

## Chapter 10: Consultant Selection

**Important Note:** Office Bulletins are periodically issued to disseminate policy or procedural changes quickly. The Office Bulletins supersede specific DLA policy and/or procedural publications, until the changes can be incorporated into the LAPM.

**Prior to reading the LAPM chapter, please make sure to review the following Office Bulletins that impacted this LAPM Chapter:**

[OB 17-02](#) Architectural and Engineering Consultant Contract Review

[OB 17-01](#) Federal Highway Administration (FHWA) Approval of Architectural and Engineering (A&E) Consultants in a Management Support Role

[OB 13-07R](#) Safe Harbor Indirect Cost Rate for Consultant Contracts

[Click here to proceed with LAPM Chapter 10](#)



*Expires – Upon Issuance of LPP 18-01*

## **Federal Highway Administration (FHWA) Approval of Architectural and Engineering (A&E) Consultants in a Management Support Role**

### **I. BACKGROUND**

The most recent version of the [Stewardship and Oversight Agreement](#) between FHWA and the California Department of Transportation (Caltrans) signed on May 28, 2015, addresses the approval action maintained by FHWA in the area of administering A&E contracts (23 CFR 172.7 (b)(5)).

### **II. POLICY**

#### **23 CFR 172.7:**

Consultant services in management support roles.

- (i) When Federal Aid Highway Program (FAHP) funds participate in a consultant services contract, the contracting agency shall receive approval from FHWA, or the recipient as appropriate, before utilizing a consultant to act in a management support role for the contracting agency; unless an alternate approval procedure has been approved. Use of consultants in management support roles does not relieve the contracting agency of responsibilities associated with the use of FAHP funds, as specified in 23 U.S.C. 302(a) and 23 U.S.C. 106(g)(4) and should be limited to large projects or circumstances where unusual cost or time constraints exist, unique technical or managerial expertise is required, and/or an increase in contracting agency staff is not a viable option.
- (ii) Management support roles may include, but are not limited to, providing oversight of an element of a highway program, function, or service on behalf of the contracting agency or may involve managing or providing oversight of a project, series of projects, or the work of other consultants and contractors on behalf of the contracting agency. Contracting agency written policies and procedures as specified in § 172.5(c) may further define allowable management roles and services a consultant may provide, specific approval responsibilities, and associated controls necessary to ensure compliance with Federal requirements.
- (iii) Use of consultants or sub-consultants in management support roles requires appropriate conflicts of interest standards as specified in paragraph (b)(4) of this section and adequate contracting agency staffing to administer and monitor the management consultant contract, as specified in § 172.9(d). A consultant serving in a management support role may be precluded from providing additional services on projects, activities, or contracts under its oversight due to potential conflicts of interest.
- (iv) FAHP funds shall not participate in the costs of a consultant serving in a management support role where the consultant was not procured in accordance with Federal and State requirements, as specified in 23 CFR 1.9(a).
- (v) Where benefiting more than a single Federal-aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles applicable to the contracting agency, as specified in 2 CFR part 200, subpart E—Cost Principles.

Consultant in management support role means:

- 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, selecting other consultants, approving changes to schedule, scope, deliverables or costs, and approving invoices.
- 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.

Consultant in management role does not mean:

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

### III. PROCEDURE

Upon the effective date of this Office Bulletin, all Local Public Agencies that solicit to hire A&E consultant(s) in a management support role must obtain FHWA approval prior to contract execution. As noted in the [Stewardship and Oversight Agreement](#), the delegation of the approval of A&E consultants to act in a management support role is not allowed.

In order for a contract for a consultant in a management support role to be federally eligible, the following is required:

- Local agency sends in a request for approval (Scope of Work and Conflict of Interest Policy) to DLA-HQ ([aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov)).
- Upon receipt, DLA-HQ shall review the request and forward it for approval to FHWA and cc DLAE.
- DLA-HQ sends FHWA’s written response to the local agency and cc DLAE.
- Local agency undergoes consultant selection process and selects consultant.
- Local agency shall submit the completed Exhibit 10-U to DLA-HQ ([aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov)). DLA-HQ shall review and forward Exhibit 10-U to FHWA for approval.
- DLA-HQ sends signed Exhibit 10-U (approved by FHWA) to the local agency and cc DLAE.

Please see attached flow chart for overall process.

Existing consultant in a management support role contracts in effect prior to the issuance of this Office Bulletin are exempt. However, any amendments to existing contracts shall require FHWA approval in order to be considered federally eligible.



All new contracts are limited to a duration of three (3) years with the possibility for a two (2) year extension.

#### IV. APPLICABILITY/IMPACTS

All Federal-aid contracts for a consultant in a management support role must be approved by FHWA **prior to contract execution**. Failure to obtain proper FHWA approval may result in federal ineligibility of the contract.

Recommended: Original Signature By 07/19/2017  
Sukhdeep Nagra, A&E Oversight Engineer Date  
Division of Local Assistance

Approved: Original Signature By 07/19/2017  
Erwin Gojuangco, Acting Office Chief Date  
Office of Policy Development and Quality Assurance

#### Attachments:

Attachment 1 – May 15, 2017 FHWA California Division letter: “FHWA Approval of Architectural and Engineering (A/E) Consultants in a Management Support Role”

Attachment 2 – 2017 Consultant in a Management Support Role Procurement Process

Attachment 3 – LAPM Exhibit 10-U Consultant in Management Support Role Conflict of Interest and Confidentiality Statement (Revised)



*Expires – Upon Issuance of LPP*

## **Architectural and Engineering Consultant Contract Review**

Division of Local Assistance Office Bulletin (DLA-OB) 17-02 updates the Architectural and Engineering (A&E) Consultant Contract Reviewers Checklist (Local Assistance Procedures Manual (LAPM) Exhibit 10-C) and submittal procedure to increase local agency compliance with federal and state consultant procurement requirements and identifies deficiencies considered procedural and unrecoverable.

### **I. BACKGROUND**

On July 15, 2011, the Office of Inspector General (OIG) reviewed the Federal Highway Administration's (FHWA) oversight of Federal-Aid and Recovery Act projects administered by local agencies in California. OIG determined that FHWA and the California Department of Transportation (Caltrans) were not managing risks properly and many projects were found noncompliant with federal regulations.

As a result of the deficiencies found in the Federal-Aid Highway Program, FHWA revised Title 23 CFR 172 on May 22, 2015 to update and clarify the procurement, management, and administration of engineering and design related services.

### **II. POLICY**

#### A&E Consultant Contract Reviewers Checklist

Exhibit 10-C is revised to identify critical elements of the consultant procurement process to increase compliance with Title 23 CFR 172 and Government Code 4525-4529.5. Items not completed in the checklist may jeopardize federal and/or state project funding. A completed Exhibit 10-C for new or amended federal and/or state funded consultant contracts must be accepted by Caltrans prior to contract award.

#### Deficiencies and Sanctions

The following are considered procedural deficiencies and may jeopardize federal and/or state funding on completed or ongoing projects:

- Did not advertise as required.
- Did not re-advertise for required period.
- Did not identify all evaluation factors in Request for Qualifications/Request for Proposals (RFQ/RFP).
- Did not identify the weights or values of each evaluation factor in RFQ/RFP.
- Method of payment in RFP not consistent with contract cost proposal.
- No supporting documentation that all proposals were received within the required time frames (example: proposals not date-stamped).
- No conflict of interest signed by panel members or evidence an appropriate Code of Ethics was followed in accordance with federal requirements.
- Profit not negotiated.
- No support that cost analysis was performed.
- Cost elements not negotiated/evidence of negotiations not maintained.



- No prior authorization given for sole source contracts.
- Title VI requirements [per Title 23 CFR 172.9 (c) (1) (vi)] revisions needed in contracts (federal funded only).
- DBE requirements [per Title 23 CFR 172.9 (c) (1) (vii)] revisions needed in contracts (federal funded only).

The following are considered unrecoverable deficiencies and shall result in the withdrawal of all or a portion of the federal and/or state funds from the project:

- No records or documentation to support consultant procurement.
- No support for scoring and/or ranking of consultants.

Two or more of the following are considered unrecoverable deficiencies and shall result in the withdrawal of all or a portion of the federal and/or state funds from the project:

- No justification for sole-sourcing.
- Could not support contract was advertised at all.
- No independent cost estimate performed.
- Local preference used.
- Price used as an evaluation factor.
- Scoring evaluation factors or weights do not match those identified in the RFQ/RFP.
- Did not include any evaluation factors in the RFQ/RFP.
- Cost proposal does not break down job classifications and types of costs by amount and/or rates.
- Missing Title VI requirements [per Title 23 CFR 172.9 (c) (1) (vi)] from contracts (Federal Funded Only).
- Missing DBE requirements [per Title 23 CFR 172.9 (c) (1) (vii)] from contracts (Federal Funded Only).

### III. PROCEDURE

Effective October 1, 2017, local agencies must submit a completed Exhibit 10-C for new or amended federal and/or state funded A&E consultant contracts to [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov) for Caltrans **review and acceptance prior to contract award**. The Office of Guidance and Oversight (GO) will notify the local agency and DLAE of Exhibit 10-C acceptance or rejection within 5 business days.

If there are any changes to the contract after Caltrans acceptance of Exhibit 10-C, the local agency must notify the Office of GO and provide a copy of an updated Exhibit 10-C and all contract amendments to [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov).

### IV. APPLICABILITY/IMPACTS

Exhibit 10-C is required for all federally and/or state funded A&E consultant contracts. Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement.



The following LAPM exhibits are updated to incorporate the revised policy and procedures associated with this OB:

- LAPM Exhibit 10-C A&E Consultant Contract Reviewers Checklist
- LAPM Exhibit 3-A, Request for Authorization to Proceed with Preliminary Engineering
- LAPM Exhibit 3-B, Request for Authorization to Proceed with Right of Way
- LAPM Exhibit 3-C, Request for Authorization to Proceed with Utility Relocation
- LAPM Exhibit 3-D, Request for Authorization to Proceed with Construction
- LAPM Exhibit 3-Q, Request for Authorization to Proceed with Non-Infrastructure Project

<b>Recommended:</b>	<b>Original Signature</b>	<b>08/17/2017</b>
	<b>FELICIA HASLEM</b> , A&E Oversight Program Manager Office of Guidance and Oversight	<b>Date</b>
<b>Approved:</b>	<b>Original Signature</b>	<b>08/17/2017</b>
	<b>ERWIN GOJUANGCO</b> , Acting Chief Office of Guidance and Oversight	<b>Date</b>

#### Attachments

- (1) LAPM Exhibit 10-C, A&E Consultant Contract Reviewers Checklist
- (2) LAPM Exhibit 3-A, Request for Authorization to Proceed with Preliminary Engineering
- (3) LAPM Exhibit 3-B, Request for Authorization to Proceed with Right of Way
- (4) LAPM Exhibit 3-C, Request for Authorization to Proceed with Utility Relocation
- (5) LAPM Exhibit 3-D, Request for Authorization to Proceed with Construction
- (6) LAPM Exhibit 3-Q, Request for Authorization to Proceed with Non-Infrastructure Project



*Expires – December 31, 2017 unless extended*

## **Safe Harbor Indirect Cost Rate for Consultant Contracts**

### **I. BACKGROUND**

Consulting Architectural & Engineering (A&E) firms providing engineering and design related services under a contract funded by a federal grant, are required by regulation (as specified in 2 CFR Part 200) to account for and bill costs in accordance with the Federal Cost Principles of 48 CFR 31. In efforts to comply with the Federal Cost Principles, A&E consulting firms that provide services on federal-aid highway projects are required to develop indirect cost rates in accordance with the Federal Cost Principles on an annual basis.

Developing indirect cost rates annually can place a significant burden on some A&E consulting firms, and may create a barrier for otherwise eligible and qualified firms to compete for federally funded contracts. For example, small firms including many Disadvantaged Business Enterprise firms, may lack the financial sophistication to develop an indirect cost rate, or lack the resources to hire a Certified Public Accountant (CPA). CPA's are hired to conduct an audit and to provide assurance as to the development of an indirect cost rate compliant with federal requirements. Additionally, new or start-up firms generally do not have a contract-related cost history to use as a base for development of an indirect cost rate. Other established A&E consulting firms may not have previous experience with federally-funded contracts, for which an indirect cost rate would have been developed in compliance with Federal Cost Principles.

To help alleviate and remove potential barriers, the Federal Highway Administration (FHWA) has developed "Safe Harbor Rate" (SHR), a national indirect cost rate to be utilized by eligible consultant firms on a test-evaluation basis. The original testing period was extended to cover July 1, 2013 to July 31, 2017. The test period will be extended again through December 31, 2017.

### **II. POLICY**

Effective July 1, 2013, all eligible A&E consultant firms can choose to use the SHR of 110% for new A&E contracts using federal-aid highway funds executed by local agencies in the State of California within the test period.

The use of the SHR is voluntary for all eligible firms (both prime and sub-consultants) on contracts executed within the established test period, and shall not be mandated as a condition of contract award.

Use of the SHR for contracts executed after December 31, 2017, is not permitted, unless written notice is provided to all designated states extending this test period. FHWA is determining whether to finalize a policy on the permanent, and nationwide implementation of SHR. FHWA intends to solicit public feedback on a proposed policy that would allow contracting agencies the option of adopting a SHR program in their Federal-aid design and engineering contracts while providing adequate assurance and oversight of consultant costs and compliance with 23 CFR 172.11(c)(2)(ii).



#### SHR Eligibility and Requirements:

Only A&E consulting firms that satisfy the criteria below have the option of using the SHR on contracts executed within the established test period.

- Firms that do not have relevant contract cost history to use as a base for developing its own indirect cost rate, or
- Firms that do **not** have a previously accepted indirect cost rate (ICR) by a cognizant agency, or with an audited/accepted actual ICR within the established test period, and
- **All firms are required to have a project/cost accounting system adequate to accumulate and track direct labor and other direct costs by contract, segregating indirect costs, and removing unallowable costs. These basic accounting system functions are essential for accurate billing of costs under federal cost-reimbursement contracts.**
- For eligible A&E consulting firms that use the SHR and do not have established salaries or wage rates for employees, the fixed hourly labor rates will need to be established for calculation of the direct labor portion of the contracted services. The agreed upon rate shall be reasonable as set forth in the Federal Cost Principles, considering the nature of the services to be provided. Where appropriate for the scope of services under contract, a “fully loaded”, hourly rate could be established utilizing a reasonable hourly direct labor rate, the safe harbor indirect cost rate as the overhead rate component, and an appropriate amount of fee (profit).
- SHR is permitted for Home Office rates, and not for Field Office rates. Should a firm opting for SHR be selected to provide services for a field-based contract, a field-based indirect cost rate may be negotiated, to ensure an equitable distribution of costs to the benefiting contract in accordance with FHWA guidance and as permitted within the Federal Cost Principles.
- SHR is not adjustable for the term of the consultant contract.
- No retroactive adjustments to indirect costs will be allowed for past contracts utilizing the SHR.

#### Other Considerations

- The expectation will be for the firm to establish a cost history for the development of an indirect cost rate for the firm in accordance with the Federal Cost Principles based on the actual costs of the firm.
- The SHR may be used in the determination of the fixed fee portion of the contract, which would not be subject to adjustment unless warranted by changes to the scope of work or duration of the contract.

### III. PROCEDURE

A&E consultant firms (prime and/or sub consultants) electing to use SHR in a contract are required to submit a completed SHR Consultant Certification of Eligibility, Contract Cost, Financial Management System (Attachment 1R), and a SHR Questionnaire for Evaluating Consultant Financial Management System (Attachment 2R). This requirement is in addition to the A&E Consultant Audit and Review Process requirement described in Local Assistance Procedures Manual, Chapter 10, Section 10.3.



#### Local Government Agencies Responsibilities:

Local Government Agencies (LGA's) are responsible to ensure all procedures are set forth and these instructions are followed. Specifically LGA are required to:

- Collect and screen all requests to use the safe harbor indirect cost rate (see Attachments 1R & 2R above). Contact *Office of Policy Development and Quality Assurance - Division of Local Assistance* for screening criteria. For example, if a firm answers question 16 of Attachment 2R as “No”, the firm is not eligible for SHR.
- Submit screened requests (certifications, questionnaires, and all required attachments) to Caltrans Audits & Investigations (A&I) for review. Submission of requests are either sent individually (for Case 1 contracts), or with the audit request packet (for Cases 2 and 3 contracts). (See Local Assistance Procedures Manual (LAPM), Chapter 10, Section 10.3 for discussion and requirements on Cases 1,2, and 3 contracts and audit request packets, LAPM Exhibit 10-A). Caltrans A&I email address is: SHR.request@dot.ca.gov
- For Case 1 contracts – submit screened request along with the proposed/executed contract, scope of work, and prime consultant's Exhibit 10-K (if applicable).

Requests to use the safe harbor indirect cost rate must be accepted/approved by Caltrans' A&I **before** contracts are executed.

#### IV. APPLICABILITY/IMPACTS

This policy applies to all federal-aid highway projects.

Recommended:	<b>Original Signed By</b> _____ Mohammad Maljai, A&E Oversight Coordinator	<b>10/03/2013</b> _____ Date
Approved:	<b>Original Signed By</b> _____ Mark Samuelson, Office Chief Office of Policy Development and Quality Assurance	<b>10/03/2013</b> _____ Date

#### Attachments:

1. Attachment 1R – SHR Consultant Certification of Eligibility and Contract Cost and Financial Management System
2. Attachment 2R – SHR Questionnaire for Evaluating Consultant Financial Management System

Chapter 10 **Consultant Selection**

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## Exhibits

Exhibits applicable to this chapter can be found at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

[\*Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist\*](#)

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

[\*Exhibit 10-C: Consultant Contract Reviewers Checklist\*](#)

[\*Exhibit 10-H: Sample Cost Proposal \(Example#1 thru #3\)\*](#)

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

[\*Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System\*](#)

[\*Exhibit 10-01: Consultant Proposal DBE Commitment\*](#)

[\*Exhibit 10-02: Consultant Contracts DBE Commitment\*](#)

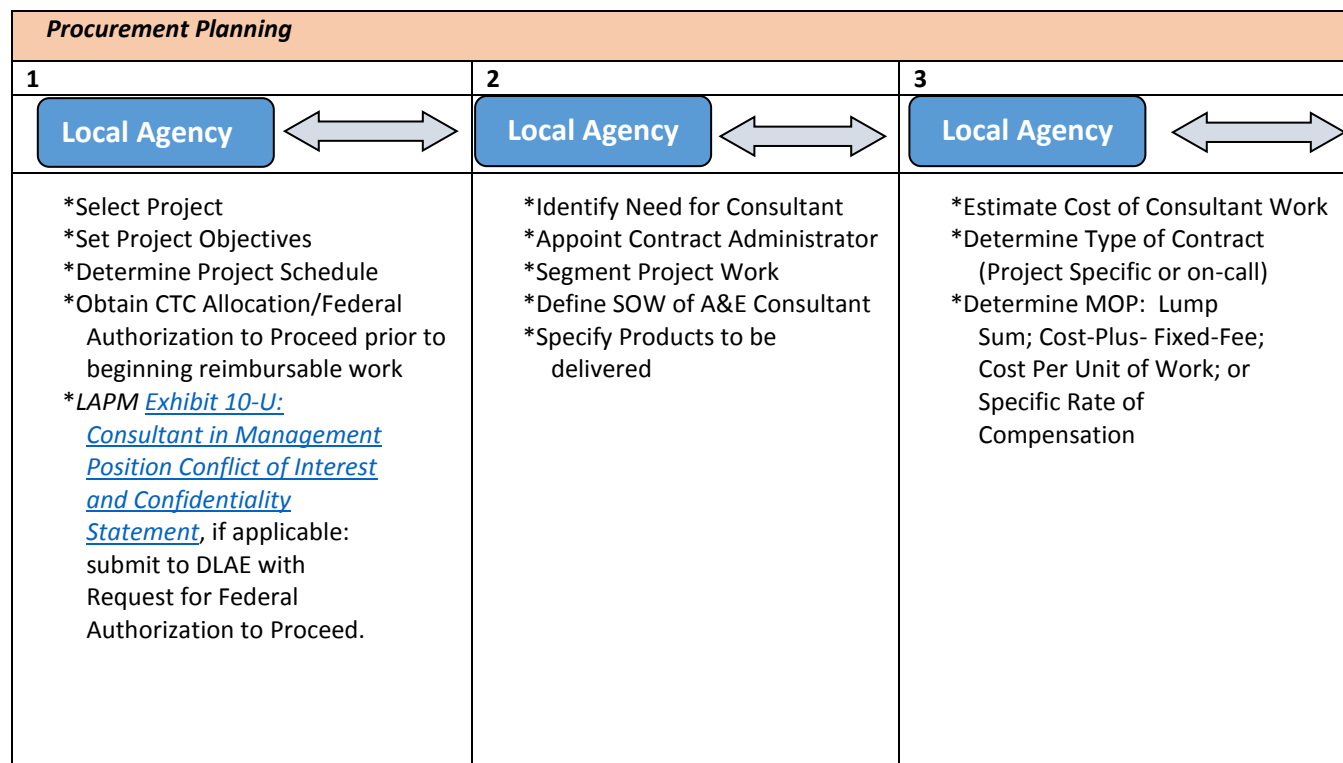
[\*Exhibit 10-Q: Disclosure of Lobbying Activities\*](#)

[\*Exhibit 10-R: A&E Sample Contract Language\*](#)

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




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

[\*Exhibit 10-U: Consultant in Management Position Conflict of interest & Confidentiality Statement\*](#)



**A&E = Architectural and Engineering**  
**A&I = Caltrans Audits and Investigations**  
**CT = Caltrans**  
**DBE = Disadvantaged Business Enterprise**  
**DLA = Division of Local Assistance**  
**DLAE = District Local Assistance Engineer**  
**LAPG = Local Assistance Program Guidelines**  
**LAPM = Local Assistance Procedures Manual**  
**MOP = Method of Payment**  
**RFP = Request for Proposal**  
**RFQ = Request for Qualifications**  
**SOQ = Statement of Qualifications**  
**SOW = Statement/Scope of Work**

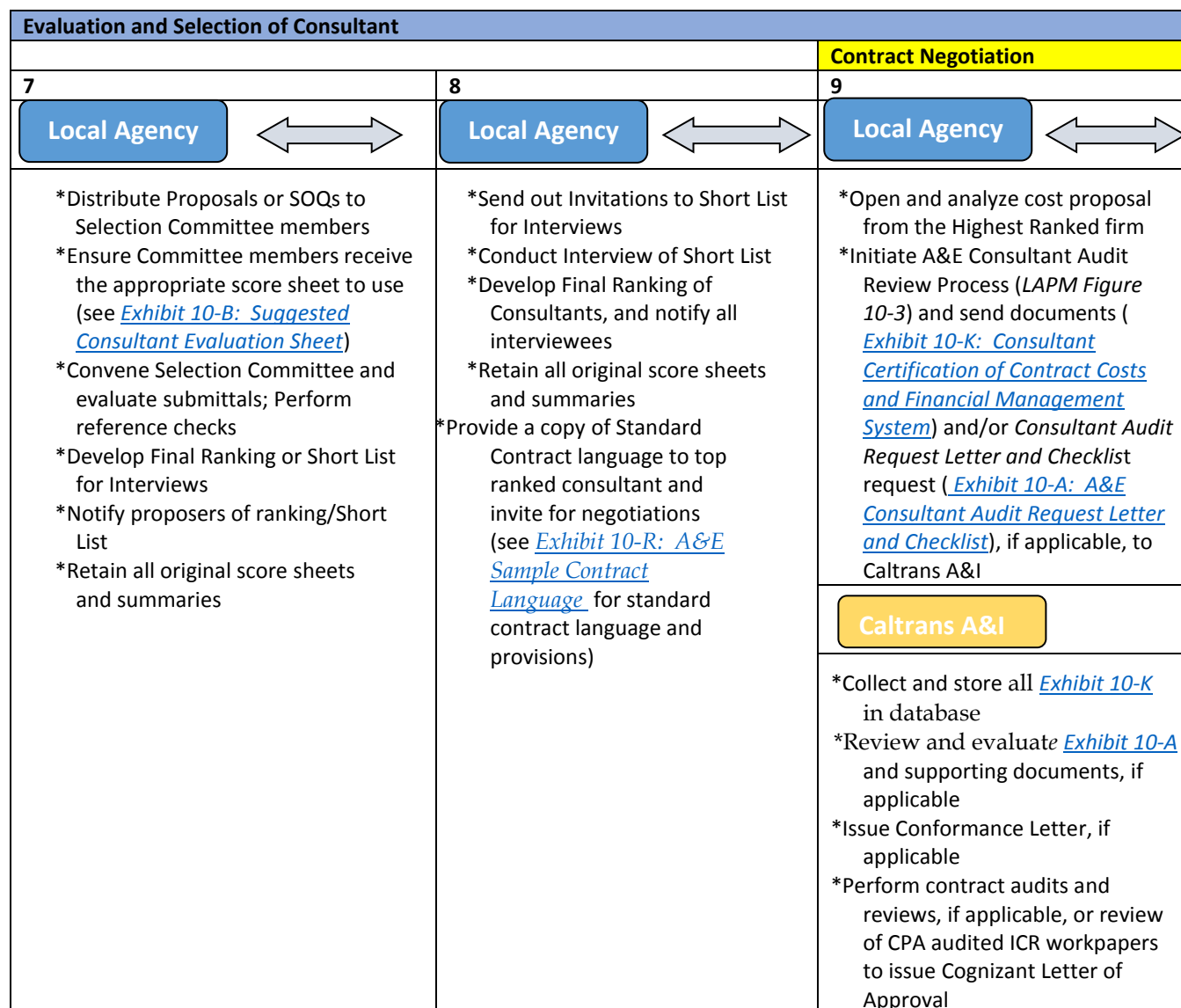
**Figure 10-1: A&E Contract Procurement Process Workflow Diagram**

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 and Confidentiality Statements (see <a href="#">Exhibit 10-T: Panel Member Conflict of Interest &amp; Confidentiality Statement</a>) from all committee members</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>*Includes SOW, evaluation process/criteria, DBE goals, MOP and cost proposal format (see <a href="#">Exhibit 10-H: Sample Cost Proposal</a>) 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; 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>

**A&E = Architectural and Engineering**  
**A&I = Caltrans Audits and Investigations**  
**CT = Caltrans**  
**DBE = Disadvantaged Business Enterprise**  
**DLA = Division of Local Assistance**  
**DLAE = District Local Assistance Engineer**  
**LAPG = Local Assistance Program Guidelines**  
**LAPM = Local Assistance Procedures Manual**  
**MOP = Method of Payment**  
**RFP = Request for Proposal**  
**RFQ = Request for Qualifications**  
**SOQ = Statement of Qualifications**  
**SOW = Statement/Scope of Work**

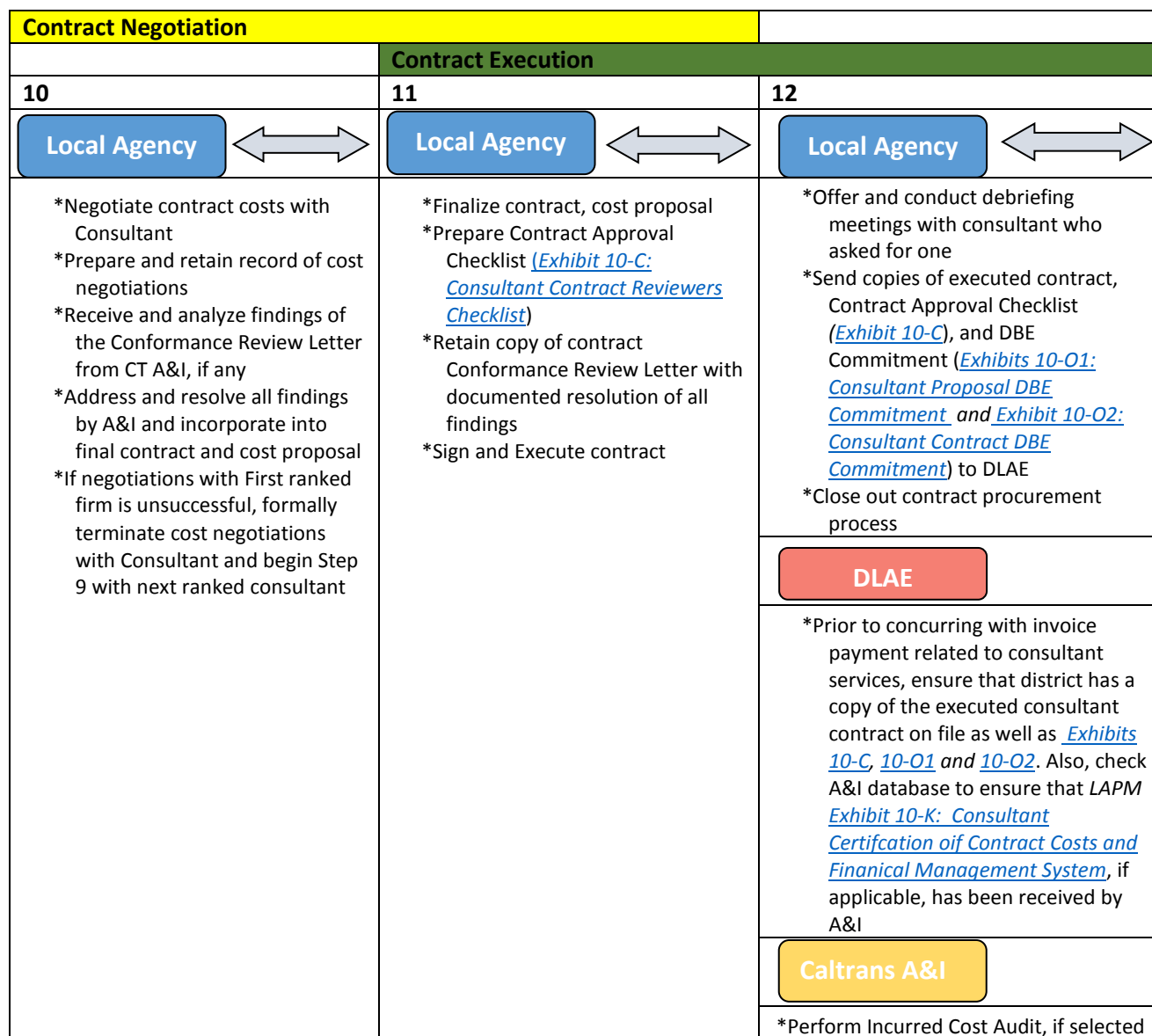
**Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued**





**A&E = Architectural and Engineering**  
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**SOW = Statement/Scope of Work**

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



**A&E = Architectural and Engineering**  
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**SOW = Statement/Scope of Work**

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

## Chapter 10 **Consultant Selection**

### **10.1 GENERAL**

#### **Introduction**

A local agency may engage consultants to perform architectural, engineering, and related services needed to develop a federal-aid or state funded project. Those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or construction project management services, with respect to a construction project, are termed Architectural and Engineering (A&E) Consultants. Local agencies requesting federal or state funds to reimburse A&E Consultants must follow the selection and contracting procedures detailed in this chapter.

#### **Architectural and Engineering Consultants**

The provisions of the Brooks Act (40 USC, Section 1104) require local agencies to award federally funded engineering and design related contracts on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the local agency, if above the small purchase procurement threshold, must be sealed and may not be included as a criterion for rating such consultants. After ranking, cost negotiations may begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the local agency does not consider fair and reasonable, negotiations must be formally terminated and the local agency 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 local agency 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 local agency.

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 websites below.

- [DIR FAQ](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html) website:  
[http://www.dir.ca.gov/OPRL/FAQ\\_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
- [DIR Wage Determination](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm) website:  
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>

## 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. The Brooks Act and the audit and review process described in [Section 10.3: A&E Consultant Audit and Review Process](#) of this chapter are optional for non A&E Consultant contracts.

Non-A&E contract procurement on highway projects must comply with California State Public Contract Code, Section 10351-10381,

## Selecting the Project

The local agency is responsible for selecting and initiating a federal-aid or state 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 local agency 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 local agency. The consultant's organization and all associated consultants and subconsultants must be identified at the time of the proposal. If the consultant wishes to use a subconsultant not specified in the proposal, prior written approval must be obtained from the local agency. The subcontract must contain all required provisions of the prime contract.

## Organizational and Consultant Conflicts of Interest

In the procurement of contracts for engineering services by private consulting firms using federal-aid highway or state funds, local agencies must take all the steps necessary to prevent fraud, waste and abuse. The local agency must develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of federal-aid highway funded contracts, including the prevention of conflicts of interest.

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). Additionally, 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 1.33) Requires that:

- No contracting agency employee who participates in the procurement, management, or administration of federal or state funded contracts or subcontracts shall 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 or state funded project shall 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 project funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project.

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

Local agencies sometimes wish 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 result in 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 necessary 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 local agencies are responsible for ensuring the public interest is maintained throughout the life of a project and that a conflict of interest, direct or indirect, 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 the form of 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 of time 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 role must complete [Exhibit 10-U: Consultant in Management Position Conflict of Interest and Confidentiality Statement](#) and retain it in the local agency files.

### **Authorization to Proceed**

The Federal Highway Administration (FHWA) must give the local agency an Authorization to Proceed with the work prior to the performance of any work for which federal reimbursement is to be requested, (see the [LAPM Chapter 3: Project Authorization](#)). For state funded projects see the [Local Assistance Program Guidelines \(LAPG\), Chapter 23: Local Agency State Transportation Improvement Program Projects](#), for guidance as to when work may proceed.

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

## **10.2 IDENTIFYING & DEFINING A NEED FOR CONSULTANTS**

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

If the local agency determines that there is a need to solicit assistance from another local agency, or to use a consultant, the District Local Assistance Engineer (DLAE) should be notified if federal-aid or state 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 local agency 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 include, but are not limited to the following:

- Ensures that all records, files and other documents related to contract procurement and management activities are retained in contract/project files;
- 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 in advance of 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 local agency's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- Reviews and approves the consultant's invoices and/or progress payments to ensure that billings are in accordance with the terms and conditions of the contract, and correspond accurately to the work performed during the billing period;
- Identifies other local agency 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\*](#)).

### Determining the Project Schedule

The local agency 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.

### 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 \(SER\) Chapters 31: Environmental Assessment \(EA\) and Finding of No Significant Impact \(FONSI\)](#) and [Chapter 32: Environmental Impact Statement \(E\)](#)). Final detailed design shall not begin until environmental clearance 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.



## Non-Discrimination Clause

The Non-Discrimination Clause ([Exhibit 10-R: A&E Sample Contract Language](#), Article XVI Statement of Compliance) must be included in each consultant contract. The consultant must include the nondiscrimination 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, Part 26) require a local agency to comply with the DBE program, and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Such steps include the setting of goals to ensure DBE firms are considered by the proposing consultants and, when feasible, organizing the project schedule and task requirements to encourage participation in the contract by DBE firms. Local agencies should be fully aware of all of the subcontracting opportunities in their consultant contracts. For detailed information and requirement on the DBE Program, see [LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises](#).

The consultant must ensure that certified DBE firms have the opportunity to participate in the performance of the contract and must take all necessary and reasonable steps to facilitate participation by DBE firms for such assurance.

A DBE goal must be established by the local agency for each contract if there are subcontracting opportunities and available DBE firms. [Exhibit 10-I: Notice to Proposers DBE Information](#) must be included in the RFQ or RFP if the proposed contract will include federal-aid funds. The consultant must meet the goal by using DBEs, or if not able to meet the DBE goal, document that a good faith effort was made to meet the contract goal. Good faith efforts must be documented by the consultant and approved by the local agency (see [Exhibit 15-H: DBE Information-Good Faith Efforts](#)). If the consultant's documented good faith efforts are found to be inadequate by the local agency, the consultant must be offered an opportunity for reconsideration.

If a DBE subconsultant is unable to perform its subcontracted services and the goal is not otherwise met, the consultant must make a good faith effort to replace it with another DBE subconsultant to the extent needed to meet the DBE goal. For more detailed information see [Exhibit 10-I](#).

A contract provision for DBE Participation must be included in all consultant contracts with federal-aid funds. For sample contract clauses with and without specified DBE goals see [Exhibit 10-R](#), Article XX Disadvantaged Business Enterprise (DBE) Participation.

## Reporting DBE Commitments and DBE Information

For Contracts with DBE Goals: If the local agency has set a DBE goal, [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) must be included in the proposal package provided to the local agency by each (prime consultant) proposer. The purpose of [Exhibit 10-O1](#) is to demonstrate the proposer's commitment to meet the DBE goal set by the local agency. [Exhibit 10-O2: Consultant Contract DBE Commitment](#), must be completed at the conclusion of cost negotiations, incorporated into the final agreement and a copy sent the DLAE. The purpose of this form is to

capture DBE participation in accordance with 49 CFR, Part 26. This form must include the names, addresses, and phone numbers of DBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a subcontracted item of work is not to be performed or furnished by the DBE firm, a description of the exact portion of work to be performed or furnished by that DBE must be included in the DBE commitment, including the planned location of that work. A proposer certified as a DBE firm must describe the work it has committed to be performed with its own forces, as well as any other work that it has committed to be performed by the DBE subconsultant, suppliers, and trucking companies.

The winning proposer must provide written confirmation from each DBE firm participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the proposer must submit a copy of the joint venture agreement.

**For Contracts with No DBE Goals:**

For contracts with no DBE contract goal, [\*Exhibit 10-O1: Consultant Proposal DBE Commitment\*](#) is not necessary and only [\*Exhibit 10-O2\*](#) must be included in the award package and provided by the winning proposer.

**Reporting DBE Final Utilization (Contracts with or without Goals):**

Upon completion of the contract a summary of the DBE final utilization must be prepared, certified correct, and submitted on [\*Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise \(DBE\) and First-Tier Subcontractor\*](#) or equivalent to the local agency showing total dollars paid to each subconsultant and supplier. [\*Exhibit 17-F\*](#) is reviewed by the local agency and certified as complete and accurate. The local agency must send the original, plus one copy of the completed [\*Exhibit 17-F\*](#) with the final invoice to the DLAE within 30 days after completion of the contract.

**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 is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency's negotiating team has a cost analysis of the project to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the local agency'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.

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 local agency and consultant for the performance of services and a defined scope of work related to a specific project or projects.
- Multi-purpose or Multi-phased 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 for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity are 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 shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172).

- To maintain the intent of the Brooks Act (40 USC 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 local agency uses to procure project specific work under the contract.
  - No task order is valid unless the on-call contract is still enforced. For example, if the on call contract is expired, all task orders will become invalid.
  - If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services:
  - Identify the number of consultants that may be selected or contracts that may be awarded.
- Specify procedures in the contracts the local agency will use to award/execute task orders among the consultants:
- Either through an additional qualification-based selection process (see the Two-Step RFQ/RFQ 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.

### Determine Method of Payment

The method of payment of contract must be specified. Four methods are permitted depending on the scope of services to be performed:

- Actual Cost-Plus-Fixed Fee (see [Exhibit 10-H: Sample Cost Proposal](#), Example #1);
- Cost Per Unit of Work (see [Exhibit 10-H](#), Example #3);
- Specific Rates of Compensation (see [Exhibit 10-H](#), Example #2);
- Lump Sum (see [Exhibit 10-H](#), Example #1).

### Actual Cost-Plus-Fixed Fee

The consultant is reimbursed for actual 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 shall 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.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. Fixed fees apply to the total direct and indirect costs. The contract shall specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H: Sample Cost Proposal](#) Example #1 and [Exhibit 10-R: A&E Sample Contract Language](#), Article V, *Option 1* in this chapter). The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved before they incur work on the contract or the costs can be questioned or disallowed.

### **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 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 shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H](#), Example #3 and [Exhibit 10-R](#), 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.

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 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 consultant's level of effort and the classification of employees used to perform the contracted work. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H: Sample Cost Proposal](#), Example #2 and [Exhibit 10-R: A&E Sample Contract Language](#), Article V, *Option 3*).

### Lump Sum or Firm Fixed Price

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-H](#), Example #1 and [Exhibit 10-R](#), 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 shall be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal shall document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

## 10.3 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 funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Audits and Investigations (A&I), 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. Figure 10.2: Segmenting Consultant Work, near the end of this section, shows an overview of the audit and review process.

### Applicable Standards

The state and federal requirements listed below, as well as specific contract requirements, serve as the standards for audits and reviews performed. The local agencies, consultants, and subconsultants are responsible for complying with state, federal and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants. Applicable standards include, but not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- Project Program Supplemental Agreements;
- 23 CFR, Chapter 1, Part 172 – Administration of Engineering and Design Related Service Contracts;
- 48 CFR, Federal Acquisitions Regulation Systems (FAR), Chapter 1 FAR, Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900;
- 2 CFR Part 200- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 23 USC, Part 112 – Letting of Contracts;
- United States Government Accountability Office, Government Auditing Standards (GAS);
- Proposed contract terms and conditions.

See [Section 10.10: References](#) of this chapter for links to above referenced standards.



### **Audit Guidance Available**

The American Association of State Highway Officials, Uniform Audit & Accounting Guide ([AASHTO Audit Guide](#)) or (<http://audit.transportation.org/Documents/UAAG-3%20FINAL.pdf>), which is referred to frequently in this section, is an invaluable tool to guide local agencies, consultants and certified public accountants (CPAs) through the requirements for establishing, and audits of, FAR compliant indirect cost rates (ICRs). The AASHTO Audit Guide is used extensively as an industry guide in the audit and review process.

The local agency may seek financial and accounting assistance from its own internal audit staff. The consultant may also seek professional guidance in selecting its independent CPA. See also the AASHTO Audit Guide, Ch 2.5 C. Selection of CPA Firm as Overhead Auditor for guidance in the selection process.

Training is also offered by FHWA's National Highway Institute (see <http://www.nhi.fhwa.dot.gov/default.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)

### **Contracts and Consultants Selected for Audit or Review**

Whether a proposed contract or consultant is selected for audit or review through A&I's risk-based approach is dictated by the dollar thresholds of the proposed contract, and other risk factors listed below.

Dollar thresholds for audits or reviews are stratified as follows:

- Less than \$150K – no audit or review is required, but is optional;
- Between \$150K and \$1M (Case 1);
- Between \$1M and \$3.5M (Case 2);
- \$3.5M and above (Case 3).

Specifics of Cases 1, 2 and 3 are outlined later in this section.

Risk factors considered include the consultant's, but not limited to:

- History of satisfactory performance;
- Prior FAR compliant history and audit frequency;
- Financial stability;
- Conformance to terms and conditions of previous contracts;
- General responsiveness and responsibility;

- The approximate dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency 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 consultant's indirect cost rate (ICR);
- Responses to internal control questionnaire (ICQ), see AASHTO Audit Guide, Appendix B;
- Changes in the organizational structure.

If audited or reviewed, contracts, cost proposals, and ICR(s) shall be modified to conform to audit and review recommendations that address requirements. Local agencies are responsible for ensuring contracts, cost proposals, and ICR(s) are modified to conform to audit and review recommendations as necessary, and to ensure that audit findings and review deficiencies are resolved in a timely manner.

The local agency may be subject to the sanctions outlined in [LAPM Chapter 20: Deficiencies and Sanctions](#) if the state or federal government determines that any reimbursements to the consultant are the result of the lack of proper contract provisions, unallowable charges, unsupported activities, or an inadequate financial management system.

### Subconsultant Impacts

Subconsultants are required to follow all the federal, state, and contract requirements outlined above in Standards that Apply. In addition, all subconsultants are required to:

- Certify their contract costs and financial management system ([Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#)) when the total contract between the prime consultant and the local agency is \$150K or more. (23 U.S.C. 112(b)(2)(B)). Reminder: The contract is between the local agency and the prime consultant. Subconsultants, as parties to the contract, must also adhere to this requirement.
- Use the accrual basis of accounting when developing their ICRs.
- Have an adequate job costing system.

Subconsultants' cost proposals also must be submitted along with the prime consultants' cost proposals through the request for audit process (see [Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#)) when the total prime plus subs proposed contract is \$1M or more.

### Cognizant Letters of Approval

Cognizant audits and reviews have been developed to assign primary responsibility for an ICR audit to a single entity (the cognizant agency) to avoid duplication of audit work performed in accordance with Government Auditing Standards. The objective of these audits and reviews is to obtain reasonable assurance that claimed costs are in accordance with the FAR cost principles. A cognizant agency may be the home state Department of Transportation (DOT)



(the state where the consultant's financial records are located), a federal agency, or a non-home state DOT to whom the home state has transferred cognizance. When providing cognizant ICR approval the cognizant agency may either perform an ICR audit themselves, or they may review and rely on the work/workpapers related to an ICR audit performed by a CPA. The desired outcome of a cognizant audit or CPA Workpaper Review is for the cognizant agency to issue a Cognizant Letter of Approval so that the ICR can be relied upon on future contracts with the consultant for a given year and for reliance by other state agencies using the same consultant. A&I will accept a consultant's cognizant approved ICR for the applicable one-year accounting period, if rates are not under dispute. The consultant is responsible for providing documentation of its cognizant approved ICR and Cognizant Letter of Approval.

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

### **Indirect Cost Rate (ICR) Audits**

During an ICR audit, the auditors (A&I or independent CPAs) will examine the consultant's proposed ICR for the applicable one-year accounting period on the proposed contract to ensure that unallowable costs have been removed from the overhead, that allowable costs have been correctly measured and properly allocated, and that the ICR has been developed in accordance with the FAR cost principles (as specified in 23 USC 112(b)(2)(B), 23 CFR 172.7(a), and 48 CFR Part 31). As a result of the audit, the local agency will work with the consultant to adjust the ICR where disallowed costs are identified based on audit recommendations.

ICR Audits apply to Case 1 and Case 2 contracts (see Case descriptions below) selected for audit. Cognizant Letters of Approval are issued with ICR Audits.

For guidance regarding the existing policies and procedures set forth in the Federal Regulations, and acceptable samples of ICR schedules, refer to the AASHTO Audit Guide, Chapter 5.

The review program in the AASHTO Uniform Audit Guide, Appendix A, should be used as a guide in performing ICR audits. This review program will be used for reviews of CPA audited ICR Workpapers.

**IMPORTANT NOTE FOR CPAs:** Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing required. Strict use of the AASHTO Audit Guide cannot be stressed enough.

### **CPA Audited ICR Workpaper Reviews**

During a CPA Audited ICR Workpaper Review, A&I will review the CPA's workpapers of its ICR audit to determine whether it is appropriate to issue a Cognizant Letter of Approval. The Workpaper Review is conducted to determine whether: (a) the CPA's audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with FAR Part 31 and related laws and regulations, and (c) the audit report format is acceptable. Chapter 11 of the AASHTO Audit Guide includes a recommended format for the audit report and required disclosures. CPA Audited ICR Workpaper Reviews apply to Case 3 contracts (see Case descriptions below) selected for review. Cognizant Letters of Approval are issued with CPA Workpaper Reviews.

The review program in the AASHTO Uniform Audit Guide, Appendix A, will be used as a guide in performing CPA Workpaper Reviews.

**IMPORTANT NOTE FOR CPAs:** Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing required. Strict use of the AASHTO Audit Guide cannot be stressed enough.

## **Other Audits and Reviews That May be Performed**

### **Contract Audits and Reviews**

During a Contract Audit or Review, auditors will review contracts and the consultants' financial management system to determine if:

- The consultants' accounting system is adequate to accumulate and segregate costs;
- Proposed costs are reasonable;
- The contract contains all necessary fiscal provisions and the provisions are sufficient in content;
- Proper state and federal procurement requirements were followed;
- Direct labor costs are compliant;
- Other audits/reviews of the contract is necessary

### **Risk Assessments**

During a Risk Assessment auditors may require an ICQ and certification of the ICRs and may perform a certain level of analytical reviews of the ICRs. They may review the contract provisions, ICQ, ICR, and/or cost proposal(s) to determine if:

- The required fiscal provisions are in the proposed contract;
- The ICR and/or cost proposal(s) are mathematically accurate and in the proper format;
- The ICR and/or cost proposal(s) contain questionable costs.

### **Incurred Cost Audits**

During an Incurred Cost Audit auditors will review contracts to determine if costs claimed are:

- Adequately supported;
- Reasonable in nature;
- Allowable, allocable, and reasonable;
- In compliance with state and federal laws and regulations;
- In compliance with the fiscal provisions stipulated in the contract.

### **Financial Management System Review**

During a Financial Management System Review auditors will determine whether:

- The accrual basis of accounting was used to prepare the ICR;

- There is a job cost accounting system adequate to accumulate and segregate allocable and allowable project costs;
- The consultant complied with 23 CFR Part 172 and 48 CFR Part 31, Standards for Financial Management Systems.

### **CASE 1: Proposed A&E Consultant Contracts of \$150,000 or More**

#### **Consultants**

Prime consultants with a proposed contract totaling \$150,000 or more, and any subconsultants listed on the contract, must certify the accuracy of their contract costs and adequacy of their financial management systems (see [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#)). The certification is to be submitted to the local agency who in turn will forward a copy to A&I.

Components include certification that:

- All costs included in the proposed contract to establish final ICR are allowable in accordance with the cost principle of the FAR, 48 CFR, Part 31.
- The proposed contract does not include any costs which are expressly unallowable under the cost principles of the FAR, 48 CFR, Part 31.
- All known material transactions or events that have occurred affecting the firm's ownership, organization, and ICRs have been disclosed.
- The consultant's financial management system meets the standards for financial reporting, accounting records, internal and budget controls set forth in the FAR 23 CFR Part 172 and 48 CFR Part 31.
- The consultant has provided the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to the consultant within the last three calendar years, and for all state DOT and local agency contracts, and the number of states in which the firm does business.
- All direct costs included in the proposed contract are reasonable, allowable, and allocable in accordance with FAR 48 CFR, Part 31, in compliance with applicable accounting principles, and in compliance with the terms of the proposed contract.

Consultants must also ensure their ICRs are prepared in the acceptable ICR scheduled format, see AASHTO Guide, Chapter 5 tables.

#### **Local Agencies**

Local agencies are to forward copies of the consultant and subconsultant, if any, certification ([Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#)) to A&I. See bottom of this section for A&I's Email or mailing address. All supporting documentation must be retained in the project files for the required retention period in the event an audit or review is performed.

Case 1 consultants and contracts may be selected for audit or review through a risk based approach described earlier in this section. Potential audits or reviews can be, but are not limited to:

- Contract Audits;
- Incurred Cost Audits;
- Financial Management System Review;
- ICR Audits;
- Risk Assessments.

### **CASE 2: Proposed A&E Consultant Contracts of \$1M or More**

Local agencies and consultants with a proposed contract totaling between \$1M and \$3.5M must comply with all the requirements outlined in Case 1 above.

In addition, local agencies must send copies of the proposed contract and additional supporting documentation to A&I for review in conformance with certain requirements outlined in the [LAPM](#). Once the proposed contract and additional supporting documentation are reviewed, A&I will issue a Conformance Letter noting any deficiencies, if any. A&I will issue the Conformance Letter within 30 business days of receipt of a complete packet.

A complete packet consists of the documents listed below. Local agencies are required to provide these documents to A&I (see [Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#)):

1. Proposed contract between the local agency and consultant;
2. Cost proposal(s) for prime consultant and all subconsultants;
3. Names, mailing addresses, phone numbers and email addresses for prime consultant and subconsultants;
4. Name of local agency contact person, phone number, mailing addresses and email addresses;
5. Prime consultant generated ICR schedule prepared in accordance with applicable CFRs;
6. A completed ICQ (see AASHTO Audit Guide, Appendix B), including all applicable attachments, for the prime consultant;
7. [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) for the prime and all subconsultants.

And one of the following, if available:

- A copy of the prior fiscal year, and most recently completed fiscal year cognizant approved ICR and approved state DOT Cognizant Letter of Approval;
- A copy of the prior fiscal year, and most recently completed fiscal year, ICR Schedules and audited report by an independent CPA. If a CPA audited ICR is available for the appropriate fiscal year (applicable one-year accounting period), then the consultant

must use the audited ICR, or a lower ICR (see 23 CFR 172.7(b) for guidelines);

- A copy of the prior, and most recently completed fiscal year, ICR(s) evaluation or audit report on a prior Caltrans or local agency contract, and any other governmental agency report/review/attestation.

Through A&I's risk-based approach, consultants may be selected for an ICR or other contract audits or reviews. If an ICR Audit is performed and the consultant's ICR is in compliance with the FAR principles, a Cognizant Letter of Approval will be issued. See bottom of this section for A&I's Email or mailing address.

### **CASE 3: Proposed A&E Consultant Contracts of \$3.5M or More**

Local agencies and consultants with a proposed contract totaling \$3.5 million or more must comply with all the requirements in Case 1 and 2 above. Also, consultants must provide the following to the local agency who in turn will forward a copy to A&I:

- A state DOT's approved ICR schedule and the Cognizant Letter of Approval;
- OR
- CPA Audited ICR Audit Report and a copy of the CPA audited financial statements, if any.

Through A&I's risk-based approach, CPA Audited ICR Workpaper Reviews may be performed. Local agencies are responsible for ensuring both the Consultant and its CPA provide full access to the CPA's workpapers, including making copies upon request. Failure to do so may be considered a breach of contract. If a review is performed and the CPA's work is in compliance with the FAR principles, a Cognizant Letter of Approval will be issued. See bottom of this section for A&I's Email or mailing address.

### **Requirements for a Conformance Letter**

A complete packet is required to begin a conformance review. See Case 2: Proposed A&E Consultant Contracts of \$1M or More above for elements of a complete packet.

Requirements for a Conformance Letter include:

- [Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#) and all applicable items listed.
- Cost proposal(s) presented in the applicable format for the method of payment for the prime consultant and all subconsultants in the proposed contracts (see Determine Method of Payment in [Section 10.2: Identifying & Defining a Need for Consultants](#) and [Exhibit 10-H: Sample Cost Proposal](#) for required formats and example proposals).
- ICRs prepared using the accrual basis of accounting for both the prime and subconsultants.
- An adequate financial accounting system (job cost system) for both the prime and subconsultants.

- The required fiscal provisions specified below must be included verbatim in the proposed contract (see [Exhibit 10-R: A&E Sample Contract Language](#) for sample language and requirements):
  1. Performance Period (begin and end date) (Article IV);
  2. Allowable Costs and Payments (Article V);
  3. Termination (Article VI);
  4. Cost Principles and Administrative Requirements; (Article VII);
  5. Retention of Records/ Audit; (Article VIII);
  6. Audit Review Procedures, (Article IX);
  7. Subcontracting (Article X);
  8. Equipment Purchase (Article XI);
  9. State Prevailing Wage Rates (Article XII);
  10. Conflict of Interest (Article XIII);
  11. Rebates, Kickbacks or other Unlawful Consideration (Article XIV);
  12. Prohibition of Expending Local Agency State or Federal Funds for Lobbying (Article XV).

A Conformance Letter will be issued within 30 business days of receipt of a complete packet.

Contracts cannot be executed until the Conformance Letter is issued and noted deficiencies that address requirements, are corrected. Corrected deficiencies, however, do NOT need to be cleared through A&I before executing the contract. Any supporting documentation addressing Conformance Letter deficiencies along with the executed contract shall be retained in the project file.

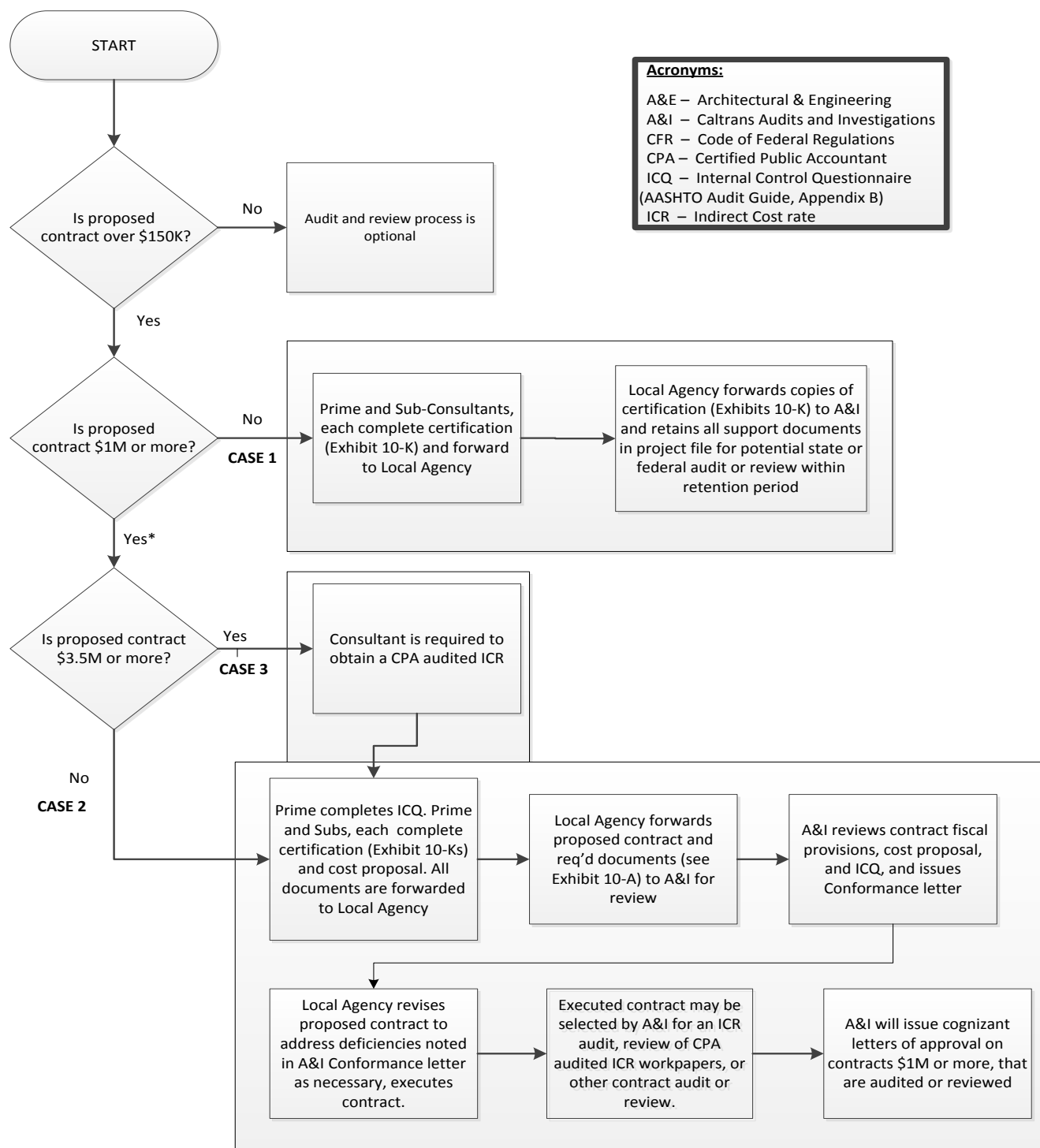
A&I email address: [conformance.review@dot.ca.gov](mailto:conformance.review@dot.ca.gov)

A&I mailing address:

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

**Table 10-1: Summary of Contracts to be Audited or Reviewed**

<i>Proposed Contract Amount</i>	<i>Documents Required</i>	<i>Conformance Letter Required?</i>	<i>Audit/Review Performed?</i>	<i>If Audited or Reviewed, Will Cognizant Letter of Approval be Issued?</i>
<b>Small Purchase Procedure</b> Less than \$150K	None	No	Audit/review not required	N/A
<b>Case 1.</b> Between \$150K and \$1M	<ul style="list-style-type: none"> <li>Certification by Prime and Subconsultants (<a href="#">Exhibit 10-K: Consultant Certification of Contract Cost and Financial Management System</a>)</li> </ul>	No	May be selected for Audit or Review.	<i>If</i> Indirect Cost Rate (ICR) Audit is performed
<b>Case 2.</b> Between \$1M and \$3.5M	<ul style="list-style-type: none"> <li>Certification for Prime and Subconsultants (<a href="#">Exhibit 10-K</a>)</li> <li>Cost proposals for Prime and Subconsultants</li> </ul> <p>All other applicable documents listed on <a href="#">Exhibit 10-A: A&amp;E Consultant Audit Request Letter and Checklist</a></p>	Yes	May be selected for ICR or Contract Audit, or other Review.	Yes
<b>Case 3.</b> \$3.5M or greater	<ul style="list-style-type: none"> <li>Certification for Prime and Subconsultants (<a href="#">Exhibit 10-K</a>)</li> <li>Cost proposals for Prime and Subconsultants</li> <li>All other applicable documents listed on <a href="#">Exhibit 10-A</a></li> </ul> <p><b>AND</b></p> <p>CPA Audited ICR or cognizant approval.</p>	Yes	May be selected for Review of CPA's workpapers of audited ICR or Contract Audit, or other Review	Yes



**Figure 10-3: A&E Consultant Audit and Review Process**

Note: For A&E consultant contracts of \$1M or more, local agency may begin, but not conclude cost negotiations with the best qualified firm until a Conformance Letter is received from A&I.



## 10.4 CONSULTANT SELECTION METHODS

Figure 10-4: Consultant Selection Flowchart shows the three methods normally used in selecting a consultant. They are:

- 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.

In addition, there are other methods used in special situations such as noncompetitive procurement and small purchases under \$150,000.

Beginning with [Section 10.5: Consultant Selection Using the One-Step RFP Method](#) Using the One-Step RFP Method each of the selection methods is explained in detail. Regardless of the method used, the local agency shall retain all consultant selection documentation in their project files as required by 23 CFR Part 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 most common selection process is the One-Step RFQ method. It 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).

### 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 local agencies 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. For more information, refer to description of on-call contract in [Section 10.2: Identifying & Defining a Need for Consultants](#). This method requires substantially more work and time than the other two methods described above.

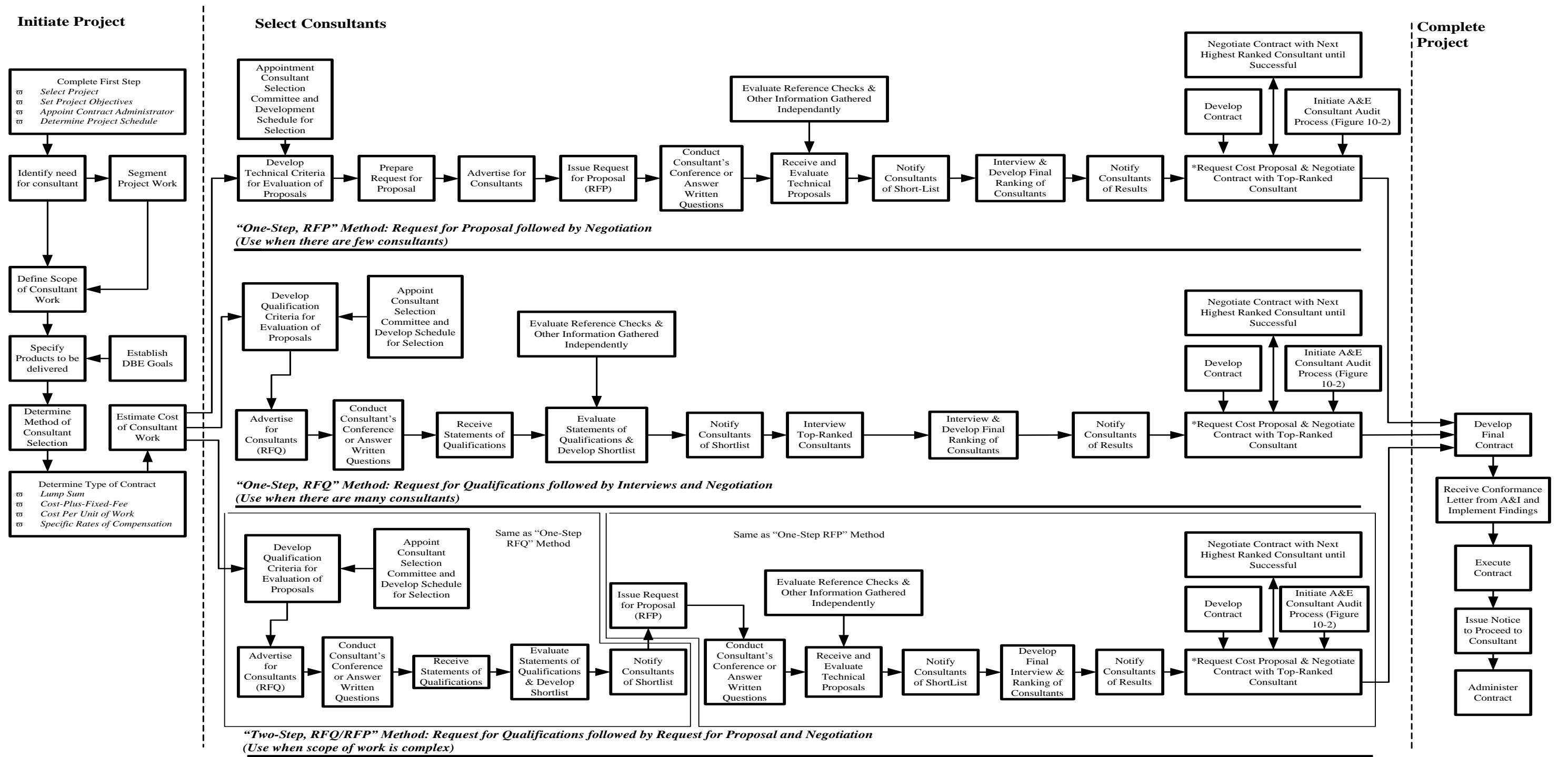


Figure 10-4: Consultant Selection Flowchart

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## 10.5 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. For non-A&E consulting contracts, a cost proposal may 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 local agency 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 local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) 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: Panel Member 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.

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 local agency 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 a RFP includes the following:

- Description of project;

- Scope of work;
- 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 sealed envelope. See [Exhibit 10-H: Sample Cost Proposal](#) for sample cost proposal formats;
- Contract audit and review process requirements (see [Section 10.3: A&E Consultant Audit and Review Process](#));
- Proposal format and required contents;
- Method, criteria and weighting for selection;
- A DBE contract goal is specified (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

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. Two to four weeks is usually allowed 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 shall 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 local agency must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts shall not be awarded to a consultant without an adequate

financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency 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 shall 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.

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, or posting the RFP on the local agency's or other widely used websites are all acceptable methods of solicitation.

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

### **Issue/Publish RFP**

The local agency shall publish the RFP on line and also issue the RFP to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded RFP on line 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 local agency 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 local agency 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 shall be rejected. Submittal of additional information after the due date shall 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. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) 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 shall 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 proposal; interviews the three or more highest ranked consultants (short listed); 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. 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.

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

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as [\*Exhibit 10-K: Consultant Certification of Contract Costs and financial Management System\*](#) of Costs and Financial Management System and [\*Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist\*](#), whichever applicable (see [\*Section 10.3: 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 consultant 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 proceeds 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 local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

The independent cost estimate, developed by the local agency 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. 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 10.3: A&E Consultant Audit and Review Process](#) in this chapter). Local agency Contract Administrator ensures that all required documentations are provided to Caltrans A&I in a timely fashion, including all documents for a Conformance Review, if applicable. Negotiations may be completed after receipt of the Caltrans A&I 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;
- Cost items, payments, and fees.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. The local agency and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see [Exhibit 10-C: Consultant Contract Reviewers Checklist](#)), and all deficiencies identified in the Conformance Letter have been addressed and resolved, if applicable. The completed checklist is to be signed by the Contract Administrator and the original retained in the project file, one copy is to be sent to the DLAE (for review of completeness) and filing within 30 days after awarding the contract.

## 10.6 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 local agency standards that will be used in the contract.

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

Local agency Contract Administrator ensures that all committee members meet the conflict of



interest requirements (23 CFR 172) 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: Panel Member 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. 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 local agency 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 [Exhibit 10-H: Sample Cost Proposal](#) for sample cost proposal formats;
- Contract audit and review process requirements (see [Section 10.3: 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 (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

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 shall 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 local agency must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency 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 shall be by public advertisement or any other public forum or method that assures qualified in-State and out-of-State consultant 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 or posting the RFQ on other widely used websites. To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

In the second approach, the local agency 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, and requests that interested

consultants send a letter of interest to the local agency for the RFQ. The RFQs shall 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 local agency shall publish the RFQ on line and also issue the RFQ to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded RFQ on line 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 shall be rejected. Submittal of additional information after the due date shall 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 a Public Interest Finding (PIF) must be documented. 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. 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 local agency may answer any questions concerning the scope of work to be contracted out, if not done earlier during the solicitation. In addition, the local agency 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 local agency in writing. It is important 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 shall 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 shall 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 local agency shall 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 meets 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 proposal (for both Prime and all Subconsultant), and contract audit and review documents such as [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) and 10-A, whichever applicable (see [Section 10.3: 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 consultant with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency 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 shall be returned to consultants. A contract audit and review may be required

(see [Section 10.3: A&E Consultant Audit and Review Process](#) earlier in this chapter). Local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans A&I in a timely fashion, including all documents for a Conformance Review, if applicable. Negotiations may be completed after receipt of the Caltrans A&I Conformance 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.

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

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 actual 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 local agency must review contract to ensure that all federal and state requirements have been met (see [Exhibit 10-C: Consultant Contract Reviewers Checklist](#)), and all deficiencies identified in the Conformance Letter have been addressed and resolved, if applicable. The completed checklist is to be signed by the Contract Administrator and the original retained in the project file, one copy is to be sent to the DLAE (for review of completeness) and filing within 30 days after awarding the contract.

## 10.7 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.

The initial steps in this method (up to the development and notification of the shortlist) are the same as the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps is indicated in Figure 10-4: Consultant Selection Flowchart. 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 combined RFQ/RFP method is recommended for use only when the scope of work is very complex or unusual. The Two-Step RFQ/RFP is

also well suited for procuring multiple on-call contracts through single solicitation. The outcome of the first step - RFQ will be multiple contracts, or on-call list of consultants with cost/price agreements. The subsequent project work will be procured thru individual competition or mini-RFPs amongst the on-call consultants. 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.

## 10.8 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 local agency and consultant have agreed to a fair and reasonable price, and (3) a Conformance Letter, if applicable, is released by Caltrans A&I and identified issues have been resolved. 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, is attached to and made a part of the consultant contract. For informational purposes, sample contract language and format have been included as [Exhibit 10-R: A&E Sample Contract 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) exceeding \$150,000, must be reviewed by the local agency 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 is included if there are subcontracting opportunities and available DBE firms
- [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) (for Prime and Subs), and [Exhibit 10-A: A&E Consultant Audit Request Letter](#) and Checklist and all supporting documents, if applicable, have been submitted to Caltrans A&I

If applicable, the issues identified in the Conformance Letter have been addressed; Contract modification language entitling the local agency to retroactively adjust ICRs within the document retention period has been included in the contract (see [Exhibit 10-R: A&E Sample Contract Language](#), Article IX, paragraph D). [Exhibit 10-C: Consultant Contract Reviewers Checklist](#) must be used to ensure that required documentation has been provided. A cost proposal (see [Exhibit 10-H: Sample 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.

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 shall provide for local agency reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.

The contract shall also provide that the consultant establish a working office at a place acceptable to the local agency. The contract shall provide that the consultant and subconsultants shall 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 local agency authorized representatives; and copies thereof shall be furnished, if requested.

Following final settlement of the contract accounts with the FHWA or State, such records and documents may be archived at the option of the local agency, but in any event shall be retained for a three-year period after processing of the final voucher by the FHWA or State.

### **Retention Clauses**

At the option of the local agency, a retention clause may be included in the consultant contract. The usual retained amount is five percent; appropriate securities on deposit may be substituted for the retention. A retention clause in the consultant contract is recommended (see [Exhibit 10-R](#), Article XXXI).

### **Review of Local Agency Actions**

Issues identified in the Conformance Letter must be resolved before the local agency executes the contract. 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 local agency 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.



[Exhibit 10-C: Consultant Contract Reviewers Checklist](#) is to be completed and signed. A copy shall be sent to the DLAE within 30 days of contract award. This signed document must be retained in the local agency project files.

### **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. Local agency 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.

### **Administer the Contract**

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the local agency 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](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html) website:  
[http://www.dir.ca.gov/OPRL/FAQ\\_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
  - [DIR Wage Determination](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm) website:  
<http://www.dir.ca.gov/oprl/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 local agency. 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 local agency 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 local agency.

For federal or state reimbursement of consultant costs on a project, the local agency 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-C: Consultant Contract Reviewers Checklist](#);
- [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) (federally funded projects only);
- [Exhibit 10-O2: Consultant Contract DBE Information](#) (federally funded projects only);

DLAE must confirm that the local agency has submitted copies of [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) (for Prime and Subconsultants) to Caltrans A&I.

Invoices should include the following:

- Prepared on the consultant's letterhead;
- Signed by the consultant's project manager;
- Have a unique invoice number;
- Appropriate documentation attached;
- If the contract involved milestones, each milestone should be invoiced separately;
- If the contract involved subconsultants, a separate invoice for each subconsultant should be attached in the same format as the prime consultant's invoice and should be included in the summary of the prime consultant's invoice.

The following are requirements associated with each invoice that the local agency should include:

- A summary of the reimbursements to-date and a summary of the funds remaining in the contract. This should be compared to the local agency's own record of reimbursements to-date and a summary of the funds remaining in the contract.
- A summary of all payments to-date and funds remaining in the contract for each subconsultant.

The local agency 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 shall 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 [Q&As](#) at: [http://www.fhwa.dot.gov/programadmin/172qa\\_01.cfm](http://www.fhwa.dot.gov/programadmin/172qa_01.cfm)).

There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the local agency, 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. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement.

For on-call consultant contracts, the amendment is restricted to the work (task order) that has already been started by the consultant and can not include any new work.

All contract amendments must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment. If an emergency exists of such magnitude that a delay cannot be tolerated, the local agency 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 local agency funding. If an amendment increases the contract to over \$1M then the procedures in either Case 2 or Case 3 under [Section 10.3: A&E Consultant Audit and Review Process](#) of this chapter, shall apply to the entire contract, and must be completed prior to execution of the contract amendment.

## Performance Evaluation

Pursuant to 23 CFR §172.9(a) 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 local agency.

## Project Records

Federal-Aid Highway Program funding recipients and sub-recipients 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 Part 200). These records shall 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 Part 200.333).

For audit purposes, project records and documentation shall 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](#) and [Exhibit 10-O2: Consultant Contract DBE Commitment](#));
- 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 receipt of RFPs and RFQs);
- Record of negotiations (to include a separate negotiations of profit in accordance with federal guidelines);
- Conformance and Cognizant Agency Letters, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management ([Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#)) for contracts over \$150,000;
- Conformance Review Letter from A&I, if applicable. Document the resolution of deficiencies that were identified in the conformance letter.

- A&E Consultant Audit Request Letter and Checklist ([Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#)) for contracts over \$1,000,000, and all supporting documentations.
- Executed consultant contracts, cost proposals and amendments (see [Exhibit 10-R: A&E Sample Contract Language](#) and [Exhibit 10-H: Sample Cost Proposal](#));
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;
- Performance evaluation (see [Exhibit 10-S: Consultant Performance Evaluation](#));
- Consultant contract checklists (see [Exhibit 10-C: Consultant Contract Reviewers Checklist](#));
- Accounting records documenting compliance with State and federal administrative requirements;
- Certifications and Conflict of Interest forms ([Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#), [Exhibit 10-U: Consultant in Management Position Conflict of Interest and Confidentiality Statement](#) and [Exhibit 10-Q: Disclosure of Lobbying Activities](#), as appropriate).

## 10.9 MISCELLANEOUS CONSIDERATIONS

### Engineering Services Under \$150,000

The procurement of consultant services by Small Purchase Procedures is in accordance with 23 CFR 172.7(a)(2) and 48 CFR 2.101.

Local agencies should be fully aware that consultant services costing in aggregate no more than \$150,000 per contract may be obtained through a relatively simple and informal method of procurement. This informal method must be sound and appropriate for the consulting services procured and the project files must contain justification for the selection. The method of procurement shall be an open and competitive process in selecting consultants and should consider a minimum of three different consultants whenever possible. The Brooks Act and the consultant audit process described in [Section 10.3: A&E Consultant Audit and Review Process](#) of this Chapter do not apply to consultant service contracts under \$150,000. Although this method of procurement is informal, it must still comply with [Sections 10.1: General](#), [10.2: Identifying & Defining a Need for Consultants Completing the Project](#), and [Section 10.9: Miscellaneous Considerations](#), of this chapter.

Project splitting should not be used to take advantage of the small purchase procedure in order to circumvent the Brooks Act.

**Table 10-2: Summary of Required/Non-Required Activities for Small Purchase Procedure**

REQUIRED	NOT REQUIRED
<ul style="list-style-type: none"> <li>• Competitive process (collect three bids)</li> <li>• Conflict of interest determination</li> <li>• Assigned Contract Administrator</li> <li>• Defined scope of work/schedule of deliverables/start and end dates for contract</li> <li>• Defined deliverables/Prime and Subconsultant responsibilities</li> <li>• DBE goal for contract; <a href="#">Exhibit 10-O1: Consultant Proposal DBE Commitment</a>, <a href="#">Exhibit 10-O2: Consultant Contract DBE Commitment</a></li> <li>• Cost estimate prior to receiving bids</li> <li>• Best method of payment determination</li> <li>• Contract provisions/clauses</li> <li>• Evaluation of consultant, justification of selection</li> <li>• Contract management responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>• No RFP/RFQ</li> <li>• No Selection/Evaluation Panel</li> <li>• No Evaluation criteria disclosure requirements</li> <li>• No record of costs/profit negotiations</li> <li>• No audit and review requirement of contract (no <a href="#">Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System</a>)</li> </ul>

Price or rate quotation may be considered in the selection of A&E consultants on contracts below \$150,000 and must be documented in the project files. Qualified small business firms shall be considered for selection on federal-aid and state reimbursed contracts. Additionally, on federal-aid contracts, qualified DBE firms shall be considered for selection, and the appropriate federal contract language shall be included.

The full amount of any contract modification or amendment that would cause the total contract amount to exceed the Federal simplified acquisition threshold (currently established at \$150,000) would be ineligible for federal funding. Also, FHWA reserves the right to withdraw all federal-aid funding from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

### **Noncompetitive Negotiated Contracts (Sole-Source)**

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, 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. A Public Interest Finding prepared by the local agency 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](#).

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 local agency shall:

- 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 local agency must carefully document details of the special conditions, obtain Caltrans approval on a Public Interest Finding and retain all documents in the project files for future Caltrans' or FHWA's review.

A Public Interest Finding (see [Exhibit 12-F: Cost-Effectiveness/Public Interest Finding](http://www.fhwa.dot.gov/legsregs/directives/policy/indirectcost.htm)) is not required for a local agency to be reimbursed for contract administration activities associated with non-infrastructure type projects such as many Safe Routes to School or Transportation Alternatives Program projects. However, an indirect cost allocation plan must be approved in order to be reimbursed for this work (see <http://www.fhwa.dot.gov/legsregs/directives/policy/indirectcost.htm>).

### Personal Services Contracts

A personal services contract is characterized by the employer-employee relationship created between the local agency and the contract personnel who essentially perform similar duties as the employees. When personal engineering services less than \$150,000 or non-engineering consultant or vendor services for non-infrastructure programs are needed and federal or state reimbursement will be sought, these services may be obtained through Small Purchase Procedures up to a limit of \$150,000 each.

The \$150,000 is a cumulative limit for services provided by any individual consultant or consulting firm. Such services must be under the direction and control of a full-time employee of the local agency in responsible charge. Compensation for construction engineering services should be based on actual costs incurred, plus a fixed fee, or in the case of individual compensation on an agreed-upon hourly or daily rate. Lump sum payments should not be used for construction engineering services.

For personal service contracts, the following information must be documented by the local agency and retained in the project files:

- Explanation of the services needed, and why they cannot be provided by the local agency;
- Name and qualification of the consultant, who provided the services;
- Documentation of the fees showing how the fee was calculated, and that it is reasonable by comparative standards;
- Any other records needed to show compliance with federal-aid program regulations.

## Retaining a Consultant as an Agency Engineer or in Management Role

A local agency may retain qualified consultants on its staff in professional capacities such as agency consultant engineers, architects, or public agency officials in a management role such as City Engineer (or equivalent). The agency consultants can be an individual or a firm providing professional or management services.

The use of a consultant in a management role should be limited to unique or very unusual situations. These situations require a thorough justification as to why the local agency cannot perform the management. Consultants used in management roles must be selected using the same procedures as those for other consultants specified in this chapter.

Eligibility for federal or state reimbursement for local agency engineering (or equivalent) services requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed;
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer;
- For a state funded or federal-aid project, completion of [\*Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement\*](#) by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered;
- For a state funded or federal-aid project, a local agency consultant in a management role shall 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 local agency 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 local agency'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 role shall be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).



- For a state funded or federal-aid project, completion of [\*Exhibit 10-U: Consultant in Management Position Conflict of Interest and Confidentiality Statement\*](#) by all consultant engineering staff in management positions.
- A completed [\*Exhibit 10-U\*](#) form shall be submitted to the DLAE, for concurrence by the local agency concurrently with submitting the request for the funding authorization of an A&E contract which will contain federal or state funds.
- Selection of consultants for A&E management positions shall 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.

All consultants acting in a management role must complete [\*Exhibit 10-U\*](#) and retain it in the local agency files.

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 or state 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 shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants are procured with federal-aid funds, the local agency (subgrantee) shall fully comply with the following:

- Subparagraphs of 2 CFR 200.318 maintain a contract administration system; and (3) maintain a written code of standards. No employee, officer or agent of the subgrantee shall 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 §172.9(d) Consultant in management roles, requires that if a local agency has or intends to have a consultant in a management role (except as the designated public official, City Engineer or equivalent, as provided for under the terms of the local agency contract), the local agency shall receive approval from Caltrans. In addition, any federal-aid projects designated as High Profile projects may also need approval from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

### **Construction Engineering Services**

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the local agency. The local agency must also ensure that the work is performed in accordance with the approved plans and specifications, by employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All construction engineering activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is in responsible charge. These activities

may include preparation of contract change orders, construction surveys, foundation investigations, measurement, and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant's contract defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant's construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this chapter's requirements. The contract shall provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the local agency.

## 10.10 REFERENCES

- [23 CFR, Part 172](#)  
Administration of Engineering and Design Related Service Contracts  
<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3>
- [40 USC, Section 1104](#)  
Brooks Act <http://www.fhwa.dot.gov/programadmin/121205.cfm>
- [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 USC](#)  
Public Contracts  
<http://law.onecle.com/uscode/41/index.html>
- [23 USC](#)  
Letting of Contracts  
<http://www.fhwa.dot.gov/map21/docs/title23usc.pdf>
- [48 CFR, Chapter 1, Part 15.404](#)  
<https://www.acquisition.gov/far/html/FARTOCP15.html>
- [48 CFR, Chapter 1, Part 31](#)  
<https://www.acquisition.gov/far/html/FARTOCP15.html>
- [Title 48, Part 16 – Types of Contracts](#)  
<http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1>

- [48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts](https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3)  
<https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3>
- [48 CFR 31.201-3](https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf)  
<https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf>
- [48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900](https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99)  
<https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99>
- [2 CFR Part 200](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)  
[http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)
- [49 CFR, Part 26](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)  
Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)
- [American Association of State Highway and Transportation Officials \(AASHTO\) Uniform Audit and Accounting Guide](http://audit.transportation.org/Pages/default.aspx)  
<http://audit.transportation.org/Pages/default.aspx>
- [Caltrans Division of Procurement and Contracts Website](http://www.dot.ca.gov/dpac/index.html)  
<http://www.dot.ca.gov/dpac/index.html>
- [California Labor Code, Section 1775](http://law.onecle.com/california/labor/1775.html)  
<http://law.onecle.com/california/labor/1775.html>
- [Government Auditing Standards \(GAS\) issued by the United States Government Accountability Office](http://www.gao.gov/yellowbook/overview)  
<http://www.gao.gov/yellowbook/overview>
- [Government Code Sections 4525 through 4529.5](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5)  
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5>
- [OMB Circular A-110](https://www.whitehouse.gov/omb/circulars_a110)  
Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations  
[https://www.whitehouse.gov/omb/circulars\\_a110](https://www.whitehouse.gov/omb/circulars_a110)
- [Standard Environmental Reference \(SER\)](http://www.dot.ca.gov/ser/)  
<http://www.dot.ca.gov/ser/>