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INFORMATION BULLETIN NO. 12-02

TO: ADOT Project Managers
Resident Engineers
and Consultant Engineering Firms

FROM: Engineering Consultants Section (ECS)

SUBJECT: **LABOR CLASSIFICATION RATE NEGOTIATION PROCESS**

The attached document outlines the process that will be used to negotiate Labor Classifications for ECS contracts, **effective immediately**.

If you have any questions regarding this bulletin, please contact the ECS office (602) 712-7525.

A handwritten signature in blue ink, appearing to read 'Vivien Lattibeaudiere', is written over a horizontal line.

Vivien Lattibeaudiere, Ph.D.
Director
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ENGINEERING CONSULTANTS SECTION (ECS)

Labor Classification Rate Negotiation Process

The Arizona Department of Transportation (ADOT) endeavors to negotiate labor classification rates with Consultants that are fair and reasonable in accordance with 40 USC §1104. The labor classification rate negotiation process shall consist of the following three (3) steps.

Step 1 – Initial Cost Proposal (CP) Submittal

- a) ECS will review reasonableness of labor classification rates.
 - 1) **Reasonable** – If a labor classification rate is within the Range of Reasonableness (**ROR**), developed by ADOT Office of Audit & Analysis (A&A), it will be deemed reasonable and ECS will accept the proposed rate(s).
 - 2) **Unreasonable** – If a labor classification rate is outside the ROR, it will be deemed unreasonable.
 - a) ECS will counteroffer rate(s) within the ROR, taking into consideration the Consultant's labor classification rate history, nature of the project, contract series and/or firm size, as applicable.
 - b) ECS will notify Consultant to make all requested changes to the CP.

Step 2 – Second CP submittal online in eCMS

- a) Consultant submits a revised CP (**2nd CP Submittal**) with justification, as applicable, attached in the online eCMS *Labor Class* tab, as well as all other revisions to the CP. The resubmission shall also include any justification from Subconsultant(s) sent to the Consultant in writing. Subconsultant's justification should be attached in the *Subconsultant* tab for each applicable firm.
- b) **Consultant shall notify ECS in the *Communication Log* if a Negotiation Meeting (teleconference or in-person) is requested at this time.**
 - 1) **Meeting Requested** – If a Negotiation Meeting is requested, the meeting shall be deemed as the Final Negotiation Meeting and no other meeting shall be scheduled with the Consultant during the negotiation process. See Negotiation Meeting Parameters.
 - 2) **Meeting Not Requested** – If a Negotiation Meeting is not requested, proceed to item c below.
- c) ECS will review reasonableness of labor classification rates based on A&A-developed ROR.
 - 1) **Reasonable** – If a labor classification rate is within ROR, it will be deemed reasonable and ECS will accept the proposed rate(s).
 - 2) **Unreasonable** – If a labor classification rate is outside the ROR, it will be deemed unreasonable.
 - a) ECS will counteroffer rate(s) within the ROR, taking into consideration the Consultant's labor classification rate history, nature of the project, contract series and/or firm size, as applicable.
 - c) ECS will notify Consultant to make all requested changes to the CP.

Step 3 – Third CP submittal online via eCMS

- a) Consultant submits a revised CP (**3rd CP Submittal**) with justification, as applicable, attached in the online eCMS *Labor Class* tab, as well as all other revisions to the CP. The resubmission shall also include any justification from Subconsultant(s) sent to the Consultant in writing. Subconsultant's justification should be attached in the *Subconsultant* tab for each applicable firm.
- b) **Consultant shall notify ECS in the *Communication Log* if a Negotiation Meeting (teleconference or in-person) is requested at this time.**
 - 1) **Meeting Requested** – If the Negotiation Meeting is requested, the meeting shall be deemed as the Final Negotiation Meeting and no other meeting shall be scheduled with the Consultant during the negotiation process. See Negotiation Meeting Parameters.
 - 2) **Meeting Not Requested** – If the Negotiation Meeting is not requested, proceed to item c below.
- c) ECS will review reasonableness of labor classification rates based on A&A-developed ROR.
 - 1) **Reasonable** – If a labor classification rate is within ROR, it will be deemed reasonable and ECS will accept the proposed rate(s).

- 2) **Unreasonable** – If a labor classification rate is outside the ROR, it will be deemed unreasonable.
 - a) ECS will consult with ADOT Project Manager (PM).
 - b) An impasse will be declared.
 - c) ECS will proceed to **Step 4 (BAFO)**.

Step 4 – Best and Final Offer (BAFO)

- a) If an impasse is declared after going through all of the steps above or negotiation is extended beyond **ninety (90) calendar days**, a written BAFO will be presented to the Consultant.
- b) Consultant shall have **10 business days** to accept or reject the BAFO.
 - 1) **Offer Accepted** – If the offer is accepted, ECS will proceed to the contract execution phase.
 - 2) **Offer Rejected** – If the offer is rejected, ADOT reserves the right to declare failed negotiations and proceed to negotiate with the next highest ranked firm or re-advertise the contact in accordance with 40 USC §1104.
 - 3) **Non-Response** – Failure to respond to the written BAFO after the timeframe indicated in the BAFO letter shall be regarded by ADOT as a rejection of the BAFO. ADOT reserves the right to declare failed negotiations and proceed to negotiate with the next highest ranked firm or re-advertise the contact in accordance with 40 USC §1104.

Negotiation Meeting Parameters

If Consultant requests a Negotiation Meeting, the following parameters apply:

- 1) If the Negotiation Meeting is requested at any stage of the process, it shall be deemed the Final Negotiation Meeting and no other meeting shall be scheduled with the Consultant during the negotiation process.
- 2) Consultant shall contact ECS to schedule the meeting within **ten (10) calendar days** from the date the CP review response is received from ECS. The meeting can be via teleconference or in-person at the ECS office.
- 3) Due to contractual reasons, the Negotiation Meeting will be with the Consultant and ADOT/ECS.
- 4) Subconsultant(s) may submit written justification for proposed labor rates to the Consultant at all phases of the negotiation process, which shall be submitted to ECS by the Consultant. Consultant and Subconsultant(s) should communicate about all unresolved CP issues and unreasonable rates prior to the Negotiation Meeting. Consultant is expected to be prepared to negotiate all Consultant and Subconsultant unresolved issues and unreasonable rates at the Negotiation Meeting. If Subconsultant(s) would like to provide additional information to ECS, they may do so in writing through the Consultant with a cc to ECS at least **three (3) business days** prior to the Negotiation Meeting.
- 5) ECS will consult with the ADOT PM prior to the meeting regarding any outstanding technical issues related to Consultant and Subconsultant CPs.
- 6) ADOT PM has the option of attending the Negotiation Meeting as a technical advisor.
- 7) Rate negotiations will be conducted by ECS.
- 8) Consultants are not permitted to modify labor classifications for Key Personnel listed in the Statement of Qualifications (SOQs).
- 9) During the meeting, ECS and the Consultant will negotiate rates deemed to be unreasonable using an offer/counteroffer process.
 - a) **Reasonable** – If labor classification rates proposed by the Consultant are within the ROR, the offer will be accepted. Consultant shall have **ten (10) calendar days** to enter all approved rates and other requested changes into eCMS and submit the final CP to ECS.
 - b) **Unreasonable** – If labor classification rates proposed by the Consultant continue to fall outside the ROR, an impasse will be declared and negotiations will conclude. ECS will proceed to issue a written BAFO (Step 4).