CONTRACTING FOR PROFESSIONAL SERVICES BY BAND COUNCILS

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Passation de marchés de services
professionnels par les conseils
de bande - Août 1983
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1.0 INTRODUCTION

1.1 Purpose and Scope

The purpose of this publication is to provide band councils with guidelines to assist them in obtaining consulting services from the private sector by applying principles and practices accepted in the industry.

These guidelines, together with referenced documents, will provide information on the acquisition process and administration of resulting contracts.

1.2 Definitions

Competitive Method: a selection procedure for awarding contracts that meets the following conditions:

a. at least two proposals are considered;

b. the evaluation of proposals is based on an appropriate set of criteria, which are predetermined and published as part of Invitations for Proposals; and

c. the evaluation is carried out by individuals qualified to judge the competing proposals against the statement of work and evaluation criteria. For large or complex requirements, a committee, jury or board will be constituted for the purpose. If one of these conditions is not met, the selection procedure should be regarded as non-competitive.

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Professional Services: a service provided by an individual or firm with a high level of attainment in a scientific, technical or managerial field (see Appendix 1).

Proposal: an offer which may be either unsolicited or submitted in response to an invitation from the band council. A proposal is based on the terms of reference/statement of work provided by the band council.

Terms of Reference: the document which specifies the work which the consultant is required to do. In some cases, a statement of requirements, definition of requirements or project brief is used instead.

2.0 BASIC CRITERIA FOR CONTRACTING

The band council should be satisfied that:

a. the advice or services sought and the resultant expenditure can be justified;

b. the services can be defined adequately to form the basis of a contract;

c. the services are available at reasonable cost;

d. the competitive process has been used to obtain the services of professionals; and

e. no contract is entered into until funds are available and properly authorized by the band.

3.0 GENERAL REQUIREMENTS

3.1 Competition

When considering potential consultants it is advisable to use the competitive method especially when the estimated value of the proposed contract exceeds $25,000.00. When selecting from a sole
source, consideration should be given to the location of the proposed consultant and the state of the art in order to obtain the best results. It is advisable to document the justification for the sole source selection.

If possible, before inviting proposals consult inventory lists to identify experienced personnel and potential consulting firms. Inventory lists maintained by the Department are available to the band council, and consulting associations maintain lists of members.

3.2 Inventories

3.2.1 Purpose

The purpose of an inventory is to provide an up-to-date list of firms which provide professional services and wish to do business with the band council. Inventories are established to ensure that the goals of consistency, economy, effectiveness, and fairness in selection are met.

3.2.2 Formation

Band councils who frequently engage the services of consultants should establish and maintain a consultant inventory. The inventory could be established by recording those firms and individuals who have provided consulting services to the band or who have expressed an interest in doing so. Band councils can enlarge the inventory by inviting firms and individuals to complete a questionnaire providing information on their business and qualifications.

3.2.3 Content

Inventories should contain at least the following:

a. the information shown in Appendix 2;

b. a summary of previous work undertaken indicating the assessment by the band council
of the consultant's abilities and past performance; and

c. evaluation reports on recent band council contracts, as confidential information.

3.2.4 Maintenance

Inventories should be periodically reviewed and information updated.

4.0 CRITERIA AND PROCEDURES FOR RETAINING CONSULTANTS

4.1 Identifying Expertise

The objective should be to select the professional who has the potential of providing best value.

4.2 Non-competitive Method

The expenses of a proposal competition are sometimes not warranted, as may be the case with contracts under $25,000.00. These include the consultants' expenses to develop a proposal package, and the band council's administrative expenses.

One firm or individual is chosen because it has the necessary capability and is in a unique position to undertake the work at the required time.

It is appropriate when one of the following conditions apply:

a. only one firm is capable and available to do the work;

b. the need is one of extreme urgency which precludes a survey of qualified consultants;

c. due to a prior contract, the proposed consultant is the only one who can undertake the next phase without a serious loss of continuity, time or economy; or
d. due to the nature of the work, it would not be in the band's interest to seek proposals from any other firm.

4.3 Terms of Reference

After the need to contract has been identified, Terms of Reference should be prepared prior to soliciting proposals.

The Terms of Reference should state the objectives to be attained and the type and scope of the work to be carried out. This document should be given a brief project title.

The Terms of Reference should contain:

a. clearly defined requirements of the band and of the consultant to ensure that the responsibilities of each are unambiguous;

b. sufficient detail to ensure that the band receives the advice or services required while retaining enough flexibility to permit the consultant to use initiative in the interest of the band; and

c. identification of the specific stages of the work, their sequence and their relationship to one another.

The details of the Terms of Reference should include the following:

a. a background statement outlining the situation leading to the requirement;

b. the objective - a statement describing what is to be achieved;

c. the scope - a description of the range, extent and bounds of the work;

d. details of any constraints imposed, such as the band council's policies and standards,
current and proposed related activities, security, sensitivity to other interests, protection of the environment, conservation of resources;

e. details of available band support and band responsibilities;

f. availability of relevant existing documents;

g. the manner in which work documents should be presented;

h. a schedule for the completion of each stage of the work and for the entire work;

i. progress report requirements and other control procedures to be applied by the band during the work;

j. approval and acceptance requirements relating to performance of the several stages and of the work as a whole; and

k. identity of the project manager or other responsible authority.

4.4 Proposal Content

Information contained in the requests for proposal documents should contain at least the following:

a. the Terms of Reference;

b. supporting documentation and data;

c. a closing date for proposals;

d. a time frame;

e. a description of the consultant's approach or the methodology to be used, names of persons to be assigned to the project with their resumes, fees, cost estimates, relevant past experience and former clients; and

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4.5 Competitive Methods

4.5.1 General Remarks

The competitive method chosen should provide best value. Three methods are identified below.

4.5.2 Selection Based on Price Alone

In order to base the selection on price alone, the proposal should contain a precise and clear specification for the work. A pre-qualification of all competitors is required.

This method is appropriate only when:

a. the scope and detail of the work can be precisely stated;

b. the cost of the work can be reliably estimated;

c. two or more firms are capable of and interested in doing the work; and

d. the criteria for accepting the finished work can be clearly specified.

4.5.3 Selection Based on Proposals Including Cost Data

The method used to select proposals including cost data is the same as in 4.5.2 except that rated and other cost information is required as part of the proposal. This is necessary for evaluation purposes during price negotiation.

This method should be used only where circumstances permit reliable cost estimates. This type of contract is difficult to control because of its estimated elements and should be used with caution.
4.5.4 Selection Based on Proposals Including Price

This method is the same as above (see 4.5.2 & 4.5.3) except that a firm price or ceiling price is offered for the whole work or part of the work. It is appropriate when conditions permit an accurate estimate of the cost of the work.

4.6 Selection Committee

A committee, consisting of a chairperson and two or three specialists, should be established to review consultant proposals estimated to exceed $25,000 in fees, and less expensive projects which are highly complicated or where it would be in the band council's interest to do so. Proposals not falling in this category may be renewed by the project manager.

There should be a sole direct contact for inquiries by prospective bidders and other interested parties during the tender period and prior to the contract award. This will ensure that information is equally distributed to all prospective bidders to avoid one firm having an unfair advantage.

NOTE: Technical questions from prospective bidders should be directed to the contact who will obtain the necessary information from the appropriate technical person and inform the inquirer.

4.7 Evaluation of Proposals

The selection process should be impartial. Proposals should conform to the Terms of Reference and other documentation supplied to the consultant. Proposals should be evaluated in accordance with the method in Appendix 3.

The selection committee should:

a. rank the proposals in accordance with the weighted factors shown in Appendix 4 - the following considerations apply:
(1) an offer rated as poor on any one of the mandatory criteria is unacceptable; and

(2) selection among firms having identical high scores must be based on the highest score for the most important criterion;

b. interview the highest ranked consultant to obtain additional information, clarification, and agreement, if necessary;

c. interview the next highest rated firm if agreement cannot be reached;

d. make final recommendations of acceptance; and

e. upon specific request, meet with unsuccessful consultants to answer their queries.

5.0 FEE GUIDELINES

5.1 Establishment of Fees

5.1.1 General Remarks

Fees may be established by price competition or negotiated on the basis of the prevailing market rate.

Negotiations based on the prevailing rate must be based on prices charged for similar work under similar conditions, in the immediate geographical area and by the majority of consultants. If prevailing rates cannot be determined, provincial association guidelines may be used.

NOTE: Some provinces set the fees to be paid for various professional services by law.

In both cases the fees should include the estimated cost to the consultant as negotiated, overhead and reasonable profit.
Generally remuneration can be divided into two parts, the negotiated fee and expenses.

5.1.2 The Negotiated Fee

5.1.2.1 General Remarks

The negotiated fee should include overhead and profit. Overhead costs are the direct costs associated with the operation of the business and are deemed, unless otherwise stated, to be included in a multiplying factor or percentage which is applied to the payroll cost.

Payroll costs are the direct salaries paid plus costs associated with salaries.

5.1.2.2 Direct Salaries

Direct salaries are those paid to personnel for time actually spent on the work, excluding bonuses and other profit-sharing schemes. The premium paid to employees for overtime is normally an overhead item unless the overtime work is authorized by the band.

5.1.2.3 Costs Associated with Salaries

Costs associated with salaries include the following:

a. provision for statutory holidays;

b. vacations with pay; and

c. the employer's contribution for:
   (1) unemployment insurance,
   (2) worker's compensation (where applicable),
   (3) health and medical insurance, and
   (4) pension.

All these costs may be expressed as a percentage of direct salary.

5.1.3 Expenses

Expenses are the direct out-of-pocket expenses incurred during the course of the work and include the following:
a. living and travel costs as authorized by the band;

b. transportation costs for equipment and supplies when the work is done away from the consultant's premises;

c. communications, including long distance telephone, telegraph, telex, cable, express charges and translation costs;

d. special authorized services directly applicable to the work such as data processing, special consultants, surveys, investigations, laboratory charges and provision of special equipment and instruments; and

e. reproduction costs directly applicable to the work such as whiteprinting, photostating, mimeographing and printing extra copies of documents.

5.2 Basis of Payment

5.2.1 General Remarks

The basis on which a consultant is to be paid should be specified in the contract, and may consist of one of the methods described below.

5.2.2 Per Diem Rate

This is a fixed daily rate, inclusive of payroll and overhead costs and profit, and is relative to the level of experience and expertise required and the length of the normal working day as defined in the contract. It is generally used for short term, intermittent or other assignments where the scope of the work cannot be accurately determined.

5.2.3 Payroll Cost Multiplied by a Factor

The multiplying factor compensates the consultant for overhead costs, interest on invested capital,
responsibility and profit. It varies with the type of service being performed, the geographic location and the length of the assignment. This method, based on the direct cost to the consultant, may be applied in the following cases:

a. where the scope of the work and the services required are extensive;

b. when it is not possible to accurately determine the scope of the services to be provided; or

c. when a percentage fee does not adequately reflect the cost to the firm.

It may be desirable to place a limit or ceiling price on the total fees payable under this method. The consultant should maintain detailed time records and accounting procedures to substantiate all costs, and all records should be available for audit by the band.

5.2.4 Payroll and Overhead Costs plus a Fixed Fee

In this method, a variant of payroll cost multiplied by a factor, the consultant is paid actual payroll and overhead costs, together with a fixed fee, negotiated to cover interest on invested capital, responsibility, and profit. It is used for the same types of work as the preceding method. The fee is calculated as a percentage of the estimated cost of payroll plus overhead.

5.2.5 Retainer

This method provides for a stipulated amount to be paid at regular intervals and is used when the services are expected to be required at intervals over a period of time, such as assistance in prolonged litigation and other special advisory-type services. The retainer is merely to ensure that the services are available on demand, the fee for the actual services being determined using one of the methods described above.
5.2.6 Expenses and Disbursements

Normally the consultant is reimbursed for the actual cost of direct out-of-pocket expenses or disbursements incurred during the course of the work, as stipulated in the contract and subject to the prior approval of the band.

5.2.7 Overtime

Overtime will not apply to consultants paid per diem, unless provided for in the contract and specifically authorized by the band. Compensation for actual overtime worked by the consultant's staff, as authorized by the band, should be based on payroll costs for normal working hours plus the applicable overtime premium. The multiplying factor for overhead referred to in 5.2.2 should not be applied to the overtime premium.

5.2.8 Percentage of the Cost of Construction

This method has two major shortcomings: the fee does not relate adequately to the cost of performing the service and the consultant is penalized for economical design. When this method is used, care should be taken to stipulate a budget ceiling and to verify that the estimated fee will be in line with the estimated cost to the consultant. This method has been used where the principal responsibility is design, the preparation of contract documents and the provision of non-resident supervision during construction. The work is expressed as a percentage of the cost of the project and the fee is translated into a fixed amount which is calculated using the lesser of:

- the construction contract award price; or
- the pre-tender estimate approved by the contracting authority.
5.2.9 Percentage of Approved Estimate

There are some circumstances when fees based on the construction contract award price may result in some inequities to either the consultant or the band. These circumstances can arise due to the construction market or tendering situation not being sufficiently predictable to be used as a basis for the consultant's fee. In this event a fixed fee may be negotiated for the design portion of the work, based on a departmentally approved estimate made prior to commencement of the working drawings. When this method is used the fee applicable to the construction supervision phase should be based on the construction contract price.

6.0 CONTRACT ADMINISTRATION

6.1 Records and Document Requirements

Records and documents should be maintained during the various administrative stages, and should include information such as the following:

a. the reason for contracting for such services;

b. an estimate of cost, together with certification that sufficient funds are available to meet anticipated expenditures;

c. a list of prospective firms or individuals uniquely qualified for the job;

d. regular physical progress and financial reports from the consultant;

e. progress reports to assure conformance to contract requirements;

f. a monitoring of time, resource, cost and quality aspects of the work against a pre-determined and agreed upon work plan;

g. technical and financial audits;
h. acceptance or approval of the work at intermediate stages and at completion; and
i. certification of all payments and follow up to ensure timely payment.

6.2 Resolution of Disputes

Legal advice should be sought immediately in the case of a dispute which cannot be readily resolved.

7.0 EVALUATION OF CONSULTANTS

On completion of the contract the consultant's performance should be evaluated.

Care must be taken to ensure that all evaluations are accurate and objective and, where judgemental comments are made, that complete and factual supporting documentation is retained on the contract file.

Attached as Appendix 5 is an evaluation report to be used for this purpose.

8.0 FORMS OF AGREEMENTS AND AMENDMENTS

8.1 Formal Contract Document

Agreements should be prepared in a formal manner. A formal document helps to resolve issues should disputes arise or the opinion of a third party be required. It should be drafted by the band council using the agreed upon:

- terms of reference,
- period of time,
- basis of payment,
- applicable general conditions, and
- consultant's proposal.

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8.2 Content

All contracts should state:

a. the parties to the agreement;

b. a reference to the consultant's proposal and statement of work;

c. the precise extent and character of the consulting services to be provided;

d. the responsibilities and rights of each party;

e. the fees payable for each type of service and the stages of payment;

f. special conditions which may apply;

g. the services which are to be provided by the band or others;

h. the rights of all parties in the event of termination, and the conditions under which they may be exercised;

i. provisions for resolution of disputes; and

j. a time schedule for the completion of each phase of the work, with a final completion date.

8.3 Basis of Payment

8.3.1 Fixed Price

"Fixed Price" means a total amount to be paid to the consultant for the satisfactory performance of all services specified in the terms of reference/statement of work. The only time a fixed price would change would be upon addition or reduction in the scope of the work to be performed.
8.3.2 Maximum Authorized Expenditure

"Maximum Authorized Expenditure" means a stated contract amount beyond which the consultant shall not spend without receiving prior approval by an official amendment. This type of contract usually consists of fixed prices of weekly, daily or hourly rates when time is estimated. If travel is required, an amount is also estimated. The total contract is therefore based on estimates of time and cost.

8.4 Amendments

Contracts should be amended formally. Every effort should be made to ensure adequate initial funding, preplanning and proper administrative procedures in order to avoid unnecessary changes to the contract.

Where contract amendments are warranted, they must be negotiated and accepted by both parties in writing. Any additional authority must be obtained and the change order executed.

The change order may provide, for example, for an expansion or reduction in the scope of the work, an increase or decrease in the cost of the work, or an extension or reduction of time.

For an extensive amendment, it may be necessary to attach other documents to change orders. When this action is taken, the document should be referenced, for example, "Supplementary Terms of Reference are attached as Appendix A".

When quasi-legal clauses are required in agreements or change orders, these should be checked with a lawyer to ensure that there is no conflict with other clauses in the contract.

No payment should be made for additional works or costs until they are formally authorized and a change order has been executed by both parties to the original agreement.

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9.0 SIGNING

9.1 Consultant's Signing Authority

The band should ensure that the individual signing on behalf of the consultant has the legal capacity to do so. If doubt exists, a certified copy of the firm's by-laws or a resolution by its board of directors should be obtained for confirmation.

9.2 Individual Consultant

For an individual consultant, the contract should be signed by the individual, in the presence of a witness;

9.3 Partnership

For a partnership, the contract should be signed by both the duly authorized partners in the presence of a witness, sealed, and dated.

9.4 Company

For a company, the contract should be signed by one or more of its officers authorized to execute contracts on behalf of the company, and duly sealed with its corporate seal in the presence of a witness.
Appendix 1

Types of Professional Services

Offices of Accountants
Accounting services
Auditing services
Book-keeping services

Offices of Architects
Architects, private practice
Architectural services

Engineering and Scientific Services
Aerial survey
Assayers, private practice
Bacteriological laboratory (excl. diagnostic or mfg.)
Biological laboratory, (excl. diagnostic or mfg.)
Boat designing
Chemical laboratory (excl. mfg.)
Draughting, engineering design
Electrical laboratory (excl. mfg.)
Engineering and scientific services
Engineers, private practice
Entomological research
Food research laboratory
Food testing laboratory
Forestry consultants
Geologists, private practice
Geological survey
Gravimetric survey
Industrial Laboratory
Laboratory, private research
Land surveyors, private practice
Metallurgical services
Research laboratory, engineering
Seismographic survey
Soil testing laboratory
Surveying
Testing laboratory (excl. medical or dental)
Offices of Management and Business Consultants
Actuarial consultants
Business consultants
Consulting economists
Customs consultants
Customs tariff specialists
Efficiency experts
Management consulting services
Personnel management consultants
Public relations counsellors
Appendix 2

Data required for Inventories

Inventories should contain sufficient data to enable the composition of a short list of qualified competitors or to make a selection without competition. The standard data to be included in all inventories are listed below. Questionnaires to consultants should request the standard data plus any extra information the band council deems necessary. All data should be filed in such a way that firms offering similar services can be identified readily.

Identification

(a) Name: of firm or individual as it will appear on the contract.

(b) Address: branch offices indicated where appropriate.

(c) Affiliation: names and addresses of other firms and their relationship.

(d) Ownership: country in which controlling interest is held.

Qualifications

(a) Field(s): of expertise

(b) Type(s): of service offered.

(c) Language(s): in which services are available.

(d) Principals and senior officers: names and resumes showing experience and qualifications.
Capacity
(a) Business volume: total sales for each of the past five years.
(b) Number of staff: in total and by specialty, employed in each of the past five years.
(c) Facilities: any specialized equipment or facilities such as instruments, computers, special mobile units or laboratories that are owned or leased.

Work History
(a) Recent contracts: which are representative of the firm's experience and capability (value, type of work and client's name should be stated).
Appendix 3

Evaluation of Proposals

Proposals should be evaluated according to the work identified in the "Terms of Reference" and using the criteria and point system set out in the attached explanation notes and form entitled "Criteria and Rating". Each proposal should be evaluated in accordance with the following procedure.

1. Each proposal should be evaluated separately by each committee member using the criteria and point system as indicated on the attached "Criteria and Rating" form.

2. The evaluation procedure is to:
   - rate each proposal for criteria 1 - 7;
   - calculate a score for each criteria by multiplying rating by weight (previously established); and
   - add up each score to determine the sub-total.

3. After all committee members have completed steps 1 and 2 above, convene a meeting to discuss the proposals and to finalize the total scores.

NOTE: If there are significant variations in the committee members subtotals for one proposal, it should be discussed. One member may have pertinent facts concerning the consultant. Ratings may be changed by individual committee members during this discussion period.

4. The proposal with the highest points should receive the contract, however, a point spread of 5% should be considered insignificant.

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Appendix 4

Explanation of "Criteria and Rating" Form

A. Criteria (see attached)

1. Experience and satisfactory performance on similar projects in the same subject area (government and private sector contracts).

2. The number, qualifications and experience of personnel to be assigned or made available for the job.

3. The depth and detail of the submission which indicates an understanding of the size, complexity and time constraints of the job.

4. The proposed time schedule for the work in relation to the time schedule proposed by the band.

5. The management of the work, delegation of responsibility, work plans, scheduling and cost control, reporting and quality control.

6. The methodology proposed, the technical methods to be utilized in the performance of the work, and any innovative and constructive ideas presented.

7. The total cost of the work and the proposed fees.

Each consultant should be ranked according to the committee's opinion of how well he/she would meet the terms of reference. The following rating system may be used:

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### CRITERIA AND RATING

**Project**

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<td>2. Project Team</td>
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<td>3. Schedule</td>
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<td>4. Proposal</td>
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<td>6. Location</td>
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<td>7. Other criteria</td>
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<td><strong>Total</strong></td>
<td><strong>100</strong></td>
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Signature of Committee ___________________ Date ________________

NOTE: Weights are assigned out of a total of 100.
EXAMPLE OF A CONSULTANT'S PROPOSAL EVALUATION
AND WEIGHTING TABLE

The proposals are evaluated on the degree to which they fulfill a
given set of criteria. The criteria are weighted in terms of
relative importance.

Each unit weight is multiplied by the appropriate degree of
satisfaction. Adding each score gives the overall degree of
satisfaction. After this procedure is repeated for all the
consultants' proposals, the selection committee will recommend the
proposal with the highest score.

| CRITERION                                      | WEIGHT | CONSULTANT  | CONSULTANT  | CONSULTANT  |
|                                               |        | PROPOSAL No. 1 | PROPOSAL No. 2 | PROPOSAL No. 3 |
|                                               |        |               |               |               |
| 1. Qualifications and experience based on similar work | 20     | 7 x 20 (140)  | 8 x 20 (160)  | 6 x 20 (120)  |
| 2. Qualifications and experience of proposed team assigned to project | 20     | 6 x 20 (120)  | 5 x 20 (100)  | 4 x 20 (80)   |
| 3. Practicability of time schedule             | 15     | 6 x 15 (90)   | 7 x 15 (105)  | 6 x 15 (90)   |
| 4. Proposed methodology and cost control       | 10     | 7 x 10 (70)   | 6 x 10 (60)   | 4 x 10 (40)   |
| 5. Cost of services                            | 10     | 7 x 10 (70)   | 6 x 10 (60)   | 7 x 10 (70)   |
| 6. Geographic location relative to project site| 10     | 6 x 10 (60)   | 6 x 10 (60)   | 5 x 10 (50)   |
| 7. Other criteria as desirable                 | 15     | 5 x 15 (75)   | 5 x 15 (75)   | 6 x 15 (90)   |
| TOTAL:                                        | 100    | 625           | 620           | 540           |

Consultant No. 1 has the highest score.
Appendix 5

Performance Evaluations

Consultant's Name and Address:

Contract No.:

Contract Period:

Value:

General Description of Work:

Quality of Work Performed:

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Efficiency in Management:

Capabilities of any Outstanding Specialists Assigned to Work:

Analysis of the Cost of Work and the Estimated Value Received:

Recommendations for Further Consideration:

Performance Evaluation Committee:

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