

FREQUENTLY ASKED QUESTIONS: 2010 ACEC/NDOR Workshop

The PE/CE prohibition is lifted, effective 10/28/2010.

4-22 Q. If our firm has a contract which includes an option for the owner to retain us for the construction phase, can we now provide that service?

A. No, if the CE solicitation, selection and agreement process was conducted before the pilot project started the LPA must go through a new selection process by either using the on-call CE procedure or through a new RFP process. As allowed by the pilot project, the PE consultant can be selected to perform the CE services. There are several projects that have similar circumstances but we have made this decision considering the program as a whole. It is everyone's goal that the pilot project be successful. The new controls are coordinated and continuous and should follow the project beginning with solicitation, selection, the agreement process and through NEPA, final design and construction engineering. With this in mind, NDOR and the FHWA have made this decision to reduce risk and assure success of the pilot project.

4-23 Q. If our firm has provided the preliminary engineering services, can we submit a proposal when the client offers an RFP for construction services?

A. Yes

4-24 Q. If we are a qualified firm on the construction on-call list, can we be selected by the client even if we provided the preliminary engineering?

A. Yes

4-25 Q. If federal regulations only require a new RFP for final design for an EIS, why is the Nebraska Division extending that requirement to EA's as well? In the rare case where an EA might turn into an EIS, why can't a new RFP can be issued at that time?

A. Federal regulations specifically address the potential for conflict on environmental impact statements (40 CFR 1506.5(c)). However, the same potential for conflict of interest exists in the preparation of an EA as well. NDOR acting in stewardship for the FHWA, has made it a policy to require separate procurements for the environmental work and the final design work for projects requiring either an environmental impact statement or an environmental assessment. FHWA concurs with NDOR on this policy.

4-26 Q. If an RFP is required between the Preliminary and Final Design Phase and a new consultant is selected, who finishes documents that are started in the Preliminary Design Phase but usually not completed until the Final Design Phase, such as Drainage Report, Geotechnical Report, Field Surveys and others. Will new consultant be given hours to review in detail all designs previous done since they will be sealing the final plans?

A. The final design consultant will ultimately be responsible for the final plans and the engineering. Engineering products of the Preliminary Design will become the property of NDOR and passed on to the Final Design consultant. It makes sense that time be provided for the final design consultant to become familiar with the products of Preliminary Design.

4-27 Q. **What methods or process changes has NDOR and FHWA implemented to improve project delivery from conception to completion? FHWA and NDOR review times. For large projects the time to get from first RFP to bid letting may see an increase of a minimum of 4-6 years with the current processes. This would be to allow for any or all of the following: a) during a project numerous documents are submitted for review. The time required to review each one is now taking 6 months to 2+ years longer than it used to. b) need to do separate RFP's for Final Design and CE services, creating additional unnecessary cost and delay. c) The 3 years+/- experienced to complete an Environmental Assessment will result in the need to redo some agency approvals or conform to changes in policy or regulations.**

A. Environmental Impact Statements for large complex projects can take from 2 to 10 plus years to complete. Time to complete depends on the complexity of the project, public controversy and other factors. Successful timely completion of a complex environmental impact statement requires commitment of resources, good project management and a willingness to address all of the issues in a constructive cooperative manner.

On a national level, FHWA is working on an initiative (Every Day Counts) to reduce overall project delivery time, including finding ways to streamline the environmental process. This effort to streamline the environmental process is not new and has been the subject of both AASHTO and FHWA efforts.

Federal Regulations (40 CFR 1506.5(c)) addressing conflict of interest require that the NEPA consultant not have a financial interest in the outcome of the NEPA determination. The CEQ has interpreted this to require a separate procurement for consulting services to prepare both the environmental studies and the final design. The consultant preparing the environmental studies is eligible to compete for the final design. Additional costs for the additional procurement are incidental to the costs of preparing a complex NEPA document and protect the integrity of that effort.

23 CFR 771.129 addresses the requirement for re-evaluation of an environmental document if "...major steps to advance the action...have not occurred within three years after the approval of the final EIS, final EIS supplement or the last major Administration approval or grant." Essentially, the three year clock starts with the Record of Decision on the EIS.

We are introducing project controls and simultaneously trying to manage the impacts the controls will have on project delivery. There are elements of communication, education, peer reviews, trust and partnering that will all play a role in maintaining efficient project delivery with the appropriate controls in place.

4-28 Q. What process/controls improvements are still needed, who is tasked with the completions and what is the scheduled to reach completion?

A. We continue to develop new process, and put new controls in place as we move forward. The pilot team will be evaluating projects in the next three years to identify way to improve the existing process, and to recommend new controls.

4-29 Q. What is NDOR's staffing plan to ensure efficiencies to move projects more quickly through processes? Will the plan include staff training on the new processes?

A. NDOR has added additional staff in Local Projects Division and designated staff to local projects in Planning and Project Development and Right of Way. NDOR and FHWA has also worked with the ACEC to make processes more streamlined in finding the right balance between project control and project delivery. NDOR and FHWA Staff attend the same training as the RC's and the ACEC.

4-30 Q. How will/are you communicating changes to LPAs and RCs? It is CRITICAL that those entities receive the updated information asap from NDOR officials.

A. The NDOR communicates essential policy guidance to the stakeholder community via the LPD website, e-mail lists, workshops and webinars. NDOR will continue to conduct RC training as well as hosting annual RC workshops.

4-31 Q. What process changes is NDOR pursuing in the next Federal Highway Legislation?

A. NDOR is working through AASHTO to leverage its influence on the Reauthorization debate. AASHTO's reauthorization website is <http://www.transportation1.org/policysummaries/>

4-32 Q. What is the current status of revisions to the on-call agreements?

A. NDOR has meetings set with ACEC to revisit these agreements and respond to questions.

4-33 Q. FHWA Circular and Brook Bill defines surveying and mapping as a professional service subject to Brooks Bill requirements and State of Nebraska statute for Competitive Negotiation Act. Why is procurement as a bid item allowed?

A. Even though Section 114 Paragraph 3.c(1)(ii) of the NDOR Standard Specifications for Highway Construction requires the survey work to be "...done under the direction of a registered Professional Engineer or registered Land Surveyor." this work is incidental to the fulfillment of a much larger construction contract which must be procured by low bid and therefore does not violate the Brooks Act. The same logic can be applied to the requirement to have shop drawings or temporary structures stamped by a professional engineer.

4-34 Q. The RC program does not seem sustainable in small communities. Has NDOR considered abandoning the RC program and providing the support form the NDOR District Office?

A. NDOR acknowledges that LPAs which pursue federal-aid transportation projects infrequently may struggle to find and maintain an RC. However, the RC is a requirement per the code of federal regulations. The RC provides for local control of projects. NDOR does not have the resources to be RC for LPA projects. There are also legal and contractual complications if NDOR would be RC for the LPA. NDOR has, in fact, provided additional support from each District office and will continue to do so; this will be in an oversight role, not in the role of RC.

4-35 Q. Has NDOR looked into the recent document management system procured by CIO's office to help with LPA project process? Including electronic submittal process and signatures?

A. The OCIO has signed a contract for a Enterprise Content Management System that includes document management. NDOR has a document management system in place and we do not want our users to have to know how to use two different document management system. The system the OCIO has an agreement with will not handle reference files on CADD documents to the best of our knowledge.

4-36 Q. How is everything talked about today related to the EDC goals?

A. EDC includes three areas of emphasis: First, Accelerating Technology and Innovation Deployment, Second, Shortening Project Delivery time and Third, Going Greener. Going Greener is internal to FHWA and our operations. Specific to Nebraska, FHWA and NDOR have implemented 6 programmatic agreements to streamline the environmental process. We continue to develop additional programmatic agreements and process that will also streamline these processes, including the development with USFWS of a Biological Matrix that will help to move projects through USFWS approval. Our efforts to shorten project delivery within the confines of the law and regulations will continue. The EDC Initiative has identified flexibilities in right of way, scope of preliminary design and utility relocation that we will continue to explore and apply as appropriate. Reducing project delivery time requires good project management, communication and coordination between FHWA, NDOR, Resource agencies and others. This meeting is part of that communication process.

4-37 Q. How close is “close” for the lift of the PE/CE prohibition?

A. The prohibition was lifted on 10/28/2010.

4-38 Q. Related to EDC initiative it is recognized that road construction is not covered by Nebraska law allowing for alternative delivery methods. However, a most likely place to apply Design Build; Construction Manager @Risk delivery methods would be state, county and city bridges. Would NDOR/FHWA be ready to encourage legislative changes to allow alternative delivery for bridge projects?

A. Legislative changes to allow alternative delivery methods like Design Build would need to be carefully developed with input and collaboration of the contracting industry stakeholders.

4-39 Q. How much time is NDOR expected to take at each “STOP” sign in the procurement process? The stop time will be a function of the quality and completeness of the submittal.

A. With the submittal information now clearly identified in chapter 4 and the checklists prepared and also available, we expect the stops won't control the overall time it takes to complete the QBS process. NDOR will consider measuring the response time at stops.

4-40 Q. How does the LPA know how much to budget for NDOR's time charged to their project?

A. NDOR plans to budget \$10,000 for project development, and one percent (minimum \$5,000) for construction phase.

4-41 Q. What steps are being taken to ensure more consistent decision making by FHWA and NDOR personnel on LPA projects?

A. NDOR continues to update the LPA Manual. Checklists are now available which will help. Transition projects have been especially difficult to work with; these would be projects started prior to the LPA Manual publication. As processes stabilize, and as the quality of LPA submittals improve, we expect greater consistency.

4-42 Q. What progress is being made towards NDOR “buying” LPA federal fund? Does the Nebraska Division of FHWA support this?

A. NDOR is briefing the Highway Commission on the concept at the October 22 Commission Meeting in Lincoln.

4-43 Q. Is there any change in view regarding a firm’s involvement in Step 1 creating a conflict for the firm’s involvement with Step 2 in the project development process? Step 1 being Independent Cost Estimate, Scope of Service, Grant applications and Step 2 being Feasibility Study, Preliminary Design, Environmental Services, Preparation of NEPA document, Final Design.

A. If the Step 1 consultant was selected using a QBS process for the development of a grant application and an appropriate fee was charged for the services, NDOR and the FHWA agree that the same consultant can submit for subsequent services. An LPA could prepare a RFP for Step 1 and subsequent steps, with an option to contract the subsequent steps if Step 1 is successful.