

**XIII. CAMERON COUNTY
POLICIES AND PROCEDURES
FOR THE PROCUREMENT OF PROFESSIONAL SERVICES
FOR USE IN STATE & FEDERALLY FUNDED PROJECTS**

Professional services are services provided by, or within the scope of services provided by, state certified or state licensed real estate appraisers, architects, landscape architects, land surveyors, certified public accountants, professional engineers, and registered engineers.

The following policies and procedures for procurement of professional services shall be used when projects will be utilizing federal funds. These written procedures shall be maintained by Cameron County and will not be implemented until receiving prior approval from Texas Department of Transportation (TxDOT) for each federal funded project. The policies and procedures shall comply with the requirements of 23 CFR 172.5 (c) and with the qualifications-based selection method (competitive negotiation) as referenced in the Texas Government Code Chapter 2254.

**Section 1 – Preparing the Scope of Work and Evaluation Factors for
Request for Proposals (RFP)**

A. Scope of Work

The RFP shall provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered. The scope of work should detail the following:

- a. Purpose and description of the project
- b. Services to be performed
- c. Deliverables to be provided
- d. Estimated schedule for performance of the work
- e. Applicable standards, specifications and policies
- f. Number of contracts and type

The County shall submit the RFP to TXDOT for review and approval prior to advertisement.

B. Evaluation Criteria

Evaluation criteria used for ranking and selection of consultants to perform engineering and design related services may include, but is not limited to:

- a. Technical approach
- b. Project understanding, innovative concepts, or alternatives
- c. Work Experience
- d. Professional Licensure
- e. Staff Capabilities
- f. Quality control procedures
- g. Workload Capacity
- h. Past Performance

The evaluation committee shall develop the relative weight for each criteria and shall develop questions, expected response, and scoring criteria. Price and in-state or local preference shall not be used as a factor in the evaluation, ranking, and selection phase.

Section 2 – Preparing and Advertising the Solicitation

A. Request for Proposals

Professional services are procured through the Request for Proposals Process. The selection of providers of professional services will be based on the competency of the firm or individuals, not competitive bidding. Departments requiring professional services must review the experience and capabilities of the prospective service providers through proposals and, if determined necessary by the County, interviews.

B. Advertisement

The County will submit the notice to TxDOT for concurrence prior to advertisement. The solicitation process shall be made by public advertisement, after Commissioners Court approval. The county will place a notice in one newspaper for a minimum of two consecutive weeks and on the County's website to allow a fair opportunity for in-state and out-of-state consultants. Submittal deadline for responses shall be not less than 14 calendar days from the date of issuance of the RFP. The service providers will submit proposals to the Purchasing Department. The Purchasing Department shall open proposals on the date specified in the Request for Proposals. Confidential and trade secret information, identified as such in the proposal, shall not be publicly disclosed, but the remainder of the proposal shall be open for public inspection following award and execution of the contract.

Section 3 – Preventing, Identifying, and Mitigating Conflicts of Interest

No employee, officer, or agent of the contracting agency shall participate in selection, or in the award or administration of a contract supported by Federal-aid funds if a conflict of interest, real or apparent, would be involved. Such a conflict arises when there is a financial or other interest in the consultant selected for award by:

- a. The employee, officer, or agent
- b. Any member of his or her immediate family;
- c. His or her partner; or
- d. An organization that employs or is about to employ any of the above.

The County's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to sub agreements.

Any elected or appointed official who has any substantial interest, either direct or indirect, in any business entity seeking to contract with the County, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. A disclosure of all of the Company's business or pecuniary financial relationships with officers or employees of Cameron County or County entities (if any such relationships exists) must be attached and included with RFP submitted. The consultants will be required to disclose in the "Conflict of Interest Questionnaire" (CIQ) that is attached to the RFP. The CIQ will be filed with the Cameron County Clerk's office no later than the 7th business day after the date the consultant becomes aware of facts that require the statement to be filed as per Chapter 176, Local Government Code.

If potential conflict exists, then the County elected official and staff shall promptly disclose in writing any potential conflict of interest to funding agency.

Mitigation – Conflict of Interest with Consultant

A firm which is part of the design team will be precluded from performing design verification, construction oversight, inspection, or QA/QC testing for the project. A firm participating as part of the design team may provide low level services (i.e., utility identification, construction staking, ground water monitoring, or other drilling and testing associated with geotechnical or environmental monitoring) as a subconsultant to a construction oversight consultant where the County determines the relationship will not impair the subcontractor's objectivity in performing the work and where the subconsultant provides a mitigation plan accepted by the County. The mitigation plan must provide, at a minimum: (1) separation of personnel working for the contractor vs. the County, (2) steps to avoid access to and sharing of project related data, whether

physical or digital, and (3) a requirement to provide prompt notice to the County when the subconsultant recognizes a potential conflict may exist related to the subconsultant's work.

Section 4 - Eligibility Requirements of Consultants

The following procedure shall be followed to verify eligibility requirements for consultants:

1. Verify the consultant is not debarred at federal level by checking for any exclusion at <https://www.sam.gov/portal/public/SAM/>.
2. Check the State Debarred list to be sure they are not listed at <https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php>
3. Keep electronic copy of verification.

The County will include a certification entitled "Certification Regarding Debarment, Suspension Ineligibility" as an attachment to the RFP.

Section 5 - Evaluating and Ranking of Consultants

The scoring committee will consist of at least 3 members to be appointed by Cameron County Purchasing Department. At least one engineer shall serve in the scoring committee when RFPs are for professional engineering services.

The Cameron County Purchasing Agent shall serve as a chairperson and will coordinate the selection process. The County shall evaluate consultant proposals based on the criteria established and published within the RFP.

Proposal evaluations shall consider the qualifications of both the consultant and any subconsultants identified within the proposal.

Each evaluation criteria shall be assigned a weight totaling 100 points.

Each Vendor will be assigned a score of 1-4 by each evaluator for each criteria

- 4 = Very Good/Exceeds expectations
- 3 = Above expectations
- 2 = Meets expectations
- 1 = Does not meet expectations
- 0 = Non responsive

Utilization of 0 by evaluator requires Evaluation's Committee's full consensus. Evaluator's score by category will be multiplied by the assigned weight for each criteria

by Consultant then totaled.

The Selection Committee shall rank, in order of scoring, at least three consultants determined most highly qualified to perform the solicited services based on the established and published criteria. In instances where only two qualified consultants respond to the solicitation, the County may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition.

Notification will be provided to the responding consultants of the final ranking of the three most highly qualified consultants. The County shall retain supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant

Section 6 - Follow Up Procedures

The County shall specify in the RFP any requirements for discussion that will follow submission and evaluation of the proposals. Any requirements may be written, discussed by telephone, video conference, or by oral/presentation interview and shall be with at least three of the most highly qualified consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFP.

The County's Commissioners Court will make the final selection and possible approval of the contract based on the firm's qualifications.

The highest scored qualified firm will be presented to the Commissioner's Court to award the contract based on the completion of a pre-negotiation and the negotiation of the contract. In the event that the Commissioner's Court does not concur with the selected firm, the county will restart the procurement process from the beginning until all federal requirements are met.

The County shall attempt to negotiate a contract with the most highly qualified firm selected. If County is unable to negotiate a satisfactory contract with the most highly qualified vendor, negotiations will formally end with that person or firm. The County will notify the consultant in writing that negotiations have formally ended. The next most highly qualified vendor will then be asked to negotiate. Negotiations are continued in this sequence until a contract is finalized.

Any concealed cost proposals submitted with the RFP will not be opened. The cost proposal for the selected consultant may be considered when the negotiations are initiated. Any other cost proposals by unsuccessful consultants will remain sealed and filed as part of the project records.

TxDOT will review the contract and approve the fees before negotiations are finalized

with the highest ranked firm.

Section 7 - Independent Estimates for Negotiations

Prior to receipt or review of the selected consultant's cost proposal, the County shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The county shall establish elements of contract costs in accordance with 172.7.a.1.V.C. The use of an independent estimate shall serve as the basis of negotiations and shall ensure contracts for consultant services are obtained at a fair and reasonable cost. The county will retain all documentation associated with negotiation activities. The documentation in the project files shall include the selected consultant's original cost proposal and each subsequent submittal, final cost proposal, pre-negotiation audit, audit report, and the responses to the pre-negotiation audit.

Section 8 - Contract types, Payment Types and Terms/Conditions

A. Contract Types

The County shall use the following types of contracts:

(1) *Project-specific*. A contract between the County and consultant for the performance of services and defined scope of work related to a specific project or projects.

(2) *Multiphase*. A project-specific contract where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

(3) *On-call or indefinite delivery/indefinite quantity (IDIQ)*. A contract for the performance of services for a number of projects, under task or work orders issued on an as-needed or on-call basis, for an established contract period. The solicitation and contract provisions shall address the following requirements:

- i. Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions, which shall not exceed 5 years;
- ii. Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services; and
- iii. If multiple consultants are to be selected and multiple on-call or IDIQ contracts awarded through a single solicitation for specific services;

- a. Identify the number of consultants that may be selected or contracts that may be awarded from the solicitation; and
- b. Specify the procedures the contracting agency will use in competing and awarding task or work orders among the selected, qualified consultants.

The County shall state the type of contract in the RFP and shall submit a draft copy of contract to TXDOT for approval prior to execution.

B. Payment Methods

The County shall use the following payment methods:

- A. The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. The methods of payment shall be: Lump sum, cost plus fixed fee, cost per unit of work, or specific rates of compensation. A single contract may contain different payment methods as appropriate for compensation of different elements of work.
- B. The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used.
- C. The lump sum payment method shall only be used when the contracting agency has established the extent, scope, complexity, character, and duration of the work to be required to a degree that fair and reasonable compensation, including a fixed fee, can be determined at the time of negotiation.
- D. When the method of payment is other than lump sum, the contract shall specify a maximum amount payable which shall not be exceeded unless adjusted by a contract modification.
- E. The specific rates of compensation payment method provides for reimbursement on the basis of direct labor hours at specified fixed hourly rates, including direct labor costs, indirect costs, and fee or profit, plus any other direct expenses or costs, subject to an agreement maximum amount. This payment method shall only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. This specific rates of compensation payment method should be limited to contracts or components of contracts for specialized or support type services where the consultant is not in direct control of the number of hours worked, such as construction engineering and inspection. When using this payment method, the contracting agency shall manage and monitor the consultant's level of effort and classification of employees used to perform the contracted services.
- F. A contracting agency may withhold retainage from payments in accordance with

prompt pay requirements, as specified in 49 CFR 26.29. When retainage is used, the terms and conditions of the contract shall clearly define agency requirements, including periodic reduction in retention and the conditions for release of retention.

The county shall specify the number of contracts and payment method in the RFP. All contracts and sub contracts shall include provisions, either by reference or by physical incorporation into the language of each contract or subcontract, as applicable as specified in 23 CFR 172.9.c.1.i – xii.

Section 9 – Negotiations

A scoping meeting with the selected consultant and the county shall be scheduled prior to negotiations to discuss the proposed services. Various representatives of the county shall attend and may include staff engineers, county's responsible person in charge, and administrative personnel. The meeting should include discussions of the following: policies, manuals to be used, contract in draft form, method of payment, procedures for invoicing, standard forms to be used, and items or services to be provided by the county. A representative of the county will keep minutes of the scoping meeting and will submit a copy to TxDOT." After the understanding of the scope by all parties has been confirmed, the county will begin a fee negotiation phase with the most qualified firm. A cost proposal from that firm will be requested at the time of negotiating the fees.

Section 10 - Compliance with Federal Cost Principles

A. Allowable costs.

- a. Costs or prices based on estimated costs for contracts shall be eligible for Federal-aid reimbursement only to the extent that costs incurred or cost estimates included in negotiated prices are allowable in accordance with the Federal cost principles.
- b. Consultants shall be responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with Federal cost principles.

B. Elements of contract costs. The following requirements shall apply to the establishment of the specified elements of contract costs:

- a. *Indirect cost rates.*
 - i. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles.

- ii. Contracting agencies shall accept a consultant's or subconsultant's indirect cost rate(s) established for a 1-year applicable accounting period by a cognizant agency that has:
 - 1. Performed an audit in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles and issued an audit report of the consultant's indirect cost rate(s); or
 - 2. Conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the related audited indirect cost rate(s).
- iii. When the indirect cost rate has not been established by a cognizant agency in accordance with paragraph 172.11.b.1.ii of this section, a STA or other recipient shall perform an evaluation of a consultant's or subconsultant's indirect cost rate prior to acceptance and application of the rate to contracts administered by the recipient or its subrecipients. The evaluation performed by STAs or other recipients to establish or accept an indirect cost rate shall provide assurance of compliance with the Federal cost principles and may consist of one or more of the following:
 - a. Performing an audit in accordance with generally accepted government auditing standards and issuing an audit report;
 - b. Reviewing and accepting an audit report and related workpapers prepared by a certified public accountant or another STA;
 - c. Establishing a provisional indirect cost rate for the specific contract and adjusting contract costs based upon an audited final rate at the completion of the contract; or
 - d. Conducting other evaluations in accordance with a risk-based oversight process as specified in paragraph (c)(2) of this section and within the agency's approved written policies and procedures, as specified in CFR §172.5(c).
- iv. A lower indirect cost rate may be accepted for use on a contract if submitted voluntarily by a consultant; however, the consultant's offer of a lower indirect cost rate shall not be a condition or qualification to be considered for the work or contract award.
- v. Once accepted in accordance with paragraphs 172.11.b.1.ii through (iv) of this section, contracting agencies shall apply such indirect cost rate for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and the indirect cost rate shall not be limited by administrative or de facto ceilings of any kind.
- vi. A consultant's accepted indirect cost rate for its 1-year applicable accounting period shall be applied to contracts; however, once an indirect cost rate is established for a contract, it may be extended

beyond the 1-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or contract award.

- vii. *Disputed rates.* If an indirect cost rate established by a cognizant agency in paragraph 172.11.b.1.ii of this section is in dispute, the contracting agency does not have to accept the rate. A contracting agency may perform its own audit or other evaluation of the consultant's indirect cost rate for application to the specific contract, until or unless the dispute is resolved. A contracting agency may alternatively negotiate a provisional indirect cost rate for the specific contract and adjust contract costs based upon an audited final rate. Only the consultant and the parties involved in performing the indirect cost audit may dispute the established indirect cost rate. If an error is discovered in the established indirect cost rate, the rate may be disputed by any prospective contracting agency.
- viii. *Direct salary or wage rates.*
 - 1. Compensation for each employee or classification of employee must be reasonable for the work performed in accordance with the Federal cost principles.
 - 2. To provide for fair and reasonable compensation, considering the classification, experience, and responsibility of employees necessary to provide the desired engineering and design related services, contracting agencies may establish consultant direct salary or wage rate limitations or "benchmarks" based upon an objective assessment of the reasonableness of proposed rates performed in accordance with the reasonableness provisions of the Federal cost principles.
 - 3. When an assessment of reasonableness in accordance with the Federal cost principles has not been performed, contracting agencies shall use and apply the consultant's actual direct salary or wage rates for estimation, negotiation, administration, and payment of contracts and contract modifications.
- ix. *Fixed fee.*
 - 1. The determination of the amount of fixed fee shall consider the scope, complexity, contract duration, degree of risk borne by the consultant, amount of subcontracting, and professional nature of the services as well as the size and type of contract.
 - 2. The establishment of fixed fee shall be contract or task order specific.
 - 3. Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist.

- x. *Other direct costs.* A contracting agency shall use the Federal cost principles in determining the reasonableness, allowability, and allocability of other direct contract costs.
- xi. *Oversight.*
 - 1. *Agency controls.* Contracting agencies shall provide reasonable assurance that consultant costs on contracts reimbursed in whole or in part with FAHP funding are allowable in accordance with the Federal cost principles and consistent with the contract terms considering the contract type and payment method. Contracting agency written policies, procedures, contract documents, and other controls, as specified in CFR §§172.5(c) and 172.9 shall address the establishment, acceptance, and administration of contract costs to assure compliance with the Federal cost principles and requirements of this section.
 - 2. *Risk-based analysis.* The STAs or other recipient may employ a risk-based oversight process to provide reasonable assurance of consultant compliance with Federal cost principles on FAHP funded contracts administered by the recipient or its subrecipients. If employed, this risk-based oversight process shall be incorporated into STA or other recipient written policies and procedures, as specified in CFR §172.5(c). In addition to ensuring allowability of direct contract costs, the risk-based oversight process shall address the evaluation and acceptance of consultant and subconsultant indirect cost rates for application to contracts. A risk-based oversight process shall consist of the following:
 - a. *Risk assessments.* Conducting and documenting an annual assessment of risks of noncompliance with the Federal cost principles per consultant doing business with the agency, considering the following factors:
 - i. Consultant's contract volume within the County;
 - ii. Number of States in which the consultant operates;
 - iii. Experience of consultant with FAHP contracts;
 - iv. History and professional reputation of consultant;
 - v. Audit history of consultant;
 - vi. Type and complexity of consultant accounting system;
 - vii. Size (number of employees or annual revenues) of consultant;
 - viii. Relevant experience of certified public accountant performing audit of consultant;
 - ix. Assessment of consultant's internal controls;
 - x. Changes in consultant organizational structure; and

- xi. Other factors as appropriate.
 - b. *Risk mitigation and evaluation procedures.* Allocating resources, as considered necessary based on the results of the annual risk assessment, to provide reasonable assurance of compliance with the Federal cost principles through application of the following types of risk mitigation and evaluation procedures appropriate to the consultant and circumstances:
 - i. Audits performed in accordance with generally accepted government audit standards to test compliance with the requirements of the Federal cost principles;
 - ii. Certified public accountant or other STA workpaper reviews;
 - iii. Other analytical procedures;
 - iv. Consultant cost certifications in accordance with paragraph (c)(3) of this section; and
 - v. Consultant and certified public accountant training on the Federal cost principles.
 - c. *Documentation.* Maintaining supporting documentation of the risk-based analysis procedures performed to support the allow ability and acceptance of consultant costs on FAHP funded contracts.
3. *Consultant cost certification.*
- a. Indirect cost rate proposals for the consultant's 1-year applicable accounting period shall not be accepted and no agreement shall be made by a contracting agency to establish final indirect cost rates, unless the costs have been certified by an official of the consultant as being allowable in accordance with the Federal cost principles. The certification requirement shall apply to all indirect cost rate proposals submitted by consultants and subconsultants for acceptance by a STA or other recipient. Each consultant or subconsultant is responsible for certification of its own indirect cost rate and may not certify the rate of another firm.
 - b. The certifying official shall be an individual executive or financial officer of the consultant's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the indirect cost rate proposal submitted for acceptance.
 - c. The certification of final indirect costs shall read as follows:

Certificate of Final Indirect Costs - This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

- i. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) of title 48, Code of Federal Regulations (CFR), part 31; and
- ii. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR of 48 CFR part 31.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

4. *Sanctions and penalties.* Contracting agency written policies, procedures, and contract documents, as specified in CFR §§172.5(c) and 172.9(c), shall address the range of administrative, contractual, or legal remedies that may be assessed in accordance with Federal and State laws and regulations where consultants violate or breach contract terms and conditions. Where consultants knowingly charge unallowable costs to a FAHP funded contract:
 - a. Contracting agencies shall pursue administrative, contractual, or legal remedies and provide for such sanctions and penalties as may be appropriate; and
 - b. Consultants are subject to suspension and debarment actions as specified in 2 CFR part 1200 and 2 CFR part 180, potential cause of action under the False Claims Act as specified in 32 U.S.C. 3729-3733, and prosecution for making a false statement as specified in 18 U.S.C. 1020.
5. *Prenotification; confidentiality of data.* FHWA, recipients, and subrecipients of FAHP funds may share audit information in complying with the recipient's or subrecipient's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. 112 and this part provided that the consultant is given notice of each use and transfer. Audit information shall not be provided to other consultants or any other government agency not sharing the

cost data, or to any firm or government agency for purposes other than complying with the recipient's or subrecipient's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. 112 and this part without the written permission of the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance; however, should a release be required by law or court order, such release shall make note of the confidential nature of the data.

Section 11 - Allowable Costs Billed

Costs or prices based on estimated costs for contracts shall be eligible for Federal-aid reimbursement only to the extent that costs incurred or cost estimates included in negotiated prices are allowable in accordance with the Federal cost principles.

Costs incurred by the Consultant should be in accordance with the contract rate schedule. Invoices shall be reviewed by the County to ensure the Consultant's billing coincides with the contract's progress according to Federal Cost Principles. Therefore, the Consultant's progress must be measureable, cost incurred or invoices submitted are not a sufficient indicator of the Consultant's progress. The Consultant will be required to provide a written progress report with its invoices for each calendar month or other contract period as designated in the contract during which work is in progress. The progress report shall describe the work performed during the period covered by the invoice. The prime consultant will also report sub-consultant payments with each invoice.

The County shall review and approve the invoices prior to submitting to TxDOT for reimbursement. The submittal to TxDOT shall include all documentation for each invoice and shall include proof of payment.

If the County believes the requested payment exceeds the contractor's progress, an explanation should be requested prior to the approval of the invoice. Payment should be withheld pending member review. The County has the responsibility to protect its interests and under appropriate circumstances, it may be necessary to withhold Consultant's payments. Examples of these circumstances include a material breach of contract by the Consultant, errors in the invoice, unsupported or undocumented costs, to remedy previous overpayments on the same contract and Consultant's performance is non-conforming or unacceptable.

Section 12 - Monitoring of Consultant's Work

A. Responsible Charge

A full-time, employee of the County qualified to ensure that the work delivered under contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract shall be in responsible charge of each contract or project. While an independent consultant may be procured to serve in a program or project management support role, or to provide technical assistance in review and acceptance of engineering and design related services performed and products developed by other consultants, the County shall designate an employee as being in responsible charge. The employee may serve in responsible charge of multiple projects and contracting agencies may use multiple public employees to fulfill monitoring responsibilities. The term responsible charge is intended to be applied only in the context defined within this regulation. It may or may not correspond to its usage in State laws regulating the licensure and/or conduct of professional engineers. The public employee's responsibilities shall include:

- a. Administering inherently governmental activities including, but not limited to, contract negotiation, contract payment, and evaluation of compliance, performance, and quality of services provided by consultant;
- b. Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
- c. Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;
- d. Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
- e. Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
- f. Evaluating and participating in decisions for contract modifications; and
- g. Documenting contract monitoring activities and maintaining supporting contract records, as specified in 2 CFR 200.333.

Section 13 - Consultant Evaluations

The County shall prepare an evaluation summarizing the consultant's performance on a contract. The performance evaluation should include, but not be limited to, an assessment of the timely completion of work, adherence to contract scope and budget, and quality of the work conducted. The County shall provide the consultant a copy of

the performance evaluation and an opportunity to provide written comments to be attached to the evaluation. The County agency shall prepare additional interim performance evaluations based on the scope, complexity, and size of the contract as a means to provide feedback, foster communication, and achieve desired changes or improvements. Completed performance evaluations shall be archived for consideration as an element of past performance in the future evaluation of the consultant to provide similar services.

Section 14 - Contract Close Out

The purpose is to verify that both parties to the contract have fulfilled their contractual obligations and there are no responsibilities remaining. Any deficiencies found as part of the closeout process shall be documented and communicated to all parties in writing with expected completion dates. A contract is completed when all deliverables have been received and accepted; all reports have been delivered and accepted; all administrative actions have been accomplished; and final payment has been made to the service provider. The county shall provide TxDOT pertinent information to expedite process.

After receipt and review of close out deliverables, contract close out and final payment will be recommended to Commissioners Court for approval.

Section 15 - Records Retention

Financial records, supporting documents, statistical records and all other records pertinent to contract must be retained for a period of three years from the date of submission of the final payment and contract is closed. The records shall be retained until all litigation, claims, or audits findings have been resolved and final action taken. The county shall provide accessibility to TxDOT and Federal Agencies for the purpose of audits and reviewing project records.

Section 16 - Errors and Omissions

The county will monitor consultant's work for quality and compliance with state/federal standards and specifications, and determine the extent to which the consultant may be liable for design errors and omissions. The county shall perform QC/QA on the consultant's submittals. As soon as an error or omission is detected, the County shall inform the consultant of such findings. The consultant will receive in writing the information that identifies errors and omissions. The consultant shall submit a response within 5 business days and propose a resolution.

Section 17 - Breach of Contract Issues

In the event that any of the provisions of the agreement are violated by the Consultant, the County may serve written notice upon the Consultant of its intention to terminate the contract. The notice shall contain the reasons for such intention to terminate the contract, and unless such violation shall cease and satisfactory arrangement of correction be made within fifteen (15) days, the agreement will, upon the expiration of said fifteen (15) days, cease and terminate. The County may, at its option, extend the period for performance to correct any such violation of the agreement.

Section 18 - Dispute Resolution

County and Consultant shall negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute.

The County's Responsible Person in Charge shall invite the consultant to discuss mistakes and to develop corrective actions. The county may perform other steps in resolving disputes such as

- Telephoning and e-mailing the consultant to clarify any misinterpretation.
- Writing a letter to the consultant citing areas of non-compliance, providing instructions for corrective action, and acknowledging that payment will be withheld until corrective action is taken.
- Hosting meetings with the consultant to resolve misinterpretation regarding specifications or design standards.

If the parties fail to resolve a dispute through negotiation, then either or both parties may exercise their rights at law.