

INDOT
Professional Services Contract Administration Manual
Vers. 1/9/15

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Chapter 1 Consultant Contracting – General

Introduction

The purpose and need for the manual is as follows:

1. Federal regulations (23CFR 172.9) require specific written procedures to be approved by the Federal Highway Administration. The requirements in 23CFR172 are meant to insure federal grantees receive high quality consultant services for competitive costs, so that the public gets good value for the expenditure of their tax dollars.
2. Documented procedures are needed to assist INDOT Districts and owner offices in administering contracts and to improve operational consistency.
3. Documented procedures are needed to establish internal lines of administrative accountability and to set into motion a system that will assist in holding consultants accountable for contractual responsibilities.

There is a separate contracting procedure for Local Public Agencies (LPAs) which is documented in Chapter 7 of the LPA Project Development Process Guidance Document.

Contacts for questions or to make suggestions regarding consultant contracting or this manual may be directed to ContractsRFP@indot.in.gov.

1.1.1 Determination of Need

The services of a consultant may be requested if funding is available and at least one of the following statements is true:

- the in-house capabilities of the department are insufficient to accomplish needed work within the desired time frame;
- the complexity or nature of the project requires specialized expertise;
- it is more economical to engage such services; or
- it is otherwise in the public interest.

The owner office shall evaluate the need for the services prior to proceeding with any subsequent steps.

1.1.2 Initiation of the Selection Process

All consultant selections shall be processed through the Contract Administration Division, which maintains the Department's official project file through authorization of the contract.

The following elements are required to initiate the consultant selection process:

- A scope of services document is required at least 2 months prior to the scheduled Request for Proposals (RFP) advertisement date. An example template is available at the Contract Administration Division Intranet website
[\\indotweb\content\CA\NewSite\ca_contracts.html](http://indotweb/content/CA/NewSite/ca_contracts.html).

- For projects that will use Federal funds in the Preliminary Engineering (PE) phase, the project must be included in the State Transportation Improvement Program (STIP) for the applicable year.
- Owner office must demonstrate that project funding is available.
- Owner office must add applicable project information to the 18 month RFP list via the Professional Services Contracting System (PSCS).
- Owner office must provide a justification for the proposed advertised services upon request.

1.1.3 Prequalification

All firms desiring to provide services that require work to be performed by or under the supervision of a registered engineer, architect, or surveyor leading to a construction project must be prequalified with INDOT. The Department has identified categories of work that require prequalification that include such services. (See the INDOT Consultant Prequalification Manual <http://www.in.gov/indot/2732.htm>)

1.1.4 Scope of Services

A scope of services document should include all anticipated elements of service required, standard and/or any special requirements associated with the elements of service, any anticipated phases of services and all required deliverables. It is required for all contracts at least two months prior to advertisement of an RFP.

On-call contracts typically use standard scope of services documents that are on file with the Consultant Services Section. The owner office must prepare the scope of services documents for non-standard on-call contracts.

An Abbreviated Scope of Services template, for project specific contracts, is available on the Contract Administration Division Consultant Services Intranet website \\indotweb\content\CA\NewSite\ca_contracts.html.

1.1.5 Fee Estimate

Prior to advertisement of an RFP, the owner office shall prepare an estimate, which will be reviewed and refined as may be necessary by the Contract Administration Division Consultant Services Section. The estimator should consider the project complexity, the amounts paid previously for similar services, the man-hours required, and the deliverable schedule. Document details to support negotiation and final approval of fees should be maintained in the INDOT project file.

1.1.6 Advertisements/Requests for Proposal (RFP) Announcements

INDOT publishes an 12 month list of anticipated professional services under “Doing Business with INDOT / Consultants / Proposals & Contracts / RFPs Currently Advertised” <http://www.in.gov/indot/2730.htm>. INDOT will also post RFPs on this website. RFPs are typically advertised on the second Tuesday of each month. Special RFPs will also be posted from time to time for more urgent contracting needs. The requests for proposals will describe the services to be contracted, compensation method to be used, schedule of deliverables,

prequalification categories required, special qualifications needed, the district/division responsible for the contract administration and due date for proposals. In the case of project specific services, project description information and the preliminary estimated construction cost will also be included.

1.1.7 Consultant Selection Process

INDOT shall select a consultant or team of consultants in accordance with the consultant selection process. For details of this process see Chapter 2 – Consultant Selection Process. INDOT will send a Notification Letter to the consultant within a week of official selection.

1.1.8 Scope of Services Meeting

INDOT should invite the selected consultant to attend a Scope of Services Meeting for all project specific and non-standard on-call contracts. The purpose of this meeting is to define in further detail the parameters of the project; what INDOT expects of the consultant; and to provide instruction regarding fee proposal requirements.

The Scope of Services Meeting will:

- Provide an opportunity for discussion and questions for the purpose of defining the scope of services as it relates to both parties to the contract. The services provided by the consultant will be incorporated into Appendix A of the consultant contract, and the information and services provided by INDOT will be incorporated into Appendix B of the consultant contract.
- Establish compensation method for the prime (lead) consultant and each of the sub consultants (negotiated labor rates, unit price or lump sum, etc.). The compensation method should be the same as noted in the RFP advertisement.
- Determine the schedule of deliverables, which will be incorporated into Appendix C of the consultant contract.
- INDOT shall require the consultant to provide a fee proposal within two weeks of the Scope of Services Meeting or at a time acceptable to both parties.
- The fee proposal must include a detailed breakdown of fees associated with various work items including personnel classifications, hours, hourly rates and direct non-salary costs (DNS). DNS costs may include: travel, meals, per diem, equipment rental, copying, mailing and telephone charges, etc. However, the DNS costs for travel reimbursement shall not exceed the limitations on travel expenses set out in the current State policy on travel reimbursement <http://www.in.gov/idoa/2459.htm> .

The consultant shall be required to prepare meeting minutes from the Scope of Services Meeting and distribute to attendees for comment.

If the Scope of Services meeting results in significant changes to the scope of services, INDOT shall revise the document accordingly. INDOT shall not permit significant changes in contract services beyond the purpose, phases or character described in the original RFP advertisement.

1.1.9 Fee Proposals

The selected consultant shall organize the fee proposal using the format specified in the Notification Letter. The consultant shall submit the fee proposal to INDOT by the time and date established at the Scope of Services Meeting. If the consultant fails to submit a timely fee proposal or if the proposal does not include the required information, INDOT reserves the right to discontinue the selection and move to the next highest ranked firm.

1.1.10 Fee Proposal Review

INDOT's fee proposal review shall include, but not be limited to the following:

- Verification of consultant and all subconsultants' prequalification status and insurance certificates, as applicable.
- Verification that the consultant is not on the federal debarment list.
- Confirmation that the proposed provisional overhead rates are consistent with current INDOT audit information as approved in the prequalification process.
- For hourly rate contracts, verification that the certified payroll documentation for the prime and sub consultants are submitted with an appropriate certification statement and signature. INDOT shall keep the consultant's salary/certified payroll information confidential.
- Verification of the accuracy of the calculated average hourly rates per classification.
- Comparison of the proposed hours and rates to other contracts for similar services.
- Review of direct non-salary costs, such as travel, supplies, equipment rental, etc.
- Confirmation that profit does not exceed the amount calculated from INDOT's profit matrix. Comparison of total proposed fee to RFP fee estimate prepared by INDOT.
- Review of hours, classifications and fees proposed for each task.
- Evaluation of fees in comparison to recent projects.
- Consultation with project manager and appropriate specialty area offices to review scope of services and level of effort, man hours and fees (for example environmental services, utility coordination, hydraulics, etc.).
- Internal peer review of the estimate and negotiation plan by an independent contract estimator before proceeding with negotiations.

1.1.11 Negotiations

INDOT may accept the proposal or negotiate with the consultant.

The points of negotiation may include, but not be limited to:

- Further definition of scope of services, project complexity & INDOT desire for creativity and added value
- Deliverables and Delivery schedule
- Commitment to project manager & other key personnel proposed in the LOI that the selection was based upon
- Appropriate personnel classifications for the required services
- Appropriate review time for INDOT

- Appropriate number and levels of staff
- Appropriate level of effort or personnel hours
- Appropriate direct non-salary costs
- Consideration of phased contracting when appropriate
- Quality control/quality assurance plan and expectations

General negotiation procedures are as follows:

- INDOT's first offer should be based on the initial negotiation plan and fee estimate.
- Attempt to complete negotiations within 14 calendar days after INDOT's first offer.
- Negotiations for complex projects or contracts should always involve at least one face-to-face meeting between the parties. INDOT Project managers should always be invited and encouraged to attend negotiation meetings.
- If negotiations for non-complex contracts do not succeed on the phone or via e-mail within 14 calendar days, then a face-to-face meeting with the consultant shall be scheduled to finalize negotiations.

If negotiation with the highest ranked consultant fails to result in an agreed upon fee, INDOT will notify that firm in writing of the termination of negotiations. INDOT will invite the next highest ranked consultant to a Scope of Services Meeting and then request that firm to submit a fee proposal. If negotiations again fail, the same procedure shall be followed with the next most qualified firm until a contract has been successfully negotiated. If negotiations with the top three firms are unsuccessful, the advertisement and selection phases will be repeated.

1.1.12 Selection Documentation

The consultant's Letter of Interest (LOI) and the INDOT's selection rating information will be considered public information upon approval of selection by the Commissioner and will be published on the INDOT internet website.

1.1.13 Contract Preparation and Signature Process

The Contract Administration staff prepares the draft contract and appendices and forwards the draft contract to the consultant for signature. Upon receipt of the contract from the consultant, the Contract Administration staff routes the contract for signature through INDOT, Indiana Department of Administration, State Budget Agency and the Attorney General's office.

1.1.14 Funding Process

Concurrent with contract preparation, the Contract Administration staff will prepare and submit a project funding request to the INDOT Division of Project Accounting, Budget & Procurement. When federal funds are involved the Finance Division will transmit a funds request to the Federal Highway Administration (FHWA) via the Federal Management Information System (FMIS) for approval. FHWA approvals are based upon existence of a project in the Statewide Transportation Improvement Program (STIP) and upon their reliance on INDOT's compliance with these approved procedures. The Finance Division will notify the Contract Administration Staff upon receipt of FHWA authorization and budget approval. Upon receipt of this approval the Contract Administration staff will process a Purchase Order (PO).

1.1.15 Notice to Proceed

The Contract Administration staff may issue notice to proceed upon receipt of a fully executed contract and PO. Any work performed prior to FHWA authorization is not eligible for federal reimbursement.

Chapter 2 Consultant Selection Process

This Chapter describes the procedures for seeking and selecting consultants for professional services contracts.

2.1.1 Standard Qualifications Based Selection Process

The Standard Qualifications Based Selection (QBS) Process is to be followed when procuring services that are required to be performed or approved by a person registered as an engineer or architect and when procuring services defined in the INDOT prequalification manual where those services are directly related to a construction project, unless the selection is made by means of an approved small purchase procedure (2.3.1) or approved as a sole source selection (2.4.1). The QBS process evaluates and ranks firms on the basis of qualifications and competence.

2.1.2 Request for Proposal Process

INDOT shall advertise RFPs seeking letters of interest (LOIs) from consultants for their services. RFPs will be posted on the INDOT Consultants website <http://www.in.gov/indot/2730.htm> and email notifications will be sent to interested consultants via the RFP Listserv.

RFP Items shall contain the following information as appropriate:

- Project Designation Number (DES).
- Description of the project including the location.
- Specific services and deliverables required.
- Prequalification categories required to provide the service.
- Approximate construction cost.
- Major work elements involved.
- Additional qualifications that will be considered in the selection process.
- Estimated date of notice to proceed.
- Time period in which the work must be completed.
- MBE/WBE or DBE participation goal.
- Score sheet to be used to evaluate LOI's.
- Instructions for submitting a LOI.
- Date and time that the LOIs are due.

The Disadvantaged Business Enterprise (DBE) program is applied to each consultant service contract that includes any direct or indirect federal funding. INDOT's Economic Opportunity Division (EOD) will review the planned services and associated items prior to advertisement to consider whether reasonable subcontracting opportunities exist. If appropriate, the EOD will assign a contract specific DBE goal to be included in the advertisement. Consultant services contracts that do not include federal participation will include applicable MBE/WBE goals as set annually by the Governor's Commission on Minority and Women Business Enterprises.

LOIs are submitted electronically via PSCS. PSCS verifies the prequalification status of prime and subconsultants for required prequalification categories via its prequalification application database. The consultant cannot successfully submit their LOI online via PSCS, unless all the item's prequalification requirements are assigned to a prequalified prime or subconsultant. PSCS will also not allow any LOIs to be electronically submitted after the advertised RFP deadline.

2.1.3 Review and Evaluation Process

Owner offices will identify a team leader for the scoring process for each item and 3 to 5 scoring team members that may include the team leader, if desired. The scorers should be those in the owner office or those in other INDOT offices with the most experience relevant to the advertised services. The scoring team for any RFP item that involves bridge inspection, bridge design or complex roadway design must include a representative identified by the applicable Director or Bridge Design or Director of Highway Design. Occasionally, when deemed necessary to obtain the best qualified scorers for a particular item, INDOT may invite non-INDOT personnel to participate.

Scoring team members are required to sign a Scorer's Agreement prior to scoring responses to an RFP. A copy of the Scorer's Agreement is attached as Exhibit 1.

Scoring team members are responsible for thoroughly reviewing LOIs and associated supporting documents. Each scorer then electronically rates and signs a score sheet for each firm via PSCS. The standard score sheet used for selections and the "Consultant Selection Rating Form Guidelines" are attached as Exhibit 2.

Scoring team scores are posted to a Team Lead Tabulation form as shown in Exhibit 3. Each team member's scores are ranked by firm and the team member ranks are then totaled. The preliminary firm ranking is based on rank totals with the lowest rank total being the highest ranked firm.

Once all scoring has been completed the team leader reviews the overall scoring and ranking. The team lead is responsible for investigating and explaining any scoring anomalies to the Selection Review Committee. Two scoring anomalies that will require explanation are: 1) negative scores among firms ranked for possible selection or alternate and 2) negative scores and low ranks from one scorer for a firm that is highly ranked by the other scorers. After the review is complete the team lead electronically signs the Team Lead Tabulation. The Team Lead Tabulation displays the ranking of firms from highest to the lowest qualified.

All signed score sheets and tabulation sheets are made available via PSCS to the Selection Review Committee (SRC), which makes the final recommendations regarding rankings and selection.

2.1.4 Selection Decision Making Process

INDOT has a standing Selection Review Committee whose role is to set business rules associated with the consultant selection process, make sure the consultant selection process is

followed, and to determine final selection recommendations for all advertised items. The committee is composed of the following members:

- Deputy Commissioner of Engineering and Asset Management
- Director of either Economic Opportunity or PreQualification, at the discretion of Chief Legal Counsel
- Two District Deputy Commissioners, at the discretion of the Deputy Commissioner of Operations
- Director of Project Management

The Consultant Services Section will provide the Affirmative Action Certifications submitted by high ranking firms to the Economic Opportunity Division for DBE/MBE/WBE compliance review. DBE requirements are covered in the DBE Program Guide.

The Consultant Services Section will compile prequalification capacity and contract balance information for the high ranked firms and prepare consultant workload reports in preparation for a Selection Review Committee meeting.

The Selection Review Committee will do the following to determine the final selection ranking recommendations:

- Review firm availability and determine Selection Review Committee Availability Adjustments. See Section 2.1.5.
- Determine actions for responses that do not comply with DBE/MBE/WBE requirements. Firms who have submitted clearly non-compliant responses may be eliminated from selection ranking. Firms who have submitted responses that demonstrate intent to comply but contain administrative errors may be allowed an opportunity to cure deficient information within a reasonable timeframe.
- Verify that recommended selections will not exceed a firm's prequalification capacity.
- Verify that a firm's key staff will not become overcommitted as a result of receiving multiple selections on the same RFP.
- Consult with the scoring team leader regarding any apparent scoring anomalies.
- Eliminate firms from the recommended selection or alternate list when there is significant concern about deficient performance or capacity.
- Insure Committee decisions are documented by the signatures of at least three members applied to the Tabulation Forms in PSCS. Explanation of firm eliminations is to be included in the signed Tabulation Form comment area and published to the INDOT website.
- The highest ranking selectable firms are approved as the recommended firm list in order from highest to lowest.

Selection Review Committee recommendations are made available via PSCS to the INDOT Commissioner for final selection approval. The Commissioner has the opportunity to approve the recommended selection ranking, to ask for clarification/additional information or to eliminate ranked firms with written explanation.

2.1.5 Selection Review Committee Availability Adjustment (SAA)

The Selection Review Committee will review workload documentation and recent selection information for the top five (5) ranked firms and for firms ranked within the top half of the number of submitting firms to consider each firm's availability to deliver the services required for a contract. The review will incorporate some information not available to the scoring team such as existing workload reports and concurrent selections. The Selection Review Committee will choose one of the following actions for each of the firms:

- +10 or +20 Firms with apparent availability that will result in added value to INDOT will receive 10 or 20 bonus points that will be added to the score totals of each scorer. Added value to INDOT could be in the form of the speed of services delivery or in the form of quality of service due to the availability of highly qualified personnel.
- +0 Firms with apparent availability to deliver contract services to meet the desired schedule with no added value will not receive an adjustment.
- E Firms with questionable resource availability to deliver contract services will be eliminated from selection consideration and a comment of explanation will be documented on the selection tabulation form.

After SAA determination is complete the firm scores will then be re-ranked accordingly for each scorer and the rank totals for each firm will be recomputed.

2.2.1 Other Professional Services Selection Process

Professional services that do not fit within the QBS definition described in section 2.1.1 above will follow the process outlined in subsections 2.1.2 through 2.1.5 above except that cost proposals will be requested during the RFP solicitation process and the selection scoresheet will be modified to provide for evaluation of the cost estimates. Non-QBS professional services may also be procured as provided for in 2.3.1.

2.3.1 Small Purchase Procedures

Selection of professional services firms for contracts with an estimated cost not exceeding \$75,000 may be accomplished using a simplified small purchase procedure. Use of this method is limited as follows:

- Selection for Architectural and Engineering (A&E) services is limited to firms certified as prequalified by INDOT.
- Only Lump Sum, Unit Price or Negotiated Labor Rate payment methods will be allowed.
- Services to be contracted may not be broken down into smaller components merely to permit the use of small purchase requirements.
- Contracts procured through this process may not be amended to increase the total to exceed \$100,000, except as approved by the INDOT Commissioner, and any balance in excess of \$150,000 will be funded with 100% State funds.

- Each contract shall have a discrete scope that will be used in the quotation process and be appended to the contract. Scopes of work must be specific, detailed, and include a schedule of deliverables.

Procedure

1. The owner office, after preparing a cost estimate and securing funding, shall solicit priced proposals from three (3) firms. For A&E services the firms must be from INDOT's list of prequalified firms and must be approved for worktypes applicable for the services. For non-A&E professional services, advertised services and prices from a catalog, advertisement, or internet site may be considered proposals.
2. If the services are to be funded with federal funding participation, a proposal shall be solicited from an Indiana certified DBE, if a firm with the requisite qualifications is available.
3. The owner office scores the firms using a score sheet similar to score sheets used for INDOT's standard selection process. Only one scoresheet per firm is required. The scoresheet must at minimum rate qualifications, approach to project and price.
4. Upon completion of the selection scoring process the scope of work, cost estimate, proposals and scoring documentation is to be routed through the applicable Deputy Commissioner to the Consultant Contracting Manager for preparation of a contract.

2.4.1 Sole Source Selection

The department may ask a specific consultant to submit a proposal without advertising the work in an RFP, if one or more of the following conditions exist:

- the project involves an emergency which will not permit the time necessary to issue an RFP, select a consultant, and negotiate a fee; or
- the service is available only from a single source; or
- after solicitation of a number of sources, competition is determined inadequate; or
- the project will be funded with 100% state funds and it is considered by the Commissioner to be in the best interest of the public.

Any sole-source selection requires the approval of the Commissioner and, if federal funds are to be used, the Federal Highway Administration. The requesting division will be responsible for documenting the reason(s) for using sole-source selection. Requests for sole source selection must be approved by the requesting division director and directed to the facilitator of the Selection Review Committee for consideration and recommendation to the Commissioner.

Contracts executed pursuant to sole-source selections may not be amended to include additional services without further approval of a sole-source selection for the amendment following the same procedures noted above.

2.5.1 Two-Step Selection Process

The Two-Step Selection Process is a specific option of the standard process (section 2.1.1) and intended for use on larger, more complex projects for which a more informed selection decision

can be made based on a more extensive technical proposal and interview process. This process should be used when INDOT decides that the additional detail will add significant benefit in the selection decision-making process. In addition, for projects requiring an Environmental Impact Statement, the FHWA will be consulted as to usage of this process.

Details of the two-step process are as follows:

Step 1

Letters of Interest will be scored independently by a 3 to 5 member “technical” evaluation committee using the Technical Selection Rating Form. The standard score sheet used for the “Technical Approach” evaluation is attached as Exhibit 4. Individual score totals will then be tabulated and ranked as in the normal one step process. The Selection Review Committee will review the DBE review recommendations from the EEO Division, verify capacity compliance and determine SAA adjustments. The top three (3) ranked teams satisfactorily passing compliance checks will be recommended to the Commissioner to participate in interviews.

Step 2

The Project Manager of the lead firm from each of the selected teams will be asked to lead in presenting their project approach to an interview team that includes a 3 to 5 member “business approach” evaluation committee. The “business approach” evaluation committee will not include any of the members of the original “technical” evaluation committee. Each of the members of the business approach committee will be supplied with copies of the Letters of Interest from the selected teams at least one week in advance of the scheduled interviews.

Interviews will be scheduled at least two weeks after the initial scoring results are reviewed and approved; and the selection list published on the INDOT website. Interviews will include an allotted time period for team presentations and a time period for questions from the evaluation committee. The details of the time, place, durations, etc. will be given to the finalists immediately following selection announcement. Selected consultants will be required to provide a one-page summary of credentials documenting why their team is the best to deliver this project. These summaries will be distributed immediately prior to the interviews.

Two to Three members of the original technical evaluation committee will be present during interviews to communicate technical approach observations to the business approach committee. Opportunities for discussion among the business committee and technical committee members present will be provided during an intermission in each interview between team presentations and questions and answers and subsequent to the conclusion of each interview.

Following the interviews the “business approach” evaluation committee will independently score the interviewed teams using the Business Approach Selection Rating Form. The standard “Business Approach” Scoresheet is attached as Exhibit 5. Scoring will be based on both the initial letter of interest submittals and on the additional information conveyed during the interviews. Individual score totals from the business approach scoring form will be tabulated and ranked and the completed scoring documentation will be forwarded to the Selection Review Committee for final compliance review. SAA adjustments will not be applied to the second round scores. The recommended firms in ranked order will then be forwarded to the INDOT

Commissioner for acceptance or rejection of the selection (Section 2.1.4).

Chapter 3 Contract Compensation

3.1 Compensation Methods

The compensation method for a contract is typically determined during development of RFP item advertisements. The owner office will identify the preferred method, which will be reviewed by the Contract Administration Division prior to RFP advertisement.

3.1.1 Cost Plus Fixed Fee

Cost plus fixed fee is a payment method whereby the consultant is reimbursed actual costs on a project, plus paid a specific fixed fee for performing the work. Assuming that there is no change in the scope of services, the fixed fee does not vary even though the actual cost will vary. The fixed fee may, however, be adjusted in a contract modification if substantial changes occur to the scope of services. Because the consultant is reimbursed for actual costs this method provides low risk to the consultant and is suitable for situations where the required level of effort cannot be well defined. This payment method is not suitable for on-call type contracts whereby work is assigned on an as-needed basis or for construction inspection contracts.

The fixed fee amount is not to exceed 15% of the estimated labor and overhead costs.

Progress payments with this method are computed using a provisional overhead rate based upon the most recently audited rate that is accepted by INDOT. Final compensation is determined by actual audited and accepted overhead rates for the billing periods, which are determined subsequent to the close of the consultant's fiscal years. Progress payment adjustments are to be made upon issuance of accepted overhead rates and a final audit is required when the work is completed. A Federal Acquisition Regulation (FAR) auditable accounting system is essential for this type of contract. (An auditable accounting system requires that the consultant have a job system which consistently and appropriately separates, accumulates and allocates costs as direct and indirect.) Consultants prequalified for more than \$250,000 of annual work can be expected to have such a system.

3.1.2 Cost Plus % of Cost

This payment method is not allowed pursuant to IC 5-22-17-1 and 23 CFR Part 172.5(c).

3.1.3 Negotiated Labor Rate Multiplier

Labor rate multiplier is a payment method whereby the consultant is reimbursed actual costs on a project, plus compensated for overhead and profit on the basis of a negotiated multiplier applied to direct salary cost plus direct non-salary costs. This payment method is suitable for on-call type contracts whereby work is assigned on an as-needed basis and for situations where the required level of effort cannot be well defined.

A final audit will be necessary with this method at the completion of the contract to verify billed labor rates, hours and compliance of direct expense billings with INDOT policies.

3.1.4 Lump Sum

Lump sum is a payment method whereby a consultant is paid a specified sum of money for a specific service in the contract. With this payment method the compensation is not subject to any adjustment due to cost changes that the consultant encounters in performance of the work unless substantive changes occur in the scope of services. Because the consultant assumes full responsibility in the form of profits or losses, this method provides a maximum incentive for effective cost control in contract performance. This type of payment method imposes the minimum administrative burden on both the consultant and the department. The lump sum payment method is suitable only with a well defined scope of services and well understood level of effort.

3.1.5 Negotiated Labor Rate

Negotiated labor rate, sometimes referred to as loaded labor rate, is a payment method whereby the consultant is paid based upon a specified hourly rate per personnel classification plus direct non-salary costs. The negotiated rates take into account the consultant's overhead rate and profit. This payment method is suitable for on-call type contracts whereby work is assigned on an as-needed basis and for situations where the required level of effort cannot be well defined.

A final audit will be necessary with this method to compare billed hours and labor classes against time sheets and to verify compliance of direct expense billings with INDOT policies.

3.1.6 Unit Price

Unit price is a payment method whereby the consultant is paid based on specified fixed prices for described units of work. This payment method is suitable for situations whereby typical work units may be reasonably well defined but the quantity of units is unknown. This method can be used for on-call type contracts. Examples of services typically paid for using the unit price method are: geotechnical services, real estate services and sub-surface utility engineering services.

This compensation method can be used when an adequate cost history is available for use in estimating and negotiating reasonable unit prices. These agreements must clearly identify what work is covered by the unit prices and any direct costs that are to be paid separately.

3.2 Profit

Profit is calculated as a percentage of the total of the direct labor costs and indirect overhead costs.

The prime consultant is not allowed profit on the work performed by subconsultants as this would constitute two (2) firms profiting from the same work. The prime consultant is, however, allowed profit for his direct project billable labor in administering the subconsultant contract. The profit rate allowed for INDOT contracting is determined according to the matrix shown in Exhibit 6.

3.3 Facilities Capital Cost of Money

Facilities capital cost of money is an imputed cost related to an engineering consultant's investment in fixed assets/facilities used in contract performance. [Reference: FAR 31.205-10, CAS 414, FAR 15.404-4] Consultants with audit approved facilities capital cost of money

(FCCM) rates may request and shall be allowed to incorporate the rates into cost plus fixed fee contracts or into negotiation of negotiated labor rate multiplier, lump sum, negotiated labor rate or unit price contracts if included in the original fee proposal.

Chapter 4 Contract Administration

4.1 Invoice Review

Invoices are to be submitted to the owner office at a frequency defined in the contract. Invoices and supporting documents are reviewed and approved by the project manager and/or contract owner. The level of review required is dependent upon the contract compensation mechanism. For example, lump sum requires less review than cost plus. Once the invoices are approved, the information is entered into Encompass (State accounting system) for payment. It is recommended that PSCS be used by owner offices for invoice tracking.

4.1.1 Lump Sum Contract Invoice Review

Lump sum contract invoices are based on the percentage of work complete. The project manager is responsible for verifying that the percentage shown on the invoice does not exceed the percentage of work complete.

Lump sum project development services typically use a pre-determined status reporting form. The form provides estimated completion percentages for various project milestones. Consultants should not be allowed to invoice for activities beyond the next milestone.

4.1.2 Unit Price Contract Invoice Review

Unit price contract invoices are based on the completion of units of work defined in the contract. The project manager is responsible for verifying that units invoiced correspond with units of work completed.

4.1.3 Negotiated Labor Rate Contract Invoice Review

Negotiated labor rate contract invoices are based on the hours of work expended by consultant personnel multiplied by the contract approved personnel classification labor rates. These contracts also allow billing for approved direct expenses attributable to a project. The project manager is responsible for reviewing the invoice to verify that hours and direct expenses billed for the time period are commensurate with the services being performed during the billing period. The project manager or other assigned contract administrator should also check to verify that the classification rates match those approved in the contract and that any travel cost rates do not exceed the State Travel Policy allowed rates.

4.1.4 Cost Plus Fixed Fee Contract Invoice Review

Cost plus fixed fee contract invoices are based on the hours of work expended by consultant personnel, plus an indirect cost additive based on a consultant's approved overhead rate plus a portion of the contract fixed fee amount based on the estimated percentage of work complete. These contracts also allow billing for approved direct expenses attributable to a project. The project manager is responsible for reviewing the invoice to verify that hours and direct expenses billed for the time period are commensurate with the services being performed and that the portion of the fixed fee being billed is not beyond the applicable percentage of completion. The project manager or other assigned contract administrator should also check to verify that the overhead rate matches the most recent approved provisional rate for prequalification and that any

travel cost rates do not exceed the State Travel Policy allowed rates.

4.2 Closeout Process for Purchase Orders (PO) and Contracts

4.2.1 PO Closeouts

- Once the final invoice has been paid, to the mutual satisfaction of both INDOT and the consultant, the PO will be closed in both Encompass and PSCS, as follows:
 - If the PO balance is \$0.00, Encompass automatically closes the PO.
 - If the PO balance is greater than \$0.00, the owner office notifies the Finance Procurement Section to close the PO in Encompass.
 - Once the PO has been closed in Encompass, the owner office closes the PO in PSCS.
- If the PO utilized hourly compensation for any services, the owner office is to provide copies of the PO, invoices and pertinent supporting documents to the INDOT Division of Cost Accounting and Audits for an audit. The documentation required for audit is noted below:
 - A copy of the Original contract and all subsequent contract amendments.
 - A copy of the full SPMS project listing, showing the Federal Highway Administration authorization indicated for the appropriate phase.
 - A copy of the NTP letters including subconsultant authorization.
 - Copies of the PO, invoices, invoice supporting documents and a spreadsheet of the payment history.
 - Invoice supporting documents include: time documents, expense reports, mileage record/log, invoices for subconsultants and equipment rental.
 - Copies of subconsultant authorizations issued after the NTP.
- The Division of Cost Accounting and Audits will perform the PO audit and resolve any cost discrepancies with the consultant firm. They will subsequently notify the owner office of the final resolved cost of the services.
- Upon notification of resolution of the final PO costs, the owner office then adds the audit complete date in the PO detailscomment area in PSCS.
- All the PO, invoice information and audit documentation is retained by the owner office with other project files until the contract has been closed and the retention period has expired (See 4.2.2).

4.2.2 Contract Closeout

- The contract is considered closed once all contract work has been completed and approved by the project manager, the final invoice has been paid, and all PO(s) have been closed and audited if required. (See 4.2.1)
- The owner office shall notify Project Accounting of final contract payment amounts so that projects can be closed out promptly in FMIS.

- Contract documents are to be retained in accordance with the Indiana Commission on Public Records' General Record Retention and Disposition Schedule. This schedule is available on the Indiana Commission on Public Records website. The documentation required for retention is noted below:
 - The Contract Administration Division's Document Control Section retains the original contract and all subsequent contract amendments.
 - The owner office retains a copy of the full SPMS project listing, showing the Federal Highway Administration authorization indicated for the appropriate phase(s).
 - Owner office will retain notice to proceed (NTP) letters.
 - The owner office retains copies of the PO, invoices, invoice supporting documents and a spreadsheet of the payment history.
 - Invoice supporting documents include: time documents, expense reports, mileage record/log, invoices for subconsultants and equipment rental
 - Owner office retains copies of subconsultant authorizations issued after the NTP.
- The owner office will enter the contract closed date and any pertinent comments in PSCS.

4.3 Consultant Performance Evaluations

INDOT will evaluate the performance of consultants in accordance with the INDOT Consultant Rating Guidelines. This data is used for quality assurance during the performance of contract services and is used to score future LOIs as noted on the score sheet in Exhibit 2.

4.4 Non-Performance

INDOT consultant contracts generally provide consultants with a 30 day notice to correct any performance deficiencies prior to contract termination. The project manager is responsible for promptly recognizing substandard performance and the contract owner office is responsible for putting the consultant on notice of default.

- The owner office should serve notice of default to a consultant at any point that the consultant is 30 or more days behind the contract schedule or at any point when a consultant has made a second submittal of a deliverable that is of substandard quality
- The notice of default should be initiated by verbal contact to the consultant president or principal in charge as identified by the consultant's prequalification submittal. The conversation must be followed up by a formal letter documenting the conversation, the deficiencies in detail, and reiterating the requirements that must be met.
- The formal letter notice shall provide a deadline date, 30 days from the notification date, upon which termination will occur unless remedy is provided satisfactorily.
- The formal letter shall be sent by US Mail and should also be transmitted as an e-mail attachment to the principal with a copy to the consultant's project manager, INDOT project manager's division director, INDOT prequalification engineer and to the Central Office Contracts Manager.
- The INDOT project manager shall notify the Central Office Contracts Manager within one week of the passing of the remedy deadline documenting the project manager's satisfaction or dissatisfaction with the consultant's corrective performance. A copy of the

notification shall be sent to the INDOT project manager's division director, the consultant president or principal in charge and consultant's project manager. The notification should include a recommendation regarding whether or not the contract should be terminated.

- The Central Office Contracts Manager will bring the termination recommendation to the attention of the Selection Review Committee (SRC). The SRC will review the documentation and if termination is confirmed, the SRC will direct the Central Office Contracts Manager to issue notice of termination.
- The INDOT project manager or Central Office Contracts Manager may recommend action to INDOT's Prequalification Committee for the consultant's non-performance.

4.5 Assignments to On-Call Contracts

In making assignments to on-call contracts, a prequalified consultant will have already been selected, with hourly rates established in the contract. Assignments to on-call contracts will be made in the following manner:

- The contract owner office determines: need, scope of services, estimate of fee, availability of funds, and project authorization in SPMS.
- If Federal funds will be utilized, the owner office shall verify that the appropriate phase of the project is in the STIP and determine the Federal/State funding split.
- The owner office selects an on-call contract for the assignment based on the services required, the expiration date of the contract and the remaining capacity in the contract.
- A request for a fee proposal, with relevant project information and scope of services required, is sent by the owner office to the consultant.
- The consultant's proposed fee is reviewed based on INDOT's fee estimate, followed by acceptance or negotiation. If negotiation fails, the request for a fee proposal is cancelled and another on-call contract selected.

Once an acceptable not-to-exceed fee amount has been agreed upon, the project funding will be submitted by the owner office via PSCS. This will prompt the Project Accounting Section to set-up project funding and initiate any needed FMIS requests. Once the funding is approved then the owner office will submit a Work Order Request in PSCS. Once the Purchase Order is issued, a Notice to Proceed with schedule of deliverables is sent by the owner office to the consultant for the assignment. The available balance of an on-call contract is reduced at the point when a PO is issued. Contract balances are maintained in PSCS.

An assignment may be terminated by the owner office with a Termination Notice to the consultant. The consultant must submit within 15 days all work completed by the date of termination to the owner office.

Chapter 5 Contract Amendments

5.1.1 Initiation

Amendments to Contracts may be initiated through one of two processes as follows:

- INDOT may request a proposal for an amendment from a consultant specifying that additional services are to be performed. These requests should be made by the project manager and should clearly state the scope of the additional services requested. If additional clarification is needed, INDOT may arrange a scope of services meeting.
- A consultant may, when they believe the scope of the contract will be exceeded, submit a proposal for an amendment to the INDOT project manager with a detailed explanation. The consultant must not exceed the original scope until additional work has been included in a fully executed contract. The INDOT project manager will process the request, or return the proposal to the consultant with an explanation of INDOT's denial for further processing. When specifically requested by the consultant, the project manager must forward a proposal for modification to the Consultant Services Section to address any unresolved disputes regarding the need for or extent of the alleged additional services.

5.1.2 Evaluation of Contract Amendment Requests

Contract amendment requests are to be reviewed first by the INDOT project manager. The project manager is to verify the proposed modification is not covered by the original scope and fee, to verify the modification is warranted and then to evaluate the validity of the proposed hours and costs. When the project manager is satisfied that a modification is warranted and that the proposed scope and fee proposal is acceptable, the project manager shall upload the proposal, along with recommendations, into PSCS for review and further processing by the Central Office Consultant Services Section.

5.1.3 Approval of the Fee and Contract Processing

INDOT Consultant Services Section shall accept the proposed fee or negotiate a fee acceptable to both parties. Following acceptance of the fee the Central Office Consultant Services Section will process the contract amendment and authorize the consultant to proceed. Work shall not be performed for the additional services until a project funding request has been submitted, FMIS modified, PO created and notice to proceed issued.

5.2 Business Rules

Significant changes in contract services beyond the purpose, phases or character described in the original RFP advertisement cannot be included in or added to a contract.

5.2.1 On-Call Contracts

Assignments shall only be made with the expectation that they can be completed within the contract term and balance. However, on-call contracts may be amended to add time or funds needed to complete previous assignments due to unexpected scope changes.

Chapter 6 Consultant Errors & Omissions

6.1 Introduction

The Indiana Department of Transportation (INDOT) enters in good faith into contracts with Consultants to provide professional services to deliver transportation projects. Deliverables of these contracts include but are not limited to environmental documents and studies, right-of-way acquisition, construction plans and contract documents.

INDOT expects Consultants to deliver technical accuracy and quality work; however, project *errors and/or omissions* (E&O) and intentional acts may occur. Some E&O may be within an acceptable level of care while others are not. Depending on their significance, E&O may result in increased design, construction, and maintenance costs thereby affecting INDOT's ability to deliver projects on time and within budget. As a result, INDOT prioritizes controlling E&O and recovering from E&O that occur.

INDOT's treatment of an E&O may depend on when the E&O is discovered. INDOT and the Consultant typically resolve an E&O discovered during a pre-construction conference more quickly and at a lower cost than one discovered during construction and at a major point in the project's critical path. The Consultant should correct an E&O identified prior to project construction at the Consultant's expense with no additional cost to INDOT if the E&O is caused by the Consultant's Negligence as defined herein. When an E&O is identified during construction, INDOT emphasizes finding a solution to correct the E&O as quickly as possible to avoid or minimize construction delays. In most cases, finding an early solution to the E&O will reduce costs resulting from the E&O. Although finding a solution is the most immediate concern, INDOT may seek to recover costs due to the E&O after the solution is found.

Resolving an E&O discovered during construction may require a change to the original construction contract. Modifying the original contract not only adds to a project's cost but also places an administrative burden on INDOT.

This chapter provides guidance on how INDOT will evaluate a potential E&O and seek to recover costs attributed to an E&O. Notwithstanding the procedures outlined in this chapter, INDOT reserves the right to determine whether an E&O affects a Consultant's ability to perform work on future INDOT contracts.

This chapter applies to Consultant contract services where E&O may have occurred. INDOT staff can contact the Office of Contract Administration regarding questions about the contract or these procedures.

6.2 Objective

To set forth a consistent procedure for INDOT staff to process and document contract E&O.

To present clear guidelines for recovering premium costs to a project or damages to INDOT that may be attributable to contract document E&O.

6.3 Standard Definitions

Consultant: The person, firm, entity or professional corporation under contract with INDOT to

provide professional design and other such professional services to INDOT.

Engineer of Record (EOR): The Indiana professional engineer who is responsible for the preparation, signing, dating, sealing, and issuing of engineering documents. If the professional engineer who was responsible for the documents has left the Consultant under contract with INDOT, the Consultant will assign another professional engineer to serve as the EOR.

Errors: Plan or specification details or other contracted services that are incorrect, conflicting, insufficient, or ambiguous.

E&O: Means Errors and/or Omissions as described herein,

Negligence: The failure to meet the “Standard of Care” that a professional would ordinarily exercise under similar circumstances or, if applicable, failure to meet the “Standard of Care” with respect to any skill, competency or duty Consultant represents it has or will discharge in its contract with INDOT.

Omissions: Cases in which the plans, specifications, or other contracted services are silent on an issue that should otherwise be addressed in the documents.

Premium Cost: The additional cost of a construction contract change that would not have been incurred if the work had been included in the original contract. More specifically, premium costs are dollar amounts paid for non-value added work that is required to correct a Consultant’s E&O. Non-value added work includes, but is not limited to, delays, inefficiencies, rework, or extra work as shown below, other than costs caused by the contractor and/or his subcontractors or suppliers or by other parties not under the control of the Consultant. Non-value added work can occur in three distinct situations:

- 1) Work delays or inefficiencies. The premium costs are costs INDOT paid or will pay to the contractor for delays or inefficiency damages caused by E&O.
- 2) Rework. The premium costs are the dollar amount of the original items of work that have to be removed and the costs to remove these items.
- 3) Extra Work. The premium costs are the net difference between the final prices INDOT agrees to pay to the contractor and the cost INDOT would have incurred had the extra work been included in the original bid at letting.

Project Engineer/Supervisor (PE/S): The INDOT or certified LPA construction personnel responsible for oversight of construction contract services.

Project Manager (PM): The INDOT or LPA Employee in Responsible Charge (ERC) responsible for oversight of project development services.

Solution: An appropriate course of action to resolve project issues.

Standard of Care: The Consultant shall perform all services in accordance with the degree of skill and care ordinarily used by competent professionals of the same discipline, providing services of a similar nature.

6.4 Discovery, Development of a Project Solution and Notification

To establish the appropriate lines of communication, the PM and EOR (or their representatives) shall attend the project's pre-construction conference. Compensation of the EOR for attendance at the pre-construction conference through post-design services will be in accordance with the Consultant Contract. When necessary, the PE/S shall coordinate with the PM and EOR for their participation in project meetings. INDOT shall compensate the EOR for attendance at project meetings through post-design services unless INDOT determines through the process outlined in this Chapter that the meetings resulted from an E&O due to Consultant's Negligence.

Upon discovery of a potential E&O, the PE/S shall advise the PM of the specific project problems. The PM then must promptly notify the EOR of the potential E&O. The EOR must acknowledge receipt of the PM notification within one business day. With this acknowledgement, the EOR must develop a potential Solution or define a timeframe to expeditiously develop a Solution.

The PM, with input from the EOR, may be able to clarify the project problems by reviewing the plans and specifications, the EOR's original scope of work, and any specific requirements that INDOT imposed on the EOR. The EOR typically provides revised drawings, calculations, and specification changes as the Solution. The EOR may not bill the costs it incurs for site visits and additional engineering services as post-design services when these visits or services are caused by a potential E&O. The EOR shall track such costs separately for potential compensation, which will be evaluated in the E&O Assessment phase.

After consultation with the PE/S and the EOR, the PM will determine the Solution to be used to address problems on the project. The PE/S will track the costs of the proposed Solution, and the EOR will track any of its costs associated with the proposed Solution. The PE/S will negotiate any additional cost and time required to implement the Solution with the construction contractor. The PE/S will document any project issue Solution through a change order with the construction contractor and provide a copy to the PM and EOR. If not included in the change order, the PE/S will provide the PM with a summary of all costs associated with the Solution. Along with a copy of the change order, the PM will provide the EOR with notification (substantially in the form of Exhibit 1 – Early Notification Letter) if the project problem appears to have been caused by an E&O due to Consultant's Negligence. The EOR will acknowledge receipt of such notice within one business day.

Unless otherwise noted, all notifications and acknowledgments of receipt between the PM and the EOR as described in Section 6.4 of this Chapter may be verbal; however, the PM and EOR must follow these verbal communications with an email or written documentation.

6.5 Assessment

When the project problems appear to have been caused by an E&O, the PM must review the Consultant's scope of work, project specific information provided to the Consultant, any INDOT instructions and policies, any specific contract language and any other information (including the professional engineering standards in effect when the contract was executed) the PM might consider to be relevant to better determine the Consultant's responsibility for the possible E&O. The PM also will consider the costs to INDOT caused by the potential E&O. The PM may consult with other INDOT personnel, such as the PE/S, subject matter experts and the Legal Services Division, to assist in evaluating potential Consultant Negligence and the likelihood for recovery of damages. The PM will make an initial written determination of whether an E&O

occurred due to the Consultant's Negligence and what, if any, premium costs INDOT seeks to recover from the Consultant.

The PM must provide the EOR with written notification if INDOT seeks to recover costs from the Consultant for the E&O (Exhibit 1 – Early Notification Letter). The notification will include a copy of the PM's written determination that an E&O occurred, that it was a result of Consultant Negligence and what, if any, premium costs INDOT seeks to recover from the Consultant. The PM's notification also will provide the Consultant and its representatives an opportunity to attend an Assessment Review Meeting with the PM. The EOR shall acknowledge receipt of the PM's notification letter in writing within three (3) business days of its receipt and indicate whether it is requesting an Assessment Review Meeting with the PM. If the EOR does not request an Assessment Review Meeting in its acknowledgment letter, INDOT will consider the opportunity to request a meeting waived. Regardless of whether the EOR requests an Assessment Review Meeting and the outcome of such a meeting, the EOR may request a Staff Review in accordance with Section 6.7 of this chapter.

If the EOR requests an Assessment Review Meeting, the PM will schedule a meeting before taking further action on the potential E&O. At the meeting, the PM will report to the Consultant its findings, including the premium costs and assessment of responsibility. The PM will provide the Consultant an opportunity to respond to the findings during this meeting, including its evaluation of the associated costs of the Solution by the EOR. The PM may choose to alter its original written determination and issue a new determination based on the discussions at the Assessment Review Meeting. The PM will follow up this meeting with a letter summarizing the discussion, providing the options available to the Consultant, and giving the Consultant fifteen (15) calendar days to respond. The Consultant shall respond in writing within fifteen (15) calendar days of receipt of the PM's letter with concurrence of the assessment findings in the letter or request a Staff Review meeting as described in Section 6.7 of this Chapter.

6.6 Recovery

INDOT's policy is to pursue the recovery of any premium costs that are the result of Consultant E&O; however, the extent of INDOT's recovery effort may be guided by the anticipated recovery amount and the likelihood of a successful recovery effort. If at any point in the process, INDOT decides not to pursue recovery, the PM shall document the decision in the project file and notify the EOR.

The Consultant may, as a result of early notification, accept responsibility for E&O and offer to settle with INDOT. In these instances, the PM will initiate a request to the Legal Services Division, in consultation with the applicable Production Management Division Director and Contract Administration Division, to prepare a settlement agreement and release of claims should INDOT decide to accept the settlement terms. The PM and Contract Administration Division will process the agreement for execution.

If the PM and the Consultant agree that a Consultant E&O exists and that a certain cost amount is due to INDOT, then the PM will notify INDOT's Accounting Division to begin Collection under Section 6.8 of this Chapter.

6.7 Staff Review

If the Consultant disagrees with the decision of INDOT's PM after the Assessment Review Meeting or after waiving its opportunity for an Assessment Review Meeting, then the Consultant can submit a request for a Staff Review. To request a Staff Review, the Consultant must prepare

and submit a written summary of the issues to INDOT's Chief Legal Counsel within fifteen (15) calendar days of either: 1.) the PM's early notification letter if the EOR chooses not to request an Assessment Review Meeting; or 2.) the PM's letter following the Assessment Review Meeting. At a minimum, the summary must include a description of the alleged E&O, an assessment of the responsibility for the alleged E&O, and an assessment of cost attributable to the alleged E&O, if any.

INDOT's Legal Division will oversee and facilitate the Staff Review process. After receiving a request for a Staff Review meeting, INDOT's Legal Division will notify the PM of the request and schedule a Staff Review meeting for the Consultant Staff Review Team to consider the issues. The Staff Review meeting must be scheduled within thirty (30) calendar days of receipt of the Consultant's request for a Staff Review meeting, unless the parties agree otherwise. The Staff Review notification letter will provide the PM with an opportunity to respond in writing to the Consultant's request for a Staff Review meeting. The Legal Division's notice to the PM must give the PM at least fifteen (15) calendar days to provide a written response to the Consultant's request for a Staff Review meeting.

INDOT's Legal Division will copy the PM on the Staff Review Meeting notification letter, and the PM must notify the Consultant Selection Committee that there is an Outstanding Unresolved Agreement Dispute. The Consultant Selection Committee shall consider its notification from the PM as Day 1 of the Dispute for purposes of selection scoring. The PM also will notify the Chair of INDOT's Prequalification Committee of the pending review. Any action taken by the Prequalification Committee will follow applicable rules and policies governing the Committee.

The following three offices will appoint one individual each to serve on the Staff Review Team: INDOT's Chief Legal Counsel, INDOT's Deputy Commissioner for Highway Management, and INDOT's Deputy Commissioner for District Operations. Team members will be appointed on a case by case basis. The members appointed to the Staff Review Team should not have had involvement in the possible E&O at issue prior to the start of the Staff Review process.

At the date and time specified by INDOT's Legal Division, the Staff Review Team will hold a review meeting to consider the issues. The Team will review the PM's decision and may consider any new information brought before it by either the Consultant or the INDOT PM. At a minimum, the Team will review the written request for a Staff Review meeting, the response to the request by the PM, any related construction change order, and prior written notifications outlined in this Chapter. At the Staff Review meeting, both parties will have an opportunity to be heard by the Staff Review Team.

The Team will make a recommendation to the Commissioner on whether an E&O occurred, to what extent the Consultant's Negligence is responsible for an E&O and what the Consultant owes to INDOT for corresponding premium costs, if applicable. The Team must submit a recommendation to the Commissioner within fifteen (15) calendar days of the Staff Review Team meeting. The Commissioner will review the Team's recommendation and make a decision with respect to some or all the matters involved. The Legal Services Division will provide the Consultant, the PM and the appropriate INDOT Division or District Director a copy of the Commissioner's decision.

The Legal Services Division will send the EOR a letter notifying the EOR of INDOT's intent to pursue recovery if applicable under the Commissioner's decision. The Legal Services Division also will inform INDOT's Accounting Division of the Commissioner's decision. If appropriate

the Accounting Division will invoice the Consultant per the Commissioner's decision. If the Consultant does not remit payment within thirty (30) calendar days of receipt of the invoices, INDOT may pursue further action.

If the Consultant decides not to pursue the Staff Review at any point, if the Staff Review Team finds no responsibility for the E&O on the part of the Consultant, or if the Consultant elects not to appeal the Commissioner's decision, the PM shall immediately notify the Consultant Selection Committee and request that the Committee remove the Consultant's Outstanding Unresolved Agreement Dispute status. The effective date of such removal shall be the date of notification.

6.8 Collection

The PM shall copy the Director of the Contract Administration Division on all notification letters involving possible E&O. The Contract Administration Division will maintain a database of identified E&O along with record of the final disposition of each, including disposition on appeal by Consultant, if applicable. The Accounting Division will invoice the Consultant for the amount indicated in the Commissioner's order if applicable or for the amount agreed upon by INDOT and the Consultant in a settlement agreement if applicable. The Accounting Division will notify Project Finance of any collections on federal-aid projects. INDOT will include any costs associated with post letting work attributed to the E&O that has been paid to the Consultant in the invoiced amount for reimbursement. The Consultant will reimburse the State within thirty calendar days.

6.9 Enlargement of Time

INDOT in its sole discretion either at the request of the Consultant or on its own initiation may extend any time period or deadline identified in this Chapter 6.

6.10 Commissioner's Authority not Waived/Failure to Participate

This Chapter 6 describes an INDOT process to address potential or actual E&Os by a Consultant to reduce delay and eliminate, reduce or recover any costs to the taxpayers. This Chapter 6 in no manner diminishes the Commissioner of INDOT's authority or ability to act granted by Indiana or other law. Should a Consultant elect not to or fail to participate in this Chapter 6 process, the appropriate INDOT staff will draft a recommendation to the Commissioner for his decision, with a copy to INDOT Legal.

Exhibit 1

Selection Scorer Agreement

The primary purpose of scoring for this RFP is to identify the best firm for each item for the scope of services advertised. It is the responsibility of INDOT scorers to make every effort to identify the firm most capable of producing the highest quality deliverables in a timely and cost effective manner without regard to personal preference. Historical performance data and references should be sought out and applied to the maximum extent necessary to make the best professional judgment possible.

All information contained in Letters of Interest, scoring documents, and scoring tabulation's, including the names of the scoring team, consultant ranking and shortlist information is to be considered confidential until such time as all associated contracts with an item are executed and the information is published for public viewing. Divulging details regarding the above confidential information will result in discipline and may result in dismissal.

IC 4-2-6-9 prohibits state employees from participating in decision making in certain circumstances such as those in which the employee or a family member would have a potential financial interest in the outcome. Scorer's shall abide by the ethical requirements set forth in IC 4-2-6-9.

All scoring documents will be published to the internet for public information upon execution, approval and awarding of the contracts. This scoring documentation will then become important information to the submitting consultants for obtaining feedback on their Letters of Interest regarding INDOT's evaluation of their qualifications, past performance and capabilities. The consultants will be relying on your scoring to focus their improvement activities.

Accurate evaluation without regard to personal relationships is a must to obtain the improvement in performance desired by INDOT and the consultant.

I have read this document prior to scoring the Letters of Interest for RFP _____ and I understand the importance of using due diligence in determining scores for each Letter of Interest associated with the items that I will be scoring and I understand the confidential nature of the information and materials.

Signed: _____

Printed Name: _____

Date: _____

Exhibit 2 – Standard Selection Scoresheet

Exhibit A, this form will be used by INDOT to evaluate and score the submitted Lol's.

Selection Rating for RFP - No. _____, Item No. _____

Consultant Name: _____

Services Description: _____

Evaluation Criteria to be Rated by Scorers						
Category	Scoring Criteria	Scale	Score	Weight	Weighted Score	
Capacity of Team to do Work	Evaluation of the team's personnel and equipment to perform the project on time.			20		
	Availability of more than adequate capacity that results in added value to INDOT.	1				
	Adequate capacity to meet the schedule.	0				
	Insufficient available capacity to meet the schedule.	-3				
Team's Demonstrated Qualifications	Technical expertise: Unique Resources & Equipment that yield a relevant added value or efficiency to the deliverable.			15		
	Demonstrated outstanding expertise and resources identified for required services for value added benefit.	2				
	Demonstrated high level of expertise and resources identified for required services for value added benefit.	1				
	Expertise and resources at appropriate level.	0				
	Insufficient expertise and/or resources.	-3				
Project Manager	Rating or predicted ability to manage the project, based on: experience in size, complexity, type, subs, documentation skills.			20		
	Demonstrated outstanding experience in similar type and complexity.	2				
	Demonstrated high level of experience in similar type and complexity.	1				
	Experience in similar type and complexity shown in resume.	0				
	Experience in different type or lower experience.	-1				
	Insufficient experience.	-3				
Approach to Project	Understanding and Innovation that gives INDOT cost and/or time savings.			15		
	High level of understanding and viable innovative ideas proposed.	2				
	High level of understanding of the project.	1				
	Basic understanding of the project.	0				
	Lack of project understanding.	-3				
Weighted Sub-Total						

The scores assigned above represent my best judgement of the consultant's abilities for the rating categories.

Signed: _____

Title: _____

Date: _____

Evaluation Ratings to be Assigned from Office of Contracts Data Sources						
Category	Scoring Criteria	Scale	Score	Weight	Weighted Score	
Disputes	Outstanding Agreement Disputes.			20		
	No outstanding unresolved agreement disputes > 3 mos. old.	0				
	Outstanding unresolved agreement disputes more than 3 mos. old.	-3				
Location	Location of assigned staff office relative to project.			5		
	Within 50 mi.	1				
	51 to 150 mi.	0				
	151 to 500 mi.	-1				
	Greater than 500 mi.	-2				
	For 100% state funded agreements, non-Indiana firms:	-3				
Past Performance	Quality score averages for similar work.			6		
	Schedule score average overall.			3		
	Responsiveness score average overall.			1		
	Budget score average overall. (No data available at this time.)			7		
	Constructability score average overall. (No data available at this time.)			7		
Weighted Sub-Total						
Weighted Total						

For categories that are not relevant to the particular item being evaluated, leave the category score as N/A. This is to be as documented in the RFP.

* Only applicable for transportation project development contracts. Data not available yet.

Exhibit 2 - Consultant Selection Rating Form Guidelines

The scoring scale used for selection rating is as follows:

- +2 Outstanding Qualifications
- +1 Highly Qualified
- 0 Qualified
- 1 Slightly Below Desired Qualification
- 3 Insufficient Qualification

The scoring form is divided into two parts, Evaluation Criteria to be Rated by Scorers at the top of the sheet and Evaluation Ratings to be Assigned from Office of Contracts Data Sources at the bottom. Explanation of the two parts is provided below.

Evaluation Criteria to be Rated by Scorers

Capacity of Team to do Work

Scoring as described with the listed criteria on the scoring form. Above standard scoring is to only occur for more than adequate capacity when the additional capacity will result in added value to INDOT.

Team's Demonstrated Qualifications

Scoring as described with the listed criteria on the scoring form. Above standard scoring is to only occur when unique expertise or resources will result in added value to INDOT.

Project Manager

Scoring as described with the listed criteria on the scoring form.

The historical performance rating for the identified Project Manager should be evaluated using the same criteria as identified for Past Performance above. What if no data in system?

Approach to Project

Scoring as described with the listed criteria on the scoring form. For on-call type contracts this approach would be in general as toward the planned approach to assigned work.

Location

Location ratings are to be assigned based on location of the indicated responsible consultant office relative to the center of the project, or for on-call regional contracts, to the center of the geographical coverage of the region for which the services are applicable.

Signature

Scorers are to sign and date each evaluation completed.

Evaluation Ratings to be Assigned from Office of Contracts Data Sources

Disputes

If an unresolved agreement dispute with a consultant has been outstanding for more than 3 months the consultant shall be assigned a score of “-3”, otherwise the score shall be “0”. A qualifying dispute with any INDOT office will result in a “-3” score for selection scoring throughout INDOT until the situation is resolved.

Possible qualifying disputes must be reviewed and approved by the Contract Administration Division prior to assigning a “-3” score. Qualifying criteria are as follows:

- Overall – describe specifically what terms in the contract the consultant is out of compliance with at this time and the date that they became out of compliance?
- Behind Schedule - what deliverables are they past due on at this time and what were the due dates?
- Substandard Work - explain any substandard work that they have not brought up to standard.
- Invoice Issues - list specific invoice issues that have been brought to their attention that they have not satisfactorily corrected.
- Budget – are they at this time refusing to complete the contracted work for the contracted compensation?
- Administrative Issues - what specific administrative issues are unresolved at this time and for how long have we been awaiting action? Define administrative issues.
- Errors and Omissions pursuant to Chapter 6 of the Professional Services Contract Administration Manual.

Also, when describing dispute situations explain what will constitute resolution of each of each dispute issue.

Past Performance

Past performance ratings will be input directly into the forms from the consultant performance database. Existing data has been converted so that it is compatible with the new scale. Existing evaluation data elements have been associated with Quality and Scheduling and Responsiveness, and then averaged per record. Quality scores will be applied based on averages for similar worktypes and Scheduling and Responsiveness scores will be applied from overall data for a firm.

Exhibit 3 – Example Scoring Tabulation

RFP Scoring Tabulation for RFP _____, Item No. _____
Item Title _____, No. of Firms Recommended to be selected _____

Consultants	SAA	Team Lead Ranking	Final Ranking	Total Weighted Score	Scorer Total Rank	Total Rank	Scorer 1				Scorer 2				Scorer 3			
							Score	Rank	After SRC	Rank After	Score	Rank	After SRC	Rank After	Score	Rank	After SRC	Rank After
A	10	1	1	305	5	4	100	2	110	1	95	1	95	1	100	2	100	2
B	10	3	2	290	8	6	90	3	100	3	85	4	85	2	105	1	105	1
C	0	2	3	291	6	10	105	1	105	2	86	3	86	5	100	2	100	3
D	10	5	4	255	13	11	80	4	90	4	80	5	80	3	85	4	85	4
E	0	4	5	250	11	13	80	4	80	5	90	2	90	3	80	5	80	5
F		6	6	210	18	18	70	6	70	6	70	6	70	6	70	6	70	6

SRC Comments:

*SRC Availability Adjustment (SAA) - the top 5 ranked firms will be scored by the Selection Review Committee according to the following criteria:
 +10 adjustment will be applied for firms with apparent resource availability that will result in added value to INDOT.
 +0 adjustment will be applied for firms with apparent resource availability that will result in added value to INDOT.
 Firms with questionable resource availability will be eliminated from selection and a comment will be documented above.

Contract Administration Director

Economic Opportunity Director

Date: _____
Production Management Director

Date: _____
Planning Director

Date: _____

Date: _____

Exhibit 4 – Step 1, Technical Approach Scoresheet

Selection Rating for RFP - No: _____, Item No. _____

Scoresheet Type:3

Consultant Name:

Services Description:

Evaluation Criteria Rated by Scorers					
Category	Scoring Criteria	Scale	Score	Weight	Weighted Score
Capacity of Team to do Work	Evaluation of the team's personnel and equipment to perform the project on time			20	
	Availability of more than adequate capacity that results in added value to INDOT	1			
	Adequate capacity to meet the schedule	0			
	Insufficient available capacity to meet the schedule	-3			
Team's Demonstrated Qualifications	Technical expertise: Unique Resources & Equipment that yield a relevant added value or efficiency to the deliverable			15	
	Demonstrated outstanding expertise and resources identified for required services for value added benefit	2			
	Demonstrated high level of expertise and resources identified for required services for value added benefit	1			
	Expertise and resources at appropriate level	0			
	Insufficient expertise and/or resources	-3			
Project Manager	Rating or predicted ability to manage the project, based on: experience in size, complexity, type, subs, documentation skills			20	
	Demonstrated outstanding experience in similar type and complexity	2			
	Demonstrated high level of experience in similar type and complexity	1			
	Experience in similar type and complexity shown in resume	0			
	Experience in different type or lower experience	-1			
	Insufficient experience	-3			
Approach to Project	Understanding and Innovation that gives INDOT cost and/or time savings			15	
	High level of understanding and viable innovative ideas proposed	2			
	High level of understanding of the project	1			
	Basic understanding of the project	0			
	Lack of project understanding	-3			
Accelerated Schedule	Evaluation of the team's ability to deliver the project on an accelerated schedule			10	
	Outstanding confidence in ability to deliver the project on an accelerated schedule	2			
	High confidence in ability to deliver the project on an accelerated schedule	1			
	Predicted satisfactory ability to deliver the project on schedule	0			
	Low confidence in ability to deliver the project within schedule	-1			
Weighted Sub-Total					

Evaluation Ratings Assigned from Office of Contracts Data Sources					
Category	Scoring Criteria	Scale	Score	Weight	Weighted Score
Disputes	Outstanding Agreement Disputes.			20	
	No outstanding unresolved agreement disputes > 3 mos. old	0			
	Outstanding unresolved agreement disputes more than 3 mos. old.	-3			
Location	Location of assigned staff office relative to project.			5	
	Within 50 mi.	1			
	51 to 150 mi.	0			
	151 to 500 mi.	-1			
	Greater than 500 mi.	-2			
	For 100% state funded agreements, non-Indiana firms.	-3			

Evaluation Based on Previous Performance					
Category	Scoring Criteria	Scale	Score	Weight	Weighted Score
Past Performance	Budget score average overall. (No data available at this time.)			7	
	Constructability score average overall. (No data available at this time.)			7	
	Quality score averages for similar work.			6	
	Schedule score average overall			3	
	Responsiveness score average overall			1	
Weighted Sub-Total					

Exhibit 5 – Step 2, Business Approach Scoresheet

Selection Rating for RFP - No: _____, Item No. _____

Scoresheet Type: 5

Consultant Name: _____

Services Description: _____

Evaluation Criteria Rated by Scorers					
Category	Scoring Criteria	Scale	Score	Weight	Weighted Score
Public Acceptance for the Proposed Project Approach	Evaluation of the team's ability to build public acceptance to the proposed project approach and of the team's ability to carry out a strategic, cost effective communications program.			10	
	High confidence in ability to build public acceptance of approach	1			
	Satisfactory confidence in ability to build public acceptance of approach	0			
	Low confidence in ability to build public acceptance of approach	-1			
Management of Land Acquisition, RR & Utility Coordination, and Environmental Mitigation Plans	Evaluation of the team's ability to manage Land Acquisition, RR & Utility Coordination, and Environmental Mitigation activities in a manner that will save time and/or money.			10	
	High confidence in ability to effectively manage described activities	1			
	Satisfactory confidence in ability to effectively manage described activities	0			
	Low confidence in ability to effectively manage described activities	-1			
Optimizing the Use of Available Funds	Team's ability to deliver the Maximum amount of Completed Interstate Highway miles on I-69 within the available budget while meeting all environmental requirements			10	
	Outstanding confidence in ability to deliver the project for the lowest cost while satisfying requirements	2			
	High confidence in ability to deliver the project for the lowest cost while satisfying requirements	1			
	Medium confidence in ability to deliver the project for the lowest cost while satisfying requirements	0			
	Low confidence in ability to deliver the project for the lowest cost while satisfying requirements	-1			
Innovative Strategies	Innovations in Project Management, Constructability, Design, and the Value Engineering efforts that gives INDOT cost and/or time savings while meeting all requirements			20	
	Outstanding level of demonstrated, implementable ideas	2			
	High level of demonstrated, implementable ideas	1			
	Medium level of demonstrated, implementable ideas	0			
	Low level of demonstrated, implementable ideas	-1			
Project Management Team	Project Manager and Key Project Staff demonstrate, through successful experiences on projects of similar or greater complexity, that they are the BEST team to deliver this project			15	
	The BEST Management Team based on experience in similar type and complexity	2			
	The Second BEST Management Team based on experience in similar type and complexity	1			
	The Third Best Management Team based on similar type and complexity	0			
Weighted Sub-Total					

Weighted Total:

The scores assigned above represent my best judgement of the consultant's abilities for the rating categories.

Signed: _____

Title: _____

Date: _____

Exhibit 6

**Consultant Contracts
Profit Calculation Worksheet**

<u>Additives</u>	<u>% Add</u>	<u>Select</u>	<u>Base =</u>
	<u>On</u>		7.00%
Complexity			
Low	0.0		
Low/Mid	0.5		
Mid	1.0		
Mid/High	1.5		
High	2.0		0.00%
Cost			
>\$10,000,000	0.0		
>\$2,000,000 & <=\$10,000,000	0.5		
>\$500,000 & <=\$2,000,000	1.0		
<=\$500,000	1.5		0.00%
Duration			
<3 years	0.0		
>=3 years & <5 years	0.3		
>=5 years	0.7		0.00%
Overhead			
>190%	0.0		
>180% & <=190%	0.7		
>160% & <=180%	1.4		
>120% & <=160%	2.1		
<=120%	2.8		0.00%
		Calculated Total	7.00%
Minimum Possible Rate			
7.0%			
Maximum Possible Rate			
14.0%			

Exhibit 6 - Complexity Levels

Low:

- On-call contracts that do not include preparation of construction plans.
- Traffic Data Collection and Forecasting
- Environmental Document Preparation –CE/Section 4(f)
- Environmental Services 5.4 to 5.12
- Topographic Survey Data Collection
- Right of Way Plan Development
- Training
- Construction Inspection
- Shop Plan Review
- Non-bridge inspection services
- Bridge Load Capacity Rating and other Bridge Analysis/Testing
- Operational staffing (such as for TMC dispatch)
- Assistance Program Services

Low/Mid:

- On-call contracts that include preparation of construction plans.
- Systems Planning
- Non-Complex Traffic Capacity and Operations Analysis
- Non-Complex Roadway Design
- Level 1 Bridge (inspection and design)
- Traffic Design 10.1 to 10.6
- Subsurface Utility Engineering

Mid:

- Environmental Document Preparation -EA
- Traffic Safety Analysis
- Studies requiring special expertise.

Mid/High:

- Level 2 bridge (inspection and design)
- Complex Traffic Capacity and Operations Analysis
- Complex Roadway Design

High:

- Environmental Document Preparation -EIS
- Multilevel interchange design
- Level 3 bridge (inspection and design)

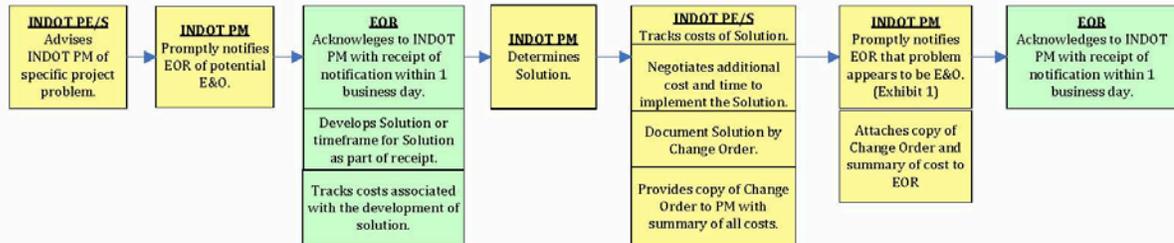
Error and Omission (E & O) Process Flowchart

March 3, 2010

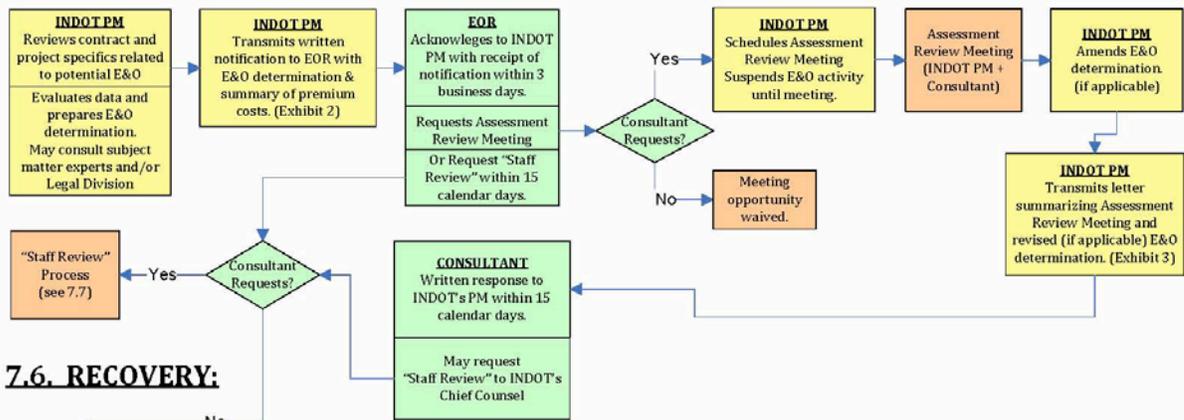
FINAL DRAFT



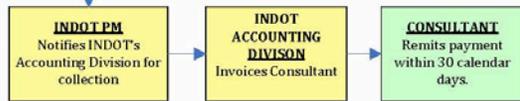
7.4. DISCOVERY, DEVELOPMENT OF A PROJECT SOLUTION AND NOTIFICATION:



7.5. ASSESSMENT:



7.6. RECOVERY:



7.7. STAFF REVIEW:

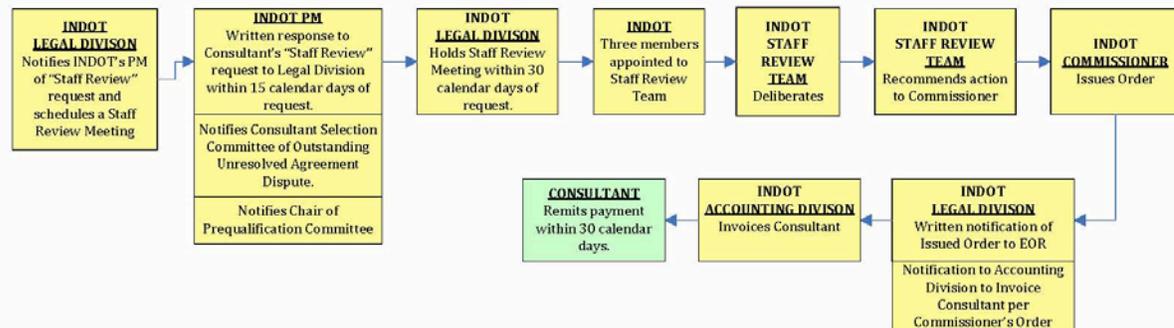


Exhibit 8 – Early Notification Letter

(insert date)

Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.

Design Consultants, Inc.
1234 Long Street
Rural City, FL 33333

Re: ***Project Description...***
Construction Contract No.
Consultant Contract No. 08#####

Dear Design Consultants:

Pursuant to Chapter 6 of INDOT's Professional Services Contract Administration Manual, this letter serves as written notification that INDOT seeks to recover costs from Design Consultants, Inc. for the Errors and Omissions (E &O) on Contract No. 12345. INDOT determined Design Consultants committed E & Os in the construction plans and contract documents. These E & O resulted in premium costs in the amount of \$_____. I have attached documentation of the E & O and the costs INDOT seeks to recover. These premium costs do not add value to the project, and Design Consultants should have avoided the E & O and any resulting costs.

We request that you provide written acknowledgment of receipt of this letter within three (3) business days. You may also request an Assessment Review Meeting. At this meeting, I will explain my findings and assessment of responsibility and provide you with an opportunity to respond. After the meeting, I will decide whether to alter my findings and provide you notice of my final decision. This notice will give you an opportunity to request a Staff Review Meeting. Should you not wish to request an Assessment Review Meeting with me, you may request a Staff Review Meeting immediately in your written acknowledgement. If your acknowledgement does not request an Assessment Review Meeting or a Staff Review Meeting, we will consider the opportunity to request such meetings waived, and we will initiate a collections process for the amount indicated above.

INDOT's E &O policy is described in more detail in Chapter 6 of INDOT's Professional Services Contract Administration Manual. You also may contact me with any questions regarding the E & O process.

Sincerely,
INDOT Project Manager