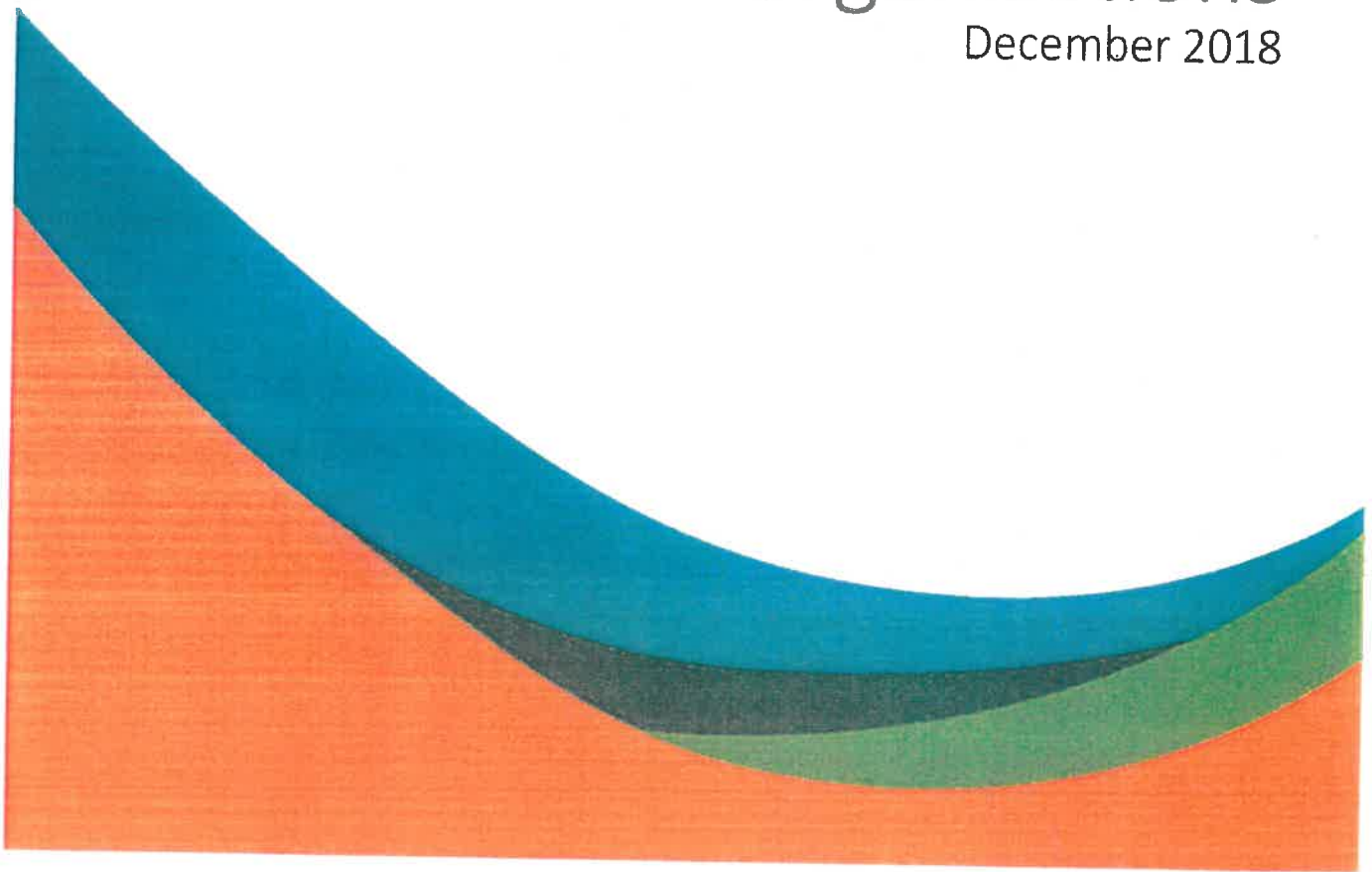




Consultant Contract  
Services Manual  
For Use By  
Metropolitan Planning  
Organizations  
December 2018



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## Introduction

The Metropolitan Planning Organization (MPO) reference applies to the MPO policy board, executive director, and other staff of the MPO in accordance with the individual MPO bylaws and operating procedures.

In order to ensure compliance with 23 CFR 172 this manual shall be adopted by the MPO as its selection process for contracts utilizing Federal funds overseen by DOTD.

This manual outlines DOTD's policies and procedures required for a Metropolitan Planning Organization (MPO) to select, contract with, and manage planning and related services consultant contracts procured under 23 CFR 172. The manual is intended for use by the MPO and consultant community desiring to provide planning and preapproved planning services to the MPO, as well as the MPO staff requiring those services.

In order to promote a fair, transparent award and contract administration process:

- All activities shall comply with the Louisiana Code of Governmental Ethics.
- All written records produced will comply with federal and state record retention requirements.

## Contract Selection

### 1.0 Contract Types and Compensation Structures

The project specific contract type may be used by an MPO. A Project Specific contract is a contract for an identified project or projects in which the solicited services are divided into one or more phases, whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

The following compensation structures are used by the MPO in both negotiated and non-negotiated contracts:

- A. Lump Sum: Provides for a single, all-inclusive fixed price, which is not subject to any adjustment because of cost changes that the consultant might encounter in the performance of the work. There is no separate reimbursement for direct or indirect expenses.
- B. Cost Plus Fixed Fee: Provides for payment of a specified amount for a fixed fee, with separate payment for labor, direct, and indirect expenses.
- C. Cost Per Unit of Work: Provides for payment using established, all-inclusive fees per unit of work satisfactorily performed. There is no separate reimbursement for direct or indirect expenses.

- D. Specific Rates of Compensation: Provides for payment based on hourly rates established in the contract, multiplied by the number of hours actually worked, with separate payment for direct expenses. There is no separate reimbursement for indirect expenses.

All compensation structures, except for lump sum, shall specify a maximum payment amount which shall not be exceeded unless adjusted by contract modification.

### **1.1 Decision Factors for Different Contract Compensation Structures**

The most important consideration in determining the choice of compensation structure is the degree of confidence that the MPO has to reasonably determine the project scope and compensation. The evaluations involve such elements as:

- A. Complexity
- B. Project/contract scope of services and/or compensation size
- C. MPO responsible charge (as defined in the 23 CFR 635.105) experience with scope of services
- D. Potential for encountering unknowns during the prosecution of the work

Non-negotiated contracts should be used when detailed information is available to enable the MPO to determine the work-effort necessary to complete the scope of services, to a reasonable degree of certainty. Prospective consultants proposing for non-negotiated compensation contracts are presumed to have evaluated the compensation in relation to the scope of services, and found it acceptable. If a consultant discovers what it believes to be an error in the MPO's estimate of the required work effort, the consultant shall contact the MPO responsible charge in writing upon discovery of the error. The MPO responsible charge will notify the DOTD project manager (PM) in writing.

Negotiated contracts may be used where sufficiently detailed information is not available to enable the MPO to determine the work-effort necessary to complete the scope of services to a reasonable degree of certainty. Following selection of a consultant, the MPO will engage in a negotiation process to determine the work effort that is necessary to complete the scope of services for the contract.

When their use is appropriate, non-negotiated contracts are preferred. The lump sum compensation structure shall be used when the MPO 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 contract procurement. The specific rate of compensation structure shall only be used when it is not possible at the time of contract procurement to estimate the extent, or duration of the work, or the estimated costs with any reasonable degree of accuracy.

#### **1.2.1 Advertisement Process**

**The MPO SHALL NOT advertise prior to receipt of a written approval to initiate the consultant selection process from the DOTD Project Manager.** Whenever an MPO determines that consultant services are needed, the MPO responsible charge must submit a written request to the DOTD project manager for permission to procure consultant services.

All advertisements shall be by public announcement, public advertisement, or any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract and complies with all applicable federal, state and local laws. This may be accomplished either by posting on the MPOs Website or the official newspaper of the MPO. The

MPO may also publish in trade journals and/or by electronic notification to a list of consultants maintained and regularly updated by the MPO.

Prior to the advertisement of any negotiated contract, the MPO must submit to the DOTD PM the plan for the proposed selection and negotiation process and a list of the resources anticipated to be used in the selection and negotiation process, evidencing the organizational capacity to carry out the selection and negotiation of the specific contract. The DOTD CCS Administrator must review and approve the proposed selection and negotiation plan and list of resources to ensure compliance with 23 CFR 172.5(b) before any such advertisement is published.

### **1.2.2 MPO Standard Submittal Form**

All responses to advertisements shall be submitted on the MPO current standard submittal form (attached Appendix A) **prior to the closing date and time stated in the advertisement**. Name(s) of the prime consultant/Team listed on the standard submittal form must precisely match the name(s) filed with the Louisiana Secretary of State, American Institute of Certified Planners (AICP), and the Louisiana State Board of Registration for Professional Engineers and Land Surveyors, or other professional regulatory board, as applicable.

Submittals should present a reasonably accurate description of the duties and percentage of total work to be performed by the prime consultant and any sub-consultant, respectively. The portion of the work to be performed by any individual sub-consultant should not exceed the portion of work to be performed by the prime consultant.

In order to ensure the stability of a selected consultant team, no substantial or significant changes in teaming partners and compensation will be permitted between the time of selection and the time a contract is executed. The MPO requires that all key personnel and sub-consultants shown on the MPO's standard submittal form remain on the consultant team in the manner in which their role was described from time of submittal until contract execution, since their qualifications were used in the selection process. In the event that changes occur, the MPO may, at its discretion, decline to execute the contract, and another consultant selection may be made from the shortlist.

### **1.2.3 Non-Responsive Firms**

Any consulting firm failing to submit the required information or satisfy all the stated Minimum Personnel Requirements and any other requirements will be considered non-responsive. If deemed non-responsive, the prime consultant will be notified in writing with an explanation for the determination.

### **1.2.4 Evaluation**

The MPO uses a qualifications-based selection process for all competitive selections. Cost shall not be a factor in the selection process for planning and related services.

### **1.2.5 Ranking/Selection**

The MPO evaluation team (of a minimum of 3 evaluators) reviews and ranks the submittals, evaluates firm and staff experience, and provides the ranking and scores to the MPO Responsible Charge. For large and complex projects, a two-tiered selection process may be utilized. The second tier of the evaluation may include an interview, work plan, or other secondary evaluation mechanisms. If a second tier evaluation will be used, details will be provided in the advertisement. The MPO responsible charge determines scores for the other evaluation factors provided in the advertisement and calculates overall scores. A shortlist containing a minimum of the three highest rated consulting firms/teams, provided there are at least three qualified firms, is prepared and notification of same provided to all consultants who responded to the advertisement. The MPO will select the top rated consulting firm/team from the shortlist. In instances in which only two qualified consultants respond to the solicitation, the MPO may proceed with the evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limit competition. All respondents will be notified as to the selection of the consultant(s). The MPO Responsible Charge will submit the ranking, selection, and all supporting documentation to the DOTD Project Manager for DOTD approval prior to contract execution.

### **1.2.6 Non-Competitive Selections**

In special and rare circumstances, non-competitive selections may be utilized. DOTD and the Federal Highway Administration (FHWA) must approve non-competitive selections on all projects involving Title 23 funds (FHWA funding) prior to contract execution. In order for the selection to obtain FHWA approval, it must meet the following requirements, as outlined in 23 CFR 172.7(a)(3)(iii):

*(iii) A contracting agency may award a contract by noncompetitive procedures under the following limited circumstances:*

- A. The service is available only from a single source;*
- B. There is an emergency which will not permit the time necessary to conduct competitive negotiations; or*
- C. After solicitation of a number of sources, competition is determined to be inadequate.*

Whenever an MPO responsible charge determines that circumstances justify a non-competitive selection, the MPO will submit written justification to the appropriate DOTD project manager. The justification will be reviewed and submitted to the appropriate DOTD executive-level staff member for approval, prior to submittal to FHWA. The request will be in written form and contain, at a minimum:

- A. The recommended firm
- B. Justification for this type of selection and an explanation of how this firm meets the criteria for non-competitive selection
- C. Type of contract and compensation structure
- D. Estimated compensation and contract time
- E. Source of funding

## Contract Preparation

### **2.0 Non-Negotiated Contracts**

For non-negotiated scope and compensation contracts, the MPO defines the scope of services, and determines the compensation. The Notice/Advertisement for the original contract will comply with Section 1.2.1 (Advertisement Process).

Consultants are expected to examine the scope and compensation to confirm that, in their judgment, the scope is correct, and the compensation commensurate with such scope. The consultant's signed MPO Standard Submittal Form indicates acceptance of the compensation and terms in the Notice/Advertisement.

The firm that receives the award is expected to execute the contract and return it to the MPO within 10 days of receipt. For this reason, it is suggested that preliminary agreements between the prime consultant and sub-consultants (if applicable) be ready for execution at the time of submittal.

### **2.1 Negotiated Contracts**

The four types of negotiated contracts used by MPO are lump sum, cost plus fixed fee, cost per unit of work, or specific rates of compensation payment method.

Contingencies may be added in the compensation computation for negotiated cost plus fixed fee contracts.

#### **2.1.2 Initial Meeting for Negotiations**

The MPO responsible charge may schedule an initial meeting with the selected consultant, the DOTD PM, and appropriate personnel. The purpose of this meeting is to transfer data and materials from the MPO to the consultant and discuss in detail the scope of the project.

#### **2.1.3 Detailed Scope of Services**

The selected consultant will be required to submit a list of detailed tasks needed to meet the requirements of advertised scope of services. This list must not include work hours or proposed compensation. The MPO and any other affected parties will review the list and reconcile differences with the consultant.

The detailed scope of services shall contain the following:

- A. A detailed narrative describing the tasks within the scope of services
- B. A list of tasks which includes:
  1. A description of the work to be performed by the prime consultant and each sub-consultant, to which work hours will be distributed at a later date, with each detailed task specifically and logically tied to the narrative. The personnel or salary classification shall be shown for each task. The detailed tasks are developed for the purpose of estimating work effort. However, the agreed upon narrative scope will become the language used as the "Scope of Services" in the contract.

2. The proposed work divided into logical parts with the magnitude and number that facilitate the future estimation of work hours. Caution should be exercised to make certain that work does not overlap between line items.

#### **2.1.4 Work-Hour Calculation for Negotiated Contracts**

After an agreement is reached on the detailed tasks necessary to perform the scope of services, the MPO responsible charge and other appropriate MPO personnel shall prepare an independent work-hour estimate and submit it to the DOTD PM. The MPO responsible charge will then request that the consultant submit a written work-hour estimate, and the MPO will provide a copy to the DOTD PM.

The consultant's initial work-hour estimate will contain the following:

- A. Previously agreed to scope of services and a list of tasks with each task showing the estimated work hours required for each appropriate salary classification.
- B. A separate sheet of calculations shall include:
  1. Total work hours for each salary class
  2. Sum of the work hours for all salary classes
  3. Estimated direct expenses (in detail including specialized equipment)

The above items must be shown separately for the prime consultant and each sub-consultant (if applicable).

The consultant's proposal(s) are distributed to all evaluators by the MPO responsible charge. The MPO responsible charge is responsible for integrating the input from all evaluators and for comparing the MPO's estimate with the consultant's estimate to ensure that they fall within the MPO's allowable tolerance of one another. If the estimates do not fall within the MPO's allowable tolerance, the MPO responsible charge shall initiate negotiations with the consultant. If an agreement cannot be reached with the selected consultant, negotiations shall be terminated and negotiations may begin with the next-ranked consultant from the shortlist.

#### **2.1.5 Development of Compensation Package for Negotiated Contracts**

The consultant will be responsible for submitting a compensation proposal that includes:

- A. Total work hours for each salary class multiplied by the appropriate salaries
- B. Sum of the work hours for all salary classes
- C. Overhead percentage and amount
- D. Fixed fee
- E. Estimated direct expenses (in detail including specialized equipment)
- F. Maximum limitation (sum of items B, C, D, and E)

The MPO responsible charge submits the final compensation proposal to the DOTD PM. The MPO compares the rates submitted in the final compensation proposal to the audited rates. The maximum and hourly compensation levels used in the contract will be the lesser of the consultant's proposed compensation or the compensation calculated by the MPO, applying the audited rates. The final compensation package is the basis for the preparation of the contract.

Pre-award audits may be requested when audited rates are not available. (See Section 2.4 Audits for more details.)

## **2.2 Preparing the Contract**

For non-negotiated contracts, the compensation used in the contract will be that stated in the advertisement. For negotiated contracts, compensation used in the contract will be that determined through the negotiation process set forth in this chapter. The contract shall describe all anticipated stages of the project. The contract shall segregate compensation according to stages. In cost plus fixed fee with maximum compensation limitation contracts, a separate maximum limit shall be set for each task of each stage.

## **2.3 Contract Execution**

After the contract is prepared, the MPO will send the selected consultant a contract for review. If found acceptable, the MPO responsible charge will send the contract to the DOTD project manager for review and approval. Once the DOTD project manager and CCS Administrator concur, the MPO will send it to the consultant for signature. The consultant is required to sign the contract with the approved signature as certified by a Board Resolution for Corporations or a Power of Attorney for Sole Proprietorships, and return the contract within ten days of receipt.

Forms required for proper and precise contract execution are:

- A. For Corporations: Corporate Certified Board Resolution, clearly authorizing and designating an officer of the consulting firm, by name, to sign contracts for the firm. Also, a Disclosure of Ownership Certificate from the Secretary of State's Office. Corporations domiciled outside Louisiana are required to submit a Certificate of Authority issued by the Louisiana Secretary of State.
- B. For Limited Liability Companies (LLC): Manager/managing member consent, clearly authorizing and designating the person, by name, to sign contracts for the firm. Also, a Disclosure of Ownership Certificate from the Secretary of State's Office. LLCs domiciled outside Louisiana are required to submit a Certificate of Authority issued by the Louisiana Secretary of State.
- C. For Sole Proprietorships: A Power of Attorney/Affidavit is required.
- D. For federally funded contracts; these additional forms are required to be signed by the authorized signatory:
  1. Certification of consultant
  2. Certification of Non-Procurement Debarment and Suspension
  3. Consultant's Statement of sub-Contractor Participation
- E. Certification of Professional Liability Insurance

After receipt of all documentation, including a signed contract, from the consultant, the MPO will search SAM.gov to verify that the consultant is not subject to any current suspensions or exclusions and will print evidence of same for inclusion in the MPO files. Once this search is completed, the contract will be executed by the MPO.



Following receipt of all necessary approvals, signatures, and forms, a copy of the executed contract will be submitted to the DOTD PM.

#### **2.4 Audits**

All consultants conducting business with the MPO must provide to the MPO an annual independent Certified Public Accountant's (CPA) audited indirect cost (overhead) rate of their firm, inclusive of the certification required under 23 CFR 172.11 (c)(3)(iii). This rate must be developed using applicable federal cost principles (e.g., Federal Acquisition Regulations [FAR]) and guidelines provided by DOTD's Audit Section. Consultants are also required to submit labor rate information to the MPO annually.

## Contract and Project Administration

### **3.0 Initial Project Schedule**

Upon receiving notice of contract execution, the consultant will prepare and submit to the MPO responsible charge a proposed project schedule. The MPO responsible charge will either approve the proposed schedule, or provide comments to the consultant for revision. The consultant and the MPO responsible charge will discuss and develop a final project schedule, which will include:

- A. Appropriate items of work
- B. Times for beginning and completion by calendar periods
- C. Review/checkpoints
- D. Any other data required by the MPO responsible charge

The schedule shall be in a format that allows comparison of actual progress to planned progress for each item of work. Final approval of the project schedule shall be at the discretion of the MPO responsible charge/project manager. A Notice to Proceed will be issued by the MPO after the schedule is finalized and approved by the MPO responsible charge/ project manager and they receive the confirmation from the DOTD PM that the project has been authorized. A copy of the final schedule shall be sent to the DOTD project manager.

The MPO responsible charge will communicate with the DOTD project manager the progress of the contract. The MPO responsible charge should coordinate the various review/checkpoints for services provided by consultants for planning and other related activities with the required DOTD contract review/checkpoint activities. At these points, there are defined tasks that must be accomplished before a certain percent-complete status is acknowledged by DOTD. These standard review/checkpoints and their defined tasks are not applicable to all projects.

### **3.1 Project Kickoff**

The MPO responsible charge shall conduct a meeting, in person or by phone, with the consultant and all applicable DOTD personnel to discuss the project scope, project review milestones, consultant evaluation, and other coordination efforts, as applicable.

### **3.2 Prime Consultant and Sub-Consultant**

After the execution of the contract, the prime consultant may request, through the MPO responsible charge, the use of a sub-consultant or the replacement of an existing sub-consultant. A request must be submitted in writing to the MPO responsible charge with justification and all required documentation.

This justification will be reviewed by the MPO responsible charge for approval and sent to the DOTD PM with a recommendation for approval, if applicable.

### **3.3 Staffing Plan**

The key personnel shown on the Staffing Plan submitted with the MPO's Standard Submittal Form should remain unchanged during the course of the project. However, if changes to the Staffing Plan or key personnel assigned to the project should become necessary, a request, including justification and supporting documentation, shall be submitted in advance to the MPO responsible charge for approval and sent to the DOTD PM with a recommendation for approval, if applicable.

### **3.4 Invoices**

A certified standard invoice in DOTD format shall be submitted each month for each project. The invoice will be accompanied with any and all backup documentation required as per the contract.

A progress report shall be submitted to the MPO responsible charge/project manager with other required monthly data required as per the contract. The progress report shall be in a form and arrangement approved by the MPO responsible charge/project manager; it should show actual progress in comparison to the original project schedule and summarize major tasks completed since the last report. The MPO responsible charge shall send the progress report to the DOTD PM.

Payments to the consultant on undisputed amounts for services invoiced by the consultant will be made monthly, or as specified in the contract.

### **3.5 Contract Management Documents**

Contract management documents, such as notices to proceed, extra work letters, time extensions, or time suspensions, may be issued as per the terms of the contract. In the event that any of these documents are issued by the MPO, the DOTD PM shall be copied with same.

### **3.6 Modifications to Contracts or Task Orders**

The consultant will make minor revisions in the described work, as directed by the MPO responsible charge/project manager, without additional compensation as the work progresses. Considerations for minor revisions have been included in the compensation computations. If the MPO responsible charge/project manager requires more substantial revisions or additional work which the consultant believes to warrant additional compensation, the consultant will notify the MPO responsible charge/project manager in writing within 30 days of being instructed to perform such work. If the MPO responsible charge/project manager agrees that the required work is necessary and warrants additional compensation, the MPO responsible charge will notify the DOTD PM and provide in writing the need for additional compensation. Once the DOTD PM has concurred with the request, if an Entity-State Agreement exists between the MPO and DOTD, it must be amended in accordance with the proposed

modification of the contract. Thereafter, the consultant contract will be modified accordingly, and DOTD will be copied on the modification to the contract.

A modification to the contract (supplemental agreement) may be executed when it is necessary to add compensation for ancillary services required for the project. Ancillary services are services that are within the general scope of the advertised project but were not obvious components of the project immediately identifiable at the time of contract execution.

When a contract modification is required, the supplement will be prepared in accordance with the processes set forth in this manual for contract preparation.

### **3.6.1 Procedures for Modifying Contracts**

The procedures to be used for contract supplements are described as follows:

- A. Non-Negotiated Type Contracts: The MPO responsible charge/project manager will develop a detailed scope of services description and a list of appropriate descriptive line items and estimate the required work hours. The MPO will calculate the compensation.
- B. Negotiated Type Contracts: The procedure is the same as outlined in Chapter 2 (Contract Preparation), except that the time period for negotiations will not exceed 60 days. If negotiations are not successful within the 60-day time frame, the consultant will be directed to proceed as per the contract.

The remainder of the process follows the policies outlined in the Chapter 2 (Contract Preparation) under the negotiation and contract execution sections.

### **3.7 Consultant Performance Ratings**

The MPO shall prepare an evaluation and provide a copy to the consultant. The 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 performed. The performance evaluation shall be archived for consideration as an element of past performance in the future evaluation of the consultant providing similar services.

### **3.8 Claims Avoidance**

Both the MPO responsible charge/project manager and the consultant shall work together in good faith to resolve issues as they arise, in order to avoid claims. The conduct of the project team contributes to the success or failure of this process.

Components that aid in claims avoidance are:

- A. Careful preparation and review of contract documents by all parties prior to signing
- B. Open, frequent, and continued communication between project manager and the consultant
- C. Adherence to all contract requirements by all parties
- D. Immediate written communication regarding any and all changes or discoveries that may require additional compensation
- E. Maintenance of proper project documentation by all parties

### **3.9 Claims**

When a consultant and the MPO responsible charge/project manager disagree as to whether additional compensation is warranted for work the consultant has been directed to perform, it is the consultant's responsibility to continue the work. Within 30 days of being directed to perform the work, the consultant must also request in writing that additional compensation be granted. If the request for additional compensation is denied, the consultant may subsequently file a claim with the MPO responsible charge within 30 days of completion of the work upon which the claim is based.

Upon timely receipt of a claim, the MPO shall confirm that the work has been done satisfactorily. If so, the MPO shall negotiate the claim, giving due consideration to whether the claimed work effort and compensation requested therefore is reasonable and whether the MPO received adequate benefit from the performance of the work to justify the award of such compensation.

### **3.10 Contract Closeout**

The MPO responsible charge shall notify the DOTD PM in writing when the contract has been satisfactorily completed. The DOTD PM will initiate the process to close the project associated with the contract and may request a post audit from the DOTD Audit Section, as necessary.

## **Compliance Programs**

### **4.0 Equal Employment Opportunity/Affirmative Action**

It is the policy of DOTD to ensure that transportation activities are free from any discriminatory elements or practices, and that affirmative actions are taken to foster the participation of Disadvantaged Business Enterprises (DBEs) in all such activities.

Each consultant must develop and maintain a written affirmative action program for each of its establishments, if it has 50 or more employees, and a contract of \$50,000 or greater.

Specific programs are established to facilitate compliance with federal and state laws, rules and regulations pertaining to non-discrimination and affirmative action. Assistance can be provided by the DOTD Compliance Programs Section who administers the compliance programs for DOTD and are described below:

- A. DBE Program – involves locating, certifying, educating, assisting, and selecting DBEs for a percentage of work financed all or in part by federal funds.
- B. Title VI Program – involves the social, economic, and environmental impact of DOTD's activities that are federally funded.
- C. Americans with Disabilities Act - prohibits discrimination based on disability.
- D. Title VII Program - prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion.
- E. Contract Compliance Program – involves enforcing the Equal Employment Opportunity (EEO) provisions included in all federal-aid contracts.
- F. Local Government Compliance Program – involves monitoring those Louisiana governmental entities that are subject to civil rights responsibilities as a result of acceptance of federal transportation funding.

Each of these program areas may have a potential impact on any contract selection. Further information and program manuals can be obtained online at DOTD's Website at [www.dotd.la.gov](http://www.dotd.la.gov).

#### **4.1 Disadvantaged Business Enterprise Requirements**

It is the policy of DOTD that DBE firms as defined in Title 49, Code of Federal Regulations, Part 26 (49 CFR 26), shall have the maximum opportunity to participate in selected contracts that are financed in whole or in part with federal funds. In this regard, MPOs shall be required to take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that DBE firms have the maximum opportunity to compete for and perform services relating to contracts.

It is further DOTD policy that Small Minority Businesses and Women Business Enterprises shall have the maximum opportunity to participate in MPO contracts as per 2 CFR 200.321. Prime consultants are required to take all steps provided for in 2 CFR 200.321(b).

Furthermore, consultants shall not discriminate on the basis of race, color, national origin, sex, or any other protected status in the performance of contracts. Consultants found to be in non-compliance with DBE regulations may be subject to sanctions.