

Policy and Procedure

LAPM Chapter 10 and the following Exhibits are replaced in their entirety:

- 10-A: *A&E Consultant Audit Request Letter and Checklist*
- 10-B: *Suggested Consultant Evaluation Sheet*
- 10-C: *Consultant Contract Reviewers Checklist*
- 10-H: *Sample Cost Proposal (Example #1 thru #3)*
- 10-K: *Consultant Certification of Contract Costs and Financial Management System*
- 10-R: *A&E Sample Contract Language*

The following Exhibits have been deleted:

- 10-D: *Consultant Contract Outline*
- 10-E: *Sample Payment Clauses*
- 10-F: *Certification of Consultant, Commissions & Fees*
- 10-J: *Standard Contract Provisions for Sub Consultant/ DBE Participation*
- 10-L: *Local Agency Certification of Cost Analysis*
- 10-P: *Non Lobbying Certification for Federal Aid Contracts*
- 10-V: *Non Discrimination Clause*

ACCESSIBILITY

- These new procedures are incorporated in the LAPM and can be found on the DLA website at: <http://www.dot.ca.gov/hq/LocalPrograms/public.htm>.
- To receive an electronic notification when new information is posted on the DLA website, please subscribe to the DLA list server at:
<http://www.dot.ca.gov/hq/LocalPrograms/sub.htm>.
- Comments and suggestions for improvement to our process or procedures are welcome. They may be submitted to Annette Goudeau at: Annette.Goudeau@dot.ca.gov.

Summary of Significant Changes

LAPM Ch. 10 Item	Change
Following Table of Contents (v-viii)	Added Figure 10-1 – A&E Contract Procurement Process Workflow Diagram
Section 10.1 (10-1 to 10-4)	Website information was updated to subsection “Architectural and Engineering Consultants”.
Section 10.2 (10-4 to 10-11)	<p>Clarifying edits are made to the following subsections:</p> <ul style="list-style-type: none"> • the bullets under “Appointing the Contract Administrator” • “Specify Products to be Delivered” • “Scope of Consultant Work” • “Non- Discrimination Clause” • “Disadvantaged Business Enterprise (DBE) Participation” • “Determine Type of Contract” • “Determine Method of Payment” • “Cost Per Unit of Work” • “Specified Rates of Compensation” • “Lump Sum or Firm Fixed Price” <p>Three cost estimating techniques and historical analysis for on-call contracts are added to “Estimated Cost of Consultant Work” subsection.</p>
Section 10.3 (10-11 to 10-20)	<p>Clarifying edits are made to the following subsections:</p> <ul style="list-style-type: none"> • “A&E Consultant Audit and Review Process” • “Applicable Standards” • “Audit Guidance Available” • “Contracts and Consultants Selected for Audit or Review” • bullets under “Risk factors considered include the consultant’s:” • “Subconsultant Impacts” • “Case 1: Proposed A&E Consultant Contracts of \$150,000 or More” • “Case 2: Proposed A&E Consultant Contracts of \$1M or More” • Added A&I Email address for submittal of electronic documents • “Summary of Contracts to be Audited or Revised”. • Figure 10-2 “A&E Consultant Audit and Review Process” <p>Enhanced guidance is added to the “Other Audits and Reviews that</p>

	<p>may be Performed” subsection under <u>Contracts and Reviews</u> bullets to ensure that these enhanced determinations are made:</p> <ul style="list-style-type: none"> • fiscal provisions are sufficient in content • proper procurement requirements were followed • direct labor costs are compliant • other audits/reviews <p>Clarifying edits and enhanced conformance letter requirements are added to “Case 3: Proposed A&E Consultant Contracts of \$ 3.5M or More” subsection.</p>
<p>Section 10.4 (10-21 to 10-23)</p>	<p>Enhanced guidance is provided under “One-Step RFP”, “One-Step RFQ”, and “Two-Step (RFQ Followed by RFP)” subsections.</p>
<p>Section 10.5 (10-25 to 10-29)</p>	<p>Clarifying edits are made to the following subsections:</p> <ul style="list-style-type: none"> • “Appoint Consultant Selection Committee” subsection. • Sealed cost proposal and document guidance is provided in “Prepare RFP” subsection. • Solicitation, advertisement, publishing and recording guidance is provided in “Advertise for Consultants” and “Issue/Publish RFP” subsections. • Guidance on minimum of three proposals is provided in “Receive and Evaluate Technical Proposals” subsection. • Guidance on required documentation, deliverables, final cost proposal agreement, and Conformance letter deficiencies is provided in “Negotiate Contract with Top-Ranked Consultant” subsection.
<p>Section 10.6 (10-29 to 10-34)</p>	<p>Enhanced guidance is provided to the following:</p> <ul style="list-style-type: none"> • “Consultant Selection Using the One-Step RFQ Method”. • Contract Administrator roles under “Appoint Consultant Selection Committee” subsection. • “Advertise for Consultants” subsection was entirely rewritten • A new subsection, “Develop Technical Criteria for Evaluation of Qualifications” is created providing evaluation criteria guidance. • A new subsection, “Issue/Publish RFQ” <p>Clarifying edits are made to the following subsections:</p>

	<ul style="list-style-type: none"> • “Interview for Top-Ranked Consultants” • “Develop Final Ranking and Notify Consultants of Results” <p>Clarifying edits and enhanced guidance on audits, documentation, on-call contracts, and consultant contract requirements is provided under “Negotiate Contract with Top-Ranked Consultant” subsection.</p> <ul style="list-style-type: none"> • “Prepare RFQ” subsection regarding cost proposals, audits, disputes, SOQ requirements, and Conformance Letter deficiencies.
Section 10.7 (10-34 to 10-35)	Enhanced guidance on two step RFQ/RFP suitability for on-call contracts is provided under “Combined RFQ and RFP” subsection.
Section 10.8 (10-35 to 10-40)	<p>Enhanced on-call guidance is added to “Execute Contract and Issue Notice to Proceed to Consultant” subsection.</p> <p>Clarifying edits are made to the following subsections:</p> <ul style="list-style-type: none"> • “Review and Approval of Contracts” • “Retention Clauses” • “Review of Local Agency Actions” • “Administer the Contract” • “Invoicing (or Progress Payments)” • “Contract Amendments” <p>Clarifying edits and enhanced audit guidance is added to “Project Records” subsection.</p>
Section 10.9 (10-40 to 10-45)	<p>A new table is added to “Engineering Services Under \$150,000” subsection providing guidance to small purchase A&E contracts.</p> <p>Clarifying edits are made to the “Construction Engineering Services” subsection.</p>
Section 10.10 (10-45)	References were updated.
Exhibit 10-A	Safe Harbor rate guidance is added to checkboxes 5 and 7, and “contracts of \$150,000 or more” is removed from checkboxes 2 and 7.
Exhibit 10-B	Signature blocks added for the Evaluator and the office reviewer.
Exhibit 10-C	Made more comprehensive and streamlined
Exhibit 10-H	Included breakdown of Other Direct Costs (ODCs)

Exhibit 10-K	Reformatted for clarity.
Exhibit 10-R	<p>Article I Introduction - Removed “E.”</p> <p>Article II Statement of Work - Added enhanced guidance, including “C” and “H”</p> <p>Article V Performance Period - Added enhanced guidance, including “A”, “B”, “N” and “O”. Removed “D” and “E”</p> <p>Article VI Termination - Clarity added to “B”</p> <p>Article VII Cost Principles - Added guidance, “A”, “B”, “C”, and “D”</p> <p>Article XII State Prevailing Wage Rates - Added guidance, “A”, “B”, “C”, and “Option 2”.</p> <p>Article XIII Conflict of Interest - Added guidance, “A”, “B”, “C”, “D”, “E”, and “F”.</p> <p>Article IX Audit Review Procedures – Added guidance “E”.</p> <p>Article XV Prohibition of Expending Local Agency State or Federal Funds For Lobbying - Added guidance, “A”, “B”, and “C”.</p> <p>Fixed Article XVI and XVII Titles</p> <p>Article XVIII Disadvantaged Business Enterprises (DBE) Participation - Removed information.</p> <p>Made correction to the titles of the following articles: XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, and XXX.</p> <p>Article XXXI - Added guidance, “A”, “B”, “C”, and “D”</p>

10.10 REFERENCES

- [23 CFR, Part 172](#) – Administration of Engineering and Design Related Service Contracts
- [40 USC, Section 1104](#) – Brooks Act
- [41 CFR](#) – Public Contracts and Property Management
- [41 USC](#) – Public contracts
- 23 USC – Letting of Contracts
- [48 CFR, Chapter 1, Part 15.404](#)
- [48 CFR, Chapter 1, Part 31](#)
- [Title 48, Part 16 – Types of Contracts](#)
- [48 CFR 27, Subpart 27.3](#) – Patent Rights under Government Contracts
- [48 CFR 31.201-3](#)
- [48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900](#)
- [49 CFR, Part 18](#)
- [49 CFR, Part 26](#) – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
- [American Association of State Highway and Transportation Officials \(AASHTO\) Uniform Audit and Accounting Guide](#)
- [Caltrans Division of Procurement and Contracts Website](#)
- [California Labor Code, Section 1775](#)
- [Government Auditing Standards \(GAS\) issued by the United States Government Accountability Office](#)
- [Government Code Sections 4525 through 4529.5](#)
- [OMB Circular A-110](#) – Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
- [Standard Environmental Reference \(SER\)](#)

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EXHIBITS

EXHIBIT/DESCRIPTION

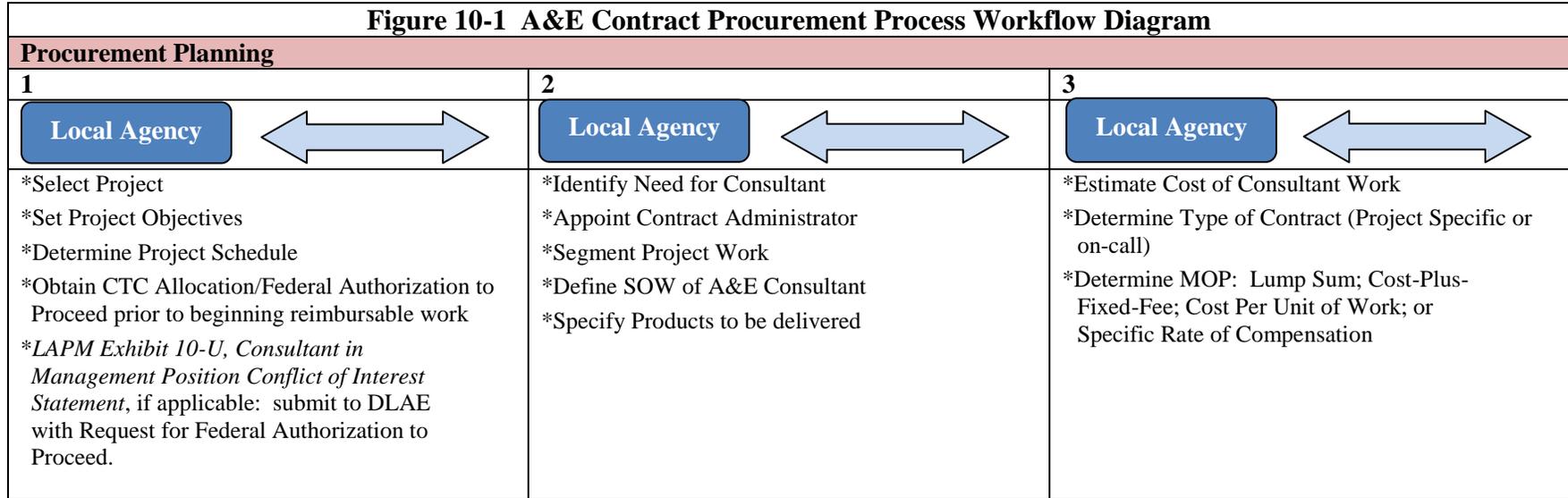
- [EXHIBIT 10-A: A&E CONSULTANT AUDIT REQUEST LETTER AND CHECKLIST](#)
- [EXHIBIT 10-B: SUGGESTED CONSULTANT EVALUATION SHEET](#)
- [EXHIBIT 10-C: CONSULTANT CONTRACT REVIEWERS CHECKLIST](#)
- Exhibit 10-D: Consultant Contract Outline (deleted w/this LPP 15-01)
- Exhibit 10-E: Sample Payment Clauses (deleted w/this LPP 15-01)
- Exhibit 10-F: Certification of Consultant, Commission & Fees (deleted w/this LPP 15-01)
- Exhibit 10-G: Certification of Local Agency (deleted w/LPP 13-01)
- [EXHIBIT 10-H: SAMPLE COST PROPOSAL \(EXAMPLE #1 THRU #3\)](#)
- [EXHIBIT 10-I: NOTICE TO PROPOSERS DBE INFORMATION](#)
- Exhibit 10-J: Standard Contract Provisions for Sub Consultant/DBE PARTICIPATION (deleted w/this LPP 14-02)
- [EXHIBIT 10-K: CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL MANAGEMENT SYSTEM](#)
- Exhibit 10-L: Local Agency Certification of Cost Analysis (deleted w/this LPP 15-01)
- Exhibit 10-M: Standard Audit Program Procedures (deleted w/LPP 12-03)
- Exhibit 10-N: Accounting & Auditing Guidelines for Contracts with Caltrans (deleted w/LPP 12-03)
- [EXHIBIT 10-O1: CONSULTANT PROPOSAL DBE COMMITMENT](#)
- [EXHIBIT 10-O2: CONSULTANT CONTRACT DBE INFORMATION](#)

- Exhibit 10-P: Non Lobbying Certification for Federal Aid Contracts (deleted w/this LPP 15-01)
- [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](#)
- Exhibit 10-V: Non Discrimination Clause (deleted w/this LPP 15-01)

NOTE: Unless stated otherwise, all references to Exhibits in this Chapter refer to the Local Assistance Procedures Manual (LAPM) Exhibits located at:

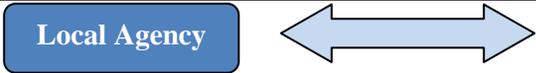
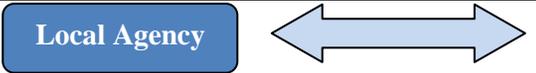
<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

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



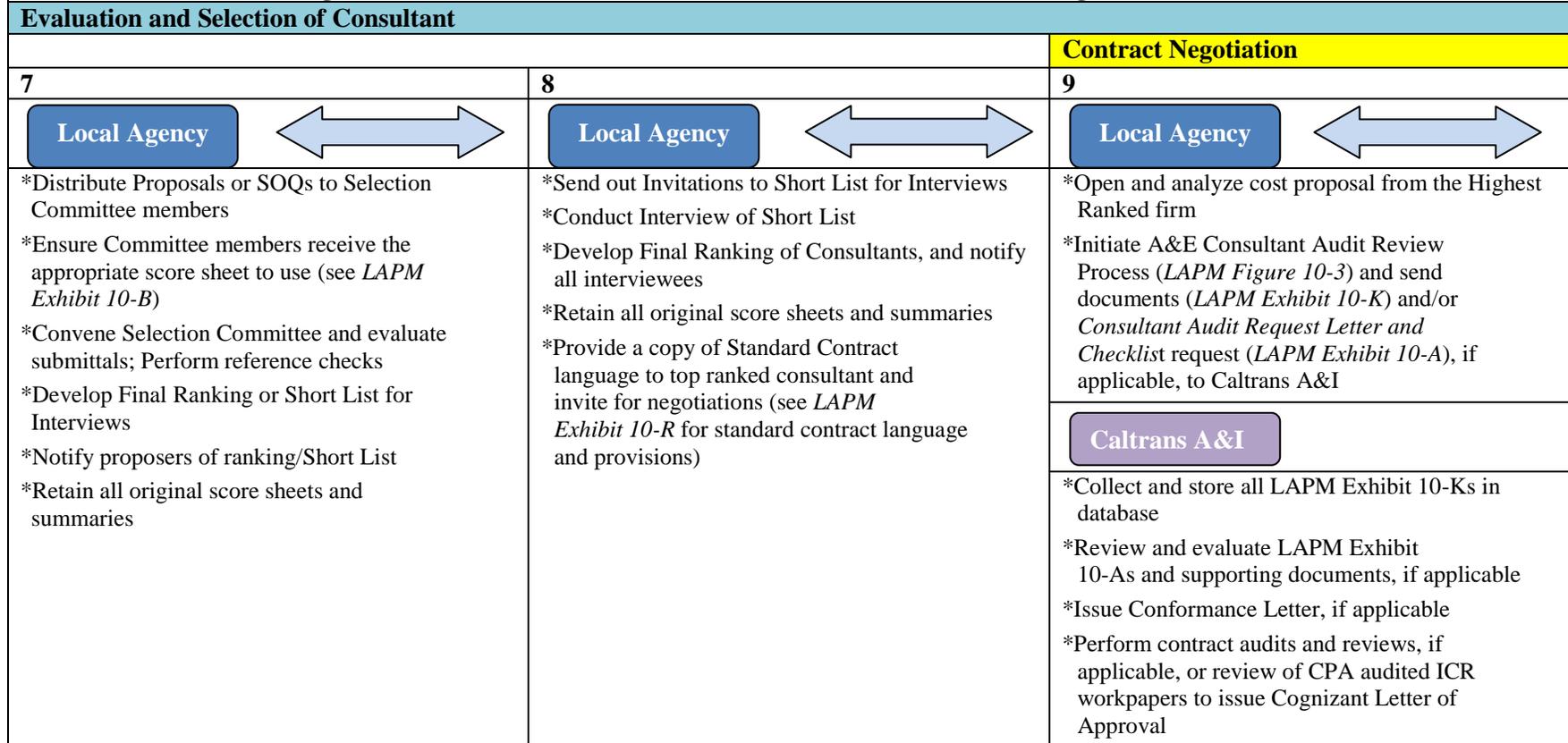
A&E = Architectural and Engineering
 A&I = Caltrans Audits and Investigations
 CT = Caltrans
 DBE = Disadvantaged Business Enterprise
 DLA = Division of Local Assistance
 DLAE = District Local Assistance Engineer
 LAPG = Local Assistance Program Guidelines
 LAPM = Local Assistance Procedures Manual
 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

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

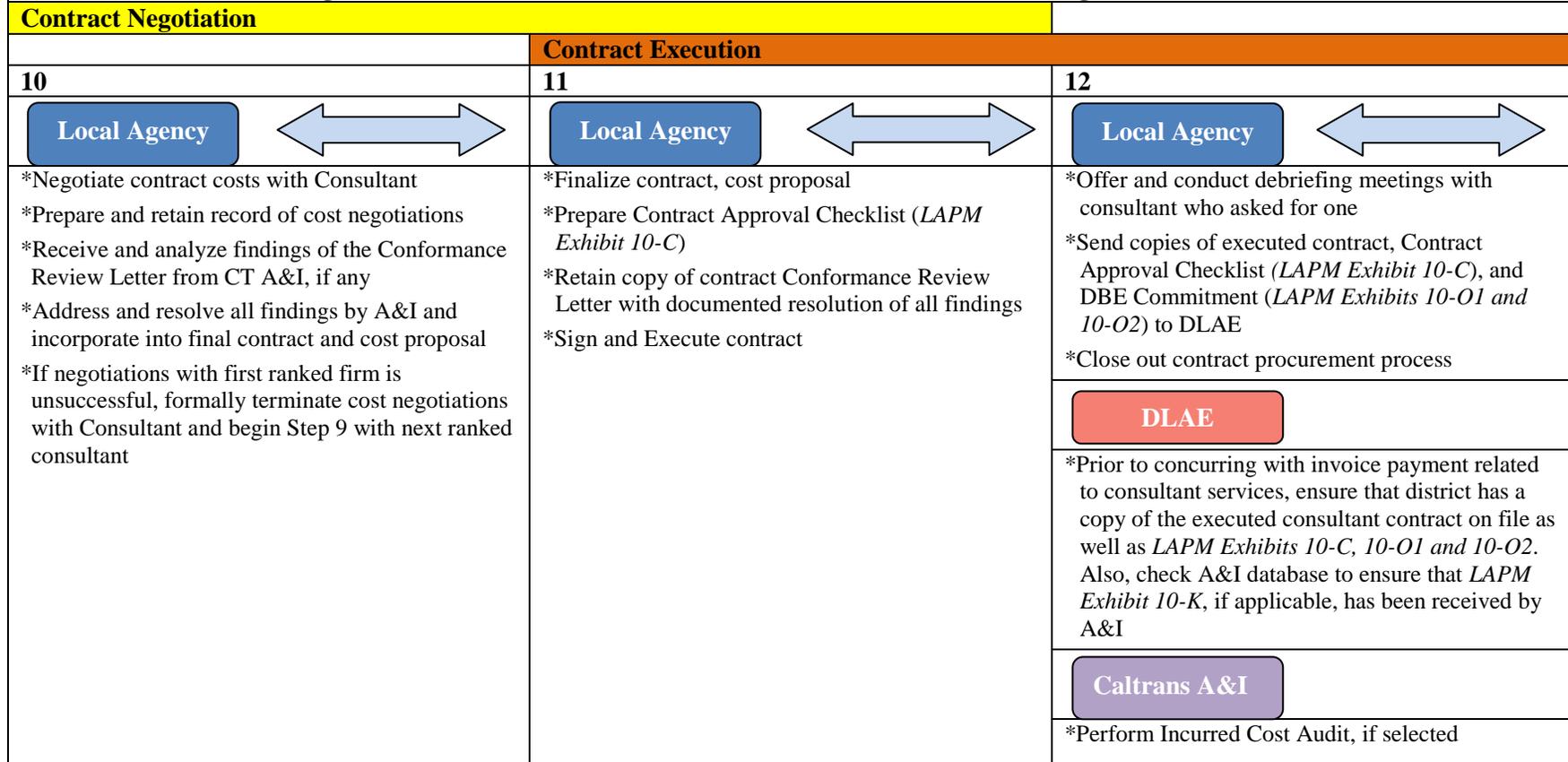
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CHAPTER 10 CONSULTANT SELECTION

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 state or federal 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). Both federal regulations and California state law (Government Code 4525-4529 et al) requires selection of A&E contract services on the basis of demonstrated competence and professional qualifications.

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 (DIR) websites below.

- DIR FAQ website: http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html
- DIR Wage Determination 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.

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.

If a subcontract for work or services to be performed exceeds \$25,000, 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 a 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 state or federal 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 state or federal 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 the 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 Chapter 3 “*Project Authorization*”). For state funded projects, see Chapter 23 “*Local Agency State Transportation Improvement Program Projects*”, of the *Local Assistance Program Guidelines* (LAPG) 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 state or federal 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 the contract procurement and management activities are retained in the 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 Disadvantaged Business Enterprise (DBE) utilization reports (Exhibit 17-F).

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 Chapter 6 "*Environmental Procedures*" and Chapters 31 and 32 of the *Standard Environmental Reference* [SER]). 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*" in this chapter, which illustrates several satisfactory ways to segment consultant activities.

FIGURE 10-2 SEGMENTING CONSULTANT WORK

	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 & Estimate				
Right of Way Activities				
Utility Relocation				
Construction Engineering				

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 non-discrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

When administering Federal-Aid projects, federal regulations (49 CFR, 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 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 “*Notice to Proposers DBE Information*”.

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 “*A&E Sample Contract Language*”, 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 “*Consultant Proposal DBE Commitment*” is to demonstrate the proposer’s commitment to meet the DBE goal set by the local agency.

Exhibit 10-O2 “*Consultant Contract DBE Information*”, must be completed at the conclusion of cost negotiations, incorporated into the final agreement and a copy sent to 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 “*Consultant Contract DBE*

Information” 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), First-Tier Subconsultant*” 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 (49 CFR 18.36(f)) 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.
- 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, “*Sample Cost Proposal*”, Example #3);
- Specific Rates of Compensation (see Exhibit 10-H “*Sample Cost Proposal*”, Example #2);
- Lump Sum (see Exhibit 10-H “*Sample Cost Proposal*”, 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 the 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 “*Sample Cost Proposal*”, Example #3 and Exhibit 10-R “*A&E Sample Contract Language*”, Article V, *Option 2*).

SPECIFIED RATES OF COMPENSATION

The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant’s estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an

hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate.

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 "*Sample Cost Proposal*", Example #1 and Exhibit 10-R "*A&E Sample Contract Language*", Article V, *Option 4*).

Normally, a lump sum contract will be paid in full at the end of the contract when completed. However, a lump sum contract can be negotiated with a 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 payment schedule based on the percent of work completed.

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 2 "*Segmenting Consultant Work*", near the end of this section, shows an overview of the audit and review process.

APPLICABLE STANDARDS

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;
- 49 CFR, Transportation, Subtitle A, Office of the Secretary of Transportation, Volume 1, Part 18, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government*;
- 49 CFR, Part 18.20 – *Standards for Financial Management Systems*;
- 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 Uniform Audit & Accounting 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 Uniform Audit & Accounting 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 Uniform Audit & Accounting Guide](#), Ch 2.5 C. *Selection of the 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 Uniform Audit & Accounting Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Uniform Audit & Accounting Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA-NHI-231029)
- Using the AASHTO Uniform Audit & Accounting 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 ICR;
- Responses to internal control questionnaire (ICQ), see [AASHTO Uniform Audit & Accounting 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 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 state, federal 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 GAS. 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

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 Uniform Audit & Accounting Guide, Chapter 5.

The review program in the AASHTO Uniform Audit & Accounting 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 is required. Strict use of the AASHTO Uniform Audit & Accounting 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 Uniform Audit & Accounting 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 & Accounting 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 Uniform Audit & Accounting 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 49 CFR, Part 18.20, 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 49 CFR, Part 18.20.
- 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 DOTs 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 Uniform Audit & Accounting 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.**

Case 1 consultants and contracts may be selected for an 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 Uniform Audit & Accounting 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** \$3.5M 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: caltransfederalfundaward@dot.ca.gov

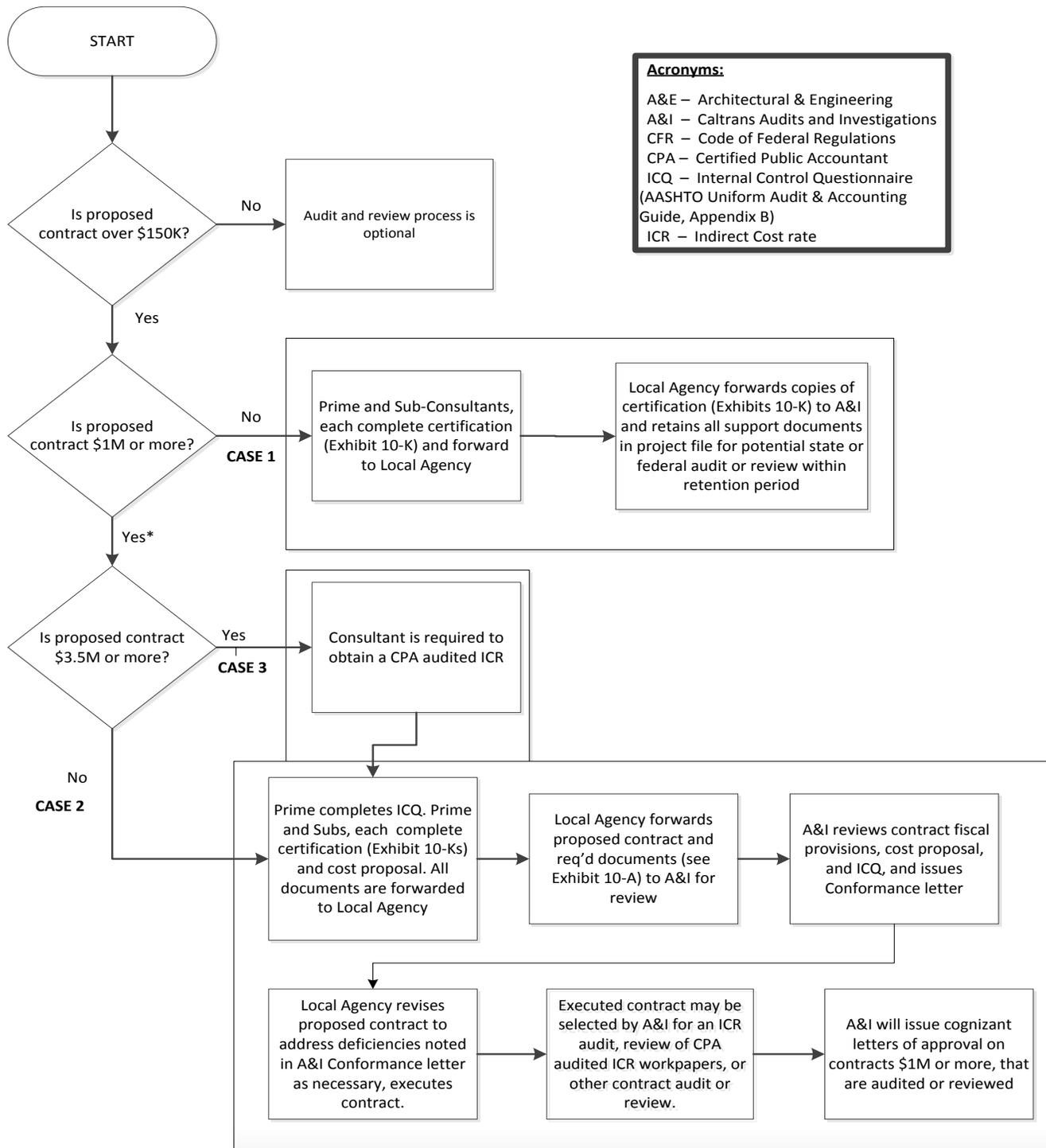
A&I mailing address:

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

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>
Small Purchase Procedure Less than \$150K	None	No	Audit/Review not required	N/A
Case 1. Between \$150K and \$1M	Certification by Prime and Subconsultants (Exhibit 10-K)	No	May be selected for Audit or Review.	<i>If ICR Audit is performed.</i>
Case 2. Between \$1M and \$3.5M	<ul style="list-style-type: none"> • Certification for Prime and Subconsultants (Exhibit 10-Ks) • Cost proposals for Prime and Subconsultants • All other applicable documents listed on Exhibit 10-A 	Yes	May be selected for ICR or Contract Audit, or other Review.	Yes
Case 3. \$3.5M or greater	<ul style="list-style-type: none"> • Certification for Prime and Subconsultants (Exhibit 10-Ks) • Cost proposals for Prime and Subconsultants • All other applicable documents listed on Exhibit 10-A <p style="text-align: center;">AND</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*” 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 49 CFR 18.36(b)(9).

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

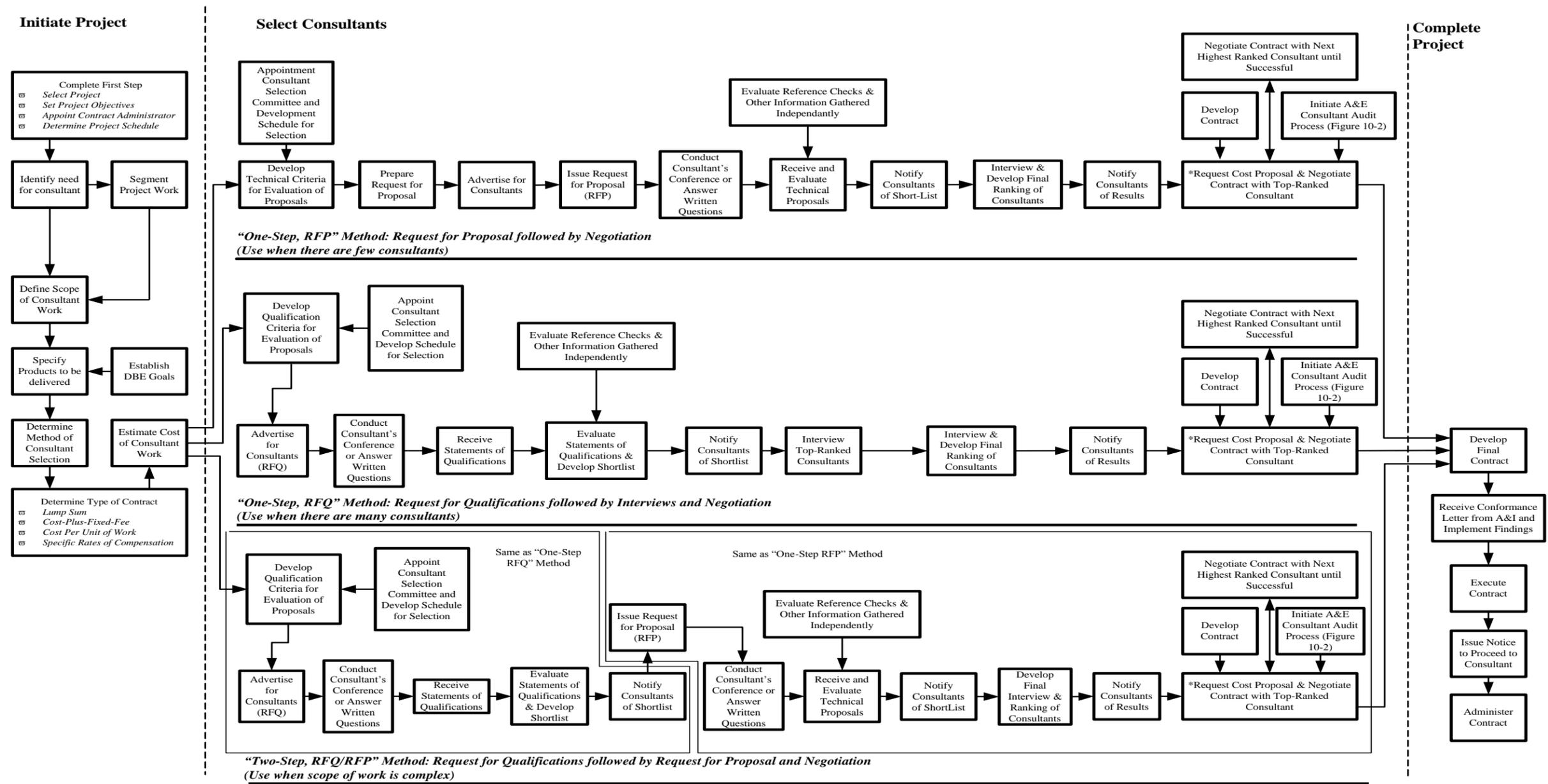
The most common selection process is the One-Step RFQ method. It is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications 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 an “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.

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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 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 short list 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 weights 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 relative weights during the evaluation will result in the contract costs being ineligible for state or federal 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 49 CFR 18.36(b)(12).

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, 49 CFR Part 18, 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 a newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded a RFP online as well as those receiving an RFP through other means, to ensure that any inquiry responses, addendums, or amendments to the RFP are given to all consultants that received the RFP.

CONDUCT PROPOSER’S CONFERENCE OR ANSWER WRITTEN QUESTIONS

The 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 the date stamped envelope 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 any 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-Ks “*Consultant Certification 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 the time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their technical proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceed to the next most qualified consultant. Each consultant’s cost proposal must remain sealed until negotiations commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the 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 a 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). The 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 the final contract.

Before executing the consultant contract, the local agency must review the contract to ensure that all state and federal 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 filed 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 short list 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.

The 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 weights 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 relative weights during the evaluation will result in the contract costs being ineligible for state or federal 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, criteria and relative 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 49 CFR 18.36(b)(12).

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 SOQ 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, 49 CFR Part 18, 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 a 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 the newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded the RFQ online as well as those receiving it

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 SHORT LIST

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 short list of consultants who are considered to be best qualified to perform the contract work. The short list includes enough qualified consultants to ensure that at least three consultants are interviewed.

NOTIFY CONSULTANTS OF SHORT LIST

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 short list. Therefore, the selection committee should keep notes why a particular consultant was not selected for the short list. 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 short list 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 short list 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 the 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 short list.

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

A cost proposal (for both Prime and all Subconsultants), and contract audit and review documents such as Exhibit 10-Ks “*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 the time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and enters into negotiations. The goal of negotiations 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). The 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 a 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 the contract to ensure that all state and federal 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 short list) are the same as the steps followed when using the One-Step RFQ method. At this point, the consultants from the short list 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 an 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. The 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 negotiations 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-Ks “*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 state and federal 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 and 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 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 “*A&E Sample Contract Language*”, 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 state or federal 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 projects) 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 website: http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html
DIR Wage Determination 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 state or federal 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 Chapter 3 “*Agreements*”) 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 state or federal 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 Chapter 5 “*Invoicing*”, to obtain reimbursement of state or federal 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 state or federal reimbursement (see Q&As):

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 state and federal 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 49 CFR 18). These records shall be maintained for a minimum of three years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (49 CFR 18.42(b)).

For audit purposes, project records and documentation shall be kept for three years after payment of the final state or federal 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 10-O2 “*Consultant Contract DBE Information*”);
- 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 ICR 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 §172.5(a)(2) modified by FHWA Memorandum dated June 26, 1996, and 49 CFR 18.36(d).

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”, 10.8 “Completing the Project” and 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.

Summary of Required/Non Required Activities for Small Purchase Procedure

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

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 (49 CFR Part 18.36).

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 172.5; also see Exhibit 12-F “Request for Approval of 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 PIF and retain all documents in the project files for future Caltrans' or FHWA's review.

A PIF (see Exhibit 12-F "*Request for Approval of Cost-Effectiveness/Public Interest Finding*") 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 state or federal 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 state or federal 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;
- Completion by the consultant designated as an agency engineer of the conflict of interest for public agency officials “Form 700” as required by State law;
- 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 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 49 CFR 18.22.
- 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 that exercise authority over the A&E selection panel pertaining to the specific selection process and the firms being considered.
- A completed Exhibit 10-U “*Consultant in Management Position Conflict of Interest and Confidentiality Statement*” form shall be submitted to the DLAE by the local agency concurrently with submitting the request for the funding authorization of an A&E contract which will contain state or federal 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 years.

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.

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 state or federal reimbursement for these services require a new consultant contract to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the RFP or RFQ 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 49 CFR §18.36(b)(2) "...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. 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

- [40 USC, Section 1104](#) – Brooks Act
- [41 CFR](#) – Public Contracts and Property Management
- [41 USC](#) – Public contracts
- 23 USC – Letting of Contracts
- [48 CFR, Chapter 1, Part 15.404](#)
- [48 CFR, Chapter 1, Part 31](#)
- [Title 48, Part 16 – Types of Contracts](#)
- [48 CFR 27, Subpart 27.3](#) – Patent Rights under Government Contracts
- [48 CFR 31.201-3](#)
- [48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900](#)
- [49 CFR, Part 18](#)
- [49 CFR, Part 26](#) – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
- [American Association of State Highway and Transportation Officials \(AASHTO\) Uniform Audit and Accounting Guide](#)
- [Caltrans Division of Procurement and Contracts Website](#)
- [California Labor Code, Section 1775](#)
- [Government Auditing Standards \(GAS\) issued by the United States Government Accountability Office](#)
- [Government Code Sections 4525 through 4529.5](#)
- [OMB Circular A-110](#) – Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
- [Standard Environmental Reference \(SER\)](#)

EXHIBIT 10-A A&E CONSULTANT AUDIT REQUEST LETTER AND CHECKLIST
(For Proposed A&E Consultant Contracts of \$1 Million or More)

[Attach this form to local agency cover letter for transmittal]

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

Date: _____
Federal Project Number: _____
Project Description: _____

Dear External Audit Manager:

The following information is attached for proposed A&E consultant contract number _____ at a proposed cost of \$ _____, with [Consultant's Name, Address, Contact Name, Phone Number]:

1. Proposed contract between the local agency and the consultant.
2. Cost proposal(s) for prime consultant and subconsultant.
3. Names, mailing addresses, phone numbers, and email addresses for all subconsultants.
4. Name of local agency contact person, phone number, and e-mail address.
5. All that apply: Consultant generated Indirect Cost Rate(s) schedule prepared in accordance with applicable Code of Federal Regulations (CFRs) and/or Safe Harbor Indirect Cost Rate certification and supplemental questionnaire, see:
[DLA-OB 13-07 - Safe Harbor Indirect Cost Rate for Consultant Contracts](#).
6. A completed Internal Control Questionnaire ([AASHTO Uniform Audit and Accounting Guide](#), Appendix B).
7. Exhibit 10-K *Consultant Certification of Contract Costs and Financial Management System*, completed for the prime and **all** subconsultants. If requesting to use the Safe Harbor Indirect Cost Rate see:
[DLA-OB 13-07 - Safe Harbor Indirect Cost Rate for Consultant Contracts](#).
8. *Include one of the following; if applicable:*
 - a. A copy of the prior fiscal year and most recently completed fiscal year Cognizant approved indirect cost rate(s) and approved State Department of Transportation letters for the consultant (must be provided if issued);
 - b. A copy of the prior fiscal year and most recently completed fiscal year Indirect Cost Rate(s) Schedule and audited report by an independent Certified Public Accountant (CPA). If a CPA-audited Indirect Cost Rate is available for the appropriate fiscal year (applicable one-year accounting period), then the consultant must use the Indirect Cost Rate(s), or lower (*see 23 CFR 172.7(b) for guidelines*), in the cost proposal.

- c. A copy of the prior and most recently completed fiscal year Indirect Cost Rate(s) Evaluation or audit report on a prior Caltrans or local agency contract; and any other governmental agency report, review or attestation.
9. Check this box if the proposed cost (including amendments) is \$3.5M or more, in which case the Indirect Cost Rate provided by the prime consultant has been audited by a CPA. Forward the following documents to Caltrans Audits & Investigations:
- a. A copy of the consultant’s approved State DOT Cognizant Indirect Cost Rate(s) Schedule and Report (must be provided if issued), and the Cognizant Approved State DOT Cognizant Concurrent Letter (if issued); OR
 - b. A CPA Audited Indirect Cost Rate Audit Report (if there is not an approved State DOT Cognizant Indirect Cost Rate); AND
 - c. A copy of the CPA audited financial statements, if any.

[Local Agency Name] understands that any work with costs incurred prior to the approval of the “Authorization to Proceed (E-76)” is not eligible for federal fund reimbursement. [Local Agency Name] further understands that a Conformance Letter will be issued to us within 30 business days of your receipt of complete documentation.

If you need further information, please contact [Local Agency Contact Name] at:

[Phone # and email address].

Sincerely,

Signed _____

Title _____

Agency _____

Attachments: Proposed Contract, Cost Proposal(s), Certifications, Indirect Cost Rate Schedules and Reports and other supporting documentation

c: Caltrans District Local Assistance Engineer

- Distribution:**
- 1) Original – Caltrans Audits & Investigations
 - 2) Copy – DLAE
 - 3) Local Agency Project files

EXHIBIT 10-B SUGGESTED CONSULTANT EVALUATION SHEET *

<u>CONSULTANT/FIRM NAME:</u>		
Criteria	Max Points	Rating
Understanding of the work to be done	25	
Experience with similar kinds of work	20	
Quality of staff for work to be done	15	
Capability of developing innovative or advanced techniques	10	
Familiarity with state and federal procedures	10	
Financial responsibility	10	
Demonstrated Technical Ability	10	
Total	100	

Evaluator

Contract Office

Print Name: _____

Initials: _____

Signature: _____

Date: _____

Date: _____

*Notes:

- To maintain the integrity of a competitive negotiation/qualifications based selection procurement, the total of all allowable non-qualifications based evaluation criterion (such as locality preference or DBE participation) cannot exceed ten (10) percent of the total evaluation criteria. The ten percent limitation applies only to non-qualifications based evaluation criterion and should not be considered as a limitation for specific DBE contract goals established by a contracting agency in accordance with its approved DBE program. (see http://www.fhwa.dot.gov/programadmin/172qa_07.cfm).
- For projects other than "Architectural & Engineering" services, as defined in Section 10.1, cost is one of the criteria, or may be the sole criterion. DBE participation by the consultant shall not be used as one of the criteria listed above.
- The evaluation criteria and suggested maximum points shown above are not mandatory, but are recommended in the interest of maintaining consistency among the hundreds of agencies utilizing federal or state funds.
- The evaluation criteria and weighted values must be identified in the RFP. If the RFP has different evaluation criteria or weighted values then the information above would have to be changed to match. The Contract Office is to initial and date in the space provided to verify that the criteria and weighted values used in the evaluation sheet are appropriate and that the sheet has been completed correctly.
- Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and requirements are met.

Distribution: Local Agency Project Files

EXHIBIT 10-C CONSULTANT CONTRACT REVIEWERS CHECKLIST

Date: _____

Agency Name: _____

Federal or State Project Number: _____

Local Agency Contract Number: _____

Project Location: _____

Consultant Name: _____

Contract Begin and End Dates: _____ to _____

Contract Max Dollar Amount: \$ _____

I. SELECTION PROCEDURES ITEMS NEEDED FOR REVIEW

	<u>Project File Location</u>	
	<u>Tab No.</u>	
A. Description of need for consultant	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
B. Request For Proposal (RFP), or Request For Qualification (RFQ) documents	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
C. Records of Publication for RFP or RFQ	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
D. DBE Utilization Goal Setting (Exhibit 10-I)	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
E. Records of Response to Solicitation	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
F. Independent cost estimates - documented	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
G. Conflict of Interest and Confidentiality statement of panel members (Exhibit 10-T)	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
H. Evaluation criteria and Weights (Exhibit 10-B)	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
I. Documentation of consultant selection (retain all original score sheets and final rankings)	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
J. Plan to monitor work (Designated Contract Administrator)	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
K. Audit and Review documents (Exhibit 10-K for contracts over \$150,000, and Exhibit 10-A for contracts over \$1M, or past audits)	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____

II. CONSULTANT CONTRACT APPROVAL CHECKLIST (See Exhibit 10-R A&E Sample Contract Language)

For contracts over \$1M, document the resolution of all identified deficiencies in A&I Conformance Review Letter and obtain Caltrans DLAE concurrence.

Consultant Contract
Page No.

A. Introduction (See Exhibit 10-R, Article I)

1. Date of Contract YES NO _____
2. Names, Address and Identifying Data of Agreeing Parties
3. Location and Description of Project
4. Name of Local Agency Contract Administrator
5. Name of Consultant Project Manager

B. Contract**1. Statement of Work (See Exhibit 10-R, Article II)**

Include description of work to be done by Consultant, including deliverables and delivery schedules, standards for design and other work, quality control measures, acceptance criteria, meetings and site visits, and professional license requirements. Each phase of the work should be described in detail, including engineering studies, preliminary and final design, environmental analysis and clearance documents (NEPA/CEQA), right of way, surveys, landscape architecture, geotechnical investigation, design support during construction, and construction management. This section should also include the description of work to be done by the local agency.

2. Consultant's Reports or Meetings (See Exhibit 10-R, Article III)**3. Mandatory Fiscal and Federal provisions (See Exhibit 10-R)** YES NO _____

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 State or Federal Funds for Lobbying (Article XV)
13. Statement of Compliance (Article XVI)
14. Debarment and Suspension Certification (Article XVII)

4. Miscellaneous Provisions (See Exhibit 10-R)

YES NO _____

1. Funding Requirements (Article XVIII)
2. Change in Terms (Article XIX)
3. Disadvantaged Business Enterprises (DBE) Participation (Article XX)
4. Contingent Fee (Article XXI)
5. Disputes (Article XXII)
6. Inspection of Work (Article XXIII)
7. Safety (Article XXIV)
8. Insurance (Article XXV)
9. Ownership of Data (Article XXVI)
10. Claims Filed by LOCAL AGENCY’s Construction Contractor (Article XXVII)
11. Confidentiality of Data (Article XXVIII)
12. National Labor Relations Board Certification (Article XXIX)
13. Evaluation of Consultant (Article XXX)
14. Retention of Funds (Article XXXI)
15. Notification (Article XXXII)
16. Contract (Article XXXIII)
17. Signatures (Article XXXIV)

List any provision that is not included in contract and reason for non-inclusion.

C. All findings in the Conformance Review Letter (for contracts over \$1M only) have been resolved, and a copy retained in project/contract file

YES NO _____

D. Record of cost/profit negotiations

YES NO _____

E. DBE Commitment (Exhibit 10-O1 and 10-O2), or GFE

YES NO _____

F. Signatures

YES NO _____

G. Cost Proposal – Final Cost proposal to be incorporated into contract

YES NO _____

Local Agency Contract Administrator

Date

Distribution: 1) Copy - Caltrans DLAE within 30 days of Contract Award
2) Original copy for the Local Agency Project file

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 1 of 2

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Consultant _____ Contract No. _____ Date _____

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
(Project Manager)	_____	_____	\$ _____	\$ _____
(Sr. Civil Engineer)	_____	_____	\$ _____	\$ _____
(Envir. Scientist)	_____	_____	\$ _____	\$ _____
(Jr. Highway Engr)	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____

LABOR COSTS

- a) Subtotal Direct Labor Costs \$ _____
- b) Anticipated Salary Increases (see page 2 for sample) \$ _____
- c) **TOTAL DIRECT LABOR COSTS** [(a) + (b)] \$ _____

FRINGE BENEFITS

- d) Fringe Benefits (Rate: _____%) e) **TOTAL FRINGE BENEFITS** [(c) x (d)] \$ _____

INDIRECT COSTS

- f) Overhead (Rate: _____%) g) Overhead [(c) x (f)] \$ _____
- h) General and Administrative (Rate: _____%) i) Gen & Admin [(c) x (h)] \$ _____
- j) **TOTAL INDIRECT COSTS** [(e) + (g) + (i)] \$ _____

FEE (Profit)

- q) (Rate: _____%) k) **TOTAL FIXED PROFIT** [(c) + (j)] x (q)] \$ _____

OTHER DIRECT COSTS (ODC)

Description	Unit(s)	Unit Cost	Total
l) Travel/Mileage Costs (supported by consultant actual costs)	_____	\$ _____	\$ _____
m) Equipment Rental and Supplies (itemize)	_____	\$ _____	\$ _____
n) Permit Fees (itemize), Plan sheets (each), Test Holes (each), etc.	_____	\$ _____	\$ _____
o) Subconsultant Costs (attach detailed cost proposal in same format as prime consultant estimate for each subconsultant)	_____	\$ _____	\$ _____
p) TOTAL OTHER DIRECT COSTS [(l) + (m) + (n) + (o)]			\$ _____

TOTAL COST [(c) + (j) + (k) + (p)] \$ _____

NOTES:

- Employees subject to prevailing wage requirements to be marked with an *.
- ODC items should be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered “tools of the trade” are not reimbursable.
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost.
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 2 of 2

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
(SAMPLE CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant _____ Contract No. _____ Date _____

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
\$250,000.00	5000	=	\$50.00	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$50.00	+	2%	=	\$51.00	Year 2 Avg Hourly Rate
Year 2	\$51.00	+	2%	=	\$52.02	Year 3 Avg Hourly Rate
Year 3	\$52.02	+	2%	=	\$53.06	Year 4 Avg Hourly Rate
Year 4	\$53.06	+	2%	=	\$54.12	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	20.0%	*	5000	=	1000	Estimated Hours Year 1
Year 2	40.0%	*	5000	=	2000	Estimated Hours Year 2
Year 3	15.0%	*	5000	=	750	Estimated Hours Year 3
Year 4	15.0%	*	5000	=	750	Estimated Hours Year 4
Year 5	10.0%	*	5000	=	500	Estimated Hours Year 5
Total	100%		Total	=	5000	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$50.00	*	1000	=	\$50,000.00	Estimated Hours Year 1
Year 2	\$51.00	*	2000	=	\$102,000.00	Estimated Hours Year 2
Year 3	\$52.02	*	750	=	\$39,015.00	Estimated Hours Year 3
Year 4	\$53.06	*	750	=	\$39,795.30	Estimated Hours Year 4
Year 5	\$54.12	*	500	=	\$27,060.80	Estimated Hours Year 5
Total Direct Labor Cost with Escalation					=	\$257,871.10
Direct Labor Subtotal before Escalation					=	\$250,000.00
Estimated total of Direct Labor Salary Increase					=	\$7,871.10

Transfer to Page 1

NOTES:

- This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
- An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #2) Page 1 of 2

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant or Subconsultant _____ Contract No. _____ Date _____

Fringe Benefit % + Overhead % + General Administration % = Combined Indirect Cost Rate (ICR) %
 (= 0% if Included in OH) (= 0% if Included in OH)

FEE % = _____

BILLING INFORMATION

CALCULATION INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²			Effective date of hourly rate		Actual or Avg. hourly rate ³	% or \$ increase	Hourly range - for classifications only
	Straight	OT(1.5x)	OT(2x)	From	To			
John Doe – Project Manager Civil Engineer II	\$0.00	\$0.00	\$0.00	01/01/2000	12/31/2000	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2001	12/31/2001	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2002	12/31/2002	\$0.00	0.0%	
Sue Jones – Construction Engineer/Inspector Engineer I	\$0.00	\$0.00	\$0.00	01/01/2000	12/31/2000	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2001	12/31/2001	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2002	12/31/2002	\$0.00	0.0%	
Buddy Black – Claims Engineer Engineer III	\$0.00	\$0.00	\$0.00	01/01/2000	12/31/2000	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2001	12/31/2001	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2002	12/31/2002	\$0.00	0.0%	
Land Surveyor *	\$0.00	\$0.00	\$0.00	01/01/2000	12/31/2000	\$0.00		\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2001	12/31/2001	\$0.00	0.0%	\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2002	12/31/2002	\$0.00	0.0%	\$00 - \$00
Technician	\$0.00	\$0.00	\$0.00	01/01/2000	12/31/2000	\$0.00		\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2001	12/31/2001	\$0.00	0.0%	\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2002	12/31/2002	\$0.00	0.0%	\$00 - \$00

- Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.
- Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Agreed upon billing rates are not adjustable for the term of contract.
- For named employees enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

NOTES:

- Denote all employees subject to prevailing wage with an asterisks (*)
- For "Other Direct Cost" listing, see page 2 of this Exhibit

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #2) Page 2 of 2

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant or Subconsultant _____ Contract No. _____ Date _____

SCHEDULE OF OTHER DIRECT COST ITEMS											
PRIME CONSULTANT				SUBCONSULTANT #1				SUBCONSULTANT #2			
DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL	DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL	DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL
Special Tooling				Special Tooling				Special Tooling			
A.				A.				A.			
B.				B.				B.			
C.				C.				C.			
Travel				Travel				Travel			
A.				A.				A.			
B.				B.				B.			
C.				C.				C.			
PRIME TOTAL ODCs =				SUBCONSULTANT #1 ODCs =				SUBCONSULTANT #2 ODCs =			

IMPORTANT NOTES:

- List direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentations.
- Proposed items should be consistently billed directly to all clients (Commercial entities, Federal Govt., State Govt., and Local Govt. Agency), and not just when the client will pay for them as a direct cost.
- Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
- Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
- Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
- Travel related costs should be pre-approved by the contracting agency.
- If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
- If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is their standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #3)

COST PER UNIT OF WORK CONTRACTS
(GEOTECHNICAL AND MATERIAL TESTING)

Note: Mark-ups are Not Allowed

Consultant _____ Contract No. _____ Date _____

Page ___ of ___

Unit/Item of Work:

(Example: Log of Test Boring for Soils Report, or ADL Testing for Hazardous Waste Material Study)

Include as many Items as necessary.

DIRECT LABOR	Hours	Hourly Billing Rate (\$)	Total (\$)
Professional (Classification)	_____	_____	_____
Sub-professional/Technical*	_____	_____	_____
EQUIPMENT (with Operator)	_____	_____	_____

OTHER DIRECT COST

Description	Unit(s)	Unit Cost	
Mobilization/De-mobilization	_____	\$ _____	_____
Supplies/Consumables (Itemize)	_____	\$ _____	_____
Travel/Mileage	_____	\$ _____	_____
Report (if applicable)	_____	\$ _____	_____

TOTAL COST PER UNIT OF WORK

NOTES:

- Denote labor subject to prevailing wage with asterisk (*).
- Hourly billing rates should include prevailing wage rates and be consistent with publicly advertised rates charged to all clients (Commercial, Private or Public).
- Hourly billing rates include hourly wage rate, net fee/profit, indirect cost rate, and actual direct equipment rate.
- Mobilization/De-mobilization is based on site location and number and frequency of tests/items.
- ODC items should be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.

**EXHIBIT 10-K CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL
MANAGEMENT SYSTEM**

*(Note: If requesting to utilize the Safe Harbor Indirect Cost Rate submit Attachment 1 of
DLA-OB 13-07 - Safe Harbor Indirect Cost Rate for Consultant Contracts found at
http://www.dot.ca.gov/hq/LocalPrograms/DLA_OB/DLA_OB.htm in lieu of this form.)*

Certification of Final Indirect Costs:

Consultant Firm Name: _____

Indirect Cost Rate: _____ * for fiscal period _____ (mm/dd/yyyy to mm/dd/yyyy)

*Fiscal period covered for Indirect Cost Rate developed (not the contract period).

Local Government: _____

Contract Number: _____ Project Number: _____

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

1. All costs included in this proposal to establish final Indirect Cost Rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR, Part 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization, and Indirect Cost Rates have been disclosed as of the date of proposal preparation noted above.

Certification of Financial Management System:

I, the undersigned, certify to the best of my knowledge and belief that our Financial Management System meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR of Title 49, CFR, Part 18.20 to the extent applicable to Consultant.

Certification of Dollar Amount for all A&E Contracts:

I, the undersigned, certify that the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to this firm within the last three (3) calendar years for all State DOT and Local Agencies is \$_____ and the number of states in which the firm does business is _____.

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are reasonable, allowable and allocable to the contract in accordance with the cost principles of the FAR of Title 48, CFR, Part 31. Allowable direct costs to a Government contract shall be:

Consultant Certification of Contract Costs and Financial Management System

1. Compliant with Generally Accepted Accounting Principles (GAAP) and standards promulgated by the Cost Accounting Standards Board (when applicable).
2. Compliant with the terms of the contract and is incurred specifically for the contract.
3. Not prohibited by 23 CFR, Chapter 1, Part 172 – Administration of Engineering and Design Related Service Contracts to the extent requirements are applicable to Consultant.

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files.

Subconsultants (if applicable)

Proposed Contract Amount (or amount not to exceed if on-call contract): \$ _____

Prime Consultants (if applicable)

Proposed **Total** Contract Amount (or amount not to exceed if on-call contract): \$ _____

Prime, list all subconsultants and proposed subcontract dollar amounts (attach additional page if necessary):

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Consultant Certifying (Print Name and Title):

Name: _____

Title: _____

Consultant Certification Signature **: _____

Date of Certification (mm/dd/yyyy): _____

Consultant Contact Information:

Email: _____

Phone number: _____

**An individual executive or financial officer of the consultant’s organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the Indirect Cost Rate proposal submitted in conjunction with the contract.

Note: Per 23 U.S.C. 112(b)(2)(B), Subconsultants must comply with the FAR Cost Principles contained in 48 CFR, Part 31. 23 CFR Part 172.3 Definitions state: Consultant means the individual or firm providing engineering and design related services as a party to the contract. Therefore, subconsultants as parties of a contract must complete a certification and send originals to A&I and keep copies in Local Agency Project Files.

Distribution: 1) Original to Caltrans Audits and Investigations
2) Retained in Local Agency Project Files

EXHIBIT 10-R A & E SAMPLE CONTRACT LANGUAGE

(For Local Assistance Federal-aid Projects)

NOTE TO LOCAL AGENCY - BE SURE THAT YOUR LEGAL STAFF REVIEWS AND APPROVES ALL CONSULTANT CONTRACTS BEFORE EXECUTION. THIS CONTRACT LANGUAGE IS ONLY SUGGESTED LANGUAGE. MODIFY AS RECOMMENDED BY YOUR OWN LEGAL STAFF AND TO FIT YOUR PARTICULAR REQUIREMENTS AND PROJECT.

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A&E SAMPLE CONTRACT LANGUAGE

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ARTICLE I INTRODUCTION

- A. This contract is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:

Incorporated in the State of *(NAME OF STATE)*

The Project Manager for the "CONSULTANT" will be *(NAME)*

The name of the "LOCAL AGENCY" is as follows:

The Contract Administrator for LOCAL AGENCY will be *(NAME)*

- B. The work to be performed under this contract is described in Article II entitled Statement of Work and the approved CONSULTANT's Cost Proposal dated *(DATE)*. The approved CONSULTANT's Cost Proposal is attached hereto (Attachment I) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.
- C. CONSULTANT agrees to indemnify and hold harmless LOCAL AGENCY, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of CONSULTANT. CONSULTANT will reimburse LOCAL AGENCY for any expenditure, including reasonable attorney fees, incurred by LOCAL AGENCY in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of CONSULTANT.
- D. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of LOCAL AGENCY.
- E. Without the written consent of LOCAL AGENCY, this contract is not assignable by CONSULTANT either in whole or in part.
- F. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- G. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II STATEMENT OF WORK

(INSERT APPROPRIATE STATEMENT OF WORK INCLUDING A DESCRIPTION OF THE DELIVERABLES)

- A. Consultant Services

Detail based on the services to be furnished should be provided by CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in consultant contract should be included. Describe acceptance criteria, and if the responsible consultant/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the contract including registration number. Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the Finding of No

Significant Impact, or the Caltrans District Director signs the Record of Decision [see Chapter 6, “*Environmental Procedures*” in the LAPM, and the *Standard Environmental Reference*].

B. Right of Way

State whether Right of Way requirements are to be determined and shown by CONSULTANT, whether land surveys and computations with metes and bounds descriptions are to be made, and whether Right of Way plots are to be furnished.

C. Surveys

State whether or not the CONSULTANT has the responsibility for performing preliminary or construction surveys.

D. Subsurface Investigations

State specifically whether or not CONSULTANT has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of CONSULTANT, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in the *Standard Environmental Reference*.

E. Local Agency Obligations

All data applicable to the project and in possession of LOCAL AGENCY or another agency, or government that are to be made available to CONSULTANT are referred to in the contract. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.

F. Conferences, Visits to Site, Inspection of Work

The contract provides for conferences as needed, visits to the site, and inspection of the work by representatives of the state, or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

G. Checking Shop Drawings

For contracts requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by CONSULTANT may be included in the contract fee, or provision may be made for separate payment.

H. Consultant Services During Construction

The extent, if any of CONSULTANT’s services during the course of construction as material testing, construction surveys. etc., are specified in the contract together with the method of payment for such services.

I. Documentation and Schedules

Contracts where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the contract objectives.

J. Deliverables and Number of Copies

The number of copies of papers or documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way plots is specified. Provision may be made for payment for additional copies.

ARTICLE III CONSULTANT'S REPORTS OR MEETINGS

(Choose either Option 1 or Option 2)

(Option 1 - Use paragraphs A & B below for standard contracts)

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the contract.

(Option 2 - Use paragraphs A & B below for on-call contracts)

- A. CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for LOCAL AGENCY's Contract Administrator or Project Coordinator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE IV PERFORMANCE PERIOD (Verbatim)

(A time must be set for beginning and ending the work under the contract. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the contract. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by CONSULTANT, they should be identified and incorporated into the contract.)

(Choose either Option 1 or Option 2)

(Option 1 - Use paragraphs A & B below for standard and on-call contracts)

- A. This contract shall go into effect on (DATE), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The contract shall end on (DATE), unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on LOCAL AGENCY until the contract is fully executed and approved by LOCAL AGENCY.

(Option 2 - Use paragraph C below in addition to paragraphs A & B above for on-call contracts)

- C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this contract, the terms of the contract shall be extended by contract amendment.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS (Verbatim)

(Choose either Option 1, 2, 3, or 4)

(Option 1 - Use paragraphs A through J below for Actual Cost-Plus-Fixed Fee contracts. Use Exhibit 10-H, Example #1 for Cost Proposal Format)

- A. The method of payment for this contract will be based on actual cost plus a fixed fee. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work.

CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY's approved overhead rate set forth in the Cost Proposal. In the event, that LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time or actual costs reimbursable by LOCAL AGENCY shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by contract amendment.

- B. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$(AMOUNT). The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- D. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.
- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.
- G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)

(ADDRESS)

- H. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed \$(Amount).
- I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by LOCAL AGENCY's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

- J. All subcontracts in excess of \$25,000 shall contain the above provisions.

(Option 2 - For Cost per Unit of Work contracts, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and re-letter the remaining paragraphs. Adjust as necessary for work specific to your project. Use Exhibit 10-H, Example #3 for Cost Proposal Format)

- A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$(Amount) per approved Cost Proposal. This rate shall be for a fully equipped vehicle, with radio and flashing yellow light (if needed), as specified in Article II of this contract.

The specified rate to be paid for equipment shall be, as listed in Attachment (Insert Attachment Number).

- C. The method of payment for this contract, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and contract is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I," shall not be exceeded unless authorized by contract amendment.
- D. All subcontracts in excess of \$25,000 shall contain the above provisions.

(Option 3 - Use paragraphs A through Q for Specific Rates of Compensation contracts [such as on-call contracts]. Use Exhibit 10-H, Example #2 for Cost Proposal Format)

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal (Attachment Number). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- D. After a project to be performed under this contract is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's Cost Proposal.
- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this contract has been approved by LOCAL AGENCY, and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this contract.
- J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.
- K. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract, must be reimbursed by CONSULTANT prior to the expiration or termination of this contract. Invoices shall be mailed to LOCAL AGENCY'S Contract Administrator at the following address:

(NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR)

(ADDRESS)

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Contract.
- M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- N. If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this contract shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.
- Q. All subcontracts in excess of \$25,000 shall contain the above provisions.

(Option 4 - Use paragraphs A through F below for lump sum contracts. Use Exhibit 10-H, Example #1 for Cost Proposal Format)

- A. The method of payment for this contract will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article II Statement of Work of this contract. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by contract amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule

set forth in the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.

- C. CONSULTANT shall not commence performance of work or services until this contract has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this contract.
- D. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within 60-calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)

(ADDRESS)

- E. The total amount payable by LOCAL AGENCY shall not exceed \$(Amount).
- F. All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE VI TERMINATION (Verbatim)

- A. LOCAL AGENCY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.
- B. LOCAL AGENCY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, LOCAL AGENCY may proceed with the work in any manner deemed proper by LOCAL AGENCY. If LOCAL AGENCY terminates this contract with CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.
- C. The maximum amount for which the Government shall be liable if this contract is terminated is _____ dollars.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS (Verbatim)

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to LOCAL AGENCY.
- D. All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE VIII RETENTION OF RECORDS/AUDIT (Verbatim)

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and LOCAL AGENCY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, LOCAL AGENCY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

ARTICLE IX AUDIT REVIEW PROCEDURES (Verbatim)

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.

(The following AUDIT CLAUSE must be inserted into all contracts of \$150,000 or greater)

- D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

(The following AUDIT CLAUSE must be inserted into all contracts of \$3,500,000 or greater).

- E. CONSULTANT Cost Proposal is subject to a CPA ICR Audit Work Paper Review by Caltrans' Audit and Investigation (Caltrans). Caltrans, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.
 1. During a Caltrans' review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans will work with the CPA and/or CONSULTANT toward a resolution of issues that arise

during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at a provisional ICR until a FAR compliant ICR {e.g. 48 CFR, part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials Audit Guide; and other applicable procedures and guidelines} is received and approved by A&I. Provisional rates will be as follows:

- a. If the proposed rate is less than 150% - the provisional rate reimbursed will be 90% of the proposed rate.
 - b. If the proposed rate is between 150% and 200% - the provisional rate will be 85% of the proposed rate.
 - c. If the proposed rate is greater than 200% - the provisional rate will be 75% of the proposed rate.
2. If Caltrans is unable to issue a cognizant letter per paragraph E.1. above, Caltrans may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this Section E, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the provisional ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this provisional ICR will become the actual and final ICR for reimbursement purposes under this contract.
 4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) Caltrans approves or rejects the original or revised independent CPA-audited ICR; (2) all work under this contract has been completed to the satisfaction of LOCAL AGENCY; and, (3) Caltrans has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICETO local agency no later than 60 days after occurrence of the last of these items.

The provisional ICR will apply to this contract and all other contracts executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING (Verbatim)

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between LOCAL AGENCY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from LOCAL AGENCY'S obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by LOCAL AGENCY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by LOCAL AGENCY.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by LOCAL AGENCY's Contract Administrator prior to the start of work by the subconsultant(s).

ARTICLE XI EQUIPMENT PURCHASE (Verbatim)

- A. Prior authorization in writing, by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by LOCAL AGENCY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.
- D. All subcontracts in excess \$25,000 shall contain the above provisions.

ARTICLE XII STATE PREVAILING WAGE RATES (Verbatim)

(Choose either Option 1 or Option 2)

(Option 1 - For contracts where a portion of the proposed work to be performed are crafts affected by state labor laws, use paragraphs A and B)

- A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

(Option 2 - Use only paragraph A below when all of the proposed work in the contract is performed by crafts not affected by state labor laws or are not contemplated for use)

- A. The State of California's General Prevailing Wage Rates are not applicable to this contract.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

ARTICLE XIII CONFLICT OF INTEREST (Verbatim)

- A. CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this contract, or any ensuing LOCAL AGENCY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing LOCAL AGENCY construction project, which will follow.
- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

(Choose either Option 1 or Option 2 if appropriate)

(Option 1 - Use paragraphs D & E below with paragraphs A, B and C above for PS&E contracts only)

- D. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

(Option 2 - Use paragraphs D, E & F below with paragraphs A, B and C above for Construction Contract Administration contracts only)

- D. CONSULTANT hereby certifies that neither CONSULTANT, its employees, nor any firm affiliated with CONSULTANT providing services on this project prepared the Plans, Specifications, and Estimate for any construction project included within this contract. An affiliated firm is one, which is subject to the control of the same persons through joint- ownership, or otherwise.
- E. CONSULTANT further certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT, will bid on any construction subcontracts included within the construction contract. Additionally, CONSULTANT certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract.
- F. Except for subconsultants whose services are limited to materials testing, no subconsultant who is providing service on this contract shall have provided services on the design of any project included within this contract.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION (Verbatim)

CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING (Verbatim)

(Include this article in all contracts where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the contract; delete this article and re-number the notification article which follows.)

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XVI STATEMENT OF COMPLIANCE

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

(For contracts with Federal funding, add paragraphs C & D)

- C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on

the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

- D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to LOCAL AGENCY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

ARTICLE XVIII FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- B. This contract is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to void the contract under the 30-day termination clause pursuant to Article VI, or by mutual agreement to amend the contract to reflect any reduction of funds.

ARTICLE XIX CHANGE IN TERMS

- A. This contract may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.

- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract without prior written approval by LOCAL AGENCY's Contract Administrator.

ARTICLE XX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this contract is _____%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as LOCAL AGENCY deems appropriate.
- D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the, contract is commensurate with the work it is actually performing, and other relevant factors.
- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- I. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

- J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- K. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within 30 days.

ARTICLE XXI CONTINGENT FEE

CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXII DISPUTES

(Choose either Option 1 or Option 2)

(Option 1 - Use paragraphs A through C below for all contracts without PS&E submittal)

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than 30 days after completion of all work under the contract, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

(Option 2 - Replace Paragraph B, above, with the following for contracts requiring the submission of PS&E)

- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

ARTICLE XXIII INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

ARTICLE XXIV SAFETY

(Use on all contracts regardless of funding source)

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

(Add to all contracts, which may require trenching of five feet or deeper)

- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

ARTICLE XXV INSURANCE

(Choose either Option 1 or Option 2)

(Option 1 - for Contracts with a scope of services that may require the consultant or subconsultant to work within the operating state or Local Agency Highway Right of Way; where there would be exposure to public traffic or construction operations)

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
 - 1. That the insurer will not cancel the insured's coverage without 30 days prior written notice to LOCAL AGENCY.
 - 2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this contract are concerned.
 - 3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.
- C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

(Option 2 - For Contracts with a scope of services that will not require the Consultant or subconsultant to work within the operating State or LOCAL AGENCY Highway Right of Way where there would be exposure to public traffic or construction Consultant operations)

CONSULTANT is not required to show evidence of general comprehensive liability insurance.

ARTICLE XXVI OWNERSHIP OF DATA

- A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in LOCAL AGENCY; and no further agreement will be necessary to transfer ownership to LOCAL AGENCY. CONSULTANT shall furnish LOCAL AGENCY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by LOCAL AGENCY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by LOCAL AGENCY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by CONSULTANT.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.
- F. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this contract.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.
(For PS&E contracts add paragraph F, below, to paragraphs A through E, above)
- F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than LOCAL AGENCY.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

ARTICLE XXXI RETENTION OF FUNDS

- A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
(Local agency to include either B, C, or D below; delete the other two)
- B. No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

- C. No retainage will be held by the Agency from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.
- D. The Agency shall hold retainage from the prime consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime consultant based on these acceptances. The prime consultant, or subconsultant, shall return all monies withheld in retention from a subconsultant within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime Consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

ARTICLE XXXII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this contract and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

(CONSULTANT)

(NAME) _____, Project Manager

(ADDRESS)

LOCAL AGENCY:

(LOCAL AGENCY)

(NAME) _____, Contract Administrator

(ADDRESS)

ARTICLE XXXIII CONTRACT

The two parties to this contract, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this contract constitutes the entire agreement which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this contract as evidenced by the signatures below.

ARTICLE XXXIV SIGNATURES

(Name of CONSULTANT)

(Name of LOCAL AGENCY)

(Signature)

(Name of Signer)

(Signature)

(Name of Signer)

DATE: _____