

# MEETING MINUTES

## SANDAG/ACEC CONTRACTS COMMITTEE

**Date:** April 14, 2011  
**Time:** 1:00 to 2:30  
**Location:** SANDAG

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### Attendees

See Sign-in Sheet Attached

### Minutes

#### **I. Status of Contract Development**

The development of the contract solicitation has been transferred to the SANDAG contracts department. As of today (4-14-11), SANDAG requests that all inquiries regarding this solicitation be directed to Mr. Ralph Tharp (rth@sandag.org). Direct contact between representatives of the consulting industry and other SANDAG employees could result in a conflict of interest and potential disqualification from the RFQ solicitation and contract award process.

Minutes from this committee will be made public and potentially posted on SANDAG's website.

#### **II. Upcoming Contracts**

SANDAG continues to anticipate the next round of on-call design contracts to be tentatively advertised in June/July 2011.

Contract size and number has not been determined. However, preliminary total contract demand is anticipated to be approximately \$240 million (combined total for all contracts awarded). Smaller contracts are still being considered to spread the work around and to encourage local disadvantaged and small business involvement.

There will be race conscious goals that are yet to be determined. Goals could vary depending on FTA or FHWA funding sources. SANDAG is seeking innovative ways of including minority firms and intends to engage the small and minority owned businesses for this work. Industry's input is welcomed regarding the methods to achieve UDBE participation goals, encourage fair distribution of the work and local participation. Specific input is requested regarding methods to incorporate UDBE firms on indeterminate on-call contracts. Discussions included possible UDBE criteria and goals at the task order level, recommended pools of minority firms, easing requirements for adding minority firms to contracts and potential minority based "bench" contracts. The ACEC group will solicit ideas and examples from member firms.

Emphasis of contracts has not been determined. Contracts may include combined services for Highway and Rail or there may be distinct separations for these. Environmental services are expected to be included. Program management services will not be included.

### III. Contract Language

Due to the timing and status of the development of the contract advertisement, SANDAG is unable to negotiate contract language or clauses. However, the ACEC members of the committee can present issues for consideration.

ACEC provided contract language input based on review by several attorneys, risk managers and insurance representatives. While there were many comments, several were suggestions for text improvements not necessarily in either party's favor. Several others were comments likely to come up in final contract negotiations with the selected firms, but not high priority for this committee. A small number are identified below as high priority issues.

ACEC has narrowed contract issues to three primary areas of concern as follows:

- Fee and Escalation
- Subconsultant Mark-ups
- Indemnification clause

#### Fee and Escalation

SANDAG will advertise the contracts with a specified fee and rate escalation. The private industry adjusted to the slowdown in the economy quickly and staff sizes were adjusted accordingly. ACEC communicated to SANDAG that it was ACEC's opinion that the current market has seen recent increases in volume and the industry faces escalating rates and difficult negotiations to bring in new staff. ACEC further communicated that in its opinion fee and rate escalations are likely to increase quickly within this segment of the industry.

#### Subconsultant Mark-ups

A significant challenge to SANDAG and all primes is subconsultant utilization. SANDAG would prefer that UDBE/DBE subconsultant opportunities be increased and planned commitments be met. Subconsultant work without significant prime involvement can add unrecoverable costs and risks to the prime consultant. ACEC communicated that a valid method to increase subconsultant utilization and provide a reasonable way to address costs and risks is through subconsultant markups.

#### Indemnification Clause

ACEC communicated that in its opinion the current SANDAG contract places a high degree of risk on consultants. While complete revision would be preferred, one clause has been identified as the most troublesome. ACEC would recommend the following revision to the last sentence of Section 6A.

“...however, that the Consultant's duty to indemnify and hold harmless shall not include any claims or liability arising from the ~~established sole~~ negligence or willful misconduct of SANDAG, its Directors, agents, officers, or employees.”

### IV. Preclusion Policy

There have been no updates to the SANDAG preclusion policies. It is best if a letter be

sent requesting preclusion decisions on a case by case basis. ACEC provided draft guidance on preclusion issues from FHWA.

**V. Next Meeting**

April 28, 2011 at 1:30PM (Tentative to be confirmed)

**VI. Action Items**

- A.** ACEC to prepare draft meeting minutes
- B.** SANDAG to finalize minutes and post to web site
- C.** ACEC to provide ideas for minority firm utilization
- D.** SANDAG will investigate potential and methods to include subconsultant markups
- E.** ACEC to provide emailed link to draft Federal guidance

<b>SIGN-IN SHEET</b>			
<b>SANDAG/ACEC Contracts Committee Meeting</b>			
<b>SANDAG Offices</b>			
<b>April 14, 2011; 1:00-3:00PM</b>			
<u>Name</u>	<u>Representing</u>	<u>Telephone</u>	<u>Email</u>
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-END OF MINUTES FOR APRIL 14, 2011 MEETING-

# MEETING MINUTES

## SANDAG/ACEC CONTRACTS COMMITTEE

**Date:** May 12, 2011  
**Time:** 1:30 to 3:00  
**Location:** SANDAG

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### Attendees

See Sign-in Sheet Attached

### Minutes

#### **VII. UDBE/DBE/SBE “bench/pool” concept**

SANDAG is working internally on a bench/pool concept for the upcoming A&E procurement. The intent is to maximize utilization and availability of small and minority firms (DBE/UDBE/SBE) for the on-call contracts.

Several options and ideas were discussed. In general a “bench” style contract is being considered to create a bench/pool of UDBE, DBE, Minority and small firms that all prime consultants awarded contracts could draw on as needed. The pool would be dynamic. New firms could be added regularly to the bench allowing and encouraging the formation of new emerging firms. It is currently suggested that exclusivity of UDBE subconsultants to specific prime consultants be avoided so as to maximize the availability of existing DBE/UDBE/SBE firms to all contracts.

Issues discussed relating to the “Bench” consultants included overhead rates, experience, contractual relationships, incentives, qualifications, selection processes and mentoring. No specific approaches have been finalized.

Prior to advertisement, SANDAG will communicate draft bench/pool concepts, number of contracts, size of contracts, scopes, and other issues via a posting of documents on the SANDAG PlanetBid website ([www.sandag.org/contracts](http://www.sandag.org/contracts)). An open Q&A will be a part of the PlanetBids web page to address questions and fine tune the RFQ advertisement.

#### **VIII. SANDAG Contract - Indemnification Provisions**

ACEC provided suggested revisions and justifications to the SANDAG indemnification clause. Ralph Tharp, SANDAG Contract Administrator will forward those recommendations to SANDAG legal counsel and requested ACEC provide example indemnification language from the City of San Diego, Caltrans and others if available.

#### **IX. Next Meeting**

None. This was the last meeting of this committee relative to this procurement.

#### **X. Action Items**

- A. ACEC to provide example indemnification language
- B. SANDAG to forward contract language documents to legal counsel
- C. SANDAG to post draft concepts and RFQ documents to PlanetBid website

<b>SIGN-IN SHEET</b>			
<b>SANDAG/ACEC Contracts Committee Meeting</b>			
<b>SANDAG Offices</b>			
<b>May 12, 2011; 1:30-3:00PM</b>			
<u>Name</u>	<u>Representing</u>	<u>Telephone</u>	<u>Email</u>
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Emilio Rodriguez	SANDAG	619-699-6984	erod@sandag.org
Dean Hiatt	SANDAG	619-699-6978	dhi@sandag.org
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-END OF MINUTES FOR MAY 12, 2011 MEETING-