shall prepare written interim and/or final performance evaluation reports for all contracts. This 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 interim and/or final performance evaluations shall be sent to the firm for its review and/or comments. Any written comments submitted to the President by the firm shall be attached to the final evaluation report.

### 13. INVOICE PROCEDURES

The firm will be required to provide a written progress report with its invoice for each calendar month during which work is in progress. The progress report shall describe the work performed during the period covered by the invoice.

ATI 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 President, or his or her designee, the retainage may be eliminated, reduced or released on any work that has been completed and accepted by ATI prior to final audit.

### 14. FINAL PAYMENT

When it is determined that the work is complete, the President shall approve the final invoice and forward it to the Chairman and Treasurer/Secretary with a recommendation for payment. When ATI terminates a contract, the final payment shall be for that portion of work satisfactorily performed in accordance with the contract.

### 15. TERMINATION OF CONTRACTS

Termination of a contract may become necessary for various reasons. Some of these reasons could include unavailability of funding, major delays in completing the necessary documentation, change in the firm's project team, reasons of convenience and poor or unacceptable performance of the firm.

All contracts shall include a provision for the termination of the contract by ATI with proper written notice to the contracted firm.

### 16. SPECIAL CIRCUMSTANCES

**Emergency Conditions:** When an emergency occurs, the ATI Board of Trustees may waive these procedures, or portions. A professional/specialized firm may be selected, negotiations conducted, and a contract executed at the discretion of the ATI Board of Trustees as required to address the emergency condition(s).

When Federal Funding is utilized in the contract, the President shall submit justification for emergency selection and receive approval from FHWA before proceeding.

**Sole Source:** These procedures or portions thereof, may be waived by the ATI Board of Trustees for the sole source selection of a firm under either of the following two conditions:

1. Sole source selection may be used for work on subsequent phases of a project when the firm has satisfactorily performed work on an earlier phase and holds an existing contract.
2. Sole source selection may be used when no more than two firms known to ATI have the required expertise, or offer such services requested. However, notice of intent for sole source must be provided on ATI's website for a period of 15 days to allow for potential vendors to respond with qualifications.

Sole source selection may only be used when it is in the interest of the membership and economically advantageous, it is necessary to acquire a product or service from the source to be compatible and integrate with existing products or services or the products or services are unique to one vendor. Selection of a sole source firm will be contingent upon satisfactory negotiation of the service.

When Federal Funds are involved, the President shall submit justification for sole source selection and receive approval from FHWA prior to proceeding.

## **17. QUARTERLY REPORT**

A quarterly report on all contracts shall be submitted to the Board of Trustees. The report will identify the current status of the contracts including original amount, current amount and any current contract issues.