

Local Project Administration Manual & Reference Guide

Consultant Selection



MaineDOT

Integrity - Competence - Service

2016 Edition

Selection of Consultants

Project engineering is complicated work requiring the expertise of licensed professionals. For this reason, municipalities and other local public agencies without engineers on staff will hire consultants to design and inspect their locally administered transportation projects. This section explains the consultant selection process and includes the following:

- A summary of the selection requirements (pages 2-1 to 2-7);
- An independent estimate worksheet – Figure 2.1 (page 2-8);
- Appendix 2A: Consultant selection checklist (page 2-9);
- Appendix 2B: Sample communications (page 2-12);
- Appendix 2C: Payment methods (page 2-16).



Remember: Consultants providing engineering, design and construction management services must be chosen through a process that combines a qualifications-based ranking and competitive negotiation. Price cannot be a factor in the evaluation or ranking of any firm.

As the next two pages explain, the selection process always starts with two things:

- A well-defined scope of work that will form the basis for a consultant’s proposal; and
- An independent estimate of the price. (*See page 2-8 for an example.*)

2.1 Scope of Work

Consultant work may include a variety of activities, such as field survey, design, permitting, and construction management. A clear understanding of the scope of work is vital to determining what services will be needed. For this reason, a municipality or other local agency in charge of a project should prepare a written scope of work with the following items, as applicable:

- A description of the project and the type of work;
- Location and duration of work;
- A list of deliverables, such as plans, specifications and a construction price estimate;
- The expected number of meetings with local staff;
- The expected number of public meetings to be facilitated;
- Preliminary engineering issues – such as constructability, environmental review, feasibility analysis, utility coordination, and right-of-way impacts, as applicable;
- A list of the services needed and any expertise required, which will be the basis for evaluating the personnel that a consultant plans to use.

2.2 Independent Estimate

A municipality or other local agency that intends to hire consultants using federal money must prepare an estimate of the price. This mandate for an “independent agency estimate” is found in federal regulation 23 CFR, Part 172. MaineDOT recommends that local agencies develop an estimate for every locally administered project – even if there is no federal money – since:

- It will determine which selection process to use, as explained pages 2-3 to 2-5; and
- It will be the basis for negotiations to arrive at fair and reasonable compensation with the top-ranked firm. Therefore, it cannot be shared with any firm likely to submit a proposal.

The estimate, which should be completed before seeking proposals, should consider:

- The number of hours of effort required;
- Classifications and hourly wages of people likely to work on a project;
- Direct costs – mileage and printing, overhead, and non-personnel costs;
- A reasonable profit for the scope of work, which for locally administered projects typically ranges from **8 percent to 10 percent**.



MaineDOT may provide guidance, but the estimate must be prepared by the local agency managing a project. There often are a variety of resources available to assist with this task:

- A local public works director or road commissioner;
- A local professional engineer not involved in the project at hand; and
- Retired engineers and technical professionals.

➡ A worksheet in Excel is found on the companion CD with this manual and online: www.maine.gov/mdot/lpa/docs/lpadocs/GovernmentEstimateTemplate.xls

2.3 Request for Proposals (RFP)

Typically, the local government or non-profit organization overseeing a project will seek to hire a consultant by drafting a request for proposals (RFP) that is either publicly advertised or sent directly to three to five pre-qualified firms. The process will vary, depending on the estimated price of the work, as outlined on pages 2-3 to 2-5.

The agency administering a project must seek from each consultant a technical proposal and a sealed price proposal that is opened only if that particular firm is ranked as best qualified based on scoring criteria in the RFP. Price proposals from consultants not selected must be returned unopened after a contract with the successful proposer is negotiated, awarded and signed.

➡ A template RFP is found on the companion CD with this manual and online: www.maine.gov/mdot/lpa/docs/lpadocs/RequestforProposals2015.doc

Each consultant's technical proposal must have detailed descriptions of the following:

- The scope of work, including the purpose and description of the project;
- The work to be performed by the consultant;
- Products and services to be delivered;
- The estimated schedule for performance of the work; and
- Specific technical qualifications for the services to be provided.



➔ **Remember:** The RFP for contracts valued at \$25,000 or more must specify that sealed price proposals be submitted separately from technical proposals. The RFP also must state that price shall not be considered in the evaluation of consultants.

Additionally, the RFP must spell out how consultants will be evaluated. Key items are:

- Technical factors such as project understanding, quality-control procedures, experience, specialized expertise, staff capabilities, workload capacity, and past performance;
- Whether interviews will be part of the selection and, if so, how they will be handled;
- The contract type and method of payment (described in Appendix 2C, page 2-16); and
- A selection schedule with key dates and deadlines.

2.4 Simplified Acquisition: Contracts Less Than \$25,000

If engineering costs are estimated to be less than \$25,000 – including sub-contracts and modifications – you may use the following simplified selection process:

- Obtain MaineDOT's permission to solicit a proposal from one **pre-qualified** consultant, using the format of Communication 5, on page 2-13, as follows:
 - You may issue a request for qualifications to create a pool of qualified consultants; or
 - You may select a consultant pre-qualified through MaineDOT – www.maine.gov/mdot/cpo/prequal/
- Request a technical proposal and a price proposal from the preferred firm;
- Negotiate the scope of work, schedule and price;
- Provide negotiated documents to the MaineDOT project manager for approval;
- Sign a contract after receiving Notice to Proceed from MaineDOT and verifying that the consultant is not debarred. (*Refer to section 2.9.*)
- Send the MaineDOT project manager a copy of the final signed, dated contract.

➔ If you use a simplified acquisition process, MaineDOT **cannot** provide reimbursement for contract costs exceeding \$24,999. If there is question about the cost, use a competitive process.

2.5 Selection Process: Contracts of \$25,000 to \$149,999

Below is the selection method for engineering and design-related contracts estimated to be greater than \$25,000 but less than \$150,000. The process uses a pool of pre-qualified consultants.

- Start with three to five firms pre-qualified by MaineDOT for the type of work involved: <http://maine.gov/mdot/cpo/prequal/>
- After receiving MaineDOT project manager's approval (*Communication 6, page 2-14*), send the RFP to your pool of consultants, seeking:
 - A technical proposal that describes each firm's qualifications and approach; and
 - A separate, sealed price proposal that must remain unopened.

Note: You may wait to request a price proposal only from the best-qualified firm once all consultants have been ranked, but this will extend the selection process.

- Review the technical proposals, check references and rank the firms using scoring criteria developed in advance. Note: Interviews are optional but encouraged.
- Provide the results of the ranking process to the MaineDOT project manager and then obtain approval to begin negotiations with the highest-ranked consultant.
- Determine the highest-ranked consultant, open that consultant's price proposal and begin negotiations based on your independent estimate.

Note: If you did not request price proposals up front, now is the time to request a price proposal from the top-ranked firm.

- All other price proposals must stay sealed.
- If a fair and reasonable price cannot be negotiated with the highest-ranked consultant, inform the MaineDOT project manager and request a "Best and Final Offer." If that final offer is deemed unreasonable, proceed as follows:
 - Send the consultant a written notice terminating negotiations – keeping in mind that you cannot go back to that consultant; and
 - Begin negotiations with the second-highest ranked consultant.
- Once agreement is reached with a qualified consultant, notify the MaineDOT project manager of the selection and submit a draft contract for the project manager's review and approval. (*See Communication 7, on page 2-15.*)
- Sign a contract after receiving Notice to Proceed from MaineDOT and verifying that the preferred consultant is not debarred. (See section 2.9.) Send the MaineDOT project manager a copy of the executed contract.
- Once the process is completed, send regret letters to the firms not selected and return their price proposals unopened.

2.6 Selection Process: Contracts of \$150,000 or More

Consultant contracts for services with estimated costs of \$150,000 or more fall under the federal Brooks Act and require an **advertised, competitive process**, as follows:

- Prepare an RFP seeking from each interested consultant a technical proposal and a separate, **sealed** price proposal.

***Note:** You may wait to request a price proposal only from the best-qualified firm once all consultants have been ranked, but this will extend the selection process.*

- Submit the draft RFP to MaineDOT for approval. (See *Communication 6*, on page 2-14.)
- Advertise the approved RFP, using your standard organizational process.
- After the submission deadline, open and review technical proposals, check references and rank the firms using criteria in the RFP.
- Conduct interviews with the top three firms. At this point, you must notify those respondents not chosen for interviews and return their price proposals unopened.
- Determine the highest-qualified consultant, open that consultant's price proposal and begin negotiations based on your independent estimate. (If you did not request price proposals initially, now is the time to request a price proposal from the top-ranked firm.)
- ➡ At this point, price proposals from all firms not selected must stay sealed.
- If a fair and reasonable price cannot be negotiated with the highest-ranked consultant, inform the MaineDOT project manager and request a "Best and Final Offer." If that final offer is deemed unreasonable, proceed as follows:
 - Send the consultant a written notice terminating negotiations – keeping in mind that you cannot go back to that consultant; and
 - Begin negotiations with the second-highest ranked consultant.
- Once agreement is reached with a consultant, inform the MaineDOT project manager and email a draft contract for review and comment. (See *Communication 7*, on page 2-15)
- Execute a contract after obtaining Notice to Proceed from MaineDOT and verifying that the preferred consultant is not debarred. (See *section 2.9*.)
- Provide the MaineDOT project manager with a copy of the signed and dated contract for the project file.
- Once the process is completed, send regret letters to the consultants not selected and return their price proposals unopened.

- Indemnification and insurance requirements;
- Ownership of engineering documents, which on federally funded projects become the property of the sponsoring organization;
- Requirements for addressing errors and omissions by the consultant;
- Administrative, contractual or legal remedies for breach of contract;
- A provision for termination for cause or for convenience by the contracting agency;
- Assurances that the primary consultant chosen for the project has not been debarred;
- Signed Title VI (civil rights) assurances (*federally funded projects*);
- Certification that no lobbying will be done with federal money (*federally funded projects*); and
- Form FHWA-1273, Required Contract Provisions for Federal-Aid Contracts (*federally funded projects.*)

➔ **Consultant General Conditions for Local Public Agencies** govern contracts for LAPs: www.maine.gov/mdot/lpa/docs/lpadocs/lpaconsultantagreement.pdf

2.9 Debarment

Consultants prohibited from receiving federal money cannot work on federal-aid contracts, a practice known as “debarment.” A local government or non-profit with a federally funded project must verify that its selected consultant is not debarred or otherwise prohibited from entering into such contracts. Verification – through a screen print from the Federal Government’s System for Award Management (SAM) – must be submitted to the MaineDOT project manager.

➔ The website to check debarment status is found here: www.sam.gov

2.10 Consultant Evaluations

MaineDOT and the Federal Government require municipalities and other agencies overseeing locally administered projects to evaluate their consultants once the work is completed. Such evaluations serve to generate feedback, foster communication and improve the process.

Evaluations should cover the following, at a minimum:

- The timely completion of the work;
- Adherence to contract scope and budget; and
- Quality of the work performed.

MaineDOT’s standard form may be used – as long as references to MaineDOT are removed. A copy of the completed evaluation should be provided to MaineDOT. Remember that a consultant must be given a chance to review the evaluation and comment on it before it is finalized.

FIGURE 2.1: INDEPENDENT ESTIMATE WORKSHEET

Project Title/Location:
 MaineDOT PIN:
 Consultant Firm Name (If Known):
 Service Area or Phase of Work:

Orig. Date:
 Revised Date:

Prepared By:

#	Task Descriptions	PRINCIPAL IN-CHARGE	?	?	?	?	?	?	?	ADMIN SUPPORT	TOTAL
		Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours
1											0.00
2											0.00
3											0.00
4											0.00
5											0.00
6											0.00
7											0.00
8											0.00
9											0.00
10											0.00
11											0.00
12											0.00
13											0.00
14											0.00
15											0.00
TOTAL HOURS		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
HOURLY RATE		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
DIRECT LABOR TOTAL		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Overhead %	0.00%	\$0.00
Profit/Fee %	0.00%	\$0.00

Subtotal = \$0.00

DIRECT EXPENSES	\$
Travel	
Printing	
Telephone	
?	
?	
Miscellaneous	

Total Direct Expenses = \$0.00

TOTAL ESTIMATED PRICE = \$0.00

TOTAL DIRECT EXPENSES = \$0.00

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Appendix 2A: Checklist: Consultant Selection



CHECKLIST: CONSULTANT SELECTION

❑ Services valued at less than \$25,000:

- Obtain MaineDOT project manager's approval for simplified acquisition (Communication 5)
- Develop a scope of work and independent cost estimate
- Send scope/estimate to MaineDOT project manager for review/approval
- Request/receive proposal from consultant
- Negotiate scope, schedule & cost with consultant, based on independent estimate
- Receive completed Disadvantaged Business Enterprise (DBE) use form from consultant
- Verify and document that a selected consultant is not debarred
- Send proposal and draft contract to MaineDOT for approval (Communication 7)
- Once contract is approved, execute document and send consultant notice to proceed
- Provide copy of signed contract to MaineDOT project manager

❑ Services valued at \$25,000 to \$150,000

- Develop a scope of work and an independent estimate
- Submit draft RFP to MaineDOT project manager for approval (Communication 6)
- Send RFP to 3-5 pre-qualified firms, seeking technical and sealed cost proposals
- Develop selection criteria and percentages for scoring
- Review and rank technical proposals, from highest to lowest
- Open the sealed price proposal from the best-qualified (No. 1) consultant and negotiate
- If negotiations with No. 1 are successful, draft a contract for MaineDOT review
- If negotiations with No. 1 are unsuccessful, request a "Best and Final Offer."
- If terms cannot be reached, begin negotiations with to No. 2 consultant
- Upon reaching terms, obtain completed Disadvantaged Business Enterprise form from consultant
- Verify and document that selected consultant is not debarred
- Send unsigned contract and price to MaineDOT for approval (Communication 7)
- Once MaineDOT approves contract, execute document and send consultant notice to proceed
- Provide MaineDOT project manager a copy of signed contract
- Sent regret letters and unopened cost proposals to unsuccessful proposers

❑ Services valued at greater than \$150,000

- Develop a scope of work and an independent estimate
- Submit draft RFP to MaineDOT project manager for approval (Communication 6)
- Advertise the RFP, requesting technical proposal and sealed cost proposal
- Develop consultant selection criteria and percentages for scoring
- Review and rank technical proposals, from highest to lowest
- Invite the top three firms for interviews
- Send written notification to firms not chosen for interviews and return sealed price proposals
- Select the best-qualified (No. 1) consultant and open its sealed price proposal
- Negotiate the scope, schedule and cost with the No. 1 consultant
- If negotiations with No. 1 are successful, draft a contract for MaineDOT review
- If negotiations with No. 1 are unsuccessful, request a "Best and Final Offer."

- If terms still cannot be reached, end negotiations and move on to No. 2 consultant
- Obtain completed Disadvantaged Business Enterprise utilization form from successful consultant
- Verify and document that selected consultant is not debarred
- Send unsigned contract and price to MaineDOT for approval (**Communication 7**)
- Once MaineDOT approves contract, execute document and send consultant notice to proceed
- Send copy of signed contract to MaineDOT project manager
- Sent regret letters and unopened cost proposals to unsuccessful proposers

□ Consultant Administration

- Oversee consultant's work and billings to ensure contract compliance
- Obtain MaineDOT project manager's approval of contract modifications **before** they are signed
- Final DBE certification of sub-consultant payments made, if applicable
- Evaluate consultant upon completion of contract, and share evaluation with MaineDOT

Appendix 2B: Communications



NOTE: THIS MAY BE SENT BY E-MAIL

Date

_____, Project Manager
Maine Department of Transportation
Bureau of Project Development, Multimodal Program
16 state House Station
Augusta, ME 04333-0016

Subject: Simplified Acquisition Request
MaineDOT WIN_____

Dear _____:

The Municipality of _____ is requesting your approval to seek a proposal for services for [scope of services] for [project scope] with [insert company name].

Since the consultant costs are estimated to be less than \$25,000 – based on our independent agency estimate (enclosed) – our understanding is that we may use a simplified acquisition allowing us to solicit a technical proposal and a price proposal from a single pre-qualified consultant.

We understand that MaineDOT cannot participate financially in any contract costs exceeding \$24,999 since a non-competitive process was used to select this consultant.

Please review the submitted materials and let us know if we are approved to solicit a proposal and subsequently to negotiate a contract with this firm. We understand that we cannot award a contract without approval.

Sincerely,

Local Project Administrator
Municipality of

Enclosures:

1. Technical proposal
2. Price proposal
3. Independent Agency Estimate

NOTE: THIS MAY BE SENT BY E-MAIL

Date

_____, Project Manager
Maine Department of Transportation
Bureau of Project Development, Multimodal Program
16 state House Station
Augusta, ME 04333-0016

Subject: RFP Review Request
MaineDOT WIN_____

Dear _____:

The Municipality intends to solicit for engineering services for **[scope of services]** for **[project scope, WIN]** in the Municipality of _____. Attached is the Request for Proposals that we intend to use for this solicitation.

If estimated cost is \$25,000 to \$149,000, use the following language:

Based on our independent estimate of the price of the proposed services (enclosed), we understand that we may select potential consultants from a pool of 3 to 5 pre-qualified firms. Therefore, we intend to send the RFP to the following consultants listed on MaineDOT pre-qualification listing for [insert type of service]:

If estimated cost is \$150,000 or greater, use the following language:

Based on our independent estimate of the price of the proposed services (enclosed), we understand that we must use a publicly advertised solicitation in accordance with the federal Brooks Act. We intend to advertise the RFP on **[date]** as follows:

Please review the draft RFP as soon as possible and inform me as to its adequacy.

Sincerely,

Local Project Administrator
Municipality of _____

Enclosure: Draft RFP

NOTE: THIS MAY BE SENT BY E-MAIL

Date

_____, Project Manager
Maine Department of Transportation
Bureau of Project Development, Multimodal Program
16 state House Station
Augusta, ME 04333-0016

Subject: Consultant Selection Approval Request
MaineDOT WIN_____

Dear _____:

The Municipality of _____ has selected [**name of consultant firm**] for [**scope of services**] for [**project scope, WIN**]. Attached is the negotiated contract, price proposal and our independent estimate. We understand that we cannot award this contract without your approval.

We have verified that our selected consultant is not debarred or otherwise prohibited from working on federally funded contracts. We have attached documentation verifying this, in the form of a screen shot from the federal SAM database: www.sam.gov.

Please review these documents as soon as possible and inform me of your decision so that we may execute a contract with this firm. We understand that no work eligible for reimbursement may begin until we execute the contract upon MaineDOT's approval and give our selected consultant notice to proceed.

Sincerely,

Local Project Administrator
Municipality of

Enclosures:

1. Draft contract
2. Independent agency estimate

Appendix 2C: Payment Methods



METHODS OF PAYMENT

BURDENED HOURLY RATE

Adjustable Burdened Hourly Rate: An adjustable rate consisting of salary, indirect costs, and profit. This rate may be adjusted during the duration of the contract, but rates must be supportable and within a required salary cap of \$50/hour for individuals. Direct expenses would be on top of the overall hourly rate.

Fixed Burdened Hourly Rate: A fixed rate consisting of salary, indirect costs, and profit that cannot be adjusted. Keep in mind that a direct salary cap of \$50/hour per individual applies. Direct expenses would be in addition to the hourly rate; there is no markup on direct expenses. A fixed burdened hourly rate remains the same for the duration of the contract.

Application: Use when the items of work are task-oriented and of indeterminable extent. The resulting contract must include a maximum amount payable that cannot be exceeded without a contract modification.

PRICE PLUS FIXED FEE

A consultant is reimbursed for actual, supportable costs incurred (within a required salary cap of \$50/hour per individual) including salaries, overhead, and direct expenses – plus a fixed amount of fee. Additional fee is not allowed unless scope is added to the contract.

Applications: Use when you **do not** have a well-defined, scope, complexity, character and duration of the work to a degree that a fair and reasonable compensation can be determined. Also use when the work per unit can be determined in advance with reasonable accuracy, but the extent of the work is indefinite. The contract must include a maximum amount payable that cannot be exceeded unless adjusted by a contract modification.

COMMERCIAL RATE

Fixed Commercial Rate: Commercial rates can be hourly or by a particular task or service. A fair and reasonable hourly or task rate includes direct salary, overhead and profit that cannot be adjusted after contract expiration. Direct expenses would be in addition to the hourly rate; consultants are not allowed a markup on direct expenses. This rate remains fixed for the duration of the contract. Common services that would use Fixed Commercial Rates may include, but are not limited to, appraisals, title abstracting, title insurance, utility coordination, training, facilitation, information services, etc.

Application: Use when a consultant is a sole proprietor or a small firm providing services of a highly specialized nature, where a municipality would gain little or no benefit from requiring an Audited Overhead Report or other extensive financial documentation.

☐ LUMP SUM

A set amount for reimbursement, which includes all salaries, overhead, profit, and other expenses established in a contract that cannot be adjusted when the final audit is performed.

Application Use when the Municipality **has** established a well-defined, scope, complexity, character and duration of the work to be required to a degree that a fair and reasonable compensation, including a fixed fee, can be determined at the time of negotiation.

DEFINITIONS

Direct Expenses: Direct expenses are defined by federal regulation 48 CFR, Part 31: telephone; reproduction costs; sub-consultant costs; tolls, mileage and per diem, in accordance with State of Maine rates. Mark-up on direct expenses, including sub-consultant costs, is prohibited.

Reproduction of plans for external use must be charged at actual costs. Any reproduction made for a consultant's internal use is considered an overhead expense and is not billable a direct expense.

Reimbursable costs for mileage and per diem (lodging and meals are only allowed with an overnight stay) will not exceed the current amount allowed by the State of Maine. See <http://www.maine.gov/mdot/cpo/doingbusiness/>

Independent Government Estimate: A written itemized estimate prepared by the Municipality as part of the development of the scope of work. This will have an appropriate breakdown of specific types of labor required; work hours, indirect costs, and an estimate of the consultant's fixed fee/profit for use during negotiations. The Independent Estimate establishes the fair and reasonable price range for the type of work that will be performed. This estimate provides the Contract Administrator with a useful tool in negotiating a contract and staying within the Project budget. The proposed price and/or work-hour estimate should vary by no more than **15 percent** from a municipality's estimate for contracts under \$100,000 and **10 percent** for contracts over \$100,000.

Maximum Amount: The maximum compensation a consultant may be entitled to upon satisfactory completion of the work described in the contract. The maximum amount does not constitute an obligation to pay a consultant this amount in its entirety under the contract, but it does constitute the maximum amount that can be paid.

Proposal: An offer made from a consultant to a municipality in reply to a Request for Proposals (RFP) that forms the technical and price basis when entering into a mutually binding contract. (Refer to 48 CFR Chapter One Part 2.101 definitions)

Provisional Overhead Rate: The amount of overhead rate compensation reasonably established in a contract and due to a consultant as part of the partial payments during execution of the contract based on the consultant's Audited Overhead Report.

After completion of the work under the contract, this rate is subject to permanent adjustment as a result of final audit by MaineDOT or an approved federal or state cognizant government organization. This adjustment may be made some time after the completion of the work under the contract, and shall be based on audit findings for the actual rates supportable for the type of work provided within the duration of said contract. If the provisional overhead rate is changed (usually based on latest actual audited overhead), and requested by the consultant, the new supportable provisional overhead rate must be approved by the Municipality before the consultant may use the new rate on all subsequent invoices to those contracts the consultant has with a Municipality.

Request For Proposals (RFP): A request soliciting services for a specific scope of work on a specific project. The consultant response shall be in the form of a technical proposal and a sealed price proposal.

Request for Qualifications (RFQ): A request to the consultant community requesting an outline of the firm's ability to provide consultant and professional services in a particular area of need, discipline or disciplines based on specific criteria as described in said RFQ. More than one consultant may be selected from a process involving only one RFQ. A Municipality may use the responses from an RFQ to develop a slate or shortlist of qualified consultants who will be sent a request for proposals (RFP).

Scope of Work: (a) *Preliminary:* A general description of the work to be performed, including the location of the project. (b) *Detailed:* A clear, accurate, and detailed description of the technical requirements for the services to be rendered.

The detailed scope of work describes for the consultant what work will be required, the schedule, the conditions under which the work shall be conducted, how achievements will be assessed, and what obligations of both the consultant and a Municipality will be. It enables a consultant to assess its capabilities in light of the contract requirements.

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