

Lassen County Transportation  
Commission  
Written Procurement Policy and Procedures  
for Federal Grant Awards

ADOPTED ON:

4/13/2026

ADOPTED BY:

LASSEN COUNTY TRANSPORTATION COMMISSION

## ***Preface***

The framework established in the following pages by this *WRITTEN PROCUREMENT POLICY AND PROCEDURES FOR FEDERAL GRANT AWARDS* document shall be followed for all local procurements that are supported with federal funds administered by the California Department of Transportation (Caltrans), Division of Rail and Mass Transportation (DRMT).

This *WRITTEN PROCUREMENT POLICY AND PROCEDURES FOR FEDERAL GRANT AWARDS* is an official document that guides the local procurement process in accordance with the rules and regulations established by 2 CFR Part 1201 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and FTA Circular 4220.1F—Third-Party Contracting Guidance. This framework also describes procurement best practices established by the FTA Best Practices Procurement & Lessons Learned Manual (BPPM), and the Federal Acquisition Regulation (FAR).

Federal guidelines for the administration of the FTA Section 5310, 5311, 5339, 5316, or 5317; and the DRMT State Management Plan (SMP) may impact the eligibility to use some methods and project types described by this framework. Before conducting any procurement action DRMT advises subrecipient agencies coordinate with the appropriate DRMT program liaison to ensure full reimbursement eligibility. Following only the procedures provided by this framework may not provide definitive assurance of compliance with federal third-party procurement requirements. This framework is not intended to be all-inclusive given the many unique situations faced when undertaking third-party procurements.

LASSEN COUNTY TRANSPORTATION COMMISSION to be further referred to as  
COMMISSION. *WRITTEN PROCUREMENT PROCEDURES FOR FEDERAL GRANT  
AWARDS* are formally adopted by LASSEN COUNTY TRANSPORTATION  
COMMISSION on APRIL 13, 2026 by the Board of Directors. Lassen County  
Transportation Commission Chairman - Dawn Miller -

This procurement policy will remain valid until federal procurement requirements or  
policies are modified; or DRMT or the COMMISSION determines that a revision is  
required.

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# 1. APPLICABILITY

## 1.1. Contracts

These policies apply to all local purchases and third-party contracts, except as specifically excluded herein.

### 1.1.1. Federal Funds

COMMISSION procurement actions when supporting mass transportation project with federal funds are primarily governed by 2 CFR Part 1201 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and FTA Circular 4220.1F—Third-Party Contracting Guidance<sup>1</sup>. In all procurements utilizing any amount of federal funds, federal requirements will generally supersede State and local law. Where no federal funds are involved, procurement actions will be governed by applicable State and local law. References to statutes or regulations herein shall be deemed to refer to any subsequent revisions or amendments that may be enacted from time to time.

### 1.1.2. State of California and the California Department of Transportation

The State of California is the Federal Transit Administration (FTA) designated grantee for FTA Section 5310, 5311, 5339, 5316, or 5317 funds. The governor of California has delegated fiduciary responsibility of these funds to the California Department of Transportation (Caltrans) Division of Rail and Mass Transportation (DRMT). These funds are then awarded to Subrecipients and administered by DRMT based on documented guidelines. DMRT Federal Grants Procurement Management (FGPM) Branch in

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<sup>1</sup> <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/final-circulars>

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conjunction with the specific FTA program branch provides oversight on the expenditure of these FTA funds. *In addition to adhering to the federal procurement requirement described in this procurement manual, COMMISSION acknowledges that DRMT requires all procurement actions at every stage are reviewed and have received prior State approval to be eligible for FTA funding support. Procurement actions made without prior State approval risk being denied federal funding support.*

DMRT may require additional documentation beyond what is described in this procurement manual before approving a procurement action. For additional information regarding Caltrans documented guidelines and the management of FTA Section 5310, 5311, 5339, 5316, and 5317 funds please refer to the State Management Plan, the Caltrans DRMT website, the DRMT Electronic Grants Management system (EGM/BlackCat), and the program liaison of the funding source.

**1.1.3. Federal Contract Law**

If no applicable State or Federal law or regulation exists regarding a particular aspect of procurement, then Federal contract law principles defined in the Federal Acquisition Regulations (FAR) may be applied.<sup>2</sup>

## 2. CONTRACTING AUTHORITY

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<sup>2</sup> <http://www.acquisition.gov/>

## **2.1. The Contracting Officer**

For the purpose of effecting the responsibility of this procurement policy, the Executive Director is the COMMISSION CONTRACTING OFFICER.

### **2.1.1. Delegation of Contracting Authority**

The CONTRACTING OFFICER may delegate contracting authority in whole or in part to DELEGATED OFFICERS within the general scope of their responsibility. This authority may not be re-delegated without the approval of the CONTRACTING OFFICER.

### **2.1.2. Contract Guidance**

DRMT Federal Grants Procurement Management (FGPM) Branch webpage provides guidance for FTA compliant procurement procedures including a matrix for determining appropriate Third-Party Contract Clauses, required by the FTA. The FGPM Branch has developed a set of FTA Third-party Contract Clauses fully compliant with State and federal procurement guidelines to aid subrecipients in expediting their third-party contracting process.

The FTA Procurement Circular 4220.1F, Appendix D, contains additional guidance in the form of a contract clause matrix for various types of commodities and services being procured. The FTA Best Practices Procurement Manual, (BPPM) Appendix A.1, contains instructions for the contract clauses required by FTA as shown in FTA Circular 4220.1F.

## **3. GENERAL PROCUREMENT STANDARDS**

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### **3.1. Competition**

It is the policy of COMMISSION that all procurement transactions be conducted in a manner intended to maximize full and open competition. For procurements above the small purchase threshold, currently set at \$150,000.00, the CONTRACTING OFFICER OR DELEGATES will advertise the procurement in local, regional and trade publications, and prospective known contractors will be directly informed of the project and encouraged to bid. For procurements below the small purchase threshold, bids or proposals will be solicited from an adequate number of qualified sources, preferably three (3) or more, but no fewer than two (2). The Agency will only make awards to responsive offers from responsible offerors. A responsive offer is one that complies with all material requirements of the solicitation. A responsible offeror is one possessing the technical, physical, financial and ethical capacity to successfully perform a specific contract.

### **3.2. Standards of Conduct**

COMMISSION shall maintain a written code of conduct governing the performance of employees, officers, agents and members of the COMMISSION related to the solicitation, award and administration of contracts, conforming to applicable laws and regulations, including but not limited to 2 CFR Part 1201 and FTA Circular 4220.1F. The CONTRACTING OFFICER AND DELEGATE OFFICERS will ensure that all persons involved in the procurement process have read and signed a copy of the Standards of Conduct and a signed copy will be maintained on file at COMMISSION s office.

### **3.3. Economic Purchasing**

Procurement activity will be reviewed by COMMISSION at least annually to determine if certain classes of purchases should be consolidated or broken out to obtain more economic pricing.

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### **3.4. Specifications**

All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative or characteristic nature of the material, product, or service to be acquired. Whenever practical, COMMISSION will describe its requirements in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications will be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance; however, when this method is used, the specification must set forth the salient characteristics that the product must meet, and vendors will be allowed to offer “equal” products meeting the salient characteristics. See also paragraph 4.1.6 below.

### **3.5. Records**

The CONTRACTING OFFICER shall maintain records detailing the history of a procurement in a manner consistent with the size, complexity and cost of the contract. Purchase order and contract files will be kept in storage for three years from date of final payment. Contract files for bus purchases will be kept for five years from date of final payment. At a minimum, these records shall include:

- The rationale for the method of the procurement,
- Independent Cost Estimate (ICE)
- Selection of the contract type,
- Reasons for each contractor’s selection or rejection, and;
- The basis for the contract price.

### **3.6. Assignment of Contract Rights (Piggybacking)**

The term “piggybacking” is often used to describe one transit agency’s use of another transit agency’s existing contract when the awarding agency’s contract did not originally envision its use by the piggybacking agency. When another agency’s contract has been identified for potential use by COMMISSION, a number of FTA requirements must be met before the contract may be used.<sup>3</sup> FTA requires that the existing contract contain an assignability clause and all required FTA contract clauses and certifications (Buy America, etc.). If the existing contract does not contain both an assignability clause and required contract clauses, it cannot be used.

In the case of an existing agency contract, FTA contract clauses may not be added later. Additionally, the items being acquired by assigned contract rights must not cause the original contract quantities (including options) to be exceeded by the piggybacking action. COMMISSION must also determine that a cost or price analysis was performed for the existing contract prices, including options, and then COMMISSION will perform a price analysis to determine that the option prices are fair and reasonable. If the contract options were not evaluated as part of the original award, exercising those options after contract award will result in a sole source award. In conclusion, COMMISSION will determine that an existing contract meets all FTA requirements before using that contract, and will document the file accordingly.

### **3.7. Protests**

Any actual or prospective bidder, proposer, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may file a protest with the CONTRACTING OFFICER. The CONTRACTING OFFICER will inform Caltrans Division of

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<sup>3</sup> See FTA Circular 4220.1F, Chapter V, Paragraph 7, for a full discussion of all FTA requirements for piggybacking.

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Rail and Mass Transportation (DRMT) immediately of a protest received by COMMISSION that involves a procurement supported by FTA funds administered by DRMT. DRMT must be named as an intermediate level of protest review between COMMISSION and the FTA. The procedures for submitting protests are as follows:

- A. If a bidder/proposer perceives that a segment of the specifications is either too restrictive for competition or if the bidder/proposer perceives any improprieties in the solicitation or specifications, a written protest must be filed with the COMMISSION at least five (5) business days prior to bid opening or the due date for proposals. Any protests concerning the award of a contract after the bid opening, or after a public announcement by SUBRECIPIENT of a contractor selection decision, or after an evaluation of proposals submitted under an RFP, must be made within five (5) business days after the bid opening, or public announcement in the case of an RFP, in order to permit COMMISSION the opportunity to resolve the issue prior to contract award.

Protest procedures similar to the sample below, naming Caltrans DRMT as an intermediate level of protest review will be included in all solicitations over the small purchase threshold (Section 5.3) or performed through an RFP/IFB (Section 5.4; 5.6).

**SAMPLE PROTEST PROCEDURES**

**Protests prior to proposal opening.**

Protests regarding any aspect of the attached materials and \_\_\_\_\_(City/Agency) selection procedures must be submitted in writing (via mail or fax only) to the \_\_\_\_\_(Contact Person), \_\_\_\_\_(Address) - fax: \_\_\_\_\_, by X:XX am/pm, PST, \_\_\_\_\_(date). The \_\_\_\_\_(Contact Person), will respond to these protests by \_\_\_\_\_(date) with an addendum to this RFP, by express mail, email and/or fax. This action completes the pre-opening administrative protest remedy at the \_\_\_\_\_(City/Agency) level.

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**Protests after proposal opening or announcement of award.**

Protests regarding \_\_\_\_\_(City/Agency) proposed selection of CONTRACTOR after proposal opening or award announcement must be submitted in writing (via mail, email or FAX) to the writing (via mail or fax only) to the \_\_\_\_\_(Contact Person), \_\_\_\_\_(Address) - fax: \_\_\_\_\_, by X:XX am/pm, PST, \_\_\_\_\_(date). The \_\_\_\_\_(Contact Person) will respond to these protests by X:XX am/pm, PST, on \_\_\_\_\_(date) by email and/or FAX. This action completes the proposal opening/award announcement administrative protest remedy at the \_\_\_\_\_(City/Agency) level.

**Appeals to Caltrans**

Under certain limited circumstances, and after the protester has exhausted all administrative protest remedies made available to him at the \_\_\_\_\_(City/Agency) level, an interested party may protest to the California Department of Transportation (Caltrans) the award of a contract pursuant to an FTA grant. The deadline for submitting protests to Caltrans prior to proposal opening is X:XX am/pm, PST, \_\_\_\_\_(date). The deadline for submitting protests to Caltrans after opening/announcement of award is X:XX am/pm, PST, \_\_\_\_\_(date).

Caltrans review of any protest will be limited to:

1. Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.
2. Violation of \_\_\_\_\_(City's/Agency's) protest procedures or \_\_\_\_\_(City's/Agency's) failure to review a complaint or protest.

The protest filed with Caltrans shall:

Include the name and address of the protester.

1. Identify \_\_\_\_\_(City/Agency) as the party responsible for the RFP process.
2. Contain a statement of the grounds for protest and any supporting documentation. (The grounds for protest filed with Caltrans must be fully supported to the extent feasible. Additional materials in support of an initial protest will only be considered if authorized by the FTA regulations.)
3. Include a copy of the protest filed with \_\_\_\_\_(City/Agency) , and a copy of \_\_\_\_\_(City's/Agency's) decision, if any.
4. Indicate the ruling or relief desired from Caltrans. Such protests should be sent to:

California Department of Transportation  
Division of Rail & Mass Transportation  
PO BOX 942874 – M.S. 39  
Sacramento, CA 94274-0001

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A copy of such protests should also be sent to the \_\_\_\_\_ (Contact Person).

### **3.8. Contract Period**

The period of contract performance for rolling stock shall not exceed five years, inclusive of options, as defined in FTA C4220.1F. The length of all other contracts shall be based upon sound business judgment, including consideration of issues such as the nature of the item being purchased, the need to afford the contractor a reasonable opportunity to recapture any start-up costs, the need to afford competing vendors the opportunity to do business with the COMMISSION, and the relative benefit to the COMMISSION of a longer or shorter contract term. All contracts must specify essential elements including, but not limited to, parties, price or rate of compensation, scope of work or technical specifications, contract period of performance described either in the form of delivery schedules for contract deliverables such as commodities, or a specific end date for service contracts, and contract termination and other legal considerations.

### **3.9. Cost Principles**

The Federal Acquisition Regulation (FAR) Part 31 cost principles will be incorporated by reference in all contracts where allowable costs must be determined for payment (e.g., all cost reimbursement contracts), and for negotiating all fixed price contracts and modifications where costs are estimated by the contractor and then negotiated for purposes of establishing a contract price.

## **4. FULL AND OPEN COMPETITION**

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## **4.1. Restrictions on Competition**

All procurement transactions over the FTA micro-purchase threshold, currently set at \$3,500.00, will be awarded competitively, without providing an unfair competitive advantage to any potential vendor. Some of the situations considered to be restrictive of competition include, but are not limited to:

- 4.1.1.** Unreasonable requirements placed on firms in order for them to qualify to do business.
- 4.1.2.** Unnecessary or excessive experience, excessive bonding, insurance, warranty or similar requirements which affect an otherwise qualified firm's ability to compete. Such requirements must also, however, be established in a manner consistent with protection of the COMMISSION interests.
- 4.1.3.** Noncompetitive pricing practices between firms or between affiliated companies.
- 4.1.4.** Noncompetitive awards to any person or firm on retainer contracts.
- 4.1.5.** Organizational conflicts of interest - An organizational conflict of interest exists where other activities, relationships, or contracts of a contractor inhibit, affect or prevent the contractor from rendering impartial assistance or advice to COMMISSION; a contractor's objectivity in performing the contract work is or might be otherwise impaired (e.g. a contractor assisting with a design might have a financial interest in a product or system that could be utilized in implementing that design); or a contractor has an unfair competitive advantage which might be gained through its involvement in writing, or reviewing the solicitation and contract documents, including the scope or specification except as part of a general industry review.
- 4.1.6.** Specifying only a "brand name" product, without specifying that equivalent products will be accepted and providing salient characteristics or other descriptive information sufficient to allow bidders to identify and propose such equivalent products.

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- 4.1.7. The use of specification requirements and evaluation criteria which unnecessarily favor an incumbent contractor.
- 4.1.8. Any arbitrary action in the procurement process.

## 4.2. Geographic Preferences

Procurement transactions using federal funds will be conducted in a manner that prohibits the use of in-state or local geographical preferences in the solicitation and evaluation of bids or proposals, except in those cases where applicable federal statutes or regulations expressly mandate or permit geographic preference. This does not preempt State or local *licensing* laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

# 5. METHODS OF PROCUREMENT

## 5.1. General Standards

Every competitive solicitation above the small purchase threshold shall adhere to the following standards:

- 5.1.1. It shall be publicized in a manner intended, at a minimum, to notify potential sources in the COMMISSION service area of the nature and type of the solicitation and the date for responses. It may also be advertised regionally or nationally as appropriate.
- 5.1.2. Every reasonable effort should be made to encourage the maximum number of responses. Pre-qualification or other methods of restricting responses shall not be used unless required for security or public safety reasons or by law.

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- 5.1.3.** The solicitation document shall contain, at a minimum, instructions on how the response is to be prepared and submitted; the deadline for submittals and other key dates in the process (such as the date and time of a pre-bid or pre-proposal conference); the basis upon which an award will be made; a statement reserving to the COMMISSION the right to reject any and all offers and the right to award to other than the offer containing the lowest price; a clear and comprehensible statement of the COMMISSION needs and the technical requirements to be met by the successful offeror; a set of terms and conditions intended to be used for any resulting contract; and representations and certifications as required by law or deemed necessary by the COMMISSION.
- 5.1.4.** The solicitation period shall remain open for sufficient time to enable the preparation of quality submittals responsive to the COMMISSION needs. The minimum bid period for competitive procurements will normally be 30 days, except in cases of urgency a shorter time may be specified. Whenever a period shorter than 30 days is considered necessary, every effort will be made to contact prospective bidders to ensure they can submit bids or proposals in the desired response time.
- 5.1.5.** Responses to any questions from prospective sources, or any amendments to the solicitation, shall be distributed to all parties known to have received the solicitation. Should the amendment substantially change the terms of the solicitation, the period for receipt of offers shall be extended to allow offerors to change their proposals accordingly.
- 5.1.6.** A determination shall be made by the CONTRACTING OFFICER that (1) the apparently successful offer is responsive (i.e. complies with all material elements of the solicitation), (2) the offeror is responsible (i.e. possesses the technical and financial resources to successfully perform the contract, and has a satisfactory record of past performance, compliance with public policy,

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and integrity), and (3) the offeror is not on the Federal Excluded Parties List System.<sup>4</sup> The CONTRACTING OFFICER shall also determine that the price(s) are fair and reasonable.

## 5.2. Micro-purchases

Currently, micro-purchases are purchases up to, but not exceeding \$3,500.00. Purchases below that threshold may be made without obtaining competitive quotations, but shall provide for competition whenever practicable. Award may be made if it is determined that the price is fair and reasonable, and that there are no significant differences in quality or price among available vendors. Typically, this would involve items sold “off-the-shelf” to the general public or a specific market. Documentation for a non-competitive micro-purchase need only include a notation that the price is fair and reasonable and the reason for the determination. The determination of price reasonableness may be recorded on preprinted forms or a checklist on the receipt. A preprinted form similar to the Micro-purchase documentation form found on the Caltrans DRMT webpage may be used to document the determination of a fair and reasonable price.

Micro-purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers, and requirements may not be split to avoid a competitive solicitation process. COMMISSION will maintain a log of micro-purchases to ensure that there is an equitable distribution of purchases among qualified suppliers. The Davis Bacon Act (40 U.S.C. §3141 et seq.) applies to construction micro-purchases in excess of \$2,000.”

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<sup>4</sup> <http://www.SAM.gov>

### **5.3. Small Purchases**

Relatively simple and informal solicitations for services, supplies, or other property, the current small purchases thresholds are between \$3,500.00 and do not exceed \$150,000.00. In no case shall small purchase procedures be used for procurements above the small purchase threshold as defined in 41 U.S.C. §403(11), currently \$150,000.00. If small purchase procedures are used, price or rate quotations shall be solicited from an “adequate number of qualified sources.” The number of sources will depend upon the availability of qualified sources, but the objective should ordinarily be to obtain quotes from at least three (3) vendors. Both the solicitation and quotes should be written, in either electronic or hard copy form.

### **5.4. Competitive Sealed Bidding**

- 5.4.1.** Bids in excess of \$150,000 are publicly solicited through a formal Invitation for Bids (IFB) with a fixed-price contract (lump sum or unit price) being awarded to the lowest-priced responsive bid from a responsible bidder.
- 5.4.2.** Competitive sealed bidding is the preferred method of solicitation, and justification for any other method of procurement must be documented as part of the procurement record.
- 5.4.3.** All bids will be publicly opened at the time and place prescribed in the IFB. Bidders shall be afforded a suitable opportunity to examine all bids received after they are opened.
- 5.4.4.** A fixed-price contract award will be made in writing to the responsible bidder submitting the lowest responsive bid at the price stated in the bid. A fixed-price contract type does not preclude consideration of the use of price-varying provisions such as escalation or incentives/disincentives if suitable for the circumstances. The price reasonableness analysis shall consider whether bids are materially unbalanced.

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- 5.4.5.** When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs may be considered in determining the low bid if specified in the solicitation. Payment discounts shall be requested or considered only when prior experience indicates that the COMMISSION is able to avail itself of such discounts.
- 5.4.6.** If the IFB includes pricing for any options or alternatives, the solicitation must define whether or not they will be considered in determining the low bid, and, in the event of multiple options, the basis for and order in which they will be accepted. In order to exercise contract options after award, and also consider them as part of the original competitive process, the options must have been considered during the award of the basic contract.
- 5.4.7.** In the event that a single responsive bid is received from a responsible bidder, the COMMISSION may negotiate with the bidder to ensure that a fair and reasonable price is obtained. If the responsive bid from the lowest responsible bidder exceeds available funds, the COMMISSION may negotiate with the apparent low bidder to obtain a contract price within available funds, provided that the COMMISSION has established in writing conditions and procedures for such negotiations prior to issuance of the IFB and summarized them therein. The COMMISSION may not, as part of a negotiation process, modify or alter the scope and specification defined in the IFB in a manner that might have attracted additional bidders if incorporated in the solicitation.

## **5.5. Two-Step Sealed Bidding**

Two-step sealed bidding is a procurement method involving the submittal of unpriced technical proposals in the first step, and a sealed bid submittal in the second step. The Two-Step process is appropriate when all of the following five (5) conditions exist:

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- (1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation and any necessary discussion of the technical aspects of the requirement to ensure mutual understanding between each source and the COMMISSION.
- (2) Definite criteria exist for evaluating technical proposals.
- (3) More than one technically qualified source is expected to be available, and more than one technical solution is considered possible.
- (4) Sufficient time will be available for use of the two-step method.
- (5) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

The first step requires offerors to submit technical proposals for evaluation, generally under the procedures for competitively negotiated procurements. Proposals are evaluated for technical merit including, if appropriate, discussions with offerors and requests for revised proposals. The objective of the process is to negotiate one or more technical solutions acceptable to the COMMISSION. At the end of this step, each offeror offering an acceptable technical solution is invited to submit a sealed bid to provide the goods or services defined in its technical proposal as negotiated. Award is based upon the lowest responsive price from a responsible offeror.

## **5.6. Competitive Negotiation**

The competitive negotiation procurement process is conducted through a formal Request for Proposals (RFP). This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. This method may be used for acquisition of supplies or services only if the COMMISSION determines in advance and in writing that competitive sealed bidding is not practicable or fiscally advantageous. The process for procuring architect/engineering services, or for other types of professional services if federal funds are not involved, is described in section 5.7 below.

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The competitive negotiation method of procurement is appropriate when the CONTRACTING OFFICER determines that the following four (4) conditions exist:

- (1) A complete, adequate, and realistic specification or purchase description is not available.
- (2) Two or more responsible offerors are willing and able to compete effectively for the award.
- (3) The selection of the successful offeror requires consideration of factors other than price.
- (4) Discussions with offerors are anticipated to be needed.

Either a fixed price or cost reimbursable type contract may be awarded. Each RFP will include a description of the factors other than price by which proposals will be evaluated. Evaluation factors and sub factors will be listed in order of their relative importance. For RFPs other than small purchases, technical and pricing proposals shall be submitted in separate volumes.

**5.6.1.** Selection Procedures – The CONTRACTING OFFICER will ensure that all solicitations (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, and (2) Identify all requirements that proposers must fulfill and all evaluation factors, and their relative importance, to be used in evaluating proposals. The sequence of the selection process will be as follows:

**5.6.2.** Appointment of Evaluation Committee: The CONTRACTING OFFICER will form a committee of at least two (2) persons who have knowledge of the procurement's subject matter/technology to evaluate technical proposals. The evaluation process shall be confidential, and each participant shall sign a confidentiality agreement prior to distribution of the proposals. Technical personnel may be from other public agencies if necessary. The

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CONTRACTING OFFICER will also serve as THE THIRD (3) member of the EVALUATION COMMITTEE (EC).

**5.6.3.** Technical Proposal Evaluations: The EC will:

- A. Develop the technical evaluation factors and their relative importance for inclusion in the RFP. Price will not be assigned a weight or “point scored” as an evaluation factor, but will be considered as a separate factor along with the weighted technical factors for award of the contract. When the scope of the work or product specifications are not precise and will allow for a range of quality or performance characteristics in the proposals, RFPs will advise proposers that the award will be made on the basis of “best value” to COMMISSION. Best value is the best combination of price and technical performance, not necessarily the lowest price or the highest technical rating, but the best combination of price and technical performance. When the scope of work or product specifications are sufficiently precise, award may in fact be made to the lowest price, technically acceptable proposer, and the RFP will notify proposers when this is the case.
- B. Evaluate technical proposals in accordance with the technical evaluation factors in the RFP and score the proposals in accordance with the scoring method chosen (i.e., points, adjectives, etc.).
- C. Prepare a preliminary report of the technical strengths, weaknesses, performance risks (if any) and ambiguities in the proposals. Merely assigning a score or adjective rating is not sufficient - scores are simply indicators of quality, but the actual qualitative differences among the proposals must be explained in narrative form.
- D. Once the technical evaluations are complete, prior to review of price, the CONTRACTING OFFICER will distribute the price proposals to the EC members.

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- E. The CONTRACTING OFFICER will be responsible for evaluating price proposals. The CONTRACTING OFFICER will prepare a spreadsheet of the prices for the items and services being procured, showing the comparative prices being proposed by line item if applicable.
  - F. Determine, with the CONTRACTING OFFICER, those proposers in the “competitive range” for the purpose of conducting discussions that will clarify proposal ambiguities and enable further evaluation by the EC. The objective of determining the competitive range is that those proposers having no reasonable chance of winning the contract, whether for technical or price reasons will not have to expend further unnecessary effort on their proposal, enabling them to release their teams to other opportunities. These proposers should be advised by the CONTRACTING OFFICER immediately following the competitive range determination that they were not included in the competitive range and no further discussions with them will be held prior to contract award.
  - G. Where the procurement is for A&E services (see section 5.7 below), the selection process will not involve prices (in accordance with FTA regulations); however, for all other procurements, including non A/E professional services, such as legal, medical, auditing, etc., prices must be considered in the selection process in accordance with FTA regulations.<sup>5</sup>
- 5.6.4.** Interviews/Discussions: The EC will conduct discussions with the competitive range proposers in order to further evaluate the proposers’ key personnel, their technical approach, pricing issues, etc. Upon completion of the interview process, the Proposers will again be rated (Final Rating).
- 5.6.5.** EC Report: The EC will prepare the final evaluation report that: (1) describes the technical strengths, weaknesses, and risks (if any) of the proposals in

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<sup>5</sup> FTA Circular 4220.1F, Chapter VI, 3.f.(2) limits qualification - based selection to A&E services. All other services require prices to be considered.

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accordance with the technical evaluation criteria; (2) evaluates the proposals' estimated costs for reasonableness (for cost type contracts), or prices offered (for fixed priced contracts) and; (3) recommends the "best value" offer – that proposal which offers the best combination of technical merit/performance and pricing. The EC will submit its report to the CONTRACTING OFFICER.

- 5.6.6.** Negotiations: The CONTRACTING OFFICER will lead the conduct of negotiations with the selected Proposer. Members of the EC will support the negotiations. Negotiations will address pricing and technical issues. Negotiations requesting a Best and Final Offer or BAFO process must be in writing. If the request is made orally to expedite the process, it must be confirmed in writing. If there is need to reopen discussions after a BAFO request, discussions must be held with all offerors.

The letter requesting a BAFO must have four (4) essential elements:

- (1) Specific notice that discussions are concluded.
- (2) Notice that this is the opportunity for the offeror to submit a Best and Final Offer.
- (3) A definite, common cutoff date and time that allows a reasonable opportunity for the preparation and submission of the BAFO.
- (4) Notice that the final offer must be received at the place designated by the time and date set in the request and is subject to any provisions dealing with late submission, modifications, and withdrawals of proposals set forth in the solicitation.

When the Proposer's technical proposal is incorporated in the contract, care must be taken to ensure that COMMISSION agrees with everything being incorporated in the

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contract by reference – and that there is no conflict between the technical proposal language and the terms of the contract.

- 5.6.7.** Records: The CONTRACTING OFFICER will ensure that a copy of all proposals and related EC documentation is kept in the official contract file, which is to be retained for three years following final payment.

**5.7. Architectural and Engineering (A&E) and Other Professional Services**

COMMISSION will use qualification-based competitive proposal procedures based on the Brooks Act, Chapter 11 of Title 40 of the United States Code, and 49 U.S.C. §5325(b), when contracting for A&E services.

- 5.7.1.** The Brooks Act requires that:
- A. An offeror's technical qualifications be evaluated;
  - B. Price be excluded as an evaluation factor;
  - C. A pricing proposal be requested from, and negotiations be conducted only with the most qualified offeror; and
  - D. Failing agreement on price, the proposal must be rejected and negotiations conducted with the next most qualified offeror, until a contract award can be made to the most qualified offeror whose price is fair and reasonable; if the pool of qualified offerors is exhausted without an agreement, the solicitation must be canceled.
- 5.7.2.** The Brooks Act "qualifications-based" procurement method can only be used for the procurement of A&E services which are defined to include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services, where any amount of Federal funds is utilized. This method of procurement cannot be used to obtain other types of services even though

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a firm that provides A&E services is also a potential source to perform other types of services. COMMISSION hereby determines that acceptance of Federal funds and compliance with the federal standard is in the public interest.

## **5.8. Other than Full and Open Competition**

Procurement other than full and open, or non-competitive procurements, are accomplished through solicitation and acceptance of a proposal from only one source. A contract amendment or change order that is not within the scope of the original contract is considered a non-competitive award procurement that must comply with the following:

- A. Guidance as to what is “within the scope” of a contract may be found in the FTA Best Practices Procurement Manual (BPPM), Section 9.2.1- Contract Scope And Cardinal Changes. “Tag-ons” are defined by the FTA as additions to the scope of work or deliverable items that were not included in the original contract competition, and which must be treated as sole source additions to the contract. Tag-ons are not to be treated as changes within the scope of the contract and are generally prohibited by the FTA.

Procurement by non-competitive proposals may be used when only one source is practicably available and the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following six (6) circumstances applies:

- (1) The item is available only from one responsible source because:
  - A. It involves a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or

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copyrighted, and is available to the Agency only from one source and has not in the past been available to the Agency from another source.

- B. Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
  - C. Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
  - D. Unacceptable Delay. In the case of a follow-on contract for the continued development or production of highly specialized equipment or major component thereof, award to another contractor would result in unacceptable delays in fulfilling the Agency's needs.
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - (3) FTA authorizes noncompetitive negotiations (e.g., in the original grant application and approval process);
  - (4) Other circumstances described in Part 6.3 of the Federal Acquisition Regulations exist;
  - (5) After solicitation of a number of sources, competition is determined inadequate and an evaluation of the specifications determines they are not unduly restrictive of competition; or
  - (6) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a) (1) that is procured directly from the original manufacturer or supplier of the item to be replaced, and no other sole source justification applies. The Agency must first certify to the FTA in writing that the manufacturer or supplier of the capital maintenance item is the only source for the item and that the price is no higher than the price paid by like customers.

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- 5.8.1.** Receipt of a single responsive and responsible bid or proposal is not, by itself, conclusive evidence that competition was inadequate; the CONTRACTING OFFICER must determine if there was a perception of competition which would affect the bid or proposal. Under these circumstances, award is not considered a sole source. The CONTRACTING OFFICER, however, must investigate the reason why no other bids or proposals were received; verify that the specification was not unduly restrictive and that the solicitation cannot be modified in a manner that would result in greater competition; and document the file accordingly.
- 5.8.2.** A cost analysis is required for each sole source acquisition.
- 5.8.3.** The contract file must include a noncompetitive award determination signed by the CONTRACTING OFFICER explaining the reasons for the award on a noncompetitive basis.

## **5.9. Options**

An option is a *unilateral* right in a contract by which, for a specified time, the buyer may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. The use of options must be limited to quantities of goods or services that are reasonably anticipated to be required by the COMMISSION during the term of the contract; options may *not* be included solely with the intent of assigning them to another entity in the future; however, contracts may include a provision allowing *assignment* to other agencies in the event of a change in the Agency's anticipated requirements, in accordance with FTA regulations and guidance.

The option quantities or periods must be defined in the solicitation; contained in the offer upon which a contract is awarded; and evaluated as part of the initial award process; i.e., the options must be evaluated in combination with bid prices for the base

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quantity to determine the low bidder. When an option has not been evaluated to determine the low bidder for award of the contract, exercise of the option will be considered a sole source procurement and must be justified as such.

The exercise of an option must be in accordance with the terms and conditions of the option as stated in the initial contract, and an option may not be exercised unless it is determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised, cost and other factors considered.

*If sequential options (e.g., a series of one-year extensions) exist, the failure to timely and properly exercise any option will void all subsequent options.* COMMISSION may exercise options in contracts of other public agencies (“piggybacking”) in accordance with FTA regulations and guidance.<sup>6</sup>

## **5.10. Time and Material Contracts**

Time and Material (T&M) contracts are generally prohibited by the FTA and may only be used after a documented determination that no other type of contract is suitable. Such contracts will specify a ceiling price (a limitation of funding) that the contractor shall not exceed except at its own risk. This type of contract is the least preferable of all allowable types because it creates a disincentive for the contractor to complete the contract in a timely manner since each labor hour expended carries with it a profit (and a predetermined overhead charge) built into the fixed hourly rate, the contractor is motivated to work as many hours as possible. Prior to the use of a T&M contract, the CONTRACTING OFFICER shall make a determination that the contractor’s accounting system is adequate to properly segregate and bill costs.

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<sup>6</sup> See FTA Best Practices Procurement Manual, Section 6.3.3

### **5.11. Cost Reimbursement Contracts**

Prior to the use of a cost-type contract, the CONTRACTING OFFICER shall make a determination that the contractor's accounting system is adequate to properly segregate and bill costs, and also adequate to allocate indirect costs in accordance with generally accepted accounting principles. In no event shall fixed indirect cost rates, that are not subject to audit and adjustment, be used in a cost-type contract, as such agreements constitute an unlawful cost-plus percent-of-cost method of compensation. Provisional indirect billing rates may be used but must be subject to later audit and adjustment.

### **5.12. Cost plus Percent of Cost Contracts**

Contracts that are structured with payment provisions based on the incurrence and payment of actual costs, such as direct labor, with a fixed mark-up on the actual costs incurred for (a) profit, (b) indirect costs, (c) or both, are prohibited by Federal statute and shall not be used.

### **5.13. Design Build**

Design-build refers to a procurement for design and construction simultaneously with contract award to a single contractor, joint venture, etc., that will be responsible for both the project's design and construction. When design build is feasible for projects other than publicly funded buildings, the procurement must comply with FTA policies.<sup>7</sup> The contractor selection process will be determined by the value of the design work as compared to the value of the construction work. If the value of the design work exceeds that of construction, then an A&E (qualifications – based) selection, without competing price proposals, must be used. Where, however, the value of construction work exceeds

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<sup>7</sup> FTA Circular 4220.1F, Chapter VI, Paragraph 3 (h).

that of design (the usual case), then competitive negotiation or sealed bids must be used for the entire procurement.

## 6. ROLLING STOCK

The procurement of revenue service rolling stock with FTA funds must meet pre-award and post-delivery certification compliance before the recipient enters into a formal contract for the purchase of such rolling stock and after rolling stock is delivered to the subrecipient. A *qualified* vehicle inspector, mechanic or similar COMMISSION staff or consultant may perform pre-award and post-delivery audit and certifications. It is the COMMISSION responsibility to coordinate and ensure the audit and certifications are performed.

COMMISSION is responsible for obtaining the following certifications:

### 6.1. Pre-Award and Post-Delivery Buy America Certification

This certification states that the subrecipient maintains either a (1) FTA letter granting a waiver to the rolling stock to be purchased from Buy America requirements, or (2) had an independent audit.

The independent audit would ensure that the rolling stock purchase meets Buy America requirements. The subrecipient must maintain records that component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

## **6.2. Pre-Award Purchaser's Requirements Certification**

This certification is kept on file by the recipient and states that (1) The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and (2) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation.

## **6.3. Post-Delivery Purchaser's Requirement Certification**

This certification is kept on file by the recipient and states that a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock.

After reviewing the report and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.

The inspectors report includes the following:

- Provide accurate records of all vehicle construction activities; and
- Address how the construction and operation of the vehicles fulfills the contract specifications.

## **6.4. Manufacturer's Federal Motor Vehicle Safety Standard (FMVSS) Self-Certification**

If federal motor vehicle standards do not apply, the recipient must provide a certification from the manufacturer stating such. If the standards do apply, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.

## 7. CONTRACT COST AND PRICE ANALYSIS

### 7.1. Requirement

A cost or price analysis must be performed for every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. The “*FTA Pricing Guide for Grantees*” will be used as guidance to perform the appropriate degree of cost or price analysis.

### 7.2. Independent Cost Estimate (ICE)

Any cost or price analysis must be based on an independent cost estimate, which should be developed before a solicitation is issued, but in no event after the receipt of bids or proposals. For contract modifications, the independent estimate must be prepared without knowledge of the contractor’s proposed pricing.

### 7.3. Cost Analysis

- 7.3.1. A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost.
- 7.3.2. A cost analysis will be necessary when adequate price competition is lacking, including non-competitive awards or sole source procurements (which include contract modifications and change orders), unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.
- 7.3.3. Profit is to be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the

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quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- 7.3.4. Costs or prices based on estimated costs for contracts will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles contained in Part 31 of the Federal Acquisition Regulations.
- 7.3.5. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

#### **7.4. Price Analysis**

- 7.4.1. A price analysis looks at the price as a whole without examination of its various components, and is usually performed by comparing prices to those from other comparable procurements.
- 7.4.2. A price analysis may be used in all instances where a cost analysis is not required to determine the reasonableness of the proposed contract price.
- 7.4.3. Adequate price competition may be determined to exist when the perception of competition exists, even if only one bid or proposal is received; conversely, the receipt of multiple bids or proposals with widely differing prices may not constitute adequate price competition.

## **8. BONDING REQUIREMENTS**

### **8.1. Construction**

COMMISSION shall specify bonds in compliance with (1) FTA requirements for construction or facility improvement contracts in FTA 4220.1F, Chapter IV, 2. h.

## **8.2. Non-Construction**

For non-construction contracts, bonding requirements are discouraged except where applicable law or regulation provides for such bonding, or COMMISSION determines that such a requirement is necessary as part of the risk management plan for a project.

# **9. PAYMENT PROVISIONS**

## **9.1. Prompt Payment & Retainage**

All payments, including payments by a third party contractors to any subcontractor, shall be made in accordance with, and in the time specified in, California Government Code, Chapter 4.5, commencing with Section 927.

The third party contractor shall not withhold retention from any subcontractor, nor shall COMMISSION withhold retention from the third party contractor. The third party contractor must pay subcontractors within 7 days of receipt of each progress payment under Public Contract Code sections 10262 and 10262.5 or Business and Professions Code sections 7108.5, as applicable.

## **9.2. Advance Payments**

The use of FTA funds for payments in advance of the incurrence of costs by the contractor is generally prohibited, without prior written approval from FTA. FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as utility services, rents and subscriptions. DRMT approval of such advance payments is required when the amount exceeds \$100,000. COMMISSION should not make advance payments using other funds (including local match funds) except where (a) it is customary in the industry, or (b) there are sound business reasons (e.g. to enable a more cost-effective pricing structure)

for doing so; in the latter case, the file shall be documented to fully justify the advance payment.

### **9.3. Progress Payments**

Progress payments are to be made only for costs incurred in the performance of the contract. When progress payments are used, COMMISSION must obtain title to property or other adequate security for the amount of the progress payment. Progress payments for construction contracts may be made on a percentage of completion basis; this method may not be used for non-construction contracts.

## **10. LIQUIDATED DAMAGES**

### **10.1. Risk Management**

COMMISSION shall determine whether to use or not to use a liquidated damages provision for a specific procurement, as part of an overall risk management program.

### **10.2. Calculation**

The amount of liquidated damages must be reasonably calculated to reflect anticipated damages COMMISSION might suffer as the result of an inadequacy or delay in contract performance, and such damages would be difficult or impossible to determine.

### **10.3. Measurement**

Liquidated damages may be imposed for an entire contract or for a readily identifiable milestone or deliverable, and the measurement period may be other than a day, where appropriate.

#### **10.4. Solicitation Requirements**

If it is determined that a liquidated damages provision will be included, the solicitation shall identify with specificity the circumstances in which the liquidated damages will be imposed and the rate to be charged. The file shall document the derivation of the rate of assessment and ensure it is reasonable, proper and not arbitrary or punitive.

#### **10.5. Recovery Credited To Project**

All liquidated damages recovered under an FTA funded contract will be credited to the project unless FTA agrees otherwise.

## **11. CONTRACT APPROVAL REQUIREMENTS**

### **11.1. Approval**

No contract (or contract modification) for goods or services may be awarded without the advance written approval of the LASSEN COUNTY TRANSPORTATION COMMISSION if the aggregate or the sum of all phases is expected to exceed \$25,000.

*COMMISSION acknowledges that DRMT requires all procurement actions are reviewed and have received prior State approval to be eligible for FTA funding support.*

*Procurement actions made without prior State approval risk being denied federal funding support. DRMT may require additional documentation beyond what is described in this procurement manual before approving a procurement action.*

### **11.2. Emergencies**

The CONTRACTING OFFICER may authorize the award of contracts or contract modifications exceeding \$25,000 without prior Board approval in the following cases:

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- 11.2.1. When emergency action is required to prevent loss of life, damage to property, a threat to public safety or the environment, or the disruption of transit service or other essential functions of the Agency.
- 11.2.2. Where an emergency has been declared by local, state or national officials affecting the Agency's service area, directly or indirectly.
- 11.2.3. In cases where a delay in approving a contract modification will cause the Agency to incur substantial additional costs (by delaying a contractor, for example) or potential liabilities.
- 11.2.4. In cases where the COMMISSION is unable to take action at its scheduled meeting (due to a lack of a quorum, for example). Any authorization by the CONTRACTING OFFICER under this paragraph shall be supported by written documentation identifying the reasons for the action, and shall be subject to confirmation by COMMISSION at its next meeting. Wherever possible at least two bids will be solicited when emergencies preclude more extensive competition.

*COMMISSION acknowledges that DRMT requires all procurement actions at every stage are reviewed and have received prior State approval to be eligible for FTA funding support. Procurement actions made without prior State approval risk being denied federal funding support. DRMT may require additional documentation beyond what is described in this procurement manual before approving a procurement action.*

## 12. CONTRACT AWARD ANNOUNCEMENTS

FTA does not require announcements of contract awards utilizing Federal funds; however, when announcements of contract awards using Federal funds are made by COMMISSION, they will be made in accordance with FTA policy. FTA policy requires that announcements of contract awards, if they are made, identify (1) that FTA is or will

be providing assistance, (2) the amount of FTA assistance that is provided or expected to be provided, and (3) the Catalog of Federal Domestic Assistance (CFDA) Number of the program that authorizes the Federal assistance.<sup>8</sup> Subpart 15.5 of the Federal Acquisition Regulation (FAR) provides additional Pre-award, Award, and Post-award notifications, Protests, and Mistakes guidance.

## 13. CONTRACT PROVISIONS

### 13.1. Sound and Complete Agreement

All contracts shall include provisions to define a sound and complete agreement, appropriate to the type and complexity of the project. At a minimum these include a well-defined statement of work or specification, a defined contract term, a clear statement of the price and payment terms, and all applicable clauses required by federal, state or local laws and regulations. Contracts will not contain so called “un-priced options,” either for extending services or for additional items. All purchase orders and contracts will be drafted by COMMISSION and contain standard terms and conditions drafted by COMMISSION and approved by COMMISSION legal counsel. COMMISSION will not execute contracts drafted by vendors.

### 13.2. Termination - Remedies for Breach

All contracts in excess of the micro purchase limit as defined herein shall include contractual provisions that allow for administrative or legal remedies in instances where contractors violate or breach the contract terms.

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<sup>8</sup> FTA Circular 4220.1F, Chapter III, Section 3 (e).

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Bilateral termination for convenience provisions, where any party to the contract is able to terminate the contract at any time or for any reason, are prohibited by Caltrans DRMT. Only the awarding agency of the third party contract may terminate a third party contract for convenience.

The following clause will be inserted in all contracts:

**13.2.1. Termination for Convenience (General Provision)** “When it is in the Awarding Agency’s best interest, the Awarding Agency reserves the right to terminate this Contract, in whole or in part, at any time by providing a TEN (10) DAY WRITTEN NOTICE to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the Awarding Agency. If the CONTRACTOR has any property in its possession belonging to the Awarding Agency, the CONTRACTOR will account for the same, and dispose of it in the manner the Awarding Agency directs.”

**13.2.2. Termination for Default (General Provision)** “If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, the Awarding Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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If it is later determined by the Awarding Agency that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, the Awarding Agency, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.”

- 13.2.3. Mutual Termination** “The PROJECT may also be terminated if the Awarding Agency and the CONTRACTOR agree that its continuation would not produce beneficial results commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.”

## 14. CONTRACTS OUTSIDE THE SCOPE OF THIS POLICY

### 14.1. Other Acquisitions

This policy will not apply to transactions involving the purchase, sale, lease, or other transactions for real property; for joint development projects; for purchases from government-regulated entities such as public utilities which are granted market exclusivity by the regulating agency; for purchases of professional subscriptions, memberships, seminars, and expenses in connection with industry meetings and conferences; for travel and living expenses on Agency business; and other similar expenditures incidental to the routine conduct of the Agency’s business.

## 15. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

It is the policy of the State of California that disadvantaged business enterprises (DBEs), as defined in 49 C.F.R. Part 26, shall have an opportunity to participate in awards of its contracts and subcontracts. COMMISSION shall take positive actions to utilize DBEs. The FTA Best Practices Procurement Manual (BPPM), Chapter 7, will be used as guidance to implement the COMMISSION DBE policy.<sup>9</sup> Additional DBE information is found on the DRMT website <http://www.dot.ca.gov/masstrans/index.html>.

## 16. CONTRACT ADMINISTRATION FUNCTIONS

### 16.1. Contract Administration

Contract administration is the post-award administration of the contract to ensure compliance with the terms of the contract by both the contractor and COMMISSION.

*It is the responsibility of COMMISSION to monitor the contract at all times and report all contract modifications, exercising optional periods of performance, and change orders to DRMT for approval prior to implementation. Subrecipient agencies implementing contract modifications, option years, or change orders without prior DRMT approval risk being denied FTA reimbursement.*

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<sup>9</sup> <https://www.transit.dot.gov/funding/procurement/bppm-disadvantaged-business-enterprise>

## **16.2. Contract Administration File Documentation**

The documentation contained in the contract file will be maintained by the CONTRACTING OFFICER. It reflects the post award actions taken by the contracting parties in accordance with the requirements of the contract and documents the decisions made, and the rationale therefore, of matters which may result (or have resulted) in controversy or dispute.

Different COMMISSION personnel may be involved in any particular procurement (maintenance, QA, engineers, inspectors, financial, DBE office, legal, etc.) and each may have their own individual files relating to the contract, reflecting their involvement with the administration of the contract, but it is important for the procurement office to maintain the "official" contract file. The "official" file would include all official correspondence relating to the administration of the contract so as to verify the contractor's adherence to the terms of the contract and demonstrate that the agency is following good administrative practice and sound business judgment in settling all contractual and administrative issues arising during contract performance.

Any contract involving the expenditure of public funds will be subject to review/audit during and after performance to ensure that, at the very broadest level, the COMMISSION and the Government got what it paid for. This concept means that at the contract administration level, the contract file (standing alone and without need of interpretation or augmentation of the CONTRACT ADMINISTRATOR or other staff element) must demonstrate that the CONTRACTING OFFICER and the contractor have complied with the terms of the contract (i.e., bonds have been submitted, contractual issues requiring the approval of the CONTRACTING OFFICER have been submitted and approved, requests for payment have been submitted, reviewed, approved, and processed, etc.), and that contractual and administrative issues in dispute have been addressed and settled in accordance with good administrative practice and sound

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business judgment. Purchase order files will be kept in storage after final payment for a period of three years. Contract files will be kept for five years.

### **16.3. Contract Administration File Contents**

For all contracts above the micro-purchase level, the CONTRACTING OFFICER will ensure that the contract administration file includes the following:

- 16.3.1.** The executed contract and notice of award;
- 16.3.2.** Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
- 16.3.3.** Contract-required insurance documentation;
- 16.3.4.** Post-award (pre-performance) correspondence from or to the contractor or other Governmental agencies;
- 16.3.5.** Notice to proceed;
- 16.3.6.** Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- 16.3.7.** Modifications/changes to the contract including the rationale for the change, change orders issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;
- 16.3.8.** Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority (i.e., FTA, board of directors, executive director) of the settlement amount;
- 16.3.9.** Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
- 16.3.10.** Documentation relating to contract close-out.
- 16.3.11.** For micro-purchases, the buyer will ensure that the file contains a receiving report with a signature of the person inspecting and accepting the items

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delivered. The signature will certify that the items ordered meet the purchase order requirements with respect to quantities ordered/delivered and are of satisfactory quality.

## **16.4. Contract Administration Functions**

Every type of contract will have different contract administration actions and the documentation required to support that administration will differ as well. Supply contracts have different specific administrative actions that construction contracts do not, just as fixed price contracts are administered differently than cost reimbursement contracts.

The CONTRACTING OFFICER may delegate certain contract administration functions to a TECHNICAL OFFICER. The delegation must be in writing and must inform the TECHNICAL OFFICER what his/her duties are for that specific contract. Following are the typical contract administration functions and the normal responsibility of the CONTRACTING OFFICER and TECHNICAL OFFICER for each function.

**16.4.1.** The Contracting Officer shall perform the following functions:

- (1) Negotiate and execute change orders and supplemental agreements resulting from change orders issued under the Changes clause.
- (2) Negotiate prices for un-priced orders issued under basic ordering agreements.
- (3) Negotiate and execute supplemental agreements changing contract delivery schedules.
- (4) Negotiate and execute supplemental agreements providing for the de-obligation of unexpended dollar balances considered excess to known contract requirements.

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- (5) Issue amended shipping instructions and, when necessary, negotiate and execute supplemental agreements incorporating contractor proposals resulting from these instructions.
- (6) Negotiate changes to interim overhead billing rates and prices.
- (7) Negotiate and finalize adjustments to contract prices resulting from exercise of an economic price adjustment clause.
- (8) Issue change orders and negotiate and execute resulting supplemental agreements under all contracts.
- (9) Review the contractor's insurance plans.
- (10) Conduct post-award orientation conferences.
- (11) Negotiate provisional overhead billing rate agreements for cost-type contracts.
- (12) Negotiate advance agreements applicable to treatment of costs under cost-type contracts.
- (13) Issue Notices of Intent to Disallow or not Recognize Costs.
- (14) Establish final indirect cost rates and billing rates on cost reimbursement contracts.
- (15) Attempt to resolve issues in controversy; prepare findings of fact and issue decisions under the Disputes clause on matters in which the agency and contractor fail to agree.
- (16) Request advisory audits or audit information from a qualified independent auditor prior to award of cost reimbursement contracts to ensure (1) adequacy of contractor's accounting system, and (2) reasonableness of cost proposal estimates (labor, overhead, G&A, etc.), when negotiating contracts of \$100,000 or more.
- (17) Issue tax exemption forms.
- (18) Issue task orders under task order/work order contracts.
- (19) Negotiate prices and execute supplemental agreements for spare parts and other items.

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- (20) Negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience.
- (21) Process and execute novation and change of name agreements.
- (22) Perform property administration.
- (23) Consent to the placement of subcontracts.
- (24) Review, evaluate, and approve MBE, WBE and DBE subcontracting plans.
- (25) By periodic surveillance, ensure the contractor's compliance with MBE, WBE and DBE subcontracting plans.
- (26) Issue administrative changes, correcting errors or omissions in typing, contractor address, facility or activity code, remittance address, computations that do not require additional contract funds, and other such changes.
- (27) Negotiate and/or execute supplemental agreements, as required, making changes in packaging or contract shipping points.
- (28) Cancel unilateral purchase orders when notified of non-acceptance by the contractor.
- (29) Administer commercial financing provisions and monitor contractor security to ensure its continued adequacy to cover outstanding progress payments.
- (30) Accomplish administrative closeout procedures and ensure file are safely stored.

**16.4.2.** The Technical Officer shall perform the following functions:

- (1) Review and evaluate contractors' proposals and, when negotiation will be accomplished by the CONTRACTING OFFICER, furnish comments and recommendations to the CONTRACTING OFFICER.
- (2) Review invoices for fixed price purchase orders and contracts. Determine that all items being billed were received and meet the specifications of the contract. Sign-off on the invoices for payment or notify the CONTRACTING OFFICER and Accounts Payable if exceptions are being taken to an invoice. Where some

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items in an invoice for multiple items are not approved for payment, payment will be nonetheless be approved for those items that have been received and found acceptable, and the contractor will be notified as to why certain items are not approved for payment. In no event will the entire invoice be rejected if only a part of the items are disapproved for payment.

- (3) Review and approve or disapprove the contractor's requests for payments under the progress payments or performance-based (construction contracts only) payments clauses.
- (4) Ensure timely notification by the contractor of any anticipated overrun or underrun of the estimated cost under cost-reimbursement contracts.
- (5) Monitor the contractor's financial condition (cost performance) on cost type contracts and advise the CONTRACTING OFFICER when it jeopardizes contract performance.
- (6) Perform necessary screening and disposal of contractor inventory.
- (7) Perform production support, surveillance, and status reporting, including timely reporting of potential and actual slippages in contract delivery schedules.
- (8) Perform pre-award surveys of the contractor's facilities.
- (9) Review and evaluate preservation, packaging, and packing.
- (10) Ensure contractor compliance with contractual quality assurance requirements.
- (11) Ensure contractor compliance with contractual safety requirements.
- (12) Perform engineering surveillance to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development, and production.
- (13) Evaluate for adequacy and perform surveillance of contractor engineering efforts and management systems that relate to design, development, production, engineering changes, subcontractors, tests, management of

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engineering resources, reliability and maintainability, data control systems, and configuration management.

- (14) Report to the CONTRACTING OFFICER any inadequacies noted in specifications.
- (15) Perform engineering analyses of contractor cost proposals.
- (16) Review and analyze contractor-proposed change orders (design changes, etc.) and submit comments and recommendations to the CONTRACTING OFFICER, as required.
- (17) Assist in evaluating and make recommendations for acceptance or rejection of contractor requested waivers and deviations.
- (18) Monitor the contractor's value engineering program.
- (19) Ensure timely submission of required progress and other technical reports.
- (20) Determine that the contractor has a drug-free workplace program and drug-free awareness program.
- (21) Monitor the contractor's environmental practices for adverse impact on contract performance or contract cost, and for compliance with environmental requirements specified in the contract.

Responsibilities include—

- A. Requesting environmental technical assistance, if needed;
- B. Monitoring contractor compliance with specifications or other contractual requirements requiring the delivery or use of environmentally preferable products, energy efficient products, products containing recovered materials, and bio-based products; and
- C. As required in the contract, ensuring that the contractor complies with the reporting requirements relating to recovered material content utilized in contract performance.

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(22) Prepare evaluations of contractor performance. These evaluations will be kept by the Procurement Office for future reference as to the vendor's responsibility (past performance) when the vendor bids on future work.

## 17. ADDITIONAL GUIDANCE AND RESOURCES

Additional procurement guidance and resources are found on the FTA and Caltrans DRMT websites:

FTA Circular 4220.1F guides procurement activity supported with federal funds  
<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/final-circulars>

FTA Best Practices Procurement Manual (BPPM)  
<https://www.transit.dot.gov/funding/procurement/best-practices-procurement-manual>

FTA Third Party Procurement FAQ  
<https://www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-procurement-faqs>

Caltrans DRMT  
<http://www.dot.ca.gov/drmt/>

Federal Acquisition Regulation (FAR)  
<https://www.acquisition.gov/>

FTA Pricing Guide for Grantees

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<https://www.transit.dot.gov/funding/procurement/third-party-procurement/pricing-guide-fta-grantees>

# Addendum 1

## Local Assistance Procedures Manual Chapter 10

### Consultant Selection

# Chapter 10 Consultant Selection

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## Exhibits

[Exhibit 10-B: Suggested Consultant Evaluation Sheet](#)

[Exhibit 10-G: Individual A&E Task Order DBE Tracking Sheet](#)

[Exhibit 10-I: Notice to Proposers DBE Information](#)

[Exhibit 10-O1: Consultant Proposal DBE Commitment](#)

[Exhibit 10-O2: Consultant Contract DBE Commitment](#)

[Exhibit 10-Q: Disclosure of Lobbying Activities](#)

[Exhibit 10-R: A&E Boiler Plate Agreement Language](#)

[Exhibit 10-S: Consultant Performance Evaluation](#)




[Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#)

[Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#)

All LAPM Exhibits are located at:




<https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>

## 10.1 FEDERALLY-FUNDED A&E CONTRACTS

Procurement Planning		
1	2	3
		
<ul style="list-style-type: none"> <li>*Select Project</li> <li>*Set Project Objectives</li> <li>*Determine Project Schedule</li> <li>*Obtain CTC Allocation/Federal Authorization to Proceed prior to beginning reimbursable work</li> <li>* <a href="#">Solicitations for Consultant in Management Support Role (CMSR)</a>: submit Conflict of Interest (COI) and Scope of Work (SOW) to DLA-HQ prior to contract advertisement and receive FHWA approval prior to contract advertisement</li> </ul>	<ul style="list-style-type: none"> <li>*Identify Need for Consultant</li> <li>*Appoint Contract Administrator</li> <li>*Segment Project Work</li> <li>*Define SOW of A&amp;E Consultant</li> <li>*Specify Products to be delivered</li> </ul>	<ul style="list-style-type: none"> <li>*Estimate Cost of Consultant Work (independent cost estimate)</li> <li>*Determine Type of Contract (Project Specific or On-Call)</li> <li>*Determine Method of Payment: Lump Sum; Cost-Plus- Fixed-Fee; Cost Per Unit of Work; or Specific Rate of Compensation</li> <li>*Submit <a href="#">Exhibit 9-D: Contract Goal Methodology</a> to DLAE for review and concurrence prior to contract advertisement</li> </ul>

The Division of Local Assistance Acronyms List is available at:  
<https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/guide/dla-acronyms.pdf>

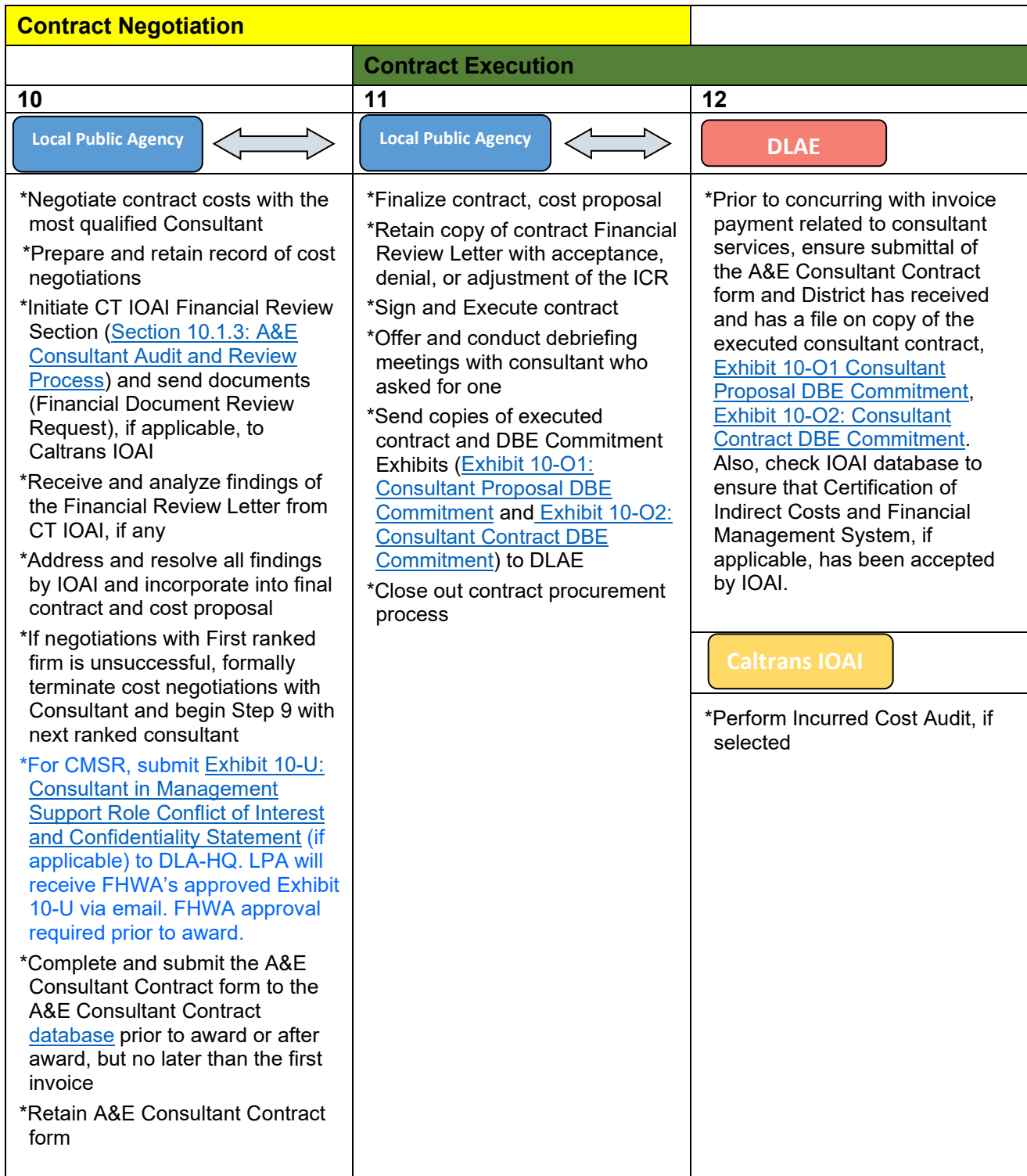
**Figure 10-1: A&E Contract Procurement Process Workflow Diagram**

Solicitation Documents and Advertisement		
4	5	6
		
<ul style="list-style-type: none"> <li>*Determine Solicitation Document; RFP or RFQ</li> <li>*Appoint Consultant Selection Committee</li> <li>*Collect signed Conflict of Interest forms and Confidentiality Statements (see <a href="#">Exhibit 10-T: Conflict of Interest &amp; Confidentiality Statement</a>) from all members involved in process</li> <li>*Determine Procurement Schedule</li> <li>*Develop Technical Criteria with level of importance (weights) for Evaluation of Proposals or the SOQ</li> </ul>	<ul style="list-style-type: none"> <li>*Prepare RFP or RFQ documents</li> <li>*Include SOW, evaluation process/criteria, DBE goals, MOP and cost proposal, minimum requirement of Proposal or SOQ, Notice to Proposers DBE Information (see <a href="#">Exhibit 10-I: Notice to Proposers DBE Information</a>), submittal deadline</li> <li>*Advertise RFP or RFQ on public forum (newspaper, technical publications, web hosting site, other local websites)</li> <li>*Issue RFP or RFQ (direct mailing, web posting)</li> </ul>	<ul style="list-style-type: none"> <li>*Prepare to respond to RFP/RFQ questions</li> <li>*Conduct Proposers Conference, if applicable</li> <li>*Receive Proposals or SOQs</li> </ul>

**Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued**

Evaluation and Selection of Consultant		
		<b>Contract Negotiation</b>
<b>7</b>	<b>8</b>	<b>9</b>
<div style="border: 1px solid black; background-color: #4a7ebb; color: white; border-radius: 10px; padding: 5px; display: inline-block;">Local Public Agency</div> <span style="font-size: 2em; margin: 0 10px;">↔</span>	<div style="border: 1px solid black; background-color: #4a7ebb; color: white; border-radius: 10px; padding: 5px; display: inline-block;">Local Public Agency</div> <span style="font-size: 2em; margin: 0 10px;">↔</span>	<div style="border: 1px solid black; background-color: #4a7ebb; color: white; border-radius: 10px; padding: 5px; display: inline-block;">Local Public Agency</div> <span style="font-size: 2em; margin: 0 10px;">↔</span>
<ul style="list-style-type: none"> <li>*Distribute Proposals or SOQs to Selection Committee members</li> <li>*Ensure Committee members receive the appropriate score sheet to use (see <a href="#">Exhibit 10-B: Suggested Consultant Evaluation Sheet</a>)</li> <li>*Convene Selection Committee and evaluate submittals; perform reference checks</li> <li>*Develop Final Ranking or Short List</li> <li>*Notify proposers of ranking/Short List</li> <li>*Retain all original score sheets and summaries</li> </ul>	<ul style="list-style-type: none"> <li>*Send out RFPs to Short List (two-step process)</li> <li>*Conduct Interview of Short List (if needed)</li> <li>*Develop Final Ranking of Consultants, and notify all interviewees</li> <li>*Retain all original score sheets and summaries</li> <li>*Provide a copy of Standard Contract language to top ranked consultant and invite for negotiations (see <a href="#">Exhibit 10-R: A&amp;E Boiler Plate Agreement Language</a> for standard contract language and provisions)</li> </ul>	<ul style="list-style-type: none"> <li>*Open and analyze cost proposal from the Highest Ranked firm</li> </ul> <div style="border: 1px solid black; background-color: #ffc107; border-radius: 10px; padding: 5px; text-align: center; margin: 10px 0;"> <b>Caltrans IOAI</b> </div> <ul style="list-style-type: none"> <li>*Review and evaluate Financial Document Review Request and supporting documents, if applicable</li> <li>*Issue Financial Review Letter, if applicable</li> <li>*Perform contract audits and reviews, if applicable, or review of CPA audited ICR workpapers to issue Cognizant Letter of Approval</li> </ul>

**Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued**



**Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued**

## 10.1.1 General

### Introduction

A Local Public Agency (LPA) may engage consultants to perform architectural, engineering, and related services to develop a federal-aid funded project. LPAs requesting federal funds to reimburse Architectural and Engineering (A&E) Consultants must follow the selection and contracting procedures detailed in [Section 10.1: Federally-Funded A&E Contracts](#) of this chapter. LPAs using local funds to procure an A&E Consultant on a federal-aid funded project and will not seek federal reimbursement for the consultant cost may choose not to follow the selection and contracting procedures detailed in Section 10.1 of this chapter. LPAs using local funds to procure a Consultant in a Management Support Role (CMSR) are required to obtain FHWA approval (see [Section 10.1.9: Retaining a CMSR](#) of this chapter).

### Definition of an Architectural and Engineering Consultant

23 CFR 172 and California Government Code 4525 defines A&E services as those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or program management.

### Architectural and Engineering Consultants

The Brooks Act (40 U.S.C.1101-1104) requires LPAs to award federally-funded engineering and design related contracts based on fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 CFR 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the LPA must be sealed and must not be included as a criterion for rating such consultants. After ranking, cost negotiations will begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the LPA does not consider fair and reasonable, negotiations must be formally terminated, and the LPA must then undertake negotiations with the second most qualified consultant.

If the negotiations with the second most qualified firm are not successful, negotiations must be formally terminated and the LPA must then undertake negotiations with the third most qualified consultant, and so on, until the price is determined to be fair and reasonable by the LPA.

In selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a proposed contract will be required.

Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages (Federal Payment of Predetermined Minimum Wage applies only to federal-aid construction contracts). Prevailing wages will apply if the services to be performed will involve land surveying (such as flag persons, survey party chief, rodman, or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations (DIR) websites below:

Consultants will need to provide their Prevailing Wage Policy if their participation on the project includes prevailing wage work. The policy will include information on the accounting treatment of delta base and delta fringe, and verify the accounting treatment is consistent every year.

- DIR FAQ [website](#)
- DIR Wage Determination [website](#)

### Non-A&E Consultants

Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value), or other critical selection criteria. The procedures outlined in this chapter can be modified for selecting non-A&E consultants by adding a cost item to the contract proposal.

For more details on non-A&E consultants, see [Section 10.3: Non-A&E Contracts](#) of this chapter.

### Selecting the Project

The LPA is responsible for selecting and initiating a federal-aid financed transportation project. The decision to begin project development is influenced by the project needs, its acceptability, the timing of studies, financing, and construction. The LPA must identify the project's objectives including the general level of improvement or service, operating standards, maximum cost, and the target date for project completion before commencing any consultant selection process.

### Subcontracted Services

The consultant is responsible for performing the work required under the contract in a manner acceptable to the LPA. The consultant's organization and all associated consultants and subconsultants must be identified in the proposal. If the consultant wishes to use a subconsultant not specified in the proposal, prior written approval must be obtained from the LPA. The subcontract must contain all required provisions of the prime contract. All subawards must include adequate oversight, management, and administration of engineering and design related consultant services and be administered in accordance with State laws and procedures specified in 23 U.S.C.106(g)(4) and 2 CFR 200.331-333.

### Organizational and Consultant Conflicts of Interest

In the procurement of contracts for engineering services by private consulting firms using federal-aid highway funds, LPAs must take all the steps necessary to prevent fraud, waste, and abuse. The LPA must develop and maintain a written code of conduct governing the performance of its employees (including the contract administrator) engaged in the award and administration of federal-aid highway funded contracts, including the prevention of conflicts of interest in accordance with 23 CFR 172.7(b)(4).

A conflict of interest occurs when a public official's private interests and his or her public duties and responsibilities diverge or are not consistent. Conflicts of interest may be direct or indirect (e.g., as result of a personal or business relationship). The appearance of a conflict of interest should be avoided as an apparent conflict may undermine public trust if not sufficiently mitigated.

Federal Regulation Governing Conflict of Interest (23 CFR 172.7(b)(4)) requires that:

- LPA must maintain a written code of standards of conduct for employees engaged in the award and administration of engineering and design service contracts;
- No contracting agency employee who participates in the procurement, management, or administration of federal-funded contracts or subcontracts must have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;

- No person or entity performing services for a contracting agency in connection with a federal-funded project must have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a federal-aid highway funded project must have, directly or indirectly, any financial or other personal interest in any real property acquired for the project;
- No contracting agency employees or agents must neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to sub-agreements;
- LPA must promptly disclose in writing any potential conflict of interest to FHWA.

### **Consultants Performing Work on Multiple Phases of Federal-aid Projects**

LPAs may choose to hire the same consultant firm to perform construction engineering and/or inspection services on the same project on which the firm also performed design services. This can cause project delivery efficiencies, as the design firm is well-suited to verify that the project is being constructed in accordance with the design and can resolve issues related to the design on behalf of the contracting agency. However, this may also pose a potential conflict of interest if the firm has a vested financial interest in failing to disclose deficiencies in its design work product and seeks to insulate itself from pecuniary liability in subsequent phases of the project, such as minimizing or ignoring design errors and omissions, rather than serving the best interests of the contracting agency and the public. Procuring a different firm from the design firm to provide the construction engineering and/or inspection services provides another level of review and reduces the risk of, or potential for, a conflict of interest.

Although federal regulations do not expressly prohibit the same firm from providing services on subsequent phases, the LPAs are responsible for ensuring the public interest is maintained throughout the life of a project and that a conflict of interest, real or apparent, does not occur or is sufficiently mitigated by appropriate public agency controls. Prior to allowing a consulting firm to provide services on subsequent phases of the same project, the contracting agency must establish appropriate compensating controls in policies, procedures, practices, and other safeguards to ensure a conflict of interest does not occur in the procurement, management, and administration of consultant services.

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform design phase services may not be the most qualified firm to provide construction phase services. Similarly, the qualifications and capacity of a firm may change over time. As such, it may not be appropriate to contract with a consulting firm to provide construction phase services at the outset of a design phase, knowing that these services may not be needed for an extended period until the preconstruction phase of the project is complete and construction funding authorized. The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications-based selection was conducted. All consultants acting in a management support role must complete [Exhibit 10-U: Consultant in](#)

[Management Support Role Conflict of Interest and Confidentiality Statement](#) (see [Section 10.1.9: Miscellaneous Considerations](#) in this chapter) and retain it in the LPA files.

### **Miscellaneous Considerations Authorization to Proceed**

The Federal Highway Administration (FHWA) must give the LPA an Authorization to Proceed (E-76) with the work prior to performing of any work for which federal reimbursement is to be requested, (see [LAPM Chapter 3: Project Authorization](#)). Eligible consultant contracts may be procured using local funds prior to receiving the E-76, but reimbursement is for work performed after the E-76 authorization date. If contract is procured using state or local funds, federal procedures must have been followed if seeking federal reimbursement. For state-funded projects see [Section 10.2: State-Only Funded A&E Contracts](#) and [LAPG Chapter 25: State Programs for Local Agency Projects](#), for guidance on when work may proceed.

Copies of the Authorization to Proceed and the consultant contract must be retained in the LPA project files for future audit.

## **10.1.2 Identifying & Defining a Need for Consultants**

The need for a consultant is identified by comparing the project's schedule and objectives with the LPA's capabilities, its staff availability of the required expertise, and its funding resources. If the LPA does not have sufficient staff capabilities, it may solicit assistance from another agency, or use a qualified private consultant to perform the required work.

If the LPA determines that there is a need to solicit assistance from another LPA, or to use a consultant, the District Local Assistance Engineer (DLAE) should be notified if federal-aid funds are to be requested for the project segment to be contracted out.

### **Appointing the Contract Administrator**

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions, and in the administration of the consultant's work. The Contract Administrator must be a qualified LPA employee or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract. On federal-aid contracts, the Contract Administrator or staff members must be a full-time employee and familiar with the work to be contracted out and the standards to be used. The Contract Administrator must also abide by the laws, regulations and policies required as part of accepting federal or state funding for their project. Non-compliance with the laws, regulations, and policies may result in loss of project funding.

The Contract Administrator's duties are listed in 23 CFR 172.9(d)(1) and include:

- Contract negotiation, contract payment, and evaluation of compliance performance, and quality of services provided by the consultant;
- Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
- Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;

- Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
- Documenting contract monitoring activities and maintaining supporting contract records as specified in 2 CFR 200.332-334;
- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;
- Arranges for preparation before an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant's cost proposal;
- Ensures contract audit and review procedure is followed;
- Ensures that fee/profit negotiation is conducted and keeps records;
- Serves as the LPA's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
- Identifies other LPA staff for the consultant to contact, if needed;
- Closes out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports ([Exhibit 17-F: Final Report - Utilization of Disadvantaged Business Enterprises \(DBE\) and First-Tier Subcontractors](#)) or [Exhibit 17-F1: Final Report - Utilization of Disadvantaged Business Enterprises \(DBE\) for A&E On-Call Contracts](#).

### Segmenting Consultant Work

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see [LAPM Chapter 6 Environmental Procedures](#) and [Standard Environmental Reference \(SER\) Chapter 31: Environmental Assessment \(EA\)/Finding of No Significant Impact \(FONSI\)](#) and [SER Chapter 32: Environmental Impact Statement \(EIS\)](#)). Final design must not begin until NEPA environmental approval has been received if federal reimbursement is desired.

Refer to Figure 10-2: Segmenting Consultant Work below, which illustrates several satisfactory ways to segment consultant activities.

	Well-structured Projects With Simple Right of Way Requirements	Well-structured Projects With Complex Right of Way Requirements	More Difficult Projects	Very Complex Projects
Preliminary Engineering				
Environmental Analysis				
Plans, Specifications & Estimates				
Right of Way Activities				
Utility Relocation				
Construction Engineering				

**Figure 10-2: Segmenting Consultant Work**

**Specify Products to be Delivered**

The Contract Administrator identifies the products and services to be delivered as a result of consultant contract work, and minimum qualification of consultant professionals and staff. These vary depending upon the type of projects and the phase of project development being addressed.

**Scope of Consultant Work**

The scope of work, which the contract must include, is a detailed description of the products or services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement, determine personnel and time requirements, and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables, standards for design and other work, quality control measures, acceptance criteria and deadlines.

**Title VI Assurances**

Title VI Assurances Appendices A and E must be included in each consultant contract. Include Title VI Assurances Appendices B, C, and D if applicable. The consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract. Include Title VI Assurances Appendices B, C, and D if applicable. Refer to [Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article XXXII Title VI Assurances. Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

## Non-Discrimination Clause

The Non-Discrimination Clause ([Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article XVI Non-Discrimination Clause and Statement of Compliance) must be included in each consultant contract. The consultant must include the non-discrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

## Disadvantaged Business Enterprise (DBE) Participation

When administering federal-aid projects, federal regulations (49 CFR 26) require the LPA to comply with the DBE program and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Refer to [LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises](#) for DBE requirements for A&E Consultant Contracts.

## Estimated Cost of Consultant Work

An independent estimate for cost or price analysis is needed for all consultant contracts (23 CFR 172.7(a)(1)(v)(B)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate must be prepared prior to opening the cost proposal from the top-ranked consultant, so the LPA has a cost comparison to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the LPA's negotiating team, is to be kept confidential and maintained for records.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver, and a time schedule of when they must be delivered.

It should be stressed that all work to be derived from the consultant services, such as preliminary design, environmental, or final design, must be clearly identified in the solicitation of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible. Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

Some of the costs estimating techniques are:

### Analogous Estimating:

Analogous cost estimating is using the actual cost of a previous, similar contract as the basis for estimating the cost of the current contract. Analogous cost estimating is frequently used to estimate costs when there is a limited amount of detailed information about the project.

Analogous cost estimating is generally less accurate, and it is most reliable when previous projects are similar in fact, and not just in appearance, and it uses expert judgment.

### Parametric Estimating:

Parametric estimating is a technique that uses statistical relationship between historical data and other variables to calculate a cost estimate for an activity resource. This technique can produce a higher level of accuracy depending upon the sophistication, as well as underlying resource quantity and the cost data. A cost example would involve multiplying the planned quantity of work by the historical cost per unit to obtain the estimated cost of the contract.

### Bottom-up Estimating:

This technique involves estimating the cost for individual work in the contract with the lowest level of detail. This detailed cost is then summarized or rolled up to determine a total cost of

contract. Cost detail should include estimated hours per task, labor hourly cost for professional and non-professional classifications, subconsultant costs, other project direct costs, and profit. Labor costs should be broken down to direct labor and indirect cost rates, if possible.

If more than one project or phase of work is to be developed within the consultant contract, separate cost estimates are required for each project or phase of work. Separate cost estimates are required for each milestone and portion of the work expected to be subcontracted.

For on-call (as-needed) contracts, the cost estimate/analysis should include at minimum, a historical analysis of annual needs for consultant work, professional labor cost and market analysis, and reasonable profit analysis.

### **Determine Type of Contract**

Types of contracts to be used are described as follows:

- Project-specific contract is between the LPA and consultant for the performance of services and a defined scope of work related to a specific project or projects.
- Multi-phase contract is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses.
- On-call contract is a contract that may be utilized for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period and maximum total contract dollar amount. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity is needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, and field surveying, etc. Many agencies use these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts must specify a reasonable maximum length of contract, not to exceed five (5) years, and a maximum total contract dollar amount (23 CFR 172.7(a)(2)(iv)). The maximum dollar amount for all contracts awarded under the solicitation must be stated in the solicitation. The maximum dollar amount is the aggregate of the on-call contracts anticipated to be awarded. For example, if the solicitation lists that up to five (5) contracts may be awarded, the aggregate amount of these 5 contracts is the maximum contract dollar amount. Setting maximum amount on each on-call contract under a multiple on-call solicitation does not meet the intent of 23 CFR 172. How many contracts are anticipated to be awarded must be stated in the solicitation. How task orders will be issued must be stated in the solicitation.

There are two options on how task orders must be awarded under multiple on-call contracts for the same type of service under the same solicitation:

1. Through an additional qualifications-based selection procedure also known as mini-RFP.
  - Solicit task order to the multiple on-call consultants on the master on-call contracts
    - Master on-call contracts are contracts awarded to on-call consultants at the initial RFQ/RFP procurement process.

- Solicitation may be informal, e.g. email, letter, etc.; documentation is required.
- Evaluation criteria must be included in the solicitation. The mini-RFP contains evaluation criteria that matches the strengths of the qualified firms to the specifics of the known tasks, thereby selecting the most qualified firm for each task.
- The evaluation criteria can include:
  - i. availability of personnel,
  - ii. staff capabilities,
  - iii. DBE (10% or less of overall score); the overall DBE goal was established at the master on-call contract,
  - iv. completion of time,
  - v. experience of consultant
  - vi. specialized expertise, and past performance.
- Evaluate and rank proposals and select from the multiple on-call contracted consultants
  - Recommend at least three panel members to evaluate and rank
  - Evaluate based on criteria in mini-RFP solicitation
- Negotiate and award to the on-call contracted consultant
  - The mini-RFP or the task order will be negotiated with first ranked firm from each competition. Task order (mini-RFP) cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.
- If only one proposal is received or there is an emergency, a Non-Competitive process must be justified, and [Exhibit 12-F: Cost Effectiveness / Public Interest Finding / A&E Noncompetitive](#) must be documented and signed by the DLAE
- Awarding task order to the multiple on-call consultants on a rotational basis does not meet the intent of the qualifications-based selection
- [Exhibit 10-G: Individual A&E Task Order DBE Tracking Sheet](#) must be used to track percentage of DBE after a task order is completed
- Each task order must have an [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) and [Exhibit 10-O2: Consultant Contract DBE Commitment](#) as applicable

## 2. Regional basis where each on-call consultant is contracted to a designated area.

To maintain the intent of the Brooks Act (40 U.S.C.1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:

- Must define a general scope of work, complexity, and professional nature of services.

- Specify a task order procedure the LPA uses to procure project-specific work under the contract.
- Task order work performed after the master on-call contract has expired will result in those costs being ineligible for federal or state reimbursement.
- If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services, the number of consultants that may be selected or contracts that may be awarded must be identified.
- Specify procurement procedures in the contracts the LPA will use to award/execute task orders among the consultants:
  - Either through an additional qualification-based selection process (see the Two-Step RFQ/RFP process later in this chapter), OR
  - On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only. The RFP may list multiple regions that allow consultants to crossover or be a “backup” to other consultants that for specifically documented reasons are not able to perform the work in their assigned region. Per 23 CFR 172.9 (a)(3)(iv)(B)(2), the “backup” option needs to be listed in the respective contracts.

An example of acceptable contract wording in multiple on-call contracts for the same type of service:

- “Agency has or will enter into three (3) task order contracts for performance of the Scope of Services identified in Exhibit “A”, including this Agreement (“CM Services Task Order Contracts”). The other CM Services Task Order Contracts are [identify other two contracts by agreement numbers and consultant firms]. The total amount payable by Agency for the CM Services Task Order Contracts must not exceed a cumulative maximum total value of Seven Million, Five Hundred Thousand Dollars (\$7,500,000) (“NTE Sum”). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the CM Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the CM Services Task Order Contracts, the Agency must send written notification to Consultant and each of the other consultants entering into the CM Services Task Order Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Agency must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.”

### **Determining the Project Schedule**

The LPA develops a schedule for performance of work and completion of the project. The schedule must include sufficient time to allow for:

- Selecting the consultant;
- Developing the consultant contract;

- Completing the A&E consultant contract audit process;
- Conducting meetings and project reviews.

### **Determine Method of Payment**

The method of payment of contract must be specified. The following four methods are permitted under 23 CFR 172.9(b) depending on the scope of services to be performed (sample cost proposals are provided on the DLA Consultant Selection and Procurement [website](#)):

- Cost-Plus-Fixed Fee
- Cost Per Unit of Work
- Specific Rates of Compensation
- Lump Sum

The method of payment to the consultant must be set forth in the original solicitation, contract, and in any contract modification thereto. A single contract may contain different payment methods as appropriate for compensation of different elements of work. Markups are not allowed on any of the four methods of payment.

The cost plus a percentage of cost and percentage of construction cost methods of payment must not be used. Both of these methods are explicitly prohibited by 23 CFR 172.9(b).

### **Cost-Plus-Fixed Fee**

The consultant is reimbursed for costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The determination of the amount of the fixed fee must take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract. See the DLA Consultant Selection and Procurement [website](#) for a useful tool on Profit/Fee Determination.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. The fixed fee limit applies to the total direct and indirect costs. Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist. The contract must specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article V, Option 1). The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved by the LPA before they incur work on the contract, or the costs can be questioned or disallowed. LPAs are not required to update the A&E Consultant Contract form when new key employees and/or classification are added to a contract. For more details, reference [Section 10.1.8. Completing the Project](#).

### **Cost Per Unit of Work**

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious, and measurable, such as a specific geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance, but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for

each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract must also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article V Option 2).

### **Specified Rates of Compensation**

The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly, or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant's estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate. Other direct costs regardless of amount are to be listed on the cost proposal.

This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method should not be used for project-specific contracts and is recommended for on-call contracts for specialized or support type services, such as construction engineering and inspection, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of the consultant's level of effort and the classification of employees used to perform the contracted work. The contract must also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article V Option 3).

### **Lump Sum**

The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article V: Option 4). Normally, a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment must be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal must document the agreed-upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

A firm fixed price method of payment is not the same as lump sum. A firm fixed price contract must not be amended.

### **Changes to Cost Proposal**

Changes to the cost proposal requiring resubmittal to Independent Office of Audits and Investigations (IOAI) for review:

- Consultant/subconsultant name change
- New participating subconsultant's ICR
- Change in ICR rate

Since these changes require an amendment, the LPA is to update the A&E Consultant Contract form.

### 10.1.3 A&E Consultant Audit and Review Process

This section outlines the audit and review process for A&E contracts that at any time use state or federal-aid highway funds in furtherance of highway construction projects. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

#### Applicable Standards

State and federal requirements listed below, and specific contract requirements, serve as the standards for audits and reviews performed.

LPAs, consultants, and subconsultants are responsible for complying with state, federal, and specific contract requirements. LPAs are responsible for determining the eligibility of costs to be reimbursed to consultants.

Applicable standards include, but are not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- State and Federal agreements between LPAs and Caltrans, (i.e., Master Agreements);
- Project Program Supplemental Agreements;
- 23 U.S.C., Section 112 – Letting of Contracts;
- 40 U.S.C., Chapter 11: the Brooks Act;
- 23 CFR 172 - Procurement, Management, and Administration of Engineering and Design Related Services;
- 23 CFR, Chapter 1- Federal Highway Administration, Department of Transportation;
- 48 CFR, Federal Acquisition Regulation (FAR), Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 – Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget
- 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- United States Government Accountability Office, Government Auditing Standards - Generally Accepted Government Auditing Standards (GAGAS);
- California Government Code sections 4529.5 and 4529.10-4529.20; and
- Proposed contract terms and conditions.

See Section [10.1.11: References](#) of this chapter for links to above referenced standards.

### Audit Guidance Available

The American Association of State Highway and Transportation Officials (AASHTO), Uniform Audit & Accounting Guide ([AASHTO Audit Guide](#)), which is referred to frequently in this section, is a valuable tool to guide LPAs, consultants, and Certified Public Accountants (CPA) through the requirements for establishing, and audits of FAR-compliant Indirect Cost Rates (ICR). The [AASHTO Audit Guide](#) is used extensively as an industry guide in the audit and review process.

LPAs may seek accounting assistance from internal audit staff and an independent CPA for compliance. The consultant may seek professional guidance in selecting its independent CPA. See also the [AASHTO Audit Guide](#), Chapter 2. Selection of CPA Firm as Overhead Auditor for guidance in the selection process. Training is also offered by FHWA's National Highway Institute (see <https://www.nhi.fhwa.dot.gov/home.aspx>). Courses offered include:

- Using the AASHTO Audit Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Audit Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA- NHI-231029)
- Using the AASHTO Audit Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

For training and additional information provided by Caltrans Local Assistance, visit the [Caltrans Local Assistance Blog](#). For FHWA's Q&A for ICRs and audits, and A&E related services, visit FHWA Consultant Services [website](#).

### Allowable Costs

23 U.S.C.112(b)(2)(B) states that any A&E contract or subcontract awarded, whether funded in whole or in part with federal-aid highway funds in furtherance of highway construction projects, must be performed and audited in compliance with the Federal cost principles.

LPAs are required to perform a cost analysis to ensure all costs are allowable and in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the Federal cost principles. Costs must be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions.

LPAs are required to apply Caltrans-accepted consultant or subconsultant's ICRs, to contracts. An ICR is valid for the one-year applicable accounting period accepted or reviewed by Caltrans. Consultants must update, on an annual basis, ICRs in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR 172.11(b)(1). If the consultant is subject to Cost Accounting Standards (CAS), the consultant must use the applicable ICR for the contract.

A consultant's accepted ICR for its one-year applicable accounting period must be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period must not be a condition or qualification to be considered for the work or contract award. The contract must clearly specify the ICR period if it is beyond the one-year applicable period.

Consultants must account for costs appropriately and maintain records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, and are allowable, reasonable, and allocable to the contract, and comply with Federal cost principles.

IOAI and representatives of the Federal Government have the right to conduct an audit of all contract costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment. For further guidance, refer to 23 CFR 172 and 48 CFR 31.

Generally, whenever LPAs, consultants, and/or contractors are unable to provide requested documentation, it must be viewed that the services were either not performed or the costs not properly recorded. Retention of all documents is required as it reduces the possibility of audit findings and **disallowed costs**. For more references, refer to Applicable Standards in this chapter.

### Safe Harbor Rate

Developing ICRs annually can place a significant burden on some small or new and emerging A&E consulting firms that lack financial sophistication to develop an ICR, as well as on other established A&E consulting firms that may not have previous experience with federally-funded contracts for which an ICR would have been developed in compliance with Federal cost principles 48 CFR 31. This may create a barrier for otherwise eligible and qualified firms to compete for federally-funded contracts.

To help alleviate and remove potential barriers, the Division of Local Assistance (DLA) has adopted Caltrans Division of Procurement and Contract's (DPAC) Safe Harbor Rate (SHR) process and rates which took into account LPAs' data. The SHR information and rates can be found at the DLA Consultant Selection and Procurement website:

<https://dot.ca.gov/programs/local-assistance/guidance-and-oversight/consultant-selection-procurement>. To request information regarding the SHR methodology, email the DLA A&E branch at [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov). Eligible A&E consultant firms can choose to use the DLA SHR rate on new A&E contracts using federal-aid highway funds executed by LPAs in the State of California.

Use and application of the SHR by eligible firms provides reasonable assurance of consultant compliance with the Federal cost principles per 23 CFR 172.11(c)(2). A&E consulting firms approved to use the established SHR will have their accounting system evaluated for capabilities of accumulating and tracking direct labor for applying the SHR, as well as for billing other direct costs by contract, segregating indirect costs, etc.

Use of the SHR is voluntary on behalf of the A&E consulting firm and LPAs. LPAs have the discretion to determine certification of eligibility based on requirements shown on the following SHR certification form: [Consultant Firm Certification of Eligibility and Certification of Financial Management System](#).

A&E consultant firms (prime consultants and/or sub consultants) that have not had an ICR previously accepted by a cognizant agency may elect and request to use the SHR in a contract by submitting the completed SHR certification form, [Consultant Firm Certification of Eligibility and Certification of Financial Management System](#), including the Questionnaire for Evaluating Consultant Firm's Financial Management System section, and any other documents as needed. This requirement is in addition to the A&E Consultant Audit and Review Process requirements described in this chapter.

It is the LPA's responsibility to:

- Collect and screen all requests to use the safe harbor indirect cost rate. See SHR certification form, [Consultant Firm Certification of Eligibility and Certification of Financial Management System](#), including the Questionnaire for Evaluating Consultant Firm's Financial Management System section.
- Submit all SHR documents to the Independent Office of Audits & Investigations (IOAI) as part of the Financial Document Review Request package. The IOAI email address is: [Conformance.Review@dot.ca.gov](mailto:Conformance.Review@dot.ca.gov).

Requests to use the safe harbor indirect cost rate must be accepted/approved by IOAI **before** contracts are executed.

## Approval or Acceptance of Indirect Cost Rates

### Cognizant Letters of Approval

A cognizant approved ICR has been audited by a Cognizant agency (a State transportation agency of the State where the consultant's accounting and financial records are located or a State transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred to in writing by the State transportation agency where the consultant's accounting and financial records are located) in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles (per 48 CFR 31), and the cognizant agency has either 1) issued an audit report of the consultant's indirect cost rate or 2) conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). The cognizant agency approves the ICR and a cognizant approval letter is issued.

### Caltrans Acceptance of Indirect Cost Rate

When the ICRs have not been established by a cognizant agency, Caltrans must perform an audit or review of a consultant's and subconsultant's ICR(s) to provide reasonable assurance of compliance with Federal cost principles.

An audit or review of the ICR may consist of one or more of the following:

- Perform a review to determine if the ICR was prepared in accordance with 23 CFR 172 and 48 CFR 31;
- Perform an audit to determine if the ICR was prepared in accordance with 23 CFR 172 and 48 CFR 31; and issue an audit report;
- Review and accept an ICR audit report and related workpapers prepared by a CPA or another State Transportation Agency;

The outcome of an audit or review is for Caltrans to approve or accept the ICR so that it can be relied upon for future contracts with the consultant for a given one-year accounting period and for reliance by other contracting agencies using the same consultant. LPAs must ensure that only approved or accepted ICRs of consultants for the applicable one-year accounting period be applied to contracts, if rates are not under dispute. LPAs may check IOAI's website for consultant's approved or accepted ICRs. All approved or accepted ICRs are issued an Acceptance Identification (ID) number by IOAI that is posted to IOAI's [website](#). This ID number should be referenced on all future contracts that use the same fiscal year ICR. ICR can be fixed

for the life of the contract in prior written document or annually updated. Once it has been updated, it must be annually updated and the most current fiscal year of ICR must be used.

ICRs that have not been accepted by Caltrans will not be eligible for indirect cost payment. An ICR approved by a cognizant agency may be used across states for the one-year applicable accounting period, but an ICR accepted by Caltrans may **only** be applied to A&E contracts with Caltrans or LPA contracts using pass-through Caltrans funding. LPAs include Cities, Counties, Metropolitan Planning Organizations, Special Districts, and Regional Transportation Planning Agencies.

### **Financial Review Performed Prior to Contract Execution**

All consultants, including prime consultants and subconsultants, on a proposed contract with a dollar value equal to or greater than \$1M are subject to an ICR financial review by IOAI. The financial documents required are detailed in the [Financial Document Review Request form](#). IOAI will review the ICR financial documents to either accept or adjust the indirect cost rate **prior to contract execution** using a risk-based approach as dictated by factors that include but are not limited to:

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Experience of consultant with FAHP contracts;
- General responsiveness and responsibility;
- The approximate contract volume and dollar amount of all A&E contracts awarded to the consultant by Caltrans or an LPA in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultants indirect cost rate;
- Assessment of consultant's internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;
- For ICRs that have been adjusted by IOAI, the consultant must provide a revised cost proposal that reflects the adjusted ICR.

### **Local Public Agencies' Responsibilities**

LPAs are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and subconsultants as outlined in the Financial Document Review Request form. LPAs are responsible for forwarding these documents to IOAI for review. LPAs are also required to ensure that IOAI has a copy of the [Certification of Indirect Costs and Financial Management System form](#). The ICR included in the LPA's cost proposal must match the ICR included in the Certification of Indirect Costs and Financial Management System form and the consultant's ICR schedule. The proposed ICR, however, can be lower than ICR in the Certification of Indirect Costs and Financial Management System form and the consultant's ICR schedule if the consultant elects to propose a lower ICR. For contracts spanning more than one year, LPAs are responsible for ensuring the Certification of Indirect Costs and Financial Management System form and cost proposals are updated annually unless all concerned parties agree to fix the ICR

for the term of contract, and this is clearly specified in the contract. ICR updates are not required to IOAI if the ICR is fixed for the life of the contract. ICR's are only reviewed for consultants that are being awarded a contract, not consultants on a shortlist or prequalified list.

The cost proposal includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. LPAs must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with Federal cost principles.

All contract supporting documentation must be retained by the LPA in project files for the required retention period. Unsupported costs may be disallowed and required to be returned to Caltrans. Having proper documentation policy and procedures, trained staff, and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, reasonable, allowable, and allocable to the contract and comply with Federal cost principles.

Contracts below \$1 Million are not subject to the Caltrans Financial Document Review but LPAs are required to establish that all costs are in compliance with the Federal cost principles, 48 CFR 31, and other applicable requirements are met. All documents listed above, and cost analysis documents are required to be retained in the project files to demonstrate compliance.

Instructions are provided in the Financial Document Review Request form including requirements for submitting a complete Financial Review packet. Financial packets can be e-mailed to: [conformance.review@dot.ca.gov](mailto:conformance.review@dot.ca.gov).

Alternatively, if you do not have internet access, you can mail Financial Review packets to:

Department of Transportation  
Independent Office of Audits and Investigations  
MS 2 Attention: External Audit Manager  
P.O. Box 942874  
Sacramento, CA 94274-0001

### **Consultants' Responsibilities (Both prime consultants and subconsultants)**

A&E prime consultants and subconsultants in contract with LPAs using state or federal-aid highway funds should refer to the Financial Document Review Request form for the ICR financial documents required to be submitted to their LPA. Consultants must complete the Certification of Indirect Costs and Financial Management System form that attests that the ICR rate proposed is in compliance with federal cost principles (48 CFR 31) and that the consultant's financial management system is adequate to accumulate and segregate reasonable, allowable, and allocable direct and indirect project costs. The Financial Document Review Request and Certification of Indirect Costs and Financial Management System forms should be submitted to the LPA who will forward a copy to IOAI along with all other related and required financial documents. For all future contracts within a same fiscal year, the consultant needs to only provide a copy of the Certification of Indirect Costs and Financial Management System form to the LPA.

Consultants must follow all the federal, state, and contract requirements outlined above in the Section above, "Applicable Standards". Each contracting consultant must ensure its ICR is not combined with any parent company's or subsidiary's ICR.

ICR schedules for both prime consultants and subconsultants should be prepared using the accrual basis of accounting and be presented in compliance with the Federal cost principles.

Figure 10-3 provides an example of a Standard Indirect Cost Rate Schedule that consultants can use when preparing their own.

For public works Prevailing Wage contracts, all workers must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project: <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>.

When determined necessary, IOAI may request additional information, such as a labor distribution summary and Executive Compensation Analysis (ECA). A consultant's labor distribution summary report is a labor expense report that detail all hours worked (paid and unpaid) for a fiscal year, wages earned, and benefits accrued by all the consultant's employees. The labor summary report should include employee names, salaries, hourly rates, total hours worked segregated by direct hours, indirect hours, paid time off hours, and uncompensated hours and amounts.

An ECA is an evaluation by the consultant to determine the allowability and reasonableness of executive compensation in compliance with Federal cost principles and the AASHTO Audit Guide that can be based on either the National Compensation Matrix or independent compensation surveys.

### **Independent Office of Audits and Investigations' Responsibilities**

After IOAI receives a consultant's complete financial document packet (per the Financial Document Review Request form) from the LPA, IOAI will review the proposed ICR and supporting documents and notify LPAs in writing whether the proposed ICRs are accepted or adjusted.

Contracts will be executed after IOAI either accepts or adjusts the ICR. Correction of the final cost proposal, however, does NOT need to be cleared through Caltrans IOAI before executing the contract. An email notification from IOAI serves as documentation to support an accepted ICR.

### **Audits and Reviews to be Performed**

After contract execution, a consultant's ICR may be subject to further detailed review or audit by IOAI based on certain risk factors. Costs that are determined to be unallowable as a result of the review or audit will be subject to repayment.

### **Indirect Cost Rate Audits**

During an ICR audit, IOAI or an independent CPA will examine the consultant's proposed ICR for a one-year accounting period to ensure that unallowable costs have been removed from the indirect costs, that allowable costs have been correctly measured and properly charged and allocated, and that the ICR has been developed in accordance with the Federal cost principles (as specified in 23 U.S.C.112(b)(2)(B), 23 CFR 172.11, 48 CFR 31 and other FAR and State requirements). As a result of the audit, the LPA will work with the consultant to adjust the ICR based on audit recommendations.

For guidance regarding the existing policies and procedures set forth in the federal regulations, and acceptable ICR schedules, refer to the AASHTO Audit Guide, Chapter 5, and Figure 10-3 Standard Indirect Cost Rate Schedule in this chapter. The AASHTO Uniform Audit and Accounting Guide, Appendix A Review Program for CPA Audits of Consulting Engineers' Indirect Cost Rates is also a resource for consultants and CPAs when preparing an ICR for audit.

## CPA Workpaper Reviews

During a workpaper review of a CPA audit of an ICR, IOAI will review the CPA's audit workpapers to determine whether to issue a Cognizant Letter of Approval for the ICR. The CPA Workpaper Review determines whether: (a) the CPA's audit of the ICR was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with the Federal cost principles and related federal and state laws and regulations. Chapter 11 of the AASHTO Audit Guide provides information to the CPA on the required audit disclosures.

**IMPORTANT NOTE FOR CPAs:** Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing is required. GAGAS provides that auditors may find it appropriate to use lower materiality levels as compared with the materiality levels used in non-GAGAS audits because of the public accountability of government entities and entities receiving government funding, various legal and regulatory requirements, and the visibility and sensitivity of government programs. The AASHTO Audit Guide should be used as a tool for performing audits and attestations of A&E firms.

## Contract Audits

During a Contract Audit, auditors will review a consultant's financial management system and contract cost proposal to determine if:

- The consultants' accounting system is adequate to accumulate and segregate costs;
- Costs are reasonable, allowable, allocable, and supported adequately;
- The contract contains all required fiscal provisions;
- Proper state and federal procurement requirements were followed.

## Incurred Cost Audits

During an Incurred Cost Audit, auditors will review incurred contract costs to determine if:

- Cost data are maintained in an accounting system that adequately gathers, records, classifies, summarizes, and reports accurate and timely financial data for direct and indirect project costs by account;
- Costs are adequately supported, reasonable, allowable, and allocable;
- Costs incurred are in compliance with state and federal laws and regulations;
- Costs incurred are in compliance with the Master Agreement and Supplemental Agreement;
- Costs incurred are in compliance with the fiscal provisions stipulated in the contract; and
- The terms required by the Master Agreement and federal laws and regulations are in the contract.

## Audit Findings and Review Deficiencies

If a consultant's ICR is audited or reviewed, LPAs are responsible for ensuring all executed and future contracts reflect the audited and adjusted fiscal year ICR(s). LPAs should request reimbursement from the consultant for overpayment on rates that were adjusted down.

The LPA may be subject to sanctions outlined in [Section 10.5 Sanctions](#) if the state or federal government determines that any reimbursements to the consultant are the result of lack of proper contract provisions, unallowable charges, unsupported activities, or an inadequate financial management system.

**Example of a FAR Compliant Indirect Cost Rate Schedule - Sample Consulting Company**

**Statement of Direct Labor, Fringe Benefits, and General Overhead for the Year Ended December 31, 20xx**

Description	General Ledger Balance	Unallowable	FAR Reference	Total Proposed	Home Office	Field Office
Direct Labor	\$123,456,789	(\$934,568)	(1)(15)	\$122,522,221	\$85,765,555	\$36,756,666
<b>Fringe Benefits</b>						
Vacation/Paid Leaves	\$17,283,950			\$17,283,950	\$12,098,765	\$5,185,185
Payroll Taxes	\$1,530,864	(\$30,617)	(15)	\$1,500,247	\$1,050,173	\$450,074
Medical Insurance	\$10,864,197			\$10,864,197	\$7,604,938	\$3,259,259
401K Match	\$4,938,272			\$4,938,272	\$3,456,790	\$1,481,481
Incentives and Bonus	\$15,308,642	(\$3,123,456)	(2)	\$12,185,186	\$8,529,630	\$3,655,556
Other Employee Benefits	\$2,515,280	(\$553,433)	(3)	\$1,961,847	\$1,373,293	\$588,554
<b>Total Fringe Benefits</b>	\$52,441,206	(\$3,707,506)		\$48,733,700	\$34,113,590	\$14,620,110
<b>General &amp; Administrative Overhead</b>						
Indirect Overhead Labor	\$72,696,030	(\$4,452,541)	(1)(2)(4)(15)	\$68,243,489	\$65,790,948	\$2,452,541
Purchased Labor/Subconsultants	\$22,433,019	(\$22,433,019)	(5)	\$ -	\$ -	\$ -
<b>Office Rent</b>	\$12,345,679	(\$987,654)	(6)	\$11,358,025	\$11,038,025	\$320,000
Supplies & Utilities	\$5,753,086			\$5,753,086	\$4,027,160	\$1,725,926
Postage and Shipping	\$1,770,000	\$321,456	(5)	\$2,091,456	\$1,464,019	\$627,437
Equipment and Maintenance	\$3,812,346			\$3,812,346	\$2,512,789	\$1,299,557
Depreciation Expense	\$6,202,469	(\$1,345,678)	(7)	\$4,856,791	\$3,205,482	\$1,651,309
Interest	\$123,456	(\$123,456)	(8)	\$ -	\$ -	\$ -
Dues and Subscription	\$123,456	(\$12,345)	(9)	\$111,111	\$77,778	\$33,333
Advertising & Marketing	\$427,406	(\$45,678)	(10)	\$381,728	\$267,210	\$114,518
Vehicles	\$5,896,123	(\$147,403)	(5)(11)(14)	\$5,748,720	\$4,024,104	\$1,724,616
Bad debts	\$12,345	(\$12,345)	(12)	\$ -	\$ -	\$ -
<b>Legal and Accounting Services</b>	\$3,713,580	(\$222,815)	(13)	\$3,490,765	\$3,490,765	\$ -
Fines and Penalties	\$80,000	(\$80,000)	(16)	\$ -	\$ -	\$ -
<b>Total General &amp; Admin. Overhead</b>	\$135,388,995	(\$29,541,478)		\$105,847,517	\$95,898,280	\$9,949,237

Total Indirect Costs				\$154,581,216	\$130,011,870	\$24,569,347
Indirect Cost Rates				126.17%	151.59%	66.84%

**Figure 10-3: Standard Indirect Cost Rate Schedule**

**FAR References:**

- (1) FAR 31.202: Uncompensated overtime.
- (2) FAR 31.205-6: Profit distribution and excess of the reasonable compensation.
- (3) FAR 31.205-46, 31.205-14 & 31.205-51: Meals not for valid business purposes and associated with lobbying and lacking adequate support
- (4) FAR 31.201-2: Administrative staff costs billed to projects/clients.
- (5) FAR 31.201-2: Subconsultant labor and other direct costs billed to and paid by contracts/clients.
- (6) FAR 31.205-36 and 31.205-17: Capital lease costs, rent paid in excess of reasonable costs, and idle facilities and capacity costs.
- (7) FAR 31.201-2 & 31.205-6: Costs relates to personal use by employees and luxury vehicles.
- (8) FAR 31.205-20: Interest and other financial costs not allowable.
- (9) FAR 31.201-2: Non-business related dues and subscriptions.
- (10) FAR 31.205-1: Costs for advertisement and public relations costs and trade show expense including labor.
- (11) FAR 31.205-46(d) and 31.205-6(m)(2): Personal use of vehicle and lack of mileage logs and business purpose.
- (12) FAR 31-205-3: Bad debts and collection costs.
- (13) FAR 31.205-27 and 31.205-47: Reorganization and capital raising related costs and costs incurred in connection with violation of a law or regulation by the consultant.
- (14) FAR 31.205-46: Unreasonable costs and costs not supported by documents and lack of business purpose.
- (15) FAR 31.201-6(a) & CAS 405-40: Labor costs associated with unallowable costs.
- (16) FAR 31.205-15: Fines and penalties resulting from violations of laws and regulations.

### 10.1.4 Consultant Selection Methods

There are three methods normally used in selecting a consultant:

- One-Step RFP
- One-Step RFQ
- Two-Step RFQ/RFP

The method used depends upon the scope of work, the services required, the project's complexity, and the time available for selection of the consultant.

Beginning with [Section 10.1.5: Consultant Selection Using the One-Step RFP Method](#), each of the selection methods is explained in detail. Regardless of the method used, the LPA must retain all consultant selection documentation in their project files as required by 23 CFR 172.

#### One-Step RFP

The One-Step RFP method may be used for Project-specific contracts when the scope of work is well-defined or for Multi-phased contracts where the defined scope of work is divided into phases. Other considerations include when the consultant's services are highly specialized and there are few qualified consultants.

#### One-Step RFQ

The One-Step RFQ method is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two-step selection process is used for procurement of on-call contract(s). Note that specifications and requirements in the RFQ must cover all aspects of the final need. An RFP specific to the project, task, or service must be included in the solicitation for evaluation of a consultant's specific technical approach and qualifications.

#### Two-Step (RFQ Followed by RFP)

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by LPAs that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or on-call list, through a single solicitation. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications. For more information, refer to description of on-call contract in [Section 10.1.2: Identifying & Defining a Need for Consultants](#). This method requires substantially more work and time than the other two methods described above.

### 10.1.5 Consultant Selection Using the One-Step RFP Method

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. This procurement procedure usually involves a single step process with issuance of a request for proposal (RFP) to all interested consultants. For non-A&E consulting contracts, a cost proposal must be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

#### Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the project/segment to be contracted out and with the LPA standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the LPA of its responsibility to ensure that proper procurement procedures are followed, and all requirements are met.

LPA Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172.7(b)(4)) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#).

#### Develop Technical Criteria for Evaluation of Proposals

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals. In-State or local preference must not be used as factor in the evaluation, ranking, and selection phase. [Local presence and DBE participation are the only two non-qualifications-based evaluation criteria that are permitted, however, the combined total of these criteria cannot exceed a nominal value of 10 percent of the total evaluation criteria](#) (23 CFR 172.7(a)(1)(iii)(D)). All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#) is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The LPA should consult with the DLAE before making major changes to the suggested approach.

## Develop Schedule for Consultant Selection

Before the contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm key dates with all selection committee members before completing the schedule.

## Prepare RFP

The information required in an RFP solicitation includes the following:

- Description of project;
- Clear, accurate, detailed Scope of work, technical requirements, and qualifications;
- Services to be performed;
- Deliverables to be provided;
- Procurement schedule;
- Applicable standards, specifications, and policies;
- Schedule of work (including estimated start and end dates of the contract);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate concealed format. Cost proposals are requested from the highest ranked firm. If these negotiations are formally terminated, the cost proposal is then requested from the next highest ranked firm. See sample cost proposals at the DLA Consultant Selection and Procurement [website](#);
- Contract audit and review process requirements (see [Section 10.1.3: A&E Consultant Audit and Review Process](#));
- Proposal format and required contents;
- Method, criteria, and weighting for selection;
- Requirements for any discussions that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals;
- Specify contract type;
- Special provisions or contracts requirements;
- A DBE contract goal is specified in the solicitation (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- CMSR requirements (see [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#));
- Protest procedures and dispute resolution process per 2 CFR 200.318(k) and 23 CFR 172.5(c)(18).

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand-delivered if different from the mailing address. A minimum of fourteen (14) calendar days is required between the time the RFP is published and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered);
- Organizational chart;
- Schedule and deadlines;
- Staffing plan;
- Proposed Team—complete for prime consultant and all key subconsultants;
- Key personnel names and classifications—key team members identified in the original proposal/cost proposal must not change (be different than) in the executed contract;
- Staff resumes;
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm;
- Consultant DBE Commitment document, see [Exhibit 10-O1: Consultant Proposal DBE Commitment](#);
- References.

### **Financial Management and Accounting System Requirements**

The LPA must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts must not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR 16.301-3, 2 CFR 200, and 48 CFR 31. The LPA must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

### **Advertise for Consultants**

The solicitation process for consultant services must be by public advertisement, or by any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of contract. The minimum length of advertisement is 14 calendar days.

Advertisement of the RFP in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting government contract solicitations such as BidSync, Planetbids, Public Purchase, or posting the RFP on the LPA's or other widely used websites are all acceptable methods of solicitation.

To document website postings, the LPA should retain copies of screen shots displaying the posted begin/end dates.

The LPA must keep a record of all consultants that have downloaded RFP online as well as those receiving an RFP through other means, to ensure that any inquiry responses, addendums, or amendments to the RFP are given to all consultants that received the RFP.

### **Conduct Proposer's Conference or Answer Written Questions**

The LPA may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The LPA must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be

given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

### **Receive and Evaluate Technical Proposals**

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed.

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. The members of the consultant selection committee must evaluate each proposal according to the technical criteria listed in the RFP. Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. The justification should state that the solicitation did not contain conditions or requirements that arbitrarily limited competition per 23 CFR 172.7(a)(1)(iv)(D) and competition is determined to be inadequate and it is not feasible or practical to re-compete under a new solicitation per 23 CFR 172(a)(3)(iii)(C). If only one proposal is received, a Non-Competitive process must be justified and an [Exhibit 12-F: Cost-Effectiveness / Public Interest Finding / A&E Noncompetitive](#) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks must be completed, and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

### **Develop Final Ranking and Notify Consultants of Results**

The selection committee evaluates each proposal, interviews the three or more highest ranked consultants (short listed) if noted in solicitation, and develops a final ranking of the highest ranked consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. The LPA may have an established procedure adopted for conducting debriefings but may also consider the following: The selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

### **Negotiate Contract with Top-Ranked Consultant**

Cost proposal (for both prime consultant and all subconsultants), and contract audit and review documents such as the Certification of Indirect Costs and Financial Management System and

Financial Document Review Request forms, whichever is applicable (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)) should be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short-listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their technical proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceed to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the LPA. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals must be returned to consultants.

Cost proposals in electronic form must be submitted separately from the RFP and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and must not be opened by the LPA or any private entity that the LPA uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be returned unopened or properly disposed of in accordance with the LPA's written policies and procedures.

The independent cost estimate, developed by the LPA in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. Items necessary for the independent cost estimate include, hours/detailed work, direct labor costs, indirect labor costs, other direct costs, and profit/fee. Agencies must retain documentation of how the cost estimate was developed. It can be revised, if needed, for use in negotiations with the next most qualified consultant. A contract audit and review may be required (see [Section 10.1.3: A&E Consultant Audit and Review Process](#) in this chapter). LPA Contract Administrator ensures that all required documentations are provided to Caltrans IOAI within 10 days of written request, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Document Review until all required documentation is completed correctly and submitted. Negotiations should be finalized after addressing all deficiencies noted in the Caltrans IOAI Financial Review Letter if applicable. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan;
- Schedule and deadlines (for deliverables and final duration of contract);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fees. Fee is required to be negotiated as a separate element;
- Hours, level of effort by task and/or classification.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the LPA. The LPA and the consultant will agree on the final cost proposal and incorporate into final contract. Retain all documentation related to negotiations.

Before executing the consultant contract, the LPA must review contract to ensure that all federal and state requirements have been met and adjustment or denial of ICR as identified in the Financial Review Letter has been included in the final cost proposal, if applicable.

Prior to contract award, or after contract award but no later than the first invoice, the LPA must submit a completed A&E Consultant Contract form for all new federal funded A&E consultant contracts using the A&E Consultant Contract database at:

<https://dla.dot.ca.gov/fmi/webd/AE%20Consultant%20Contract%20Form> (please use Firefox or Chrome if not supported by your browser). Submission of the A&E Consultant Contract form is not required for non-A&E consultant contracts.

If there are any changes requiring an amendment to the contract after submittal of the A&E Consultant Contract form, refer to [Section 10.1.8: Contract Amendments](#) of this chapter.

### 10.1.6 Consultant Selection Using the One-Step RFQ Method

The RFQ method is used when the services being procured are specialized, or the scope of work is defined broadly and may include multiple projects.

#### Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the scope of work to be contracted out and with the LPA standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the LPA and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the LPA of its responsibility to ensure that proper procurement procedures are followed, and all requirements are met.

LPA Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172.7(b)(4)) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#).

#### Develop Technical Criteria for Evaluation of Qualifications

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant qualifications. [In-State or local preference must not be used as factor in the evaluation, ranking, and selection phase. Local presence and DBE participation are the only two non-qualifications-based evaluation criteria that are permitted, however, the combined total of these criteria cannot exceed a nominal value of 10 percent of the total evaluation criteria \(23 CFR 172.7\(a\)\(1\)\(iii\)\(D\)\). All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.](#)

The criteria and relative weights must be included in the RFQ, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#) is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the State. The LPA should consult with the DLAE before making major changes to the suggested approach.

### **Develop Schedule for Consultant Selection**

Before a contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm target dates with all selection committee members before completing the schedule.

### **Prepare RFQ**

As a minimum, the RFQ generally includes the following:

- General description of the services or project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See sample cost proposals at the DLA Consultant Selection and Procurement [website](#);
- Contract audit and review process requirements (see [Section 10.1.3: A&E Consultant Audit and Review Process](#));
- Statement of Qualification (SOQ) format and required content to be submitted;
- Method and criteria and weights for selection;
- A DBE contract goal is specified in the solicitation (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Consultants acting in a management support role requirements [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#); Protest procedures and dispute resolution process per 2 CFR 200.318(k) and 23 CFR 172.5(c)(18).

The RFQ specifies the content of the SOQ, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand-delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFQ is published and time that SOQs must be submitted. More time may be required for complex contracts or scope of work.

Items typically required in a statement of qualification include:

- Qualifications of key personnel (including consultant project manager) proposed for the contract. Key team members identified in the original proposal/cost proposal must not change (be different than) in the executed contract;
- Staff resumes;
- Related projects that key personnel have worked on;
- Qualifications/experience of the firm;
- Organizational chart;
- Forecast or Schedule of work;
- Consultant DBE Commitment document, see [Exhibit 10-O1: Consultant Proposal DBE Commitment](#);
- References.

### **Financial Management and Accounting System Requirements**

The LPA must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts must not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR 16.301-3, 2 CFR 200, and 48 CFR 31. The LPA must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

### **Advertise for Consultants**

The solicitation process for consultant services must be by public advertisement or any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of contract. The RFQ must contain sufficient project work information, so that interested consultants can submit an appropriate SOQ.

Advertisements for RFQ may take one of two approaches. The most common is an advertisement or publication of the RFQ in a major newspaper of general circulation, technical publication of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting contract solicitations such as Bid Sync, PlanetBids, or posting the RFQ on other widely used websites. To document website postings, the LPA should retain copies of screen shots displaying the posted begin/end dates.

In the second approach, the LPA advertises the availability of the RFQ in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, or through a web hosting or clearing houses known for posting contract solicitations such as BidSync or PlanetBids, and requests that interested consultants send a letter of interest to the LPA for the RFQ. The RFQs must then be sent to those firms who indicated interest in the RFQ. In some cases, it may be desirable to advertise nationwide for a particular project or service. This approach provides a registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addenda to the RFQ, if necessary.

### **Issue/Publish RFQ**

The LPA must publish the RFQ online and also issue the RFQ to all consultants responding to newspaper advertisement. The LPA must keep a record of all consultants that have downloaded the RFQ online as well as those receiving an RFQ through other means, to ensure that any

inquiry responses, addendums, or amendments to the RFQ are given to all consultants that received the RFQ.

### **Receive/Evaluate Statements of Qualifications and Develop Shortlist**

The first step in the evaluation process is to determine that each SOQ contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified, and an [Exhibit 12-F: Cost Effectiveness / Public Interest Finding / A&E Noncompetitive](#) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The consultant selection committee reviews the submitted SOQ according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant's references. This check applies to major subconsultants also. The committee establishes a shortlist of consultants who are considered to be best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

### **Notify Consultants of Shortlist**

All consultants that submitted an SOQ must be notified of the results of the review. The notification also identifies those consultants (short list) that will be requested to attend interviews if interviews were an option in the solicitation. Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

### **Interview Top-Ranked Consultants**

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed scope of work, and/or description of required services, and other information. This should be sent with the initial notification of the interview.

Between the time of the notification of the shortlist and interviews, the LPA may answer any questions concerning the scope of work to be contracted out, if not done earlier during the solicitation. In addition, the LPA may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions about the RFQ and receive their answers from the LPA in writing. It is required that all consultants on the shortlist receive the questions and answers and are given the same information.

The committee should evaluate reference checks and other information that is gathered independently. Reference checks must be completed, and other information gathered before the

interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant must be allowed the opportunity to make a presentation if desired; however, a time limit should be specified. Interview questions are prepared in advance.

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants, and
- Questions relating to each specific consultant, based upon the reference checks, and the strengths and weaknesses identified during evaluation of the SOQ

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process. Additional information requested should be kept at a minimum, that is, only information required to select the most qualified consultant for the contract. The selection committee or LPA must not gather additional information concerning the consultants after the interviews are completed.

### **Develop Final Ranking and Notify Consultants of Results**

All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not selected as the most qualified. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing. The next two sections provide guidance when the RFQ is solicited for specialized services and additional information is required prior to cost negotiations with consultant. For on-call contracts, skip the next two sections and begin Negotiation phase.

### **Conduct Scoping Meeting**

The Contract Administrator should meet with the first-ranked consultant's project manager to review the project, and to ensure that the consultant has a complete understanding of the work that is required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered for the consultant.

### **Request Cost Proposal**

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

### **Negotiate Contract with Top-Ranked Consultant**

Cost proposals (for both prime consultant and all subconsultants), and contract audit and review documents such as Certification of Indirect Costs and Financial Management System and Financial Document Review Request forms, whichever applicable (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)), will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short-listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the LPA reviews the cost proposal and compares it with the LPA's confidential detailed independent cost estimate and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the LPA the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the LPA in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated.

Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant.

At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals must be returned to consultants.

Cost proposals in electronic form must be submitted separately from the RFQ and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and must not be opened by the LPA or any private entity that the LPA uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be returned unopened or properly disposed of by permanently deleting the cost proposals in accordance with LPA's written policies and procedures.

A contract audit and review may be required (see [Section 10.1.3: A&E Consultant Audit and Review Process](#) earlier in this chapter). LPA Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Review until all required documentation is completed correctly and submitted. Negotiations may be completed after receipt of the Caltrans IOAI Financial Review Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Staffing plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fee. Fee is required to be negotiated as a separate element.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the LPA. For on-call contracts, typically a price agreement is reached based on specific rate of compensation for the term of the contract. The subsequent task orders (or mini agreements for individual project work) is negotiated based on cost plus fee, or lump sum, which is derived from the wage rates agreed upon earlier for the on-call contract.

Before executing the consultant contract, the LPA must review the contract to ensure that all federal and state requirements have been met, and receive Caltrans IOAI's Financial Review acceptance letter, if applicable.

Prior to contract award, or after contract award but no later than the first invoice, the LPA must submit a completed A&E Consultant Contract form for all new federal-funded A&E consultant contracts using the A&E Consultant Contract database at <https://dla.dot.ca.gov/fmi/webd/AE%20Consultant%20Contract%20Form> (please use Firefox or Chrome if not supported by your browser).

If there are any changes to the contract after submittal of the A&E Consultant Contract form, refer to [Section 10.1.8: Contract Amendments](#) of this chapter.

### 10.1.7 Consultant Selection Using the Two-Step RFQ/RFP Method

#### Combined RFQ and RFP

Selecting consultants using the Two-Step RFQ/RFP method requires combining certain steps from each of the other two methods previously described. The consultants are rated based upon both their qualifications and their technical proposals. This procurement procedure involves a two-step process with issuance of a request for qualifications (RFQ) whereby responding consultants are evaluated and ranked based on qualifications and a request for proposal (RFP) is then provided to three or more of the most highly qualified consultants. The two-step method leads to an executed project specific contract.

A different process may also be used that includes assessing minimum qualifications of consultants to perform services under general work categories or areas of expertise through a prequalification process whereby annual statements of qualifications and performance data are encouraged. These consultants are not ranked, and an RFP must be submitted to the entire list for evaluation and consideration. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

The initial steps in the Two-Step RFQ/RFP method (up to the development and notification of the shortlist) are similar to the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an additional RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the Two-Step RFQ/RFP method is recommended for use only when the scope of work is not clearly known, very complex, or unusual.

The Two-Step RFQ/RFP is also well-suited for procuring multiple on-call contracts through a single solicitation (see [Section 10.1.2 Determine Type of Contract](#)). The outcome of the first step RFQ will be multiple contracts, or on-call list of consultants. For multiple on-call contracts, project work will be procured through subsequent competition or mini-RFPs amongst the on-call consultants.

LPA's may also use the Two-Step RFQ/RFP method to:

1. Develop and maintain a prequalified file/list of consultant firms by specific work categories or areas of expertise. This list includes all consultants that meet the minimum published pass/fail requirements. The prequalified list can be updated annually or at least every two years and must be maintained by the agency. This list has not gone through the evaluation process.
2. Create a short list of evaluated and ranked consultants that leads to executed contracts

Because it is a combination of the One-Step RFQ and One-Step RFP methods, the Two-Step RFQ/RFP method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use when the scope of work is very complex or unusual.

### **Categorize Work**

Descriptions of the categories of work, deliverables, and the minimum qualification standards for each category must be clearly identified.

The LPA may prequalify consulting firms in the following (or more) categories:

- Roadway Design
- Bridge Design
- Bridge Inspection
- Traffic Engineering
- Environmental Services
- Roadway Construction Inspection and Administration
- Landscape Architecture
- Land Surveying
- Intelligent Transportation System (ITS)
- Federal-aid Highway Project Development Support Services

## Establish Minimum Qualifications

In an effort to ensure quality performance and results, a consultant should be required to meet certain minimum qualifications to be eligible for consideration in the prequalification process.

General criteria guidelines should be established for consultant selection for a prequalified list. The criteria may be established by an individual or a panel of subject matter experts for the specific task of developing the criteria. Some agencies also establish appropriate weights for each criterion. It may be necessary to modify the criteria to fit specific cases. When a RFQ is published, it should state the criteria that will be used in the selection process.

Criteria for evaluating statements of qualifications, may include but are not limited to:

- Special expertise and experience of the firm's key employees
- Proposed staffing (include number of licensed and specialized staff) for the project and previous experience of those identified
- Experience of the firm and their personnel on previous projects similar to the one under consideration
- Consultant DBE Commitment document (see [Exhibit 10-O1: Consultant Proposal DBE Commitment](#))
- Professional references by the firm with the LPA
- Understanding of the project by the firm as demonstrated by their approach to organizing and management of the work
- Current workload of the firm and their ability to meet the proposed project schedule
- Quality of previous performance by the firm with the LPA
- Use of subconsultants to accomplish work on the project
- Equipment the firm has available and proposes to use as compatibility with Computer-Aided Drafting and Design (CADD) and other equipment proposed to be used in accomplishing the work
- Familiarity with federal, state, and local codes, requirements, standards, and procedure
- Examples of minimum qualifications for work categories above are provided here based on Caltrans best practices

## Issue RFQ

The need for services of a consulting firm may be advertised in appropriate national, state, and local publications and web sites. Notices can also be sent to firms known to be qualified to do specific work, to professional societies, and to recognized Disadvantaged Business Enterprises (DBE) organizations. The advertisements and notices seek statements of interest and qualifications from consultants who are interested in the project. The DBE goal is established at the master on-call contract and included in the solicitation document.

The SOQ should list consulting firm details, names of principals, office locations, personnel by discipline, project experience and examples, current workload, types of service the firms are qualified to perform, and previous performance. Also, resumes of key persons, specialists, and other associates that may be assigned to the project or projects should be included. This

information should be the basis for evaluating and placing a consulting firm on a general prequalification list.

Federal regulations require that any procedures related to prequalifying consultants cannot restrict competition.

Prequalification of consultants may be allowed as a condition for submitting a technical proposal for a contract only if the period between the date of the issuance of the RFP and the deadline for submitting a technical proposal affords sufficient time to enable a consultant to obtain prequalification status.

Another practice is to qualify consultants on a project-by-project basis. This is accomplished for some agencies by advertising or publishing notices in national, state, and local publications for needed services for specific, individual projects. These notices include a precise project location, a defined preliminary scope of services to be performed, a specific schedule within which the work is to be completed, and a list of products and deliverables to be provided by the consultant. Specific project advertisements usually are published when the proposed project is large and complex, in-house resources are not available, special expertise is required, or the objectivity of an outside authority is desired.

Appropriate Federal-aid requirements should be complied with on Federal-aid projects.

### **Set-Up Evaluation Process**

The first step in the evaluation process is to determine that each SOQ contains all forms, qualifications, and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Documentation of when each SOQ was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

If all required information is not provided, a SOQ may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed.

The LPA must establish a process by which SOQs are evaluated and consultants who are deemed meeting the minimum qualifications are accepted and placed on a per-qualified list. Whether the LPA has a “committee” of experts evaluating the SOQs or individuals responsible for the evaluation, the process must be well-defined, open, and transparent. The prequalification process must also allow for consultants to be re-evaluated in cases of denials. The LPA must specify how long the prequalified list lasts, not to exceed two years. Federal regulation recommends refreshing the SOQs on an annual basis.

LPA Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172.7(b)(4)) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Conflict of Interest and Confidentiality Statement](#).

### **Evaluate Qualifications and Add Firm to List**

All SOQs received should first be reviewed for completeness. Each response must contain all required forms and any other information requested in the advertisement. The response may be considered incomplete and rejected without further evaluation if all required information is not provided or if the submittal is late.

The qualifications of all responding firms are then reviewed according to established evaluation criteria or factors. The agency then establishes a short list of at least three consultants that are determined to be the most highly qualified to perform the required work. Firms not selected should be notified in writing.

### **Maintain List**

Prequalification of a consultant expires in two years. Prequalified consultants must renew their prequalification status every two years. Firms can apply to be on the list at any time. After a period of two years, firms should re-apply (repeat the process of submitting SOQs) to be on the list. In addition to the required two-year renewal process, the consultant should also be required to update the firm's organizational structure within one year when there is a corporate/affiliate change, ownership control, type of work expertise, capacity, or any other major change.

If the consultant does not meet the minimum requirements and their SOQ is rejected, the committee must respond to the consultant explaining the reason for their rejection. The consultant is allowed to reapply to be on the list again provided the reasons for rejection are corrected.

The list of qualified firms can be maintained online through the agency's website. Firms can also apply to be on the list through the agency website for ease of operation.

### **Issue RFP to Prequalified Consultants on List**

An RFP is sent to the short-listed firms. The RFP should indicate the content of the technical proposal, technical review procedures, anticipated schedule of activities, scope of work, project description, where the technical proposals are to be delivered, the number of copies required, and the due date.

Some agencies receive the technical proposal orally as part of an interview conducted for this purpose. In these cases, written documentation may not be required.

Items typically required in a technical proposal include:

- Work plan
- Organization plan
- Schedule for meeting time frame
- Available computer equipment and programs
- Staffing plan and resumes including subconsultants
- Pre-award audit/financial package information (if deemed appropriate)
- Examples of similar work previously completed
- Subconsultants, DBE, their proposed participation, and other related information

### **Conduct Proposer's Conference or Answer Written Questions**

The LPA may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The LPA must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However,

consultants not attending the conference do not receive notes from the meeting unless they request the notes.

### **Receive and Evaluate Technical Proposals**

The Contract Administrator must verify that each technical proposal contains all forms and other information required by the RFP. If all required information is not provided, a technical proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed. Documentation of when each technical proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The members of the consultant selection committee must evaluate each technical proposal according to the technical criteria listed in the RFP. A minimum of three technical proposals must be received and evaluated.

If only two technical proposals are received, a justification must be documented to proceed with the procurement. If only one technical proposal is received, a Non-Competitive process must be justified, and an [Exhibit 12-F: Cost-Effectiveness / Public Interest Finding / A&E Noncompetitive](#) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks must be completed, and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

### **Develop Final Ranking and Notify Consultants of Results**

The selection committee discusses and documents the strengths and weaknesses of each technical proposal, interviews the three or more highest ranked consultants (shortlisted), and develops a final ranking of the highest ranked consultants. All consultants that submitted technical proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

### **Request Cost Proposal and Negotiate Contract with Top-Ranked Consultant**

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

Cost proposals (for both prime consultant and all subconsultants) and contract audit and review documents, such as Certification of Indirect Costs and Financial Management System and Financial Document Review Request forms, whichever applicable (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)), will be submitted in a separate sealed envelope.

After the top-ranked consultant submits a sealed cost proposal, the LPA reviews the cost proposal and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the LPA the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the LPA in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals must be returned to consultants.

A contract audit and review may be required (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)). The LPA Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Conformance Review, if applicable. Negotiations may be completed after receipt of the Caltrans IOAI Conformance Letter. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan
- Schedule and deadlines (for deliverables and final duration of contract)
- Products to be delivered
- Classification, wage rates, and experience level of personnel to be assigned
- Other Direct Cost items, and profit or fee

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the LPA.

The LPA and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the LPA must review the contract to ensure that all federal and state requirements have been met.

## 10.1.8 Completing the Project

### Develop the Final Contract

The Contract Administrator requests a revised cost proposal from the consultant after: (1) negotiations have been completed, (2) the LPA and consultant have agreed to a fair and reasonable price, and (3) a letter, if applicable, is released by Caltrans IOAI that accepts, denies, or makes an adjustment to the proposed ICR. The Contract Administrator should review the revised cost proposal to ensure that all the items and changes discussed during negotiation were included. This revised cost proposal then becomes the final cost proposal and is attached to and made a part of the consultant contract. Sample contract language and format have been included as [Exhibit 10-R: A&E Boilerplate Agreement Language](#).

The Contract Administrator has responsibility to ensure that the final negotiated contract is complete and has verified that all required backup documents have been provided. Copies of the contract are sent to the consultant for signature first.

### Review and Approval of Contracts

Proposed contracts for consultant services (including subcontracted work) must be reviewed by the LPA to verify that:

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
- Work activities and schedules are consistent with the nature and scope of the project;
- DBE goal [Exhibit 10-O2: Consultant Contract DBE Commitment](#) is included for all contracts regardless of goal;
- Certification of Indirect Costs and Financial Management System (for prime consultants and subconsultants) and Financial Document Review Request forms and all supporting documents, if applicable (contracts at or above \$1 Million), have been submitted to Caltrans IOAI;
- If applicable, adjustment or denial of the ICR identified in the Financial Review Letter have been included in the final cost proposal;
- [A&E Consultant Contract database](#) must be used to ensure that required documentation has been provided;
- A cost proposal must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

Before approving a contract for consulting services, the Contract Administrator must be satisfied that the consultant's organization:

- Is qualified to perform the services required;
- Is in a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed;
- Is fully aware of all applicable federal and state laws including implementing regulations, design standards, specifications, previous commitments that must be incorporated into the design of the project, and administrative controls including those of Caltrans and FHWA.

- Has an adequate financial management system as required by the applicable federal regulations.
- Is not disbarred or suspended from state or federally-funded contracts. Per 23 CFR 172.7(b)(3) “A contracting agency shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract in accordance with 2 CFR 1200 and 2 CFR 180.”

The contract must provide for a defined level of acceptability and a statement to the effect that the consultant may be required to modify its work as necessary; to meet that level of acceptability as defined in the contract. The contract must provide for LPA reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.

The contract must provide that the consultant and subconsultants must maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, State, and LPA authorized representatives; and copies thereof must be furnished, if requested.

Following final settlement of the contract accounts with the State or FHWA, such records and documents may be archived at the option of the LPA and must be retained for a three-year period after processing of the final voucher by FHWA.

### **Execute Contract and Issue Notice to Proceed to Consultant**

The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the Authorization to Proceed is issued, or for consultant costs incurred prior to the execution of the consultant contract. All executed on-call contracts must have a begin and end date. All executed project-specific or multiphase contracts must have a begin date and should have an end date prior to the Project End Date. Work performed after the Project End Date is not eligible for reimbursement; see [LAPM Chapter 3: Project Authorization](#). LPA consultant selection and contract execution costs may be reimbursable.

For on-call contracts, a fully executed copy of the contract with original signatures will be sent to the consultant. Each subsequent task order (for individual project) will be accompanied with a copy of the signed task order and a Notice to Proceed, once it is negotiated and approved. Task order expiration dates must not exceed the Master On-call agreement end date.

### **Administer the Contract**

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the LPA manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget and terms of the contract.

Contract administration activities help to ensure that contractual obligations are completed satisfactorily. Generally, these activities include:

- Monitoring project progress and compliance with contract requirements;
- Receiving, reviewing, and assessing reports, plans, and other required products/deliverables;

- Receiving and reviewing state prevailing wages (see Department of Industrial Relations websites below):
  - DIR FAQ website: [http://www.dir.ca.gov/OPRL/FAQ\\_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
  - DIR Wage Determination website:  
<http://www.dir.ca.gov/opri/DPreWageDetermination.htm>
- Reviewing invoices to ensure costs claimed are in accordance to the method of payment and contract cost proposal, approving payments;
- If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices.
- Record keeping and reporting;
- Controlling costs;
- Identifying changes to the scope of work and preparation of amendments (must ensure that any changes to the scope is within the constraints of the original RFP/RFQ);
- Completing the consultant performance evaluations (see [Exhibit 10-S: Consultant Performance Evaluation](#)).

### **Substitution of Consultant Personnel and Subconsultants**

After contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written approval from the LPA. Refer to [LAPM Chapter 9: Civil Rights & Disadvantaged Business Enterprise](#) and 49 CFR 26 for DBE substitution requirements. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the LPA prior to use of a different subconsultant on the contract.

The proposed substituted person must be as qualified as the original, and at the same or lower cost. For engineering types of consultant contracts, the consultant's project manager must be a registered engineer in the State of California.

### **Invoicing (or Progress Payments)**

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements (see [LAPM Chapter 3: Project Authorization](#)) need to have been prepared prior to any payments being requested. Payments to the consultant are to be in arrears. In other words, the consultant must have actually incurred and paid the costs before invoicing the LPA.

For federal reimbursement of consultant costs on a project, the LPA must submit the following to the DLAE, for each consultant or consulting firm used on the project (failure to do so will result in the consultant's invoices for reimbursement being returned to the agency unprocessed):

- Copy of Executed Consultant contract;
- [Exhibit 10-O1: Consultant Proposal DBE Commitment](#)
- [Exhibit 10-O2: Consultant Contract DBE Commitment](#)
- Copy of issued task order and Exhibit 10-O2 for the task order for on-call contracts.

DLAE must confirm that the LPA has submitted copies of the Certification of Indirect Costs and Financial Management System form (for prime consultant and subconsultants) to Caltrans IOAI and that LPA has submitted the A&E Consultant Contract form to Caltrans.

The LPA is to follow the procedures given in [LAPM Chapter 5: Invoicing](#), to obtain reimbursement of federal or state funds.

### Contract Amendments

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services must be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement (see FHWA's [Q&A](#) for A&E related services).

There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the LPA, clearly outlining the changes and containing a mutually agreed-upon method of compensation. Such agreements must conform to the requirements of this manual with regard to payment.

A consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract by formal amendment. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement. Task orders are not considered an amendment and therefore not appropriate to extend the terms of the contract.

All contract amendments must be negotiated following the same procedures as the negotiation of the original contract and must be in writing and fully executed by the consultant and LPA before reimbursable work begins on the amendment. For any additional engineering and design related services outside of the scope of work established in the original solicitation, a contracting agency must either procure the series under a new solicitation, perform the work itself using agency staff, or use a different, existing contract under which the services would be within the scope of work. Overruns in the costs of the work must not automatically warrant an increase in the fixed fee portion of a cost-plus-fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost-plus-fixed fee or lump sum reimbursed contracts. If an emergency exists of such magnitude that a delay cannot be tolerated, the LPA and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of LPA funding. [Section 10.1.3: A&E Consultant Audit and Review Process](#) of this chapter must apply to the entire contract and must be completed prior to execution of the contract amendment. For contracts greater than or equal to \$1 Million, submit the [Financial Document Review Request form](#) to IOAI for all amendments on consultant/subconsultant's name change, amending an ICR, or adding new subconsultant's ICR. ICRs that have not been accepted by IOAI are not eligible for federal or state reimbursement. For contracts with original amounts under \$1 Million but subsequently became greater than or equal to \$1 Million after amendment, IOAI Financial Document Review is not required. If there are any changes to the contract after submittal of the A&E Consultant Contract form, the LPA must submit an amended form to the A&E Consultant

Contract [database](#) prior to the first invoice after the contract has been amended. Submission of the A&E Consultant Contract form is not required for non-A&E consultant contracts. All amendments must incorporate any current requirements of the federal regulations including the federal fiscal provisions and submit the A&E Consultant Contract form to the A&E Consultant Contract database prior to the first invoice after the contract has been amended (please use Firefox or Chrome if not supported by your browser).

### Performance Evaluation

Pursuant to 23 CFR 172.9(d)(2) agencies are required to prepare an evaluation of the consultant when the project has been completed. The Contract Administrator evaluates the consultant's performance after the consultant's final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant's project manager. See [Exhibit 10-S: Consultant Performance Evaluation](#) for a suggested format for use by the LPA.

### Project Records

Federal-Aid Highway Program funding recipients and subrecipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records considered pertinent to the grant agreement and in compliance with federal laws and regulations (e.g., 23 USC 112; 40 USC 1101-1104, 23 CFR 172, 48 CFR 31, and 2 CFR 200). These records must be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (2 CFR 200.334).

For audit purposes, project records and documentation must be kept for three (3) years after payment of the final federal or state voucher. Among the records to be retained are as follows (not an all-inclusive list):

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder's list;
- Documentation of DBE participation (including [Exhibit 10-O1: Consultant Proposal DBE Commitment](#), [Exhibit 10-O2: Consultant Contract DBE Commitment](#)), [Exhibit 10-G: Individual A&E Task Order DBE Tracking Sheet](#), [Exhibit 17-F: Final Report – Utilization of Disadvantaged Business Enterprise and First-Tier Subcontractors](#) or [Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise for A&E On-Call Contracts](#), and [Exhibit 17-O: Disadvantaged Business Enterprise Certification Status Change](#)).
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions, and other documentation (see [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#));
- Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines);

- Financial Review Letter and Cognizant Agency Letter, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management (Certification of Indirect Costs and Financial Management System form) for contracts at or above \$1 Million;
- A&E Consultant Audit Request Letter and Checklist (Financial Document Review Request form) for contracts at or above \$1 Million and all supporting documentation.
- Executed consultant contracts, cost proposals, and amendments (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#));
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;
- Performance evaluation (see [Exhibit 10-S: Consultant Performance Evaluation](#));
- A&E Consultant Contract form (see [A&E Consultant Contract database](#));
- Accounting records documenting compliance with State and federal administrative requirements;
- Certifications and Conflict of Interest forms ([Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#), all personnel involved in the procurement of the agreement should complete Exhibit 10-T, [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#), and [Exhibit 10-Q: Disclosure of Lobbying Activities](#), as appropriate). Exhibit 10-Q is included in the solicitation and must be completed if the consultant needs to disclose any lobbying activities.

### Retention Clauses

At the option of the LPA, a retention clause may be included in the consultant contract. A retention clause in the consultant contract is recommended (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article VIII).

### Review of Local Public Agency Actions

Federal-aid or state reimbursement is contingent on meeting the federal or state requirements and can be withdrawn, if these procedures are not followed and documented. The LPA files are to be maintained in a manner to facilitate future FHWA or Caltrans process reviews and audits. As specified in the Review and Approval of Contracts above, the Contract Administrator must review the proposed consultant contract before execution.

The A&E Consultant Contract form is to be completed prior to award, or after contract award but no later than the first invoice. A copy of this form must be retained in the LPA project files.

## 10.1.9 Miscellaneous Considerations

### Agreements with Other Governmental Agencies

Intergovernmental or inter-entity agreements are encouraged if appropriate. If another governmental agency is requested to do work or provide services to an agency, an interagency agreement is needed (2 CFR 200, PCC 10340, and California Government Code 11256).

### Small Purchase Contracts

Contracts that are less than \$250,000 are considered small contracts in accordance with federal regulations. However, within the State of California, there is no recognized small purchase procedure and all A&E contracts are procured using qualifications based selection and not cost. For federal contracts that are less than \$250,000 and are not anticipated to exceed this amount, the agency must use either [Section 10.2: State-Only Funded A&E Contracts](#) or the federal guidance for contracts greater than \$250,000. If the contract is anticipated to exceed \$250,000, use one of the accepted procurement procedures listed in the previous sections. Small contracts using the simplified acquisition procedure (see Section 10.2: State-Only Funded A&E Contracts) must not exceed \$250,000 or the additional costs are considered not reimbursable. The entire contract could also be considered ineligible by FHWA depending on circumstances. The scope of work, project phases, and contract requirements must not be broken down into smaller components to permit the use of small purchase procedure. DBE requirements apply for all federally-funded projects.

### Noncompetitive Negotiated Contracts (Sole-Source)

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under sealed bids or competitive proposals (23 CFR 172.7(a)(3)).

FHWA considers these types of contracts as Sole Source contracts and should be used only in very limited circumstances. An Exhibit 12-F prepared by the LPA and approved by Caltrans is required before establishing these services (23 CFR 172.7(a)(3); also see [Exhibit 12-F: Cost-Effectiveness/Public Interest Finding/A&E Noncompetitive](#)).

Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work;
- An emergency exists of such magnitude that cannot permit delay;
- Competition is determined to be inadequate after solicitation of a number of sources.

The LPA must:

- Follow its defined process for noncompetitive negotiation;
- Develop an adequate scope of work, evaluation factors, and cost estimate before solicitation;
- Conduct negotiations to ensure a fair and reasonable cost.

The LPA must carefully document details of the special conditions, obtain Caltrans approval on the [Exhibit 12-F: Cost Effectiveness / Public Interest Finding / A&E Noncompetitive](#) and retain all documents in the project files for future Caltrans' or FHWA's review.

### Retaining a Consultant in a Management Support Role (CMSR)

An LPA may retain a qualified CMSR on its staff in professional capacities for federal-aid projects such as:

- A City Engineer (or equivalent) who manages the engineering unit for the city, providing oversight of a project, series of projects, managing or directing work of other consultants or contractors on behalf of the city.

- A County Engineer (or equivalent) who manages the engineering unit for the county such as duties described above.
- A Project Manager (or equivalent) who manages and oversees a project, series of projects, or the work of other consultants and contractors on behalf of the public agency.
- A Program Manager (or equivalent) who manages and oversees an element of a highway program, function, or service on behalf of the public agency.

However, typically a CMSR is not:

- A consultant engineer performing project-specific design, and/or construction contract administration and construction engineering for the public agency.
- A consultant providing support to administrative duties such as federal authorization process, labor compliance activities, and other management and administrative tasks.

The use of a CMSR should be limited to unique or very unusual situations. These situations require a thorough justification as to why the LPA cannot perform the management. Consultants used in management support roles must be selected using the same procedures as those for other consultants specified in this chapter. A CMSR funded by local or state funds must have approval from FHWA to be considered qualified to manage federal projects or consultants providing services on federal projects.

Eligibility for federal or state reimbursement for a CMSR requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the LPA and the consultant specifying the LPA engineering services to be performed;
- Written designation by the LPA of the responsibilities and authority of the consultant as an agency engineer;
- For a federal-aid project, completion of [Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#) by all panel members (both consultants and employees) prior to participating in the A&E Selection Panel pertaining to the specific selection process and the firms being considered;
- Selection of consultants for A&E management positions must be by the use of qualification-based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years;
- For a federal-aid project, the LPA's CMSR must not:
  - Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or subconsultant to a proposing firm;
  - Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the LPA consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables, and approving invoices.
  - Apply for or receive reimbursement of federal-aid funds for the LPA's federal-aid project if either of the foregoing has occurred. However, reimbursement for the

construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.

- Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role must be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).

If engineering services for a project are within the scope of the services described in the retained consultant's contract, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal reimbursement for these services require a new consultant contract to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the RFP or RFQ must not be considered in the selection of consultants for the resulting project specific work.

When a CMSR is procured with federal-aid funds, the LPA (subgrantee) must fully comply with the following:

- Subparagraphs of 2 CFR 200.318 maintain a contract administration system and maintain a written code of standards. No employee, officer, or agent of the subgrantee must participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.
- Subparagraph of 23 CFR 172.7(b) requires that the LPA must receive approval of the CMSR from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

For federally-funded projects, LPAs that solicit to hire A&E consultant(s) in a management support role must obtain FHWA approval prior to contract execution.

In order for a contract for a CMSR to be federally eligible, the following are required prior to contract execution:

- The LPA must submit a request for approval via email, the Scope of Work (SOW) and Conflict of Interest (COI) Policy to the Division of Local Assistance-Headquarters (DLA-HQ) at [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov), prior to contract advertisement.
- Once the LPA receives FHWA's written response, the LPA may need to revise the documents reflecting FHWA's opinions and can proceed with the RFQ.
- **Before award**, the LPA must submit the completed [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) to DLA-HQ at [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov). LPA will receive FHWA's approved [Exhibit 10-U](#) via email. **FHWA approval required prior to award.**



### 10.1.10 Program Management

According to 23 CFR 172.5, LPAs are required to adopt written policies and procedures prescribed by Caltrans. As such, the LPA must adopt Caltrans Local Assistance Chapter 10: Consultant Selection, which contain the A&E policies and procedures.

To meet this requirement, LPAs are required to email and provide one of the following documents to the DLA Office of Guidance and Oversight (OGO) at [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov):

1. A Board Resolution showing that the LPA is adopting Caltrans LAPM Chapter 10; OR
2. An official letter signed by the LPA's Public Works Director or equivalent manager addressed to the DLA OGO Office Chief, stating that the agency is adopting Caltrans LAPM Chapter 10

The DLA Consultant Selection and Procurement [website](#) includes an example of the adoption [resolution](#) and [letter](#). These examples are for reference only; the appropriate language to be used is determined by the individual agency.

LPAs are responsible for providing all resources necessary for the procurement, management, and administration of A&E consultant contracts including subcontracts. Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;

- Monitoring the consultant's work and compliance with the terms, conditions, and specifications of the contract;
- Preparing a consultant's performance evaluation when services are completed and using such performance data in future evaluation and ranking of consultant to provide similar services;
- Closing-out a contract;
- Retaining supporting programmatic and contract records, as specified in 2 CFR 200.334 and the requirements of this part;
- Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;
- Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate; and
- Resolving disputes in the procurement, management, and administration of engineering and design related consultant services.

### 10.1.11 References

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirement, and Audit Requirements for Federal Awards  
<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>
- 2 CFR Part 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations  
<https://www.govinfo.gov/app/details/CFR-2013-title2-vol1/CFR-2013-title2-vol1-part215/context>
- 23 U.S.C.112 Letting of Contracts  
<https://www.govinfo.gov/app/details/USCODE-2021-title23/USCODE-2021-title23-chap1-sec112/context>
- 23 CFR Part 172 Procurement, Management, and Administration of Engineering and Design Related Services  
<https://www.ecfr.gov/current/title-23/chapter-I/subchapter-B/part-172>
- 40 U.S.C. Chapter 11 Brooks Act  
<https://www.govinfo.gov/app/details/USCODE-2021-title40/USCODE-2021-title40-subtitle-chap11/context>
- 41 CFR Public Contracts and Property Management  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl)
- 41 U.S.C. Public Contracts  
<https://www.govinfo.gov/app/details/USCODE-2020-title41/context>
- 48 CFR Part 15 – Contract By Negotiation  
<https://www.ecfr.gov/current/title-48/chapter-1/subchapter-C/part-15>
- 48 CFR Part 31 – Contract Cost Principles and Procedures  
<https://www.ecfr.gov/current/title-48/chapter-1/subchapter-E/part-31>
- 48 CFR Part 16 – Types of Contracts  
<https://www.ecfr.gov/current/title-48/chapter-1/subchapter-C/part-16>
- 48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts  
<https://www.ecfr.gov/current/title-48/chapter-1/subchapter-E/part-27/subpart-27.3>
- 48 CFR 31.201-3 – Determining Reasonableness  
<https://www.ecfr.gov/current/title-48/chapter-1/subchapter-E/part-31/subpart-31.2/section-31.201-3>
- 48 CFR, Chapter 99 - Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget  
<https://www.ecfr.gov/current/title-48/chapter-99>
- 49 CFR Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs  
<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>
- American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit and Accounting Guide  
<https://transportation.org/audit/>

Caltrans Division of Procurement and Contracts Website

<http://www.dot.ca.gov/dpac/index.html>

California Labor Code, Section 1775

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=1775](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=1775)

California Government Code Sections 4525 through 4529.5 and Sections 4529.10 through 4529.20

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=GOV&division=5.&title=1.&part=&chapter=10.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=5.&title=1.&part=&chapter=10.&article=)

California Government Code Sections 4529.10 through 4529.20

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=GOV&division=5.&title=1.&part=&chapter=10.1.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=5.&title=1.&part=&chapter=10.1.&article=)

Government Auditing Standards (GAS) issued by the United States Government Accountability Office

<http://www.gao.gov/yellowbook/overview>

Government Code Sections 4525 through 4529.5 and Sections 4529.10 through 4529.20

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=GOV&division=5.&title=1.&part=&chapter=10.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=5.&title=1.&part=&chapter=10.&article=)

Standard Environmental Reference (SER)

<http://www.dot.ca.gov/ser/>

## 10.2 STATE-ONLY FUNDED A&E CONTRACTS

### 10.2.1 General

LPA's are required to follow all applicable local and state regulations including those listed in LAPM Chapter 10 in accordance with their State Master Agreement. Although the requirements listed in this section are minimum requirements, the LPA must use good engineering judgment and best practices to document their processes and procedures when procuring A&E contracts utilizing qualifications based selections. LPA's using local funds to procure an A&E Consultant on a state-only funded project and will not seek state reimbursement for consultant cost may choose not to follow the selection and contracting procedures detailed in Section 10.2: State-Only Funded A&E Contracts of this chapter.

All consultants must comply with 48 CFR 31: Contract Cost Principles and Procedures. Also, consultants and LPA's must comply with 2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, excluding sections 200.318-200.326 Procurement Standards (reference Federal Highway Administration December 4, 2014 Memorandum Action: 2 CFR 200 Implementation Guidance).

Agency state-only funded (SOF) agreements must contain the required federal fiscal provisions from 2 CFR 200 in all Division of Local Assistance funded agreements. [Exhibit 10-R: A&E Boilerplate Agreement Language](#) contains 2 CFR 200 requirements and may also be used in SOF agreements. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

All proposed A&E contracts and supporting documents (including state-only funded) are subject to audit or review by Caltrans' Independent Office of Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government and required to follow [Section 10.1.3 A&E Consultant Audit and Review Process](#).

For consultant contracts, procured with local or state funds, to provide services for federal-aid projects, or to oversee or manage other consultants providing these services, the Consultant in Management Support Role process must be completed to be eligible for reimbursement. Refer to [Section 10.1.9 Retaining a Consultant in a Management Support Role \(CMSR\)](#).

DBE contract goals are not required for state-only funded contracts.

This guidance is for contracts utilizing state funds only. If any federal funds are added or reimbursed, the federal process must be followed.

Non-A&E consultant contracts reference [Section 10.3: Non-A&E Contracts](#).

**Reference: California Government Code Title 1, Division 5, Chapter 10, Contracts with Private Architects, Engineering, Land Surveying, and Construction Project Management Firms §4525-4529.5.**

### 10.2.2 Definition of A&E

Architectural, landscape architectural, engineering, environmental, and land surveying services includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

Construction project management means those services provided by a licensed architect, registered engineer, or licensed general contractor. Any individual or firm proposing to provide

construction project management services must provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

Environmental services mean those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

**Reference: California Government Code §4525-4529.5 and 4529.10-4529.20**

### 10.2.3 Minimum Audit Requirements

#### A. Written Procedures

Local agencies shall follow the minimum requirements listed below in addition to any local laws and regulations.

California Government Code §4526

#### B. Conflict of Interest

The LPA must develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of state-funded contracts, including the prevention of conflicts of interest.

California Government Code §4526, §1090, §4529.12

#### C. Records

Local agencies shall keep adequate records of all contracts including the procurement, project management, accounting, and financial administration.

California Government Code §4529.14, §4006

#### D. Full & Open Competition

All A&E contracts shall be procured through a qualifications-based selection utilizing open and fair competition. Evaluate at least three consultants using published evaluation criteria and rank these firms in order of preference. If less than three consultants are evaluated, provide justification for agency file.

California Government Code §4526, §4527, §4529.12

#### E. Selection Basis

Selection of a firm shall be based on qualifications and the order of ranked preference.

California Government Code §4526, §4527

#### F. Publication

Solicitations for A&E contracts shall be in a manner that is open and competitive.

California Government Code §4527

#### G. Solicitation

The solicitations shall include published evaluation criteria to rank in order of preference. Clearly define expectations in the solicitation in order to evaluate firms.

California Government Code §4527

#### H. Cost Analysis

An independent cost comparison to the consultant's cost proposal shall be done in order to ensure the contract is negotiated at a fair and reasonable price.

California Government Code §4528

#### I. Negotiations

Negotiations must be documented to verify a fair and reasonable contract has been executed using public funds.

California Government Code §4528

#### J. Audit and Review Process

A&E contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits. All agencies shall follow the Audit and Review Process as stated in [Section 10.1.3: A&E Consultant Audit and Review Process](#).

[Financial Document Review Request form](#)

California Government Code §4529.14, 2 CFR 200

#### K. A&E Consultant Contract Form

The A&E Consultant Contract form must be completed and submitted in the A&E Consultant Contract database at <https://dla.dot.ca.gov/fmi/webd/AE%20Consultant%20Contract%20Form> (please use Firefox or Chrome if not supported by your browser) prior to contract award, or after contract award but no later than the first invoice for all new state-only funded A&E consultant contracts.

If there are any changes requiring an amendment to the contract after submittal of the A&E Consultant Contract form, the LPA must submit an updated form to the A&E Consultant Contract [database](#) prior to the first invoice after the contract has been amended. Submission of the A&E Consultant Contract form is not required for non-A&E consultant contracts.

Reference: LAPM Ch.10.2

## CA Government Code References

### **California GOV §1090**

(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

### **California GOV §4006**

Plans, specifications, work authorizations describing work to be performed, and all other information referred to in this chapter are open to inspection and examination as a public record.

### **California GOV §4525**

For purposes of this chapter, the following terms have the following meaning:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(b) "State agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(d) "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(e) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

(f) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

### **California GOV §4526**

Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services may adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.

In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

**California GOV §4527**

In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(a) When the selection is by a state agency head, statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be made by the agency head through publications of the respective professional societies. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him or her, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(b) When the selection is by a local agency head, the agency head may undertake the procedures described in subdivision (a). In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when these employees have a relationship with a person or business entity seeking a contract under this section.

**California GOV §4528**

(a) When the selection is by a state agency head the following procedures shall apply:

(1) The state agency head shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services at compensation which the state agency head determines is fair and reasonable to the State of California or the political subdivision involved.

(2) Should the state agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable to the State of California or the political subdivision involved, negotiations with that firm shall be formally terminated. The state agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the state agency head shall terminate negotiations. The state agency head shall then undertake negotiations with the third most qualified firm.

(3) Should the state agency head be unable to negotiate a satisfactory contract with any of the selected firms, the state agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

(b) When the selection is by a local agency head, the local agency head may undertake the procedures described in subdivision (a).

**California GOV §4529**

This chapter shall not apply where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.

**California GOV §4529.12**

All architectural and engineering services shall be procured pursuant to a fair, competitive selection process which prohibits governmental agency employees from participating in the selection process when they have a financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities.

**California GOV §4529.14**

Architectural and engineering services contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.

**California GOV §4529.20**

This act seeks to comprehensively regulate the matters which are contained within its provisions. These are matters of statewide concern and when enacted are intended to apply to charter cities as well as all other governmental entities.

## **Federal Highway Administration Memorandum 2 CFR Part 200 Implementation Guidance 12/4/2014**

**Attachment A: FHWA 2 CFR Part 200 Uniform Guidance – Questions and Answers**

Question 21: “Will the FHWA/USDOT provide a waiver of the requirements in 2 CFR 200.317 for subrecipients to comply with State procurement requirements or other policies and procedures approved by the State (200.317)?”

Answer: Yes. The USDOT requested and received an OMB waiver of the requirements in 2 CFR 200.317 concerning procurement by subrecipients. This waiver provides an exception to the requirement for all subrecipients of a state to follow the procurement requirements in Sections 200.318 through 200.326. The waiver will allow States and subrecipients to continue to use state-approved procurement procedures as they did under part 18 prior to the adoption of the Uniform Guidance.

## 10.3 NON-A&E CONTRACTS

### Scope

This section covers the procurement requirements for the services that are not included in [Section 10.1 Federally-Funded A&E Contracts](#) and [Section 10.2 State-Only Funded A&E Contracts](#). This guidance is for contracts utilizing federal-aid funds and state funds. Federal regulations refer to state and local regulations for non-A&E type contracts. Although LPAs are required to follow 2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for all contracts, the Procurement Standards section 200.318-200.326 is exempt. The guidance in this section follows the established regulations in the California Public Contract Code (PCC). Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

LPA must designate one person within the LPA as a contract manager.  
(PCC 10348.5)

LPAs using local funds to procure non-A&E Consultants on a federal-aid funded or state-only funded project and will not seek federal or state reimbursement for consultant costs may choose not to follow the selection and contracting procedures detailed in Section 10.3: Non-A&E Contracts of this chapter.

### Determining Non-A&E

After identifying that there is a need for consulting services, the LPA must determine that the services needed are more of a technical nature and involve minimal professional judgement and that requiring a cost proposal would be in the public's best interest. These type of consultant services that are not directly related to a highway construction project or that are not included in the definition of engineering and design-related services are considered non-A&E. The services must not be included in [Section 10.1.1: Definition of Architectural and Engineering Consultant](#) and [10.2.2: Definition of A&E](#).

The determining factor is whether the services being procured are related to a specific construction project and whether the services require work to be performed, provided by, or under the direction of a registered engineer or architect.

### Example of Determining Non-A&E

Material testing has been requested to ensure quality assurance on a construction project. The service includes only performing the material test and providing material test data. Although the service is related to a construction project, the overall service did not provide an evaluation or a discipline report. In this example, the LPA can determine that the service provided is more of a technical nature and is therefore a non-A&E service.

The following is a list of the more common non-A&E services:

- Right-of-Way Appraisal
- Right-of Way acquisition activities
- Conducting public outreach during environmental clearance or construction
- Active Transportation Program educational and outreach activities
- Intelligent Transportation System (ITS)

- Non-Infrastructure
- Local Roadway Safety Plan (LRSP) associated with Highway Safety Improvement Program (HSIP)-funded projects
- [Traffic Counts](#)
- [Speed Surveys](#)

### Intelligent Transportation System (ITS) Projects

Intelligent Transportation System (ITS) means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects are those that in whole or in part, fund the acquisition of technologies or systems of technologies that provide significant contributions to the provision of one or more ITS user services as defined in the National ITS Architecture.

The federal-aid procurement regulations identify three possible contract procurement procedures for ITS projects including engineering and design related services (A&E), construction, and non-engineering/non-architectural (non-A&E).

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding. If the ITS project involves software development, system integration, hiring engineers, and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it may be considered an engineering and design services contract and the contract must be procured as an A&E consultant contract. If the scope of work is unclear as to whether it is an A&E type of work, contact [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov) for assistance.

However, if an ITS project does not meet either the definition of construction or engineering and design services, then the contract may be considered to be a non-A&E consultant contract.

Examples of non-A&E consultant contracts are:

- The procurement of hardware and software associated with incident management system;
- Software systems for arterial and freeway management systems;
- Operating the 511 traveler information service;
- Nonprofessional services for system support such as independent validation and verification, testing and specification development;

For more information regarding Intelligent Transportation Systems (ITS) Program procurement requirements, refer to [LAPG Chapter 13: Intelligent Transportation Systems \(ITS\) Program](#).

### Non-Infrastructure Projects

Non-infrastructure (NI) projects are those transportation-related projects that do not involve either engineering design, Right-of-Way acquisition (for additional guidance refer to [LAPM Chapter 13: Right of Way](#)), or the eventual physical construction of transportation facilities.

Procurement of non-A&E consultant contracts associated with non-infrastructure projects must follow Non-A&E procurement procedures described in this chapter. For more information on NI projects, refer to [LAPM Chapter 3: Project Authorization](#).

### **Governing Regulations and Codes for Non-A&E**

When procuring non-A&E services with federal-aid funds, LPAs must comply with 2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, excluding sections 200.318-200.326 Procurement Standards (reference FHWA December 4, 2014 Memorandum Action: 2 CFR 200 Implementation Guidance, Attachment A). LPAs must follow the same policies and procedures that the State uses for procurement with its non-Federal funds. When procuring non-A&E services with federal-aid and state-only funds, the governing procurement code is California Public Contract Code 10335-10381.

### **Procurement of Non-A&E Consultant Contracts**

All non-A&E procurements contracts must be conducted in a manner providing full and open competition consistent with federal and state standards. LPA must meet the code of conduct governing the performance of its employees engaged in the award and administration of federal-aid and state-funded contracts, including the preventions of conflict of interest in PCC 10410.

The following are the fundamental rules when procuring a non-A&E consultant contract.

1. The request for proposal (RFP) must not limit the competition directly or indirectly to any one consultant. The RFP must be publicized, and all evaluation factors and their relative importance identified (PCC 10339).
2. Splitting a single transaction into a series of transactions for the purpose of evading the procurement requirements is not allowed (PCC 10329).
3. LPA must secure at least three competitive proposals for each contract. (PCC 10340) When receiving less than three proposals, refer to the [Cost-Effective/Public Interest Finding](#) in this section as an alternative to re-advertisement.
4. No proposals must be considered which have not been received at the place, and prior to the closing time as stated in the RFP (PCC 10344(a)).
5. LPA must have a written procedure for evaluating proposals (PCC 10344).

### **RFP Basic Requirements**

There are two general types of consulting service contract solicitations:

- A. Request for Proposal using Cost only
- B. Request for Proposal using Cost and Qualifications

The LPA must include the following in the request for proposal:

- A. A clear, precise description of the work to be performed or services to be provided.
- B. Description of the format that proposals must follow and the elements they must contain.
- C. The standards the agency will use in evaluating proposals. This includes qualifications and certifications if applicable.
- D. The date the proposals are due.

- E. The procurement schedule that the LPA will follow in reviewing and evaluating the proposals.

(PCC 10344)

### **Additional Requirements and Evaluation Criteria**

#### Additional Requirements for Request for Proposal using Cost only

- A. LPA must require consultants to submit their proposals and cost in a separate, sealed envelope.
- B. LPA must determine those that meet the format requirements and the standards specified in the request for proposal.
- C. The sealed envelopes containing the price and cost information for those proposals that meet the format requirements and standards must then be publicly opened and read.
- D. Contract must be awarded to the lowest responsible consultant meeting the standards.

(PCC 10344(b))

#### Additional Requirements for Request for Proposal using Cost and Qualifications

- A. LPA must include in the proposal the description of the evaluation and scoring method. Substantial weight in relationship to all other criteria utilized must be given to the cost amount proposed by the consultant.
- B. LPA must determine those that meet the format requirements specified in the RFP.
- C. LPA evaluation committee must evaluate and score the proposals using the methods specified in the RFP. All evaluation and scoring sheets must be available for public inspection after the committee scoring process. Evaluation committee should comply to the prevention of conflict of interest in PCC 10410.
- D. The non-A&E contract must be awarded to the consultant whose proposal is given the highest score by the evaluation committee.

(PCC 10344(c))

When using RFP (Cost and Qualifications), the criteria used to evaluate the consultant's proposals must have a logical foundation within the scope of work or within other technical requirements contained in the RFP. Each criterion must have a weight or level of importance, and it is recommended that total possible score for the evaluation criteria be one hundred (100) points. The proposed cost should be at least thirty percent (30%) of total points in evaluation criteria.

An example RFP for non-A&E is provided on the DLA Consultant Selection and Procurement website at <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/ae/files/rfp-example-non-ae.docx> and may be modified.

Submission of the A&E Consultant Contract form is not required for non-A&E consultant contracts.

### **Consultant's Proposal**

The consultant's proposal should include the following information:

- Consultant Project Manager – qualifications, roles, and responsibilities.

- Methodology - description of work and overall approach, specific techniques that will be used and specific administrative and operations expertise to be used.
- Workplan and Work Schedule - the technical proposal should include activities and tasks, and their delivery schedule.
- Personnel - List of personnel who will be working on the project, and their resumes.
- Facilities and resources (If applicable) - Explanation of where the services will be provided and what type of equipment is needed to perform services.
- Subcontracts - Identify all subcontracts that are to be used, description of each, and the work by each subconsultant/subcontractor. No work must be subcontracted unless listed in the technical proposal. Subconsultant resumes should be provided.
- References - The technical proposal should provide at least three (3) clients for whom the proposer has performed work of similar nature to the request.

### Cost Proposal Worksheet

The RFP should provide a standard format for cost proposal that all proposers must include in their proposal. The cost proposal format can be broken down by specific tasks, showing hourly labor rates, level of effort and material, and/or by milestones and deliverables.

LPA is not required to award a contract if it is determined that the contract price is not reasonable (PCC 10340(c)).

### DBE Consideration

DBE consideration is required on all federal-aid funded contracts including non-A&E.

### Administrative Requirements

Advertisement for RFPs may be through the LPA website, local publications, and national publications. Minimum solicitation time is 14 calendar days. The solicitation should inform potential qualified consultants that questions must be submitted in writing to the Agency Contract Manager/Administrator by a specified date and time. All pertinent technical information and answers to consultant's questions must be provided to all potential consultants. Written responses to all questions will be collectively compiled and provided as an addendum.

A proposal may be considered nonresponsive and rejected without evaluation if all required information is not provided. Proposals without information regarding, or not meeting, the required DBE utilization goal or without a Good Faith Effort documentation (see [Exhibit 15-H: Proposer/Contractor Good Faith Efforts](#)), late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

No consultant who has been awarded a consulting service contract may be awarded a subsequent contract for the services or goods which are required as an end product of the consulting service contract, unless the subcontract is no more than 10 percent of the total monetary value of the consulting services contract. Excludes A&E contracts.

(PCC 10365.5)

Contracts may be modified or amended only if the contracts so provide. Amendments must be requested and executed prior to the termination date of the most recently approved original or amended contract. All records of contract activities must be kept for three years after federal final voucher E-76 or state final voucher for State-Only funds. Costs are reimbursable after state allocation by the California Transportation Commission (CTC) and/or the issuance of the federal E-76. The per diem rate must not exceed the state rate. Contract Managers are responsible for monitoring expenditures on all contracts and verifying categories of work that require prevailing wage. A person in Responsible Charge of contract management is required for all federally-funded projects.

### **Oral Presentations Optional**

When oral presentations are required by the LPA, the evaluation criteria must include factors/sub-factors and weights used to score the proposers performance at the oral presentation. The evaluation committee will only be able to score each proposer based upon these criteria. The Contract Manager/Administrator should develop a set of questions related to the scope of work or the project to be asked during the evaluation committee question and answer (Q & A) section of the oral presentations. All proposers are asked the same questions for consistency.

The committee must also evaluate reference checks and other information gathered independently. Reference checks must be completed, and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

### **Cost-Effective / Public Interest Finding**

A minimum of three proposals must be evaluated to establish effective competition. Any agency that has received less than three proposals on a contract must document the names and addresses of the firms or individuals it solicited for proposals. Prepare an explanation as to why less than three proposals were received. When only two proposals are received, a justification must be documented to proceed with the procurement. When only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) ([Exhibit 12-F: Cost-Effectiveness/Public Interest Finding/A&E Noncompetitive](#)) must be documented. In either case, the re-advertisement of the RFP should be considered as an option. Retain document as supporting documentation in the contract file.

(PCC 10340(c))

### **Protest / Appeals / Reinstatement Procedures**

Both state and federal regulations require well-defined protest/reinstatement procedures. It is essential that the procedures include a reasonable opportunity for the prospective consultant to present his/her case. The appeals procedures strengthen the process by which the contracting agency reaches its ultimate goal and helps defend its action against a claim of lack of due process. A termination clause and a provision for settlement of contract disputes are required. Protest procedures and dispute resolution processes should be in accordance with PCC 10345.

## 10.4 A&E OVERSIGHT PROGRAM AND PROCESS REVIEW

### General

The A&E Oversight Branch is responsible for the oversight of consultant contracts procured by LPAs complying with federal regulations 23 CFR 172 and 23 U.S.C.112, and state regulations California Government Code 4525-4529.5.

For locally-administered federal-aid highway projects, A&E consultant contract oversight reviews will be performed by Caltrans' Local Assistance A&E Oversight Engineers (A&EOEs). DLAE staff should participate in the reviews.

### Type of Reviews

The purpose of A&E consultant contract oversight reviews is to verify LPA compliance with federal and state consultant contract administration requirements. A risk-based approach has been identified by the A&E branch to aid LPAs with compliance that includes requiring agencies to complete and submit the A&E Consultant Contract form prior to contract award, or after contract award but no later than the first invoice. The objective is to create a database documenting all consultant contracts and to perform process reviews on a sample of contracts for the annual performance measures report.

Although the risk-based approach is the submittal of the A&E Consultant Contract form via the database, a process review may be conducted on projects for reporting purposes and to determine accuracy of the A&E Consultant Contract form information.

### A&E Consultant Contract Form Review

The purpose of the A&E Consultant Contract form is to provide oversight and guidance to an LPA regarding consultant contract administration on a federal or state-funded project prior to the award of the contract. The A&E Consultant Contract form includes items considered critical for compliance with federal and state regulations.

Subsequent process reviews may be performed on selected state and/or federal projects requiring a greater degree of oversight if deemed necessary for agencies with a noncompliance history.

The following factors may be used when selecting projects for subsequent review:

- LPAs with identified deficiencies during an Incurred Cost Audit
- Projects administered by agencies with previous sanctions/findings
- Lack of experienced/trained LPA personnel
- Request by LPA or DLAE for additional assistance

During subsequent process reviews, the A&EOE will meet with the LPA's consultant contract administration team and discuss project record documentation requirements using the A&E Consultant Contract form. The timing of these types of reviews is targeted for pre-advertisement, pre-negotiations, and pre-award of the consultant contract. This will allow for any changes to take place prior to execution or termination of negotiations for re-advertising. The A&EOE will also explain new policies or procedures, discuss available training, and highlight common problem areas and the means to avoid them.

## Review Findings and Deficiencies

Caltrans will not be involved in most project-level reviews and approval activities. Instead, the Process Review as outlined in this section is Caltrans' primary method of ensuring that federal and state requirements are met. During a Process Review of the LPA's project files, errors and/or deficiencies that may violate federal or state law or regulation could be found. If that happens, federal and/or state funds may be withdrawn from a project depending on the severity and circumstance of the deficiency, as well as the possibility of jeopardizing future federal and/or state funding opportunities for the agency's other projects.

It is important to note that the formal process review is not the only method of discovering project deficiencies. Errors or deficiencies are discovered occasionally as part of the normal routine of processing project submittals by DLAEs or DLA Area Engineers.

Review findings from any subsequent reviews will be forwarded to the LPA and the DLAE within five business days. Deficiencies identified during a review may require development of a corrective action plan by the LPA in consultation with the district within 30 calendar days of receipt of the deficiency notification, unless the agency disagrees with the deficiencies identified and appeals the decision as discussed below.

A list of common A&E consultant procurement-related deficiencies is found at the DLA Consultant Selection and Procurement [website](#). These examples, not all-inclusive, should assist LPAs with knowing common deficiencies found in the past and the possible ramifications for those errors and deficiencies. The key to avoiding possible sanctions is to follow the procedures outlined in this chapter and other appropriate policies and guidelines, and if you have any questions, to consult your DLAE.

Corrective action plans, if required, will identify actions the LPA will take to address each deficiency noted. Corrective actions may include the following: Re-advertising, modifications of LPA policies and procedures, and participation in training to address systemic related deficiencies. Project-specific issues may require additional measures to remedy deficiencies to ensure compliance with federal and state requirements and ensure reimbursement eligibility. Corrective action plans must also include timelines for each action to be implemented. Failure to provide and implement corrective actions may result in sanctions or federal/state ineligibility notices against the project or LPA and could prevent federal or state participation in all or a portion of the project.

In the event the LPA disagrees with the deficiencies identified, the LPA will have 30 calendar days from receipt of the deficiency notification to submit their written request for appeal in accordance with the DLA's [Local Agency Dispute Resolution Process](#). If the appeal is denied, the LPA will have 30 calendar days from receipt of the decision to submit their corrective action plan.

The Dispute Resolution Process provides a means for the LPA to appeal a sanction that they feel has been imposed upon them unfairly or they feel the penalty is too harsh for the error or deficiency. This appeal process is not limited to just the appeal of sanctions; it can be used by LPAs when they disagree with the decision, they receive from a district office.

## 10.5 SANCTIONS

Depending on the severity and circumstances of the deficiencies which may require sanctioning by Caltrans, the DLA or DLAE may impose one of the following sanctions:

- Freeze on all future programming of federal or state funds until corrective action is implemented
- Freeze progress payments for a federal-aid project until the project's deficiency is corrected
- Percentage of federal or state funds for a project withdrawn
- All federal or state funds withdrawn from a project

The DLAE will be responsible for notifying the LPA of sanctions imposed. Whether or not sanctions are imposed against an LPA, the LPA will be expected to develop a corrective action plan and implement it to correct the deficiencies. LPAs will be given adequate time to develop and implement their action plan. Failure to correct the deficiencies in a timely manner will be grounds for imposing additional sanctions