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City of Waukesha Cover Sheet

Committee: Board of Public Works	BPW Meeting Date: 5/7/2026
ID Number: ID#26-03527	Ordinance/Resolution Number (if applicable):
Department Submitting: Department of Public Works	Common Council Meeting Date: 5/19/2026
Agenda Item Title: Review and possible action on the Architectural/Engineering Procurement, Management and Contract Administration Policy for Federally Funded Projects.	

Issue Before the Council:

As part of the City's RAISE Grant award for the study of two pedestrian bridges over the Waukesha Bypass, the City must meet current federal policies which are referenced in the formal grant agreement with USDOT. Because of the nature of the RAISE Grant award work, one of these requirements is to meet 23 CFR Part 172 which governs the procurement and management of engineering consultants. As part of this policy, the City is required to maintain written policies and procedure for the procurement, management and administration of engineering and design related consultant services.

The City currently does not have an established policy for this type of work on federally funded projects. A policy was drafted and reviewed by DPW, Administration, City Attorney, and Finance, and is attached. The policy provides written guidance for all items outlined within the federal requirements, and follows a qualification based selection (QBS) process for the procurement of these services which is a requirement of federally funded projects.

Options & Alternatives:

N/A

Additional Details:

See attached Architectural/Engineering Procurement, Management and Contract Administration Policy for Federally Funded Projects.

What is the Strategic Plan Priority this item relates to:

N/A

What impact will this item have on the Strategic Plan Priority?

N/A

Financial Remarks:

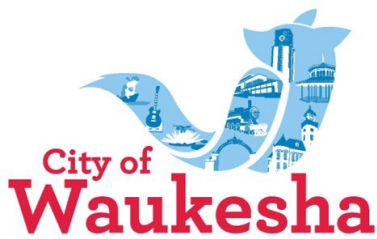
There are no immediate costs to the City.

Suggested Motion:

Move to approve the Architectural/Engineering Procurement, Management and Contract Administration Policy for Federally Funded Projects.

Reviewed By:

City Attorney Brian Running	Date Reviewed
Finance Director Joseph P. Ciarro	Date Reviewed
City Administrator Anthony W. Brown	Date Reviewed



Public Works – Engineering Division

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CITY OF WAUKESHA

ARCHITECTURAL/ENGINEERING PROCUREMENT, MANAGEMENT AND CONTRACT ADMINISTRATION POLICY FOR FEDERALLY FUNDED PROJECTS

This policy outlines the architectural/engineering service procurement, management and contracting process related to projects which receive federal funding. It is expected that the procedures outlined in all sections of this policy will be followed by all parties to ensure the integrity of the consultant contracting process.

1.1 General

The consultant selection process begins once an identification of need for consultant services on a given project is determined by the Department of Public Works – Engineering Division and funding for those services are approved in the adopted Community Investment Program (CIP) or annual operating budget.

The selection process for engineering and design services (as defined in 23 CFR 172) on all federally funded projects will be in accordance with the "Brooks Act" (Public Law 92-582, 86 Stat. 1278 (1972), 40 U.S.C. 541). The Brooks Act requires a Qualification-Based Selection (QBS) process whereby at least three firms are selected in order of preference based upon qualification criteria. Negotiations are initiated with the firms in their order of preference until a fair and reasonable price is secured. The intent of the Brooks Act is that consideration of price within the selection process is not in the public's best interest.

The definition of "engineering and design services" contained in 23 CFR 172.3(e) applies to the specific types of services listed in Title 23, U.S.C. 112(b)(2), which was amended by Section 111(b) of the 1987 STURRA to include environmental and geotechnical drilling and laboratory testing when such services are required for engineering and design studies, investigations, tests, evaluations, or soils investigations for a specific project.

During an ongoing solicitation, all consultant questions about a project must be submitted to the listed project contact on RFP or NOI documents during the Question-and-Answer period. Answers to these questions will be posted for open viewing.

Project solicitation questions outside of the Question-and-Answer period shall be directed to the listed project contact noted above. No consultant questions shall be directed to any other City staff member during a solicitation preview, ongoing solicitation, or period between solicitation close and selection posting.

1.2 Solicitation of Interest/Scope of Work

The City of Waukesha Department of Public Works – Engineering Division will maintain an active solicitation list of architectural and engineering consultants which will be utilized for the sending of requests for proposals or other project solicitation materials. All solicitation information will also be publicly advertised via Official Notice publication to provide opportunity for out-of-state consultants a fair opportunity for consideration.

Unless waived via written memo by the Director of Public Works or City Administrator, all engineering consultant procurement shall be made via formal Request for Proposals (RFP). In most cases, formal RFP documents shall also include a corresponding Notice of Interest (NOI) form to be completed by interested consultants. During the evaluation process, the selection committee may utilize information provided on the NOI forms to determine if a consulting firm contains the necessary qualifications for the requested scope of services. If it is determined that a firm does not meet the required qualifications for the requested services, the selection committee will not review a submitted formal proposal.

Requests for Proposals shall include a full overview of the project and requested services, including and special provisions or requirements not outline in existing City policies. One City point of contact shall be identified in the RFP, and will be the sole source of all inquires from perspective consulting firms. The RFP shall also establish a clearly identified timeline for solicitation, Q&A, selection process and all necessary Board/Committee and Common Council approvals. Any services or information to be provided by the City in conjunction with the consultant services will also be clearly identified. Each issued RFP will identify evaluation factors including their relative weight(s).

All Requests for Proposals (RFPs) shall follow the guidelines and requirements in 23 CFR 172. All cost proposal elements related to the requested services will not be included as a submittal requirement.

1.3 Proposal Review and Selection Authorization

A proposal review committee shall be established under the direction of the Department of Public Works – Engineering Division. This committee shall consist of no fewer than 3 staff members with background knowledge of the intended engineering consultant services to be provided. If the intended services would benefit multiple City departments, a representative from those departments will be selected to serve on the selection committee.

The selection process should include the following steps:

1. City RFP review committee to rank and score proposals.
 - a. The City's review committee of the submitted proposals may include any combination of the following staff or additional staff if desired:

- i. Director of Public Works, Deputy Director of Public Works/City Engineer, Engineering Project Manager(s), Community Development Director, Principal Planner, Parks, Recreation and Forestry Director, PRF Operations Manager, or any other City staff as assigned by impacted department.
 - b. A short list of at least three qualified consultants will be developed based upon:
 - i. Consultant response to the NOI questionnaire (If included in solicitation)
 - ii. If an engineering consultant was on the original solicitation list maintained by the Engineering Division, or after a check of references to verify qualifications.
 - iii. Other relevant information as appropriate. Including but not limited to formal proposal response, direct inquiries regarding staff availability and experience, interest, policies, and qualifications. Contacts with former clients may also be made.
 - iv. Total scoring based on factor weights included in the original solicitation solely based on Qualification Based Selection (QBS).
 - c. Notification of the top three selected firms will be provided to all who responded to the original solicitation.
- 2. After selection of the short list, unless waived by the Director of Public Works or City Administrator, interviews shall be conducted with the top three qualified consultants for further scoring and evaluation.
 - a. General interview timeline and process will be included in the original solicitation.
 - b. Additional interview information, including proposed questions and time limits shall be sent to the short list of consultants prior to the scheduled interview date.
 - c. The City's proposal review committee will be responsible for conducting the interviews, with a DPW-Engineering staff member being utilized as the committee chair.
 - d. City staff will analyze interview responses with a separate scoring system, however, general weights will be aligned with original solicitation.
- 3. After completion of the short list consultant interviews, the City review committee will make a recommendation of the top selected consultant based on formal proposal scores and in person interview scoring.
 - a. Notification of the final ranking of the top three consultants will be made to each of the three firms.
 - b. The recommendation of consultant ranking/selection will be taken to the Board of Public Works and Common Council for approval and concurrence to enter Contract negotiations.
 - c. After approval noted in (b.) above, the preferred, or first ranked consultant will be invited by City staff to formally discuss the required services.
 - i. If the invitation is declined, the second ranked consultant will be notified in the same manner.

- ii. If the second ranked consultant also declines the invitation, the third ranked consultant will be notified in the same manner.

4. Selection Documentation

- a. The selection process, ranking of consultants, list of the selection committee including the chairperson and reason(s) for selecting the preferred consultant must be documented and records retained for four years after the project is closed in accordance with 2 CFR 200, 333-337. Failure to properly retain records is a violation of law.
- b. In the event any litigation, claim, negotiation, audit, or other action involving these records has commenced prior to expiration of four years, the records must be retained until all issues are resolved.
- c. For contracts where formal interviews are conducted, the selection committee's final composite rating and recommendation(s) resulting from those interviews should be retained in the project file. Failure to properly retain records is a violation of law.

1.4 Final Scoping/Contract Negotiations

Prior to entering into final scoping discussions and contract negotiations, DPW-Engineering staff will prepare an engineering cost estimate for the requested services. This estimate will be used during the negotiations to verify that the engineering services are obtained for a justified cost.

After acceptance of the formal invitation noted in 1.3 3(c.) above, Contract scoping meeting(s) will be held with the selected consultant. The purpose of the scoping meeting is to establish a shared understanding of the detailed scope and nature of the services. The negotiation process begins after the scoping meeting(s) has been held and an initial scope has been agreed upon. After completion of the scoping meeting(s), City staff will review the previously completed estimate of engineering services and make any revisions or adjustments related to the outcome of the scoping meeting(s). The DPW-Engineering project manager assigned to the oversight of the subject project will request the consultant to independently prepare an estimate of hours and costs for all services.

The negotiation process begins after the scoping meeting(s) have been held and an initial scope has been agreed upon. The consultant shall submit to the City for review prior to negotiation discussions a detailed description of all services and a summarized time estimate by task and employee classification including a detailed fee computation showing analysis of direct labor, indirect costs, non-labor direct costs, fixed fee, and subcontracts.

During contract negotiations with consultants, the Director of Public Works or Deputy Director of Public Works/City Engineer must represent the City, along with any other appropriate City staff as determined by the City Administrator.

Negotiation of contracts on the basis of demonstrated competence and qualifications, at fair and reasonable

prices is required for all engineering and design related services using Federal-Aid Highway Program (FAHP) funding. The City's goal is to negotiate an amount that is fair and reasonable for both the City and the consultant to complete the proposed effort.

Determination of fixed fee will be set by the City prior to solicitation and will be included in the published scope of services. The City may not initiate discussions about reducing firms' indirect rates. Firms may voluntarily reduce the indirect rate used on a contract in order to lower total costs. The City considers all other costs negotiable including total direct labor and wage escalation rates. Hence, all of the costs must be considered together to fairly evaluate reasonableness of the bottom-line fee.

Depending on knowledge of the project, its complexity, and receptiveness of the City and the consultant, negotiations should generally be substantially completed in one or two meetings after the scoping meeting(s) are completed. If agreement does not seem imminent, the DPW-Engineering project manager is required to contact the Director of Public Works and City Administrator to discuss the recommendation to terminate the negotiations in writing. The DPW-Engineering project manager can then invite the second ranked consultant to negotiate a contract. Negotiations with a consultant may not be re-opened after termination. If agreement also does not seem imminent with the second ranked consultant, invitation to the third ranked consultant can be sent upon termination of discussions with the second ranked consultant.

All submitted consultant cost proposals from unsuccessful bidders or negotiations, including any initial versions or iterations shall be destroyed via secure document shredding and/or permanent deletion of digital documents.

2.1 Contracting

After completion of the Contract negotiations, and all items are agreed upon with City staff, the consultant shall prepare a final version of the detailed task description and summarized time estimate by task and employee classification and send them to the DPW-Engineering project manager. The Consultant shall also provide any contract special provisions request to be incorporated into the final Contract document(s).

The City Attorney's office will review the documents submitted by the consultant and develop the final Contract language utilizing the City's standard template(s). Draft versions will be sent to the consultant for review and revisions made directly with the City Attorney's office until concurrence is reached by both parties.

After concurrence is reached on the final Contract documents, they will be taken through the Board of Public Works and Common Council for final review and approval.

Documents and records relevant to contract negotiations must be retained three years after final invoice on the contract or for improvement projects after the last project on the contract is closed, in accordance with 49 CFR 18.42. Documents and records that need to be retained include:

1. Initial WisDOT estimate
2. E-mails with the selected consultant
3. Meeting minutes from negotiation meetings with WisDOT and consultant
4. Phone records/notes related to negotiations

In the event any litigation, claim, negotiation, audit, or other action involving the records has commenced, the records must be retained until all issues are resolved.

After Common Council approval of the contract, and upon receipt of the fully executed copy, the DPW-Engineering project manager will send a Notice to Proceed to the consultant. The consultant shall not commence services or incur costs prior to receiving an executed contract and written authorization to proceed. Any services performed and/or costs incurred prior to authorization are not eligible for payment and shall not be added to current contract charges, amendments, or future contracts.

Unless written approval from the City Administrator is provided, the City shall utilize project-specific contract types for all consultant contracts. Although likely rare, other contract types that may be utilized shall follow 23 CFR Part 172.9(a).

City final contract provisions shall include language according to 23 CFR Part 172.9(c).

The Director of Public Works shall assign a DPW-Engineering staff member to serve as Responsible Charge for the execution of the Contract. This can be re-assigned at any time during the duration of any consultant contract work based on staffing levels, vacancies and availability.

2.2 Conflict of Interest

The City takes policy adherence very seriously and not only expects staff and consultants to follow policy but also to notify the DPW-Engineering project manager and Director of Public Works of known violations of stated policies.

Due to the relatively subjective nature of the consultant selection and negotiation process, City employees responsible for any phase of consultant contract administration must take special care to avoid conflicts of interest, the appearance of conflict of interest, or abuse of authority. City employees are prohibited from accepting anything of value from consultants including money or property, favor, service, payment, advance, forbearance, loan, future promise of employment, meals, tickets, imprinted clothing, and gifts. In consideration of these rules, consultants should not offer anything of value to City employees.

A City employee may not transact business with any entity with which either the employee or a family member has a personal and private interest. Examples of personal and private interest include situations where the employee/family member is an officer, director or has a significant ownership interest in an entity. An employee's family member employed by a consultant may also represent a personal and private interest when the family member's compensation is based, in part, on activities associated with obtaining contract work with the City or in the performance of any work under a contract with the City. A conflict of interest may also exist when a family member's continuation of employment is directly related to the firm's success in receiving City contracts.

No City employee who is authorized to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract.

No engineer, attorney, appraiser, inspector or other person performing services for the City in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than their employment by the City, in any contract or subcontract in connection with such project.

All engineering estimates are considered confidential and shall not be provided to parties other than the City before, during, or after the letting. Regulations governing the conduct of architectural/engineering firms require consultants to avoid conflicts of interest. City contract provisions will require the consultant to warrant that it has no conflicts of interest.

If a conflict of interest, or potential conflict of interest is discovered during the work on a federally funded project, written disclosure must immediately be sent to the respective federal agency overseeing the project, and as specified in any agreed upon general terms and conditions.

2.3 Disbarment Actions and Eligibility of Consultants

All engineering consultants or subconsultants shall meet the requirements of 2 CFR part 1200 and 2 CFR part 180 regarding suspension and debarment actions and eligibility of consultants. All consultants shall be in good standing and approved for work on federally funded projects. Certification of meeting these requirements will be a requirement of submitting proposals for engineering services.

As needed, City staff will utilize the System for Award Management website <https://www.sam.gov>, to verify the eligibility of any participant consultant, subconsultant or its principles. The consultant shall provide immediate written notice to the City if any time the consultant or any subconsultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The City shall notify the contracting federal agency of any changes in certification regarding these circumstances.

2.4 Method of Payment for Engineering Services

The method(s) of payment used for consultant contracts may be one, or a combination, of the following: Lump Sum, Actual Cost Plus Fixed Fee, Cost Per Unit of Work, or Specific Rate of Compensation. These methods of payment are also applicable to subconsultants. The City and consultant should discuss the method of payment at the start of negotiations. Documentation should be developed and retained that outlines the decision process on the selected method of payment or any changes to the method of payment during the life of the contract. When the method of payment is any other than lump sum, the contract must specify an upper limit of compensation. It is intended that the basis of payment anticipated will be identified in solicitation documents.

1. Lump Sum

The term lump sum contract is often used to generally describe a type of contract. Federal Acquisition Regulation 48 CFR 16.2 uses the Fixed Price Contract rather than lump sum contract. However, it is important to clarify that the term lump sum is actually referring to the method of payment to be used in a contract with a consultant. The lump sum method of payment, once negotiated is then covered under the Basis of Payment section within a contract. The intent of a lump sum method payment is to minimize amendments to a contract that increase costs. Once both parties have agreed to the level of effort in an executed consultant contract, a change in the amount of the lump sum can only be made if the scope of services changes materially.

It is appropriate when the project scope, estimate, risk, scheduling complexity and duration of the services are defined in enough detail to allow determination of fair and reasonable compensation in advance by all parties.

2. Actual Cost Plus Fixed Fee

Under this method of payment, a consultant is reimbursed for all allowable costs incurred up to a maximum upper limit plus a fixed fee. Fixed fee is defined as a specific dollar amount, not subject to change except by contract amendment when there is a change in the scope of services required. Actual cost plus fixed fee is appropriate when the scope of services can be well defined but the precise extent, complexity, or duration of the required services is indeterminable at the time of negotiations.

3. Cost per Unit of Work

Under this method of payment, a specified dollar amount is paid for costs plus fixed fee for each completed unit of work. It is appropriate when the scope of services and unit cost can be determined in advance with reasonable accuracy, but the extent of the effort is indefinite.

4. Specific Rate of Compensation

Under this method of payment, a specified hourly or daily rate is paid for each class of employee or type of equipment engaged in providing the required services. It may be used for relatively minor or straightforward scope of services of indeterminable extent of effort over which the City can monitor the time and classification of employee and/or equipment utilized.

Allowable actual costs on City consultant contracts will not exceed those costs allowed under 48 CFR Chapter 1, Part 31 - Contract Cost Principles and Procedures.

2.5 Subconsultants

A subconsultant is any individual not classified as an employee of the consultant, firm, or entity the higher tier consultant contracts to perform a portion of the contract services.

The use of subconsultants is subject to approval by the City. The prime consultant must perform the greatest share, as a percent of total dollar value, of contract services. The prime consultant should perform more than 50% of contract services. The prime consultant may perform as little as 30% of contract services with City approval. Additional justification may be required when the prime consultant performs less than 50% of the work order services.

The prime consultant retains full responsibility for the fulfillment of the contract.

Higher tier consultants may select subconsultants using a qualification-based selection process or by using cost proposals from a minimum of two qualified firms. The City may ask for documentation of cost proposals.

Contracts must state both the method of payment from the City to the prime consultant and the method of payment from higher to lower tier consultants.

Subconsultants, except railroads companies, may not be included as direct costs to higher tier consultants.

Subconsultants must provide the same detailed time and cost estimates as prime consultants in accordance with this Policy.

Subcontracts with national experts for specialized advisory services, geotechnical exploration, and traffic control; that do not use the actual cost-plus fixed fee basis of payment; and are greater than \$75,000 may use market rates, but the estimate must have enough detail for the City to determine the estimate is reasonable.

The City does not pay fixed fee to higher tier consultants for services performed by subconsultants.

Any substitution of subconsultants, changes in the scope of services performed by subconsultants, and/or changes in fees requires an approved contract amendment. Amendments must be approved before new services can begin including money transferred between higher and lower tier consultants.

Consultants are required for assuring the following provisions are included in subconsultant contracts:

1. Access to Records - Subconsultants agree to maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under contract for three years from the date of final payment.
2. Nondiscrimination - The prime consultant must include provisions for nondiscrimination in every subcontract including procurements of materials and leases of equipment.
3. Equal Employment Opportunity - Provisions of EEO must be included in every subcontract in excess of \$10,000.
4. Implementation of the Clean Air Act and Clean Water Act (Contracts exceeding \$100,000) - The consultant must include the requirements of the Clean Air Act and Clean Water Act boilerplate section of the contract.
5. Certification of Debarment/Suspension - It is the responsibility of the prime consultant to assure the City that the subcontractor has not been debarred or suspended. The consultant may rely upon a certification unless it knows it is erroneous.
6. Certification Regarding Lobbying - The consultant shall require language of this certification be included in the documents for subcontractors. Subconsultants must certify and disclose accordingly.

Higher tier consultants must pay subconsultants for contract services performed within 10 business days of receiving payment from either WisDOT or a higher tier consultant.

Subconsultants are responsible for performance of services and to the same standards as the prime consultant.

Performance of subconsultants does not limit the legal liability of either the higher tier(s) or the subconsultant.

The performance of the subconsultant will be included in the prime consultant's performance evaluation.

3.1 Cost Accounting Requirements

All consultants contracting with the City must maintain accounting and estimating systems in accordance with the requirements of Cost Accounting Standard (CAS) 401-Consistency in Estimating, Accumulating, and Reporting Costs; and Cost Accounting Standard 402-Consistency in Allocating Costs Incurred for the Same Purpose. Cost Accounting Standards are published in Title 48 CFR Subparts 9904.401 and 9904.402.

Consultant contracts which would qualify for either modified or full CAS coverage in accordance with 48 CFR 9903.201 if they were direct Federal contracts are subject to the appropriate CAS coverage regardless of funding source. Upon request, consultants shall provide a copy of their CAS disclosure statement.

3.2 Direct Labor Costs

Allowable direct labor costs are those costs related to actual wages paid to employees for time they are productively engaged in services necessary to fulfill the terms of the contract. Some consultants may charge direct labor costs for administrative personnel (principals and clerical) directly to projects. Others recover such labor costs through their indirect cost rate.

All consultant labor costs must be estimated based on current consultant pay rates whether those rates are based on specific individuals, averages of groups of individuals, or company-wide average rates based on classification. Provisions for future pay raises (commonly referred to as escalation) must be shown separately in supporting fee computation worksheets and are subject to negotiation.

Key Personnel - Employee name, classification, and hourly rate must be stated at the actual rates paid to the employees by the consultant.

Estimates for key personnel must be based on individual pay rates of specific employees and may not be based on company-wide averages by classification. Employee name or number, classification and rate must be shown in the estimate along with the employee's actual pay rate. Key personnel may include the Project Manager and selected Senior Engineer positions for design and planning projects, based on their unique technical qualifications and the need for those skill sets on the project(s) in question.

Some projects may require key technical specialists. For the technical specialist to qualify as key personnel, they must be critical to the project requirements. Typically, that key technical person would have technical training or experience such that the individual's contribution is considered an essential component of the consultant's firm's qualifications to complete services under the contract.

For construction engineering contacts, staff assigned to work on a construction contract on a full-time basis during the project construction period are considered key personnel.

Non-key Personnel - For staff not considered to be key personnel, firms may estimate costs using company-wide average rates by classification or they use the average rates of specific employees they anticipate using on the project.

Consultants may develop direct labor rates based on company-wide averages for each classification based on standard classifications. Average rates by classification may be developed for an entire organization or subsets of the organization such as a region or division when applicable. The

company-wide average rates are computed by the sum of all wage rates of each staff person in that classification divided by the number of staff in that classification. Computation and documentation of company-wide average rates are the responsibility of the consulting firm and documentation shall be made available to the City upon request. If a consultant uses company-wide average rates, company-wide average rates shall be used for estimating costs of non-key personnel when negotiating all contracts.

Consultants that do not calculate company-wide average rates by classification must estimate labor for non-key personnel using averages of specific employee pay rates developed on a project-by-project basis. Pay rates of specific consultant staff within a classification who may be reasonably expected to work on the contract should be used to develop an average weighted rate for that classification based on their percentage of participation in that classification. The names or numbers, classifications and individual pay rates must be shown in the worksheets supporting the consultant's estimate. The consultant shall not use a specific employee in more than one classification. If one employee fills multiple roles on a project, a discussion with the City is required to ensure that an understanding of effort by that particular staff person in the contract hours is understood and agreed upon by both parties.

Use of Employee Numbers - In lieu of providing consultant names on contract proposal documents, consultants may list employee numbers. If numbers are listed rather than names, the consultant shall provide the City with a listing showing employee numbers, classifications and names. This list of employee numbers, classifications and names can be provided outside of the contract document. Requests for copies of lists of consultant names and employee numbers will be evaluated in accordance with applicable laws and regulations governing public information requests.

Anticipated Pay Increases - Actual labor rates of employees may take into account reasonable anticipated pay increases if it is known that the duration of the contract will involve an actual pay increase. The City will determine the reasonableness of the proposed pay increases. The consultant must provide an estimate of the amount of services to be completed prior to and subsequent to the anticipated increase.

Total direct labor is determined by multiplying labor rates by the estimated number of hours for each task or services element. The tasks used to estimate labor hours on the contract equate to those used by DPW engineering staff.

3.3 Indirect Costs

Indirect costs are those costs (indirect labor, fringe benefits, and general and administrative expenses) that cannot be identified specifically with a particular project. Consultants must have an indirect cost rate approved by DPW-Engineering and City of Waukesha Finance Department staff prior to contract approval.

3.4 Fixed Fee

The fixed fee percentage for City contracts will typically be within a range of 6% to 12%, but is not to exceed 15%. The fixed fee percentage will be set on a project by project basis and listed in all solicitation material. The fixed fee will be set by a committee of the Department of Public Works, Finance Department and City Administrator. WisDOT's FDM section 8-10-10.2 will be utilized as guidance for the determination of a project specific fixed fee

The fixed fee percentage is not open to change by the selected firm during contract negotiations.

Fixed fee for subcontractors will be the same as used for services performed by the prime consultant. It will be the same percentage that the City determined for the project when solicited.

3.5 Non-Labor Direct Costs

Non-labor direct costs are those costs not included in the consultant's indirect cost rate that are specifically incurred for the purpose of fulfilling the terms of the contract. They will vary depending on the accounting policies and practices of different consultant firms, but generally may include such things as travel expenses, reproductions, and equipment. They are allowable to the extent they are properly and consistently accounted for as direct costs by the consultant. Costs that are obviously attributed to a project will not be allowed as a direct cost on a contract if the consultant does not consistently exclude similar costs from indirect costs when they are incurred on other projects.

Reimbursement of costs associated with commuting labor, mileage and travel expenses should be limited to costs allowed under the consultant's company policy and further limited by City policy including contract provisions and the Federal Acquisition Regulation (FAR). The costs of commuting between the project site and the home base on consecutive days will be limited to the cost that would be incurred if the consultant stayed overnight. Home Base is the consultant's nearest office or, the consultant employee's home unless negotiated differently with the City. The City will pay the consultant the lesser of:

- commuting from the consultant's home base to the project office each day, or
- the cost of staying overnight at nearby lodging.

This applies to all contracts in which a consultant performs services not in the consultant's base office including construction oversight and contracts where a consultant will be working at a City office. It is the consultant's responsibility to ensure that estimated and incurred costs are limited in accordance with these principles.

When commuting costs will be charged to a contract, the consultant should provide the City negotiators with an analysis showing that the cost of commuting vs staying overnight including the consultant's direct wage, indirect cost, fixed fee, cost of mileage, meals, lodging and per diem.

When a contract requires a consultant employee to work full time at a City office on a long-term basis, the consultant's home base is the location of the office where the services are being performed. Therefore, commuting or overnight travel costs will not be reimbursed under the contract. This paragraph does not apply to Construction Contract Administration Accounting. Relocation expense in accordance with the FAR cost principles will be allowed unless specifically excluded in the solicitation of interest for the contract.

Nothing in the above policy precludes the consultant from making his/her own decisions about when to commute or Stay-Out. The amount invoiced to the City should be based on the most cost-effective alternative even when the consultant chooses the less cost-effective alternative. When a consultant chooses the less cost-effective alternative, the consultant must implement invoicing controls to ensure the City is not invoiced for costs in excess of those that would have been incurred following the more cost-effective alternative. Consultant accounting records supporting costs invoiced to the project must show total costs incurred, costs billed to the City and unbilled direct costs.

Regardless of their amount, non-labor direct costs must be itemized in the contract fee computation. "Miscellaneous" or "Other" is not an appropriate categorization.

Direct costs for meals and lodging are subject to the limits published in 48 CFR 31.205-46. The regulation allows reimbursement based on per diem or actual costs. However, per diems for meals and lodging are allowable only if they represent the consultant's normal company policy for reimbursing its employees and the consultant is consistent in carrying out the policy. Costs incurred under less restrictive consultant policies because they are reimbursable under government contracts will be considered unreasonable and disallowed.

Subconsultants, including lower-tier subconsultants, should not be shown in the contract basis of payment or supporting fee computations as non-labor direct costs.

3.6 Subcontracts

Any contract services intended to be subcontracted must be so designated. Subcontracts must be supported by a copy of the original cost proposal from the subcontractor. All subcontracts should be supported by fee computations that are applicable based on the subcontract basis of payment and amount of the subcontract.

4.1 Progress Reports

Work activities performed by consultants under contract with the City must be monitored by the DPW-Engineering project manager to ensure that a quality service/product is received within the agreed upon time schedule and cost of the contract. For design, design related and specialty contracts, the consultant is required to prepare and submit a progress report with its monthly invoices to the WisDOT project manager for each month in which contract work is performed.

The primary purpose of the progress report is to monitor the overall progress of actual work performed. The consultant's cost and staff-hour estimates by task or deliverable product identified during contract negotiations are tools available for analyzing the consultant's progress. If there is a significant variance in actual work completed shown on the progress report versus percent of time elapsed on the contract or amount billed on the invoices, a meeting between the DPW-Engineering project manager and consultant may be necessary to resolve the differences. Any additional reporting as required by Contract special provisions or federal project requirements shall also be completed and submitted by the consultant.

The DPW-Engineering project manager should recommend to the prime consultant how the progress data is to be prepared and submitted. The work completion percentage calculated by task reflects the percentage of actual work completed rather than the amount of time or money spent on that task.

Work performed by subconsultants shall be included by task in the monthly progress reports. The subcontract work may be combined with the work completed by the prime or shown separately. Variations to this are acceptable provided the monthly progress report reflects actual work completed by both the prime consultant and subconsultant.

All amendments to design and design related contracts authorizing a change in project hours, contract value, or completion time must be accounted for in the progress report. The completion date and percentages by task on the progress report should reflect all approved amendments.

All amendments to construction engineering contracts authorizing a change in project hours, contract value, or completion time must be recorded and monitored.

Often it is useful for City staff to meet with the consultant when the project has reached 30% completion. At this time the consultant can report in detail on what has been done and the City can provide the consultant with guidance on how to proceed. The project schedule can also be revised as necessary.

4.2 Performance Evaluations

The City evaluates the work of consultants providing professional services on federally funded project at the completion of services or as necessary on multi-year contracts. Evaluations should reflect both the positive and negative aspects of the consultant's performance on the project. City staff will affirm consultant successes on the evaluation as well as provide constructive feedback on how the consultant could improve its performance.

A preliminary evaluation should be performed at an early stage of the performance of services. An informal discussion between the consultant and DPW-Engineering Project Manager may be warranted to discuss the evaluation and identify ways to improve areas in which performance is not adequate. When conducted in the constructive manner intended, this preliminary evaluation can

enable required corrective measures to be implemented in a timely manner and potentially eliminate a negative or adverse final evaluation at the conclusion of the services. Additional interim evaluations may be performed when necessary.

To achieve consistent ratings between various City staff, the following rating system shall be used for both design and construction engineering contracts:

Consultant Performance Evaluations
5. Outstanding - Performance consistently exceeds requirements in all phases of the work. This level should be reserved for only special occasions where the Consultant always exceeds expectations and is under budget and ahead of schedule.
4. Above Average Performance - Performance is above average. Most requirements of the job are completed ahead of schedule. Consultant requires a minimal amount of monitoring. Quality leadership principles and sound engineering judgments are used. Agency coordination and public involvement activities are always timely and well done. Consultant reacts well to criticism.
3. Satisfactory - Meets quality/performance expectations. Project is completed on time and on budget. There may be some areas that need minor improvements but the tasks are usually done on time and with minor revisions and monitoring. Good engineering practices/management. Adequate evaluation of alternatives and trial solutions. Agency coordination is adequate.
2. Below Average Performance - Some work or time requirements need improvement but with monitoring are acceptable. Consultant's work is done solely by rote. Consultant should have a plan for improvement if they expect to be selected for additional projects.
1. Unacceptable Performance - The consultant's work has numerous errors/omissions and the consultant requires a high degree of monitoring to complete the work. Significant improvements need to be made before consideration for future work.

Written comments are encouraged to better define the numerical ratings. City Staff may use the comment fields to address issues not mentioned on the evaluation. Suggestions for improvement should be included when appropriate.

Evaluations must be performed within three months of the completion of the consultant services.

Consultants may appeal a decision or the results of an evaluation. Only written appeals will be accepted, and they must be submitted to the DPW-Engineering Project Manager who shall review the appeal and prepare a response. The DPW-Engineering Project Manager, in agreement with the Deputy Director/City Engineer, then forwards the appeal and response to the Director of Public Works. After reviewing the documents, and researching the situation thoroughly, the Director of Public Works forwards the information to the City Administrator for a final decision.

4.3 Consultant Contract Payments

Consultants may invoice the City no more often than once per month for the authorized contract work or services performed to date. The text below explains specific items to be shown on invoice documents:

1. State name of firm as stated in contract, address to which payments should be mailed, and federal employer identification number.

2. State invoice number assigned by the firm and used in its accounting system and the date the invoice was prepared.
3. State beginning and ending date of the time period in which invoiced costs were incurred. Specify if this invoice is for an adjustment of prior period costs.
4. State name and address of City DPW-Engineering project manager.
5. State project name/title for which costs were incurred. This project name/title must be included in the contract document. Invoice separately for each specific project.
6. State the original contract amount. For phased contracts, show only that portion of the original amount specified for the first fiscal period.
7. State the revised contract amount including all amendments approved to date. For phased contracts, include authorizations issued for periods following the first fiscal period.
8. For contract items involving an actual-cost-plus-fixed-fee method of payment, show cost of work completed to date by consultant, including:
 - a. Direct labor costs incurred to date,
 - b. Estimated total indirect costs using the rate approved for current use, and
 - c. Non-labor direct costs incurred to date.

Fixed fee is based on the percentage of the contract work that is completed. The percent complete (progress) should be calculated using one of the following formulas:

Total Direct Labor Invoiced + Total Overhead Invoiced

$$\frac{\text{Total Estimated Contract Direct Labor + Total Estimated Contract Overhead}}{\text{Total Estimated Contract Direct Labor + Total Estimated Contract Overhead}} \times 100\%$$

OR

Total Direct Labor Invoiced

$$\frac{\text{Total Direct Labor Invoiced}}{\text{Total Estimated Contract Direct Labor}} \times 100\%$$

9. For contract items involving a lump sum method of payment, state the product of the lump sum amount multiplied by the percentage of work completed to date. When different lump sum amounts are included in the contract for different work elements within the same project, repeat this line for each lump sum amount.
10. For contract items involving a cost-per-unit-of-work method of payment, state the number of work units completed multiplied by the rate per unit. Completed work units must be delivered to the City prior to invoicing. When different rates are included in the contract for different work elements within the same project, repeat this line for each different work element.
11. For contract items involving a specific rate of compensation method of payment, state the daily or hourly rate multiplied by the number of days or hours expended. When different rates

are included in the contract for different employee classifications or pieces of equipment, repeat this line for each rate.

12. State the cumulative total of amount billed to the prime consultant by subconsultants.
13. State the sum of lines 8 through 12.
14. State the cumulative total of all previous invoices submitted to the City. Show cumulative total of payments received to date if different than the cumulative total of previous invoices.
15. Show the difference between total cost to date and amount previously invoiced.

Include a statement of consultant certification, including a complete signature and title of an authorized representative of the consultant firm.

Include, as supporting documentation, the following:

1. For actual cost method of payment:
 - a. A schedule of direct labor for time period covered by the invoice including the employee name, classification and number of hours for each employee. The invoice should also show the total number of hours and direct labor cost by classification.
 - b. An itemization of non-labor direct costs for the time period covered by this invoice.
2. For lump sum method of payment, a progress report identifying the amount of work completed to date.
3. For specific rate of compensation method of payment, a summary of hours, days, or other unit expended in performance of the contract by employee classification or type of equipment, whichever is applicable.
4. For subconsultant costs included in the amount due on this invoice, a copy of the subconsultant's billing to the prime.

Submit invoices to the DPW-Engineering project manager. Provide one copy unless more are specifically requested. Final invoices must be submitted within three months of completion of the contract work or services.

4.4 City Payment Approval Process

The DPW-Engineering project manager will take the following actions:

1. Payments may only be approved for those services and costs that were incurred after the contract or amendment was authorized. Payments for services and costs incurred before a contract was authorized are not allowed. Payments for services and costs covered by amendment incurred before the amendment was authorized are not allowed. A full list of employees must be included on contract amendments for Specific Rate contract.
2. Process and approve the invoice through the standard City financial system within 30 days of receipt of an approved invoice.
3. Note the invoice for future reimbursement by the federal grant funds and add to next reimbursement request.

4.5 Payment/Cost Disputes

If a consultant invoice is not properly completed by the consultant or some or all of the invoiced costs are disputed, the DPW-Engineering project manager will provide the consultant an explanation regarding the ineligibility or deficiencies. Such notice will be provided by the DPW-Engineering project manager within 30 days of receipt by the City of the original invoice.

In the event of a dispute, the DPW-Engineering project manager should promptly process for payment any undisputed portion of the invoice. Later, when the disputed portion is resolved, a copy of the invoice and the dispute notice can be included for processing of any unpaid but resolved portions.

5.1 Contract Amendments

Consultant contract amendments are required for any modification in the terms of the original contract that change the cost of the contract, change the subcontractors working on the contract, significantly change the character, scope, complexity, or duration of the contract services or significantly change the conditions under which the services are required to be performed.

A contract amendment shall clearly outline the changes made and include an amount and method of compensation for the work or services covered by the amendment. In addition, it shall state the total revised contract amount and basis of payment resulting from the amendment changes.

Fee computations display the increase or decrease in costs by classification and engineering task. They do not restate the total costs of the contract in those terms.

Amendments to increase the pay rate of an employee on a specific rate contract are not allowed, unless the duties of an employee changes and/or there is a time extension caused by the City. In the event of a new negotiated rate due to contract extension, the new rate should not take effect until the end of the original contract period.

Overruns or underruns in the costs of services do not warrant an adjustment in the fixed fee portion of a cost plus fixed fee contract. Adjustment of the fixed fee portion in an actual cost plus fixed fee contract or a lump sum contract will be allowed only when a significant change to the scope of services is made.

No payment will be made for services commenced prior to amendment execution.

Contract amendments require the approval of the Board of Public Works as well as Common Council. Amendments will be placed on appropriate public meeting agendas as soon as practical after determination that an amendment is required.

5.2 Conflict Resolution Process

The intent of this process is to resolve all issues within a reasonable amount of time. Any conflict will be discussed and every effort made to resolve the conflict at the level where it originates. This will

reduce time consuming efforts of others. This conflict resolution process also allows project participants to escalate issues that they are uncomfortable handling. In this manner, the project participants are able to preserve their good working relationship with each other.

WisDOT's Conflict Resolution/Issue Resolution Matrix (FDM 8-25-20.2 Attachment 20.1) should be used on any size design contract and construction engineering contract. The Conflict Resolution/Issue Resolution Matrixes should be filled out by the appropriate parties while the project is being scoped. This will help determine who is responsible for resolving various project issues.

It is suggested that a range of 50 to 90 percent be used for the lowest level in the column for Anticipated Percent of Conflicts to be Resolved at this Level. The Time Available column for each level to resolve a conflict needs to reflect the appropriate time to make a timely and quality decision based upon the best information available during the same time period. Names of individuals for each party are to be filled in for each level within the conflict resolution path. The matrix needs to be updated when participants or roles change during the course of the project.

All parties involved in developing the matrix should sign and date the agreement. It is recommended that those participants responsible for resolving at least 90 percent of the issues on the project should review and sign the matrix agreement.

General Guidelines:

1. A conflict or issue may be identified by any party at any level during the course of the project.
2. Any conflict will be discussed and every effort made to resolve the conflict at the level where it originates.
3. Bypassing a level in the matrix is not allowed.
4. Proper documentation is required to escalate any issue or conflict. Note: The level of documentation must be agreed upon prior to initiating the project. The extent of the documentation should be addressed on a specific case-by-case basis.
5. If a conflict can't be resolved at a specific level in the matrix, it can be accelerated to the next level before the allotted time is up if both parties agree.
6. The conflict resolution matrix must be updated when participants or roles change during the project.
7. The conflict resolution matrix should be evaluated periodically for effectiveness and mutually adjusted if improvements can be made to the process.
8. If any party is absent, conflicts involving a critical path schedule should be escalated to the next appropriate level within the corresponding matrix time frame.
9. Ignoring the conflict or decision is not acceptable.
10. No individual is expected to make a decision that makes him/her uncomfortable.
11. Have empathy for other's views. Listen to and try to understand the conflict or problem from the other person's point of view and accounting for what "real" or legitimate needs they have.
12. Communications between the parties will be open, honest, person-to-person, timely, and up front, in a trusting atmosphere.

13. Once a conflict is identified and project participants are informed, each level of the escalation process has a specific time allotted for resolution of the conflict. If the conflict cannot be resolved within the defined time frame, it automatically moves up to the next level.
14. Once an unresolved conflict moves up to the next level, participants at previous levels relinquish their decision rights to the next higher level of participants indicated in the matrix.

The conflict resolution process shall follow the steps outlined in WisDOT FDM 8-25-20.6.

5.3 Consultant Contract Claims and Disputes

The intent of this process is to resolve each contract claim or dispute within a reasonable amount of time and at the organizational level closest to the source of the problem. Uniformity is important in notification, documentation and in providing the consultant adequate opportunity to participate in resolving the issue. This process is needed to ensure that both parties' rights are protected if an issue isn't resolved and continues in the review/appeals process.

Early identification of a potential error/omission enables the City and the consultant to work together to minimize the adverse effects of the error/omission. Just as the consultant has a duty to meet a standard of care by contract for their services, the City has a duty to properly notify the consultant of an alleged error/omission.

The consultant has contracted with the City to resolve any problem resulting from a potential error/omission quickly. When the City incurs additional costs due to an error/omission during the design or construction of the project, early notification to the consultant is required. Both parties agree that during construction of the project, time is of the essence in solving the problem and avoiding delays in construction. All parties have a duty to identify reasonable alternatives for resolution. Resolving the problem should be first. Responsibility and financial implications become secondary and can be handled by these procedures.

Listed below are opportunities for the City to notify the consultant of possible additional costs as early as any of the following may occur:

- When designs and plans do not meet Contract requirements.
- When the City receives pre-bid questions on projects.
- When contractor bid prices reviewed by the City are not consistent with PS&E estimates.
- At pre-construction conferences.
- During review of the contractor's schedule for production rates and identification of equipment/staffing to meet intermediate and final contract completion dates.
- When a contractor's proposed sequencing/staging and respective quantities appear to be inconsistent with the designer's intentions.
- At construction project meetings where upcoming activities and schedule revisions are discussed because of additional work caused by increases in quantities and contract change orders.

- When the contractor notifies the City of changed conditions, unforeseen conditions, or intent to file a claim.
- When input from others, such as utilities or local units of government, indicates a potential problem.

Claims Process - The overall objective of this process is to resolve all consultant claims and disputes in a timely manner and at the level of origination. The review and appeals process allows claims or disputes to escalate if they remain unresolved. Each level of review should include the staffs that are directly involved.

1. Review by DPW-Engineering Project Manager

At the first indication of a claim, dispute or a professional error/omission, the DPW-Engineering project manager will:

- Notify the Deputy Director/City Engineer
- Immediately notify the consultant who designed the project or who is providing construction engineering services or both, whichever is applicable. This notification can be made verbally (document in the project file or diary for construction) and followed-up by a written notice. The consultant will be invited to participate in the development of a solution with City staff. If time is of the essence, the consultant will participate in this process without immediately seeking compensation. The City and the consultant are to resolve such problems first and afterwards determine cause and financial responsibility.
- If cause and financial responsibility are disputed, staffs need to prepare written descriptions of the claim/dispute with facts supporting their position. All decisions, descriptions of work, photographs, records of labor, materials, and equipment should be fully documented. Any immediate action taken to reduce the additional costs of the claim/dispute or error should also be documented.
- If agreement is reached, the documentation is forwarded to the Deputy Director/City Engineer and Director of Public Works.
- If the claim/dispute remains unresolved, prepare a report that includes the previous documentation in addition to a complete description and results of the previous discussion/meeting with the consultant and forward to the Deputy Director/City Engineer and Director of Public Works.

2. Review by Deputy Director/City Engineer

- Review the written report of the claim/dispute from the previous level and obtain input from City and consultant participants involved in the previous level. Determine if additional information is needed to clarify the issue, who should obtain it, and when it should be obtained. Determine if there are other key players who should be involved in resolving this matter.
- Independently redefine the problem based upon facts and meet with the consultant to resolve claim/dispute.

- c. If agreement is reached the documentation is forwarded to the Director of Public Works and City Administrator
- d. If the claim/dispute remains unresolved, submit the previous documentation, in addition to a complete description and results of the previous discussion/meeting with the consultant and forward to the Director of Public Works.

3. Review by Director of Public Works

- a. Review the written report of the claim/dispute from the previous level and obtain input from City and consultant participants involved in previous level. Determine if additional information is needed to clarify the issue, who should obtain it, and when it should be obtained. Determine if there are other key players who should be involved in resolving this matter.
- b. Independently redefine the problem based upon facts and meet with the consultant to resolve claim/dispute.
- c. If agreement is reached, the documentation is filed and a copy of the resolution letter and financial settlement from the consultant is forwarded to the City Administrator.
- d. If the claim/dispute cannot be resolved at the Director level, the claim may be submitted to the City Administrator.

4. Review by the City Administrator

The City Administrator will review any claim/dispute which cannot be resolved between DPW staff and the consultant. Appeals to the City Administrator resulting from DPW's decision should be made directly to the City Administrator by either DPW or the consultant. All appeals must be in writing and received within 30 days of the date of DPW's decision.

The City Administrator will coordinate meetings/discussions to resolve the dispute. The Administrator will consider all facts and discussions to date, as well as, any additional discussions of the dispute. The City Administrator will issue a written statement of the decision related to the dispute no more than 60 days after the last meeting or discussion of the dispute.

6.1 Indirect Cost Rate Audit

The City's Finance Department may elect to complete an indirect cost rate audit for any contracted consultants in accordance with WisDOT's FDM 8-25-30.1.

6.2 Final Cost Audit

Following final payment and closing of a consultant contract, the City's Finance Department may perform a final cost audit. The purpose is to determine that all costs for which payment has been

made by the City to the consultant are allowable according to the Federal Acquisition Regulation (FAR), City policy, and the terms of the contract. Cost audits may also be performed during contract performance as deemed necessary.

During final cost audits for contracts utilizing a cost-plus-fixed-fee method of payment, indirect cost rates previously used to propose costs and for invoicing are adjusted to the actual audited rates for the time period(s) in which the work was actually performed. This may result in the consultant owing money to or receiving money from the City subject to the contract maximum amount.

Final cost audits may be performed concurrently with the consultant's indirect cost rate audit.

6.3 Confidentiality/Disclosure of Indirect Cost Rates

Under Wisconsin Statutes, contract cost estimates, audit reports, and audit working papers are public information. 23 CFR 172 prohibits sharing of indirect cost rates with other consultant firms or with government agencies that do not receive FHWA funds.

When a public information request is made for information which includes indirect cost rates such as consultant cost reports by firm, audit reports, and consultant contracts with consultant fee computations, the City will ask parties requesting information on indirect cost rates whether they represent another firm or a government agency, which is not a recipient of federal highway funds.

If the requesting party represents another firm or a government agency that is not a recipient of federal highway funds, the City will notify the requesting party that distribution of the requested information is restricted by federal regulations. The City will redact all references to rates as well any other numbers in the reports and proposals which would permit calculation of a rate. For consultant fee proposals, amounts to be redacted include hourly labor rates, total labor costs, consultant indirect cost rates, and total indirect costs.

If the requesting party is another government agency that is a recipient of federal aid highway funds, the information shall be provided. The City must notify that firm whose cost information was requested that the transfer of information occurred.

If the requesting party does not represent another firm or a government agency, which is not a recipient of federal highway funds the information should be provided in accordance with normal procedures governing public information requests, any release of consultant indirect cost rates should note the confidential nature of the data by including the following statement:

“The attached document includes information pertaining to a consultant’s overhead rates. The consultant firm to which these rates pertain may consider this data to be of a confidential nature.”