

## Internal Audit – Contract Provisions

Required contract provisions, based on federal requirements and SDDOT policies, are listed below. These apply to subcontracts also.

The proposed contract must contain a cost breakdown including the cost of material, direct salaries, payroll additives, other direct costs, indirect costs, and profit (if applicable), irrespective of the method of reimbursement. (49 CFR 18.36(f))

The proposed cost must be calculated in accordance with applicable procedures and generally accepted accounting principles. (48 CFR Part 31)

The agreement needs to include the following contract provisions:

- A. All contracts:
  - 1. Scope of work (49 CFR 18.36)
  - 2. Effective date
  - 3. Termination/Completion date
  - 4. Method of reimbursement
  - 5. Contract price (detailed cost breakdown must be available)
    - a. Estimated number of hours by individual
    - b. Current wage rate of individuals
    - c. Overhead cost rate - supported by a Schedule of Indirect Costs and Rate Calculation Proposal
    - d. Cost of Money Rate Schedule
    - e. Cost Pool Accumulation data for rate basis expenses (i.e. mileage, copy costs, computer time)
    - f. Estimated materials costs
    - g. Fixed Fee amounts
  - 6. Provide for ownership, control, utilization and disposition of any property acquired under the agreement
- B. All engineering contracts:
  - 1. Hold harmless and insurance
- C. Most contracts:
  - 1. ADA clause (exceptions: governments, stockpile lease agreements, Right of Way contracts for abstracts or titles, maintenance agreements for office equipment, gravel pit option agreements with landowners)
- D. Contracts with potential liability problems:
  - 1. Hold harmless clause (SDDOT Legal Counsel has recommended that this clause be included in every construction-related contract and all other contracts where the potential liability problem could be serious)
- E. All actual cost contracts:
  - 1. Records retention (49 CFR 18.36(i)(11)) required for federally-funded agreements, irrespective of method of payment
  - 2. Access to records (49 CFR 18.36(i)(10)) required for federally-funded agreements, irrespective of method of payment
  - 3. Provision for audit (49 CFR 18.36(i)(10)) required for federally-funded agreements, irrespective of method of payment
  - 4. Reference applicable cost principles that will be used to determine allowable costs (49 CFR 18.22, governmental organizations - OMB Circular A-87, not-for-profit organizations - OMB Circular A-122, commercial organizations - 48 CFR Part 31) required for federally-funded agreements, irrespective of method of payment
- F. All federally-funded contracts (should be in state-funded):
  - 1. Subcontracts are to contain all the required provisions of the prime contract (49 CFR Part 18, definitions)

2. Extra work or changes in the scope of work (49 CFR 18.30)
  3. Acquisition of any property or equipment will be in accordance with 49 CFR 18.32
  4. Code of conduct (49 CFR 18.36(b)(3))
  5. Settlement of disputes (49 CFR 18.36(b)(12), 49 CFR 18.36(i)(1))
  6. Documentation of accomplishments (49 CFR 18.36(i)(7))
  7. Patent rights (49 CFR 18.36(i)(8))
  8. Copyrights and rights to data (49 CFR 18.36(i)(9))
  9. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (49 CFR 18.36(l)(13)) Office of Energy Policy indicated this would only apply to construction of new buildings (SDCL 11-10).
  10. Civil Rights (nondiscrimination) (23 CFR 200.9)
  11. Suspension/debarment paragraph (OMB Circular A-133)  
*Note: This may be covered by various assurances submitted by grantees for some programs. Check with originating program officials.*
- G. All federally-funded contracts in excess of \$10,000.00 (Should be in state-funded):
1. Termination for cause and for convenience (49 CFR 18.36(i)(2)).
- H. All federally-funded contracts in excess of \$100,000.00 (should be in state-funded):
1. Administrative, contractual, or legal remedies for violation or breach of contract terms (49 CFR 18.36(i)(1))
  2. Compliance with sections 306 and 508 of the Clean Air Act, Executive Order 11738, and EPA regulations (49 CFR 18.36(i)(12))
- I. All construction-type contracts (Enhancements, Community Access, Industrial Parks, etc.)
1. Provide for SDDOT review of plans and/or specifications prior to advertising for bids
  2. Provide for SDDOT concurrence in award prior to awarding the contract
- J. Recommended contract provisions:
1. Specialized equipment and instrumentation required to perform the work
  2. Definition of terms (i.e., ENGINEER, does it mean the director of the Division of Engineering only or does it encompass any engineer involved with the work, whether the director or a project engineer?)
  3. Signature date lines.