

# Consultant Procurement Manual

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## Exhibits

Exhibits applicable to this manual can be found at:

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

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

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

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

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

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

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

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

[LAPM Exhibit 10-O2: Consultant Contract DBE Information \(Exhibit 10-O2\)](#)

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

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

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

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

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

[Exhibit 12-F: Request for Approval of Cost-Effectiveness/Public Interest Finding \(Exhibit 12-F\)](#)

[LAPM Exhibit 15-H: DBE Information-Good Faith Efforts \(Exhibit 15-H\)](#)

[LAPM Exhibit 17-F: Final Report Utilization of Disadvantaged Business Enterprises \(DBE\) and First-Tier Subcontractors \(Exhibit 17-F\)](#)

## **1.0 GENERAL**

### **1.1 Introduction**

This manual shall be followed for all locally administered transportation related projects that seek reimbursement for consultant services with state and/or federal funding. A local agency that prefers to use their own procurement process differing from this manual must obtain advance approval for its processes from the Federal Highways Administration (FHWA) and/or the California Department of Transportation (Caltrans) prior to solicitation for consultant services.

Agencies that have a consultant engineer on staff acting on behalf of the agency in a management role must submit a completed [Local Assistance Procedures Manual \(LAPM\) Exhibit 10-U, Consultant in Management Position Conflict of Interest and Confidentiality Statement](#), for approval by the FHWA prior to the federal-aid authorization request.

### **1.2 Definition of an Architectural and Engineering Consultant**

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

### **1.3 A&E Consultants**

The provisions of the Brooks Act (40 United State Code, Section 1104) require local agencies to award federally funded engineering and design related contracts, otherwise known as A&E 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 regulation and California state law (Government Code 4525-4529 et al) require selection of A&E consultant 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 then will 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 a statement qualification, and a proposed contract is 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, but not limited to, land surveying (such as flag persons, survey party chief, rodman or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations websites below.

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

#### 1.4 Non-A&E Consultants

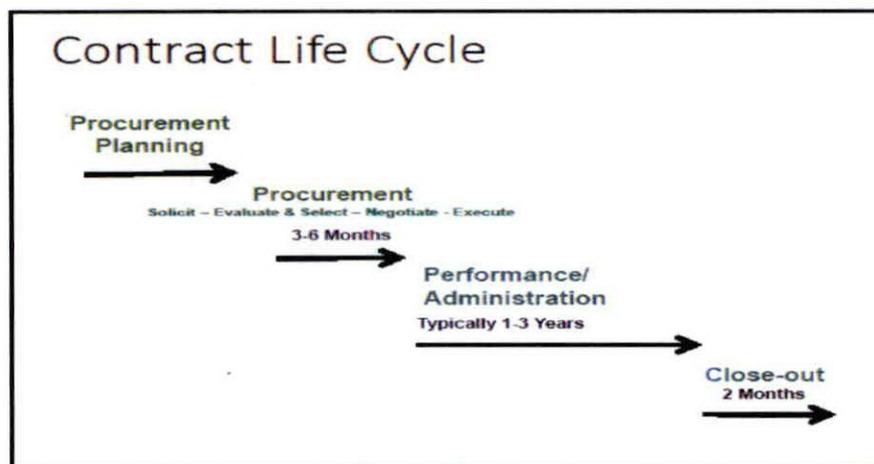
Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value) or other critical selection criteria, based on local agency's individual procurement process. The Brooks Act and the audit and review process described in *Section 4.0, A&E Consultant Audit and Review Process* of this manual are optional for non-A&E Consultant contracts.

Non-A&E contract procurement for federal or state funded transportation projects must comply with 2 CFR Part 200, and California State Public Contract code 10301-10381. Refer to *Section 9.0, Non-A&E Consultants* of this manual for further guidance on Non-A&E procurement procedures.

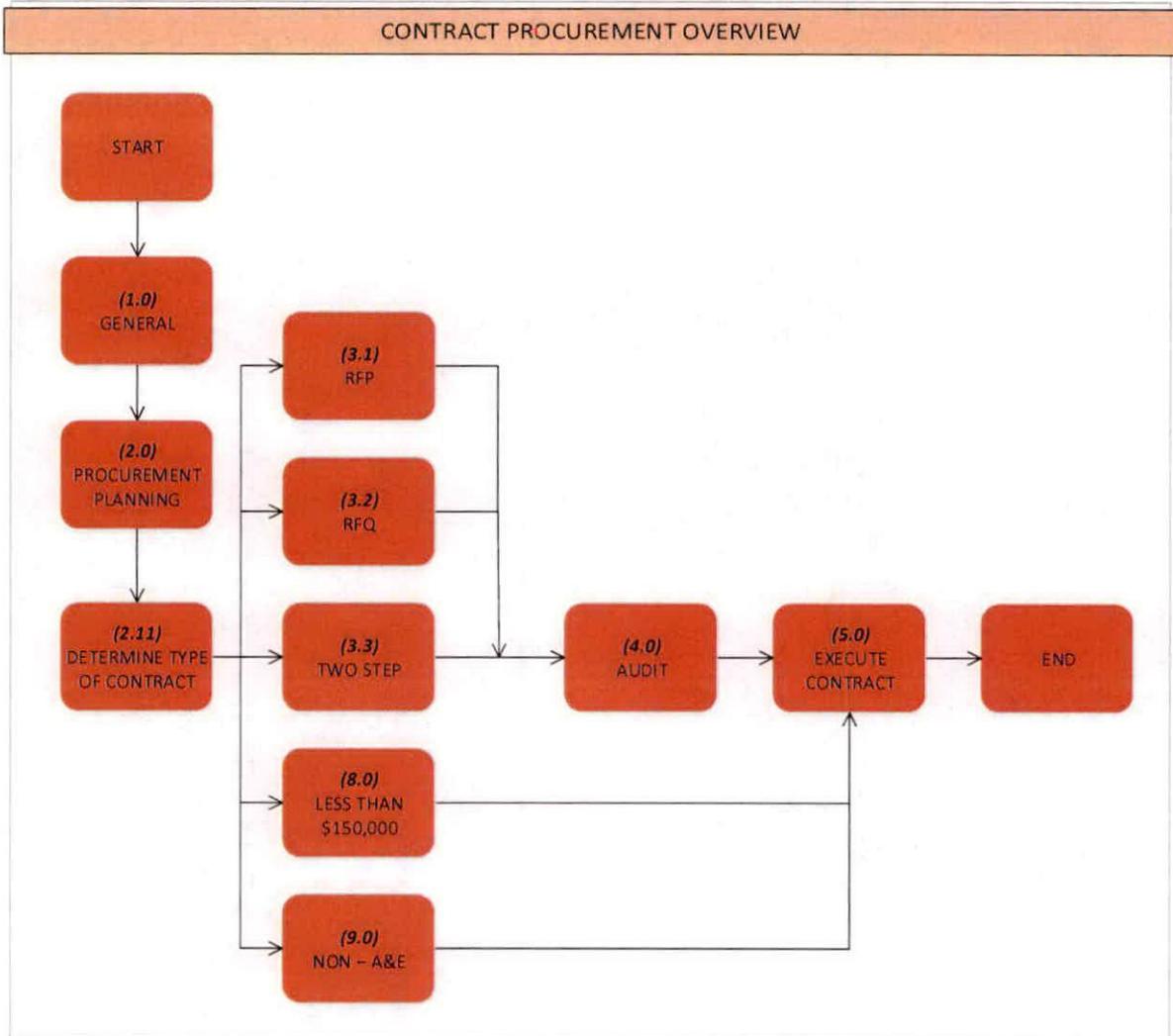
#### 1.5 Contract Life Cycle

A typical contract life cycle includes the following phases as shown below in Figure 1-1: A&E Contract Life Cycle Diagram. The Procurement Planning phase includes the selection of the project and deliverables to be contracted out to consultants, determination of the scope of work, contract type, and method of payment and preparation of an independent estimate of contract cost. The Procurement phase includes contract requirements and preparation of the solicitation document, evaluation and selection of consultant, contract negotiation and audit or review, and contract approval and execution. The Performance phase includes performance monitoring and progress payments, contract change approvals and amendments, and conflict resolution. And finally the contract Close-out phase.

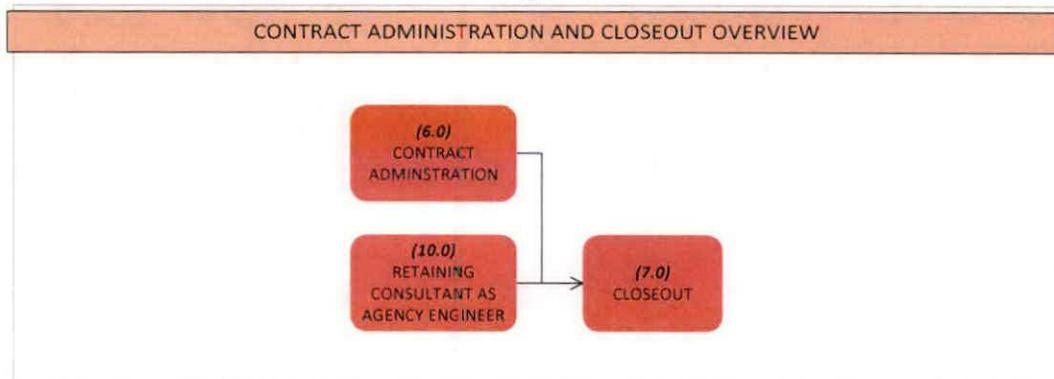
**Figure 1-1: A&E Contract Life Cycle Diagram**



**Figure 1-2: A&E Contract Procurement Overview Workflow Diagram**

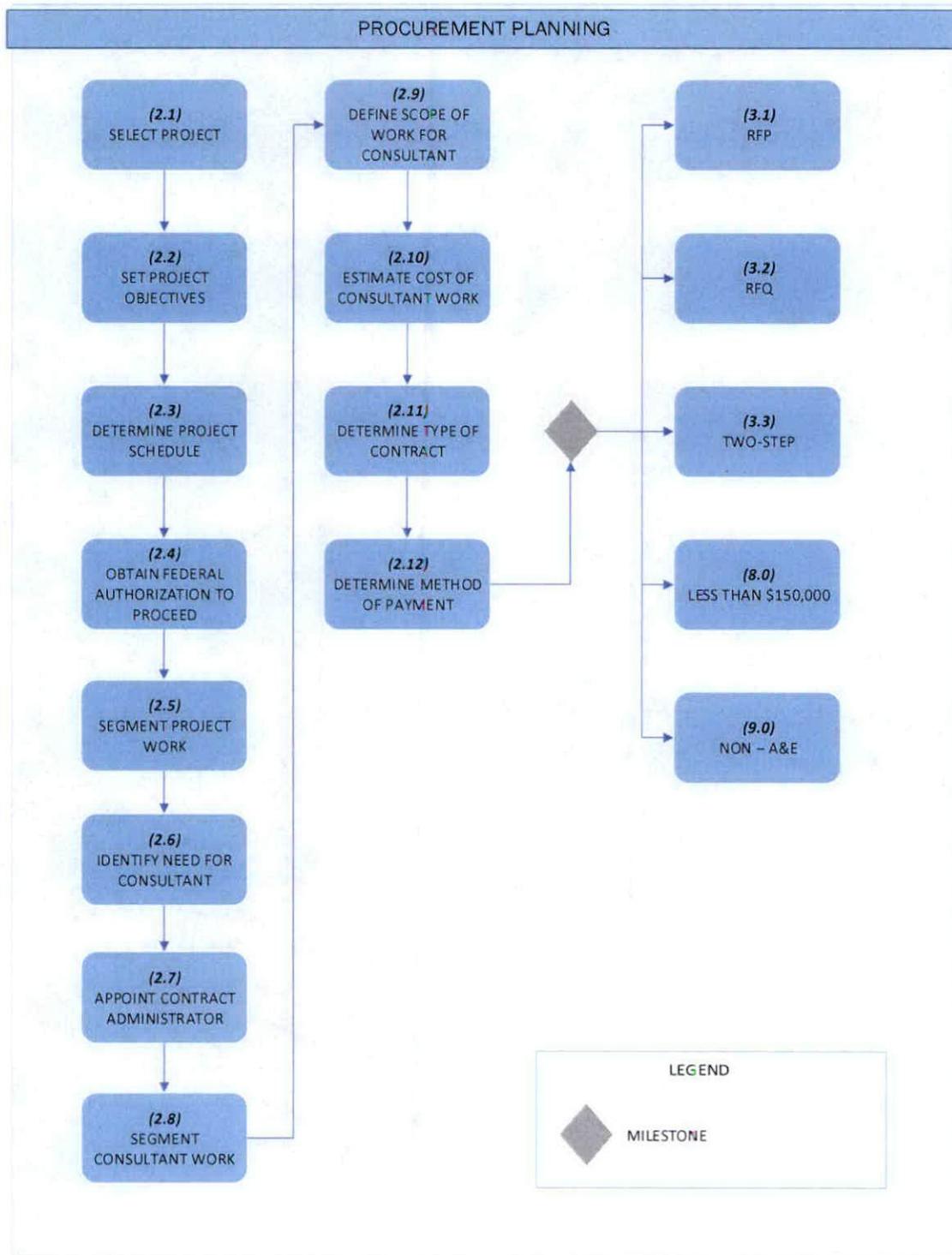


**Figure 1-3: A&E Contract Administration and Closeout Overview Workflow Diagram**



## 2.0 PROCUREMENT PLANNING

Figure 2-1: A&E Contract Procurement Planning Workflow Diagram



## 2.1 Select 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 selected project includes deliverables which should define necessary resources, timeline, and project goals. 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. Once the deliverables, timeline, and goals for the project are defined, state and federal funding must be secured prior to starting reimbursable work done on the project.

## 2.2 Set Project Objectives

The local agency is responsible for setting project objectives, and determining what project development phases and deliverables are required. This information is critical and will assist the local agency decide what services are needed and which require consultant contracts. The scope of the consultant contract must reflect project objectives, and local agency should follow the scope carefully to ensure that it is met and that only work defined in the scope is undertaken. Work beyond that authorized in the scope is known as "scope creep" and it is unnecessary and expensive.

## 2.3 Determine Project Schedule

A schedule of all work and completion of the project should be developed. It should include sufficient time at the beginning to allow:

- Selecting the consultant
- Developing the consultant contract
- Completing the A&E consultant contract audit process
- Conducting meetings and project reviews

TIP:

All contracts must have a specified end date.

## 2.4 Obtain Federal Authorization to Proceed

The FHWA must give the local agency an Authorization to Proceed (E-76) with the work prior to the performance of any work for which federal reimbursement is to be requested (see [LAPM Chapter 3, Project Authorization](#)). For state funded projects see the [Local Assistance Program Guidelines \(LAPG\) Chapter 23, Local Agency State Transportation Improvement Program Projects](#), for guidance as to when work may proceed. Although a consultant contract may be executed prior to authorization/allocation, only costs generated after the authorization/allocation will be reimbursed.

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

## **2.5 Segment Project Work**

After the project has been selected, the objectives set and a project schedule put in place, the project can be segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Segmenting the project helps to identify areas where consultants are required and what areas of work can be carried out by the agency. Segmenting also assists in setting the scope of work for the consultant.

### **2.5.1 Determine Project Development Phases**

After the project has been selected, the objectives set, and a project schedule put in place, the project development phases have been determined appropriately. The extent of each project phase depends upon the type and complexity of the work. The scope of each project phase helps to identify areas where consultants are required and what areas of work can be carried out by the agency.

### **2.5.2 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 technical proposal. If the consultant wishes to use a subconsultant not specified in the technical proposal, prior written approval must be obtained from the local agency. The subcontract must contain all required provisions of the prime contract.

### **2.5.3 Organizational and Consultant Conflicts of Interest**

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

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

Federal regulation governing conflict of interest (23 CFR 1.33) requires that:

- No contracting agency employee who participates in the procurement, management, or administration of federal funded contracts or subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract.
- No person or entity performing services for a contracting agency in connection with a federal 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.

**TIP:**

Contract approval documentation must be kept in Local Agency files.

## **2.6 Identify Need for Consultant**

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 Caltrans 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.

### **2.6.1 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 a project for 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 financial liability in subsequent phases of the project, such as minimizing or ignoring design errors and omissions, rather than serving the best interests of the contracting agency and the public. Procuring a different firm from the design firm to provide the necessary construction engineering and/or inspection services provides another level of review and reduces the risk of, or potential for, a conflict of interest.

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

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform design phase services may not be the most qualified firm to provide construction phase services. Similarly, the qualifications and capacity of a firm may change over time. As such, it may not be appropriate to contract with a consulting firm to provide construction phase services

at the outset of a design phase, knowing that these services may not be needed for an extended period of time until the preconstruction phase of the project is complete and construction funding authorized.

The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications based selection was conducted.

All consultants acting in a management role (City or County Engineer) must complete [LAPM Exhibit 10-U](#) and retain it in the local agency files.

## **2.7 Appoint 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 contract provisions, and in the administration of the consultant's work. The Contract Administrator must be a qualified local agency employee, or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract. On federal-aid contracts, the Contract Administrator or staff members must be a full time employee and familiar with the work to be contracted out and the standards to be used. The Contract Administrator must also abide by the laws, regulations and policies required as part of accepting federal or state funding for their project. Non-compliance with the laws, regulations, and policies may result in loss of project funding.

The Contract Administrator's duties include, but are not limited to, the following:

- Ensures all records, files and other documents related to contract procurement and management activities are retained in contract/project files
- Provides direction to ensure the proposed work is advertised properly
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used
- Prepares the draft contract
- Arranges for preparation in advance of an independent estimate of the value of the work to be contracted out
- Ensures that the selection procedures are followed
- Analyzes the selected/best-qualified consultant's cost proposal
- Ensures contract audit and review procedure is followed
- Ensures that fee/profit negotiation is conducted and records are kept
- 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 and completing the mandatory consultant evaluation and final DBE utilization reports (See [LAPM Exhibit 17-F: Final Report Utilization of Disadvantaged Business Enterprises \(DBE\) and First-Tier Subcontractors](#)).

## 2.8 Segment Consultant Work

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

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

**Figure 2-2: 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 & Estimates				
Right of Way Activities				
Utility Relocation				
Construction Engineering				

## 2.9 Define Scope of Work for Consultant

The detailed scope of work or services describes what work will be required, what standards are followed for products and deliverables, and the quality, and performance assessment criteria. It also provides the obligation of both local agency and the consultant.

An effective scope of work is written in clear, unambiguous, and concise language. It contains provisions for determining the quality of the services or products delivered. Those preparing the scope of work should remember that it must communicate effectively with non-technical oriented people (administrators, attorneys, accountants) involved in the procurement process.

The scope of work is an integral part of contract development and procurement process. The scope of work may be developed from standardized tasks such as work breakdown structure, in accordance with project conditions and requirements. A multi-disciplined team should provide appropriate details for the tasks and activities in their field of expertise to complete the scope of work. Costly modifications, in terms of time and expenditures, can often be avoided with a well written scope of work, an accurate estimate and effective contract management.

The scope of work should also describe the minimum qualification of professional staff performing contract tasks. Specialized licenses, certification and qualification must be identified in order for consultant to assemble a team suitable to compete and once selected to conduct project activities.

## 2.10 Estimate Cost of Consultant Work

An independent estimate for cost or price analysis is needed for all consultant contracts 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 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.

### TIP:

Local Agencies must develop an independent cost estimate prior to review of cost proposals.

Some of the widely used cost 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.

### 2.10.1 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 requirements of the DBE Program, see [LAPM Chapter 9, Civil Rights and Disadvantaged Business Enterprises](#).

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

A DBE goal must be established by the local agency for each contract if there are subcontracting opportunities and available DBE firms. [LAPM Exhibit 10-I: Notice to Proposers DBE Information \(Exhibit 10-I\)](#) 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 [LAPM Exhibit 15-H: DBE Information-Good Faith Efforts \(Exhibit 15-H\)](#)). Good Faith Effort on A&E solicitation measures the effort by the consultant to receive maximum number of DBE proposals since the selection process is based on "qualification". If the consultant's documented good faith efforts are found to be inadequate by the local agency, the consultant must be offered an opportunity for reconsideration.

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

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

## **2.10.2 Reporting DBE Commitments and DBE Information**

### **For Contracts with DBE Goals**

If the local agency has set a DBE goal, [LAPM Exhibit 10-O1: Consultant Proposal DBE Commitment \(Exhibit 10-O1\)](#) must be included in the technical proposal or the statement of qualification package provided to the local agency by each (prime consultant) proposer. The purpose of [Exhibit 10-O1](#) is to demonstrate the proposer's commitment to meet the DBE goal set by the local agency.

[LAPM Exhibit 10-O2: Consultant Contract DBE Information \(Exhibit 10-O2\)](#) 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](#) is not necessary and only [Exhibit 10-O2](#) must be included in the award package and provided by the winning proposer.

Upon completion of the contract, a summary of the DBE final utilization must be prepared, certified correct, and submitted on [Exhibit 17-F](#) 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 Consultant contract invoice to the DLAE within 30 days after completion of the contract.

## 2.11 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, on an as-needed basis, and for an established contract period, under which task or work orders are issued for specific projects or scope of work. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity are needed for a number of different projects. Most common services used under an on-call contract are construction engineering, construction material testing, geotechnical studies and land surveying. Many agencies use these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172). To maintain the intent of the Brooks Act (40 USC 1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:
  - Must define a general scope of work, complexity, and professional nature of services.
  - Specify a task order procedure the local agency uses to procure project specific work under the contract.
    - No task order is valid unless the on-call contract is still in force. For example, if the on-call contract is expired, all task orders issued after the contract expiration date will become invalid.
  - If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services:
    - Identify the number of consultants that may be selected or contracts that may be awarded.
    - Specify procedures in the contracts the local agency will use to award/execute task orders among the consultants:
      - Either through an additional qualification-based selection process (see the [Two-Step RFQ/RFP process](#) later in this manual), OR
      - On a 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.

## 2.12 Determine Method of Payment

The method of payment for the contract must be specified in the original solicitation, the executed contract and any subsequent modification thereto. Four methods are permitted depending on the scope of services to be performed:

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

**TIP:**

Method of payment must be clearly identified in RFP/RFQ solicitation.

### **2.12.1 Actual Cost-Plus-Fixed Fee**

The consultant is reimbursed for actual costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract.

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

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

The consultant is paid based on a 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 not within the original scope of work) must be amended into the contract before work is performed. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H](#), Example #3 and [Exhibit 10-R](#), Article V, *Option 2*).

### **2.12.3 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. Indirect cost

rate should be accepted prior to application and are generally valid for one accounting period, unless both parties to the contract agreed to fix it for the term of the contract. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate. Direct costs must be "actual".

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 length of contract period (which shall not exceed five years) and a maximum total contract dollar amount (see [Exhibit 10-H](#), Example #2 and [Exhibit 10-R](#), Article V, Option 3).

#### **2.12.4 Lump Sum or Firm Fixed Price**

The consultant performs the services stated in the contract for an agreed amount of compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see [Exhibit 10-H](#), Example #1 and [Exhibit 10-R](#), Article V, Option 4).

Normally, a lump sum contract will be paid in full at the end of the contract when work is completed. However, a lump sum contract can be negotiated with progress payments, if feasible. The progress payment shall be based on percent of work completed or the completion of clearly defined milestones. The contract cost proposal shall document the agreed upon progress payment and include the necessary milestone costs, or the percent of work completed schedule.

### 3.0 CONSULTANT CONTRACT PROCUREMENT PROCESS (SOLICITATION, EVALUATION AND SELECTION, NEGOTIATIONS)

The consultant procurement process could be divided into these steps or phases: Solicitation and advertisement, evaluation and selection of the most qualified consultant, cost negotiations with selected consultant, and finally, the execution of the contract and issuance of the Notice to Proceed.

There are three methods normally used in soliciting for a consultant. They are:

- One-Step Request For Proposal (RFP)
- One-Step Request For Qualifications (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. These methods are discussed in *Section 8.0, Engineering Services Under \$150,000* of this manual.

Beginning with *Section 3.1, Consultant Selection Using the One-Step RFP Method* of this manual, 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 2 CFR Part 200.333. The local agency must ensure that consultant contract solicitation and advertising documents clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 23 CFR Part 172, 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure and document that the selected consultants have the adequate financial management systems as required by the applicable federal regulations.

All solicitations for A&E services shall be by public advertisement, or by any other public forum or method that assures qualified in-state and out-of-state consulting firms are given a fair opportunity to be considered for award of an A&E related services contract. Advertisement in a major local newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, electronic communication boards or Internet web sites, or clearing houses known for posting government contract solicitations, such as Bidsync, or posting on the local agency's or other widely used websites are all acceptable method of advertisement. To document website postings, the local agency should retain copies of screen shots displaying the posted "begin/end" dates.

**TIP:**

RFP/RFQ solicitations must be publicly advertised and can be published on an agency website or [www.bidsync.com](http://www.bidsync.com)

### **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 land surveying, construction management, or any specialized services that are needed across many projects. 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 pre-qualified list, through a single solicitation. This method requires substantially more work and time than the other two methods described above.

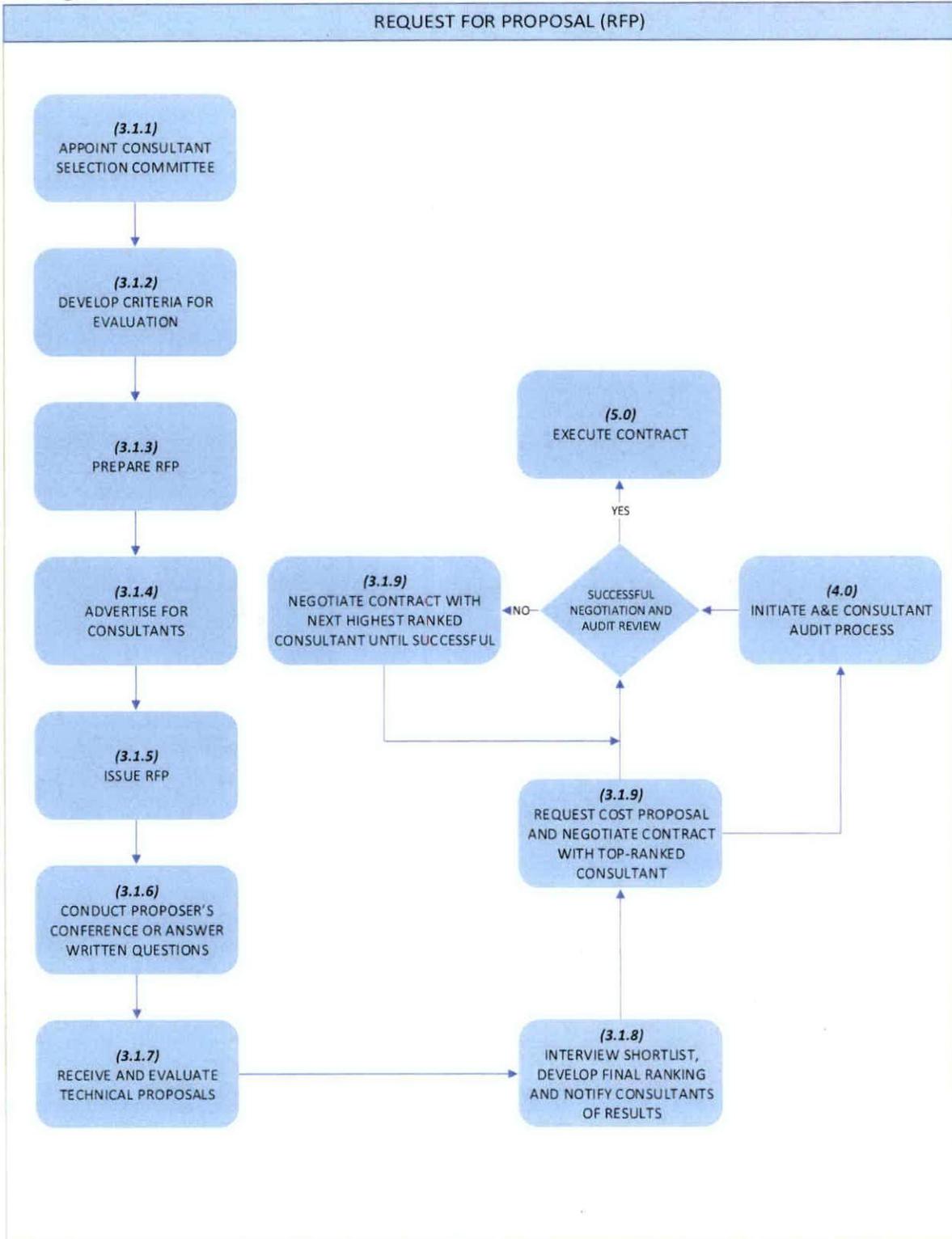
## **3.1 Consultant Procurement Using the One-Step RFP Method**

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.

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. For non-A&E consulting contracts, a cost proposal may be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal. See *Section 9.0, Non-A&E Consultants* in this manual for further guidance on non-A&E consultant procurement.

The following workflow chart describes the necessary steps and activities during the procurement of consultant contracts using the One-step RFP method.

**Figure 3-1: Consultant Procurement Using One-Step RFP Method Flowchart**



### 3.1.1 Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified technical 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.

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

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.

**TIP:**

It is essential the Selection Panel complete the Conflict of Interest Statement [LAPM Exhibit 10-T](#).

### 3.1.2 Develop Criteria for Evaluation of RFP

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant technical proposals.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used on the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [LAPM Exhibit 10-B: Suggested Consultant Evaluation Sheet \(Exhibit 10-B\)](#) 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.

### 3.1.3 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](#) for sample cost proposal formats.)

- Contract audit and review process requirements (see *Section 4.0, A&E Consultant Audit and Review Process*)
- Technical Proposal format and required items (see list below)
- Method, criteria and weighting for selection
- DBE contract goal specified (see [Exhibit 10-1](#)) if a federal-aid contract
- Protest procedures and dispute resolution process per 2 CFR Part 200.318 (k)

The RFP specifies the content of a technical 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 technical 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 technical 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 10-01](#)
- References

#### **3.1.4 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.

The advertisement of the RFQ may take one of two approaches. In one approach, the entire RFQ is published with all its requirements and submittal deadline. In the second approach, the advertisement specifies the availability of the RFQ. Interested consultant will be able to obtain RFQ at a location, request that RFQ to be mailed or simply download the electronic RFQ from web site after registration. This approach provides a registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addendum to the RFQ, if necessary.

### 3.1.5 Issue RFP

The local agency shall publish the RFP online and also issue the RFP to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded the 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

**TIP:**

Selection criteria and specific weights (percentages) must be defined in the solicitation.

### 3.1.6 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.

### 3.1.7 Receive and Evaluate Technical Proposals and Develop Shortlist

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

The members of the consultant selection committee must evaluate each technical proposal according to the technical criteria listed in the RFP. A minimum of three technical proposals must be received and evaluated. The selection committee establishes a shortlist of consultants who are considered to be best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

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

**TIP:**

Selection must be made using selection criteria and specific weights defined in the solicitation.

### **3.1.8 Interview Shortlist, Develop Final Ranking and Notify Consultants of Results**

Interviews are to be structured and conducted in a formal manner. Each consultant to be interviewed is sent an invitation to the interview, with an agenda and timeline. A copy of the draft proposed contract, defining the standard contract language/boilerplate is also provided.

The selection 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.

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
- 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 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.

All consultants that submitted technical proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information. Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests a debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others, and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

#### **TIP:**

Score sheets must be signed, dated, and retained in Local Agency files.

### **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.

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

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

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

Cost proposal (for both prime and all subconsultants) and contract audit and review documents, such as [Exhibit 10-K](#) and [Exhibit 10-A](#), whichever applicable (see *Section 4.0, A&E Consultant Audit and Review Process*), will be submitted in a separate sealed envelope.

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

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

A contract audit and review may be required (see *Section 4.0, A&E Consultant Audit and Review Process*). 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.

Items typically negotiated include:

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

**TIP:**

Price/fee negotiations must be documented.

The consultant's indirect cost rate (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 it into the final contract.

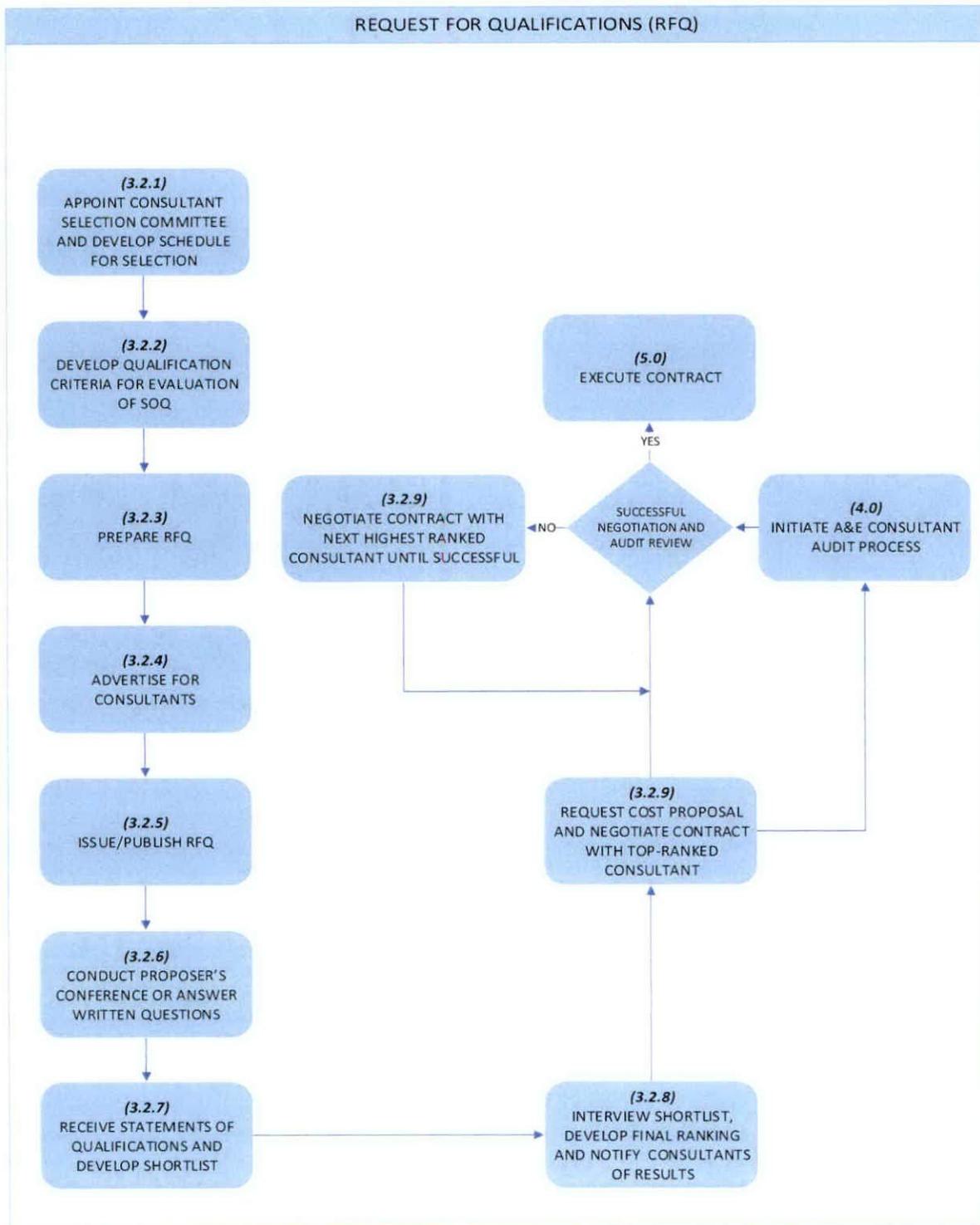
Before executing the consultant contract, the local agency must review the contract to ensure that all federal and state requirements have been met (see [LAPM Exhibit 10-C: Consultant Contract Reviewers Checklist \(Exhibit 10-C\)](#)), and all deficiencies identified in the Conformance Letter have been 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.

**TIP:**

Consultant Contract Reviewer Checklist *Exhibit 10-C* must be filled out by the Local Agency.

### 3.2 Consultant Procurement Using the One-Step RFQ Method

Figure 3-2: Consultant Procurement Using One-Step RFQ Method Flowchart



### 3.2.1 Appoint Consultant Selection Committee and Develop Schedule for Consultant Selection

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 Statement of Qualification (SOQ) submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the scope of work to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the local agency and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T](#).

#### TIP:

It is essential the Selection Panel complete the *Conflict of Interest Statement LAPM Exhibit 10-T*.

### 3.2.2 Develop Criteria for Evaluation of SOQ

The Contract Administrator is responsible for developing the technical criteria and their relative importance which are used to evaluate and rank the consultant qualifications. The criteria and relative weights must be included in the RFQ, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [Exhibit 10-B](#) 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.

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.

### 3.2.3 Prepare RFQ

As a minimum, the RFQ generally includes the following:

- 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](#) for sample cost proposal formats.)

- Contract audit and review process requirements (see *Section 4.0, A&E Consultant Audit and Review Process*)
- SOQ format and required items to be submitted (see list below)
- Method, criteria and weights for selection
- Specified DBE contract goal, if a federal-aid contract (See [Exhibit 10-1](#))
- Protest procedures and dispute resolution process per 2 CFR Part 200.318 (k)

The RFQ specifies the content of the SOQ, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFQ is published and the 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 proposed for the contract, including consultant project manager (Key team members identified in the original technical proposal/cost proposal shall not change or 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 10-01](#))
- References

#### **3.2.4 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 consultants are given a fair opportunity to be considered for award of contract. The RFQ must contain sufficient information regarding project work or the specialized services being sought, so that interested consultants can submit an appropriate SOQ.

Advertisements 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 BidSync, or posting the RFQ on 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.

The advertisement of the RFQ may take one of two approaches. In one approach, the entire RFQ is published with all its requirements and submittal deadline. In the second approach, the advertisement specifies the availability of the RFQ. Interested consultant will be able to obtain RFQ at a location, request that RFQ to be mailed or simply download the electronic RFQ from web site after registration. This approach provides a registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addendum to the RFQ, if necessary.

### 3.2.5 Issue RFQ

The local agency shall publish the RFQ online and also issue the RFQ to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded the RFQ online as well as those receiving an RFQ through other means, to ensure that any inquiry responses, addendums, or amendments to the RFQ are given to all consultants that received the RFQ.

**TIP:**

Selection criteria and specific weights (percentages) must be defined in the solicitation.

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

The local agency may allow for clarification of the RFQ 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 RFQ. 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 RFQ. 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.

### 3.2.7 Receive and Evaluate Statements of Qualifications and Develop Shortlist

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

Minimum of three SOQ must be received and evaluated. If only two SOQ are received, a justification must be documented to proceed with the procurement. If only one SOQ is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) ([LAPM Exhibit 12-F](#)) must be documented. In either case, the re-advertisement of the RFQ 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 also applies to major subconsultants. The committee establishes a shortlist of consultants who are considered to be the best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

All consultants that submitted an SOQ must be notified of the results of the review. The notification also identifies those consultants (shortlisted) that will be requested to attend interviews. Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the

Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

**TIP:**

Selection must be made using selection criteria and specific weights defined in the solicitation.

### **3.2.8 Interview Shortlist, Develop Final Ranking and Notify Consultants of Results**

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

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

The committee should evaluate reference checks and other information that is gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

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

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants
- 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 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.

**TIP:**

Score sheets must be signed, dated, and retained in local agency files.

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

The cost proposal (for both Prime and all Subconsultants), contract audit, and review documents, such as [LAPM Exhibit 10-K: Consultant Certification of Costs and Financial Management System \(Exhibit 10-K\)](#) and [LAPM Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist \(Exhibit 10-A\)](#), whichever applicable (see *Section 4.0, A&E Consultant Audit and Review Process*), should be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their technical proposal.

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

The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. It can be revised, if needed, for use in negotiations with the next most qualified consultant.

A contract audit and review may be required (see *Section 4.0, A&E Consultant Audit and Review Process* in this manual). The local agency Contract Administrator ensures that all required documentation is provided to Caltrans Audits and Investigations (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
- Other direct cost items, and profit or fee

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

TIP:  
Price/fee negotiations must be documented.

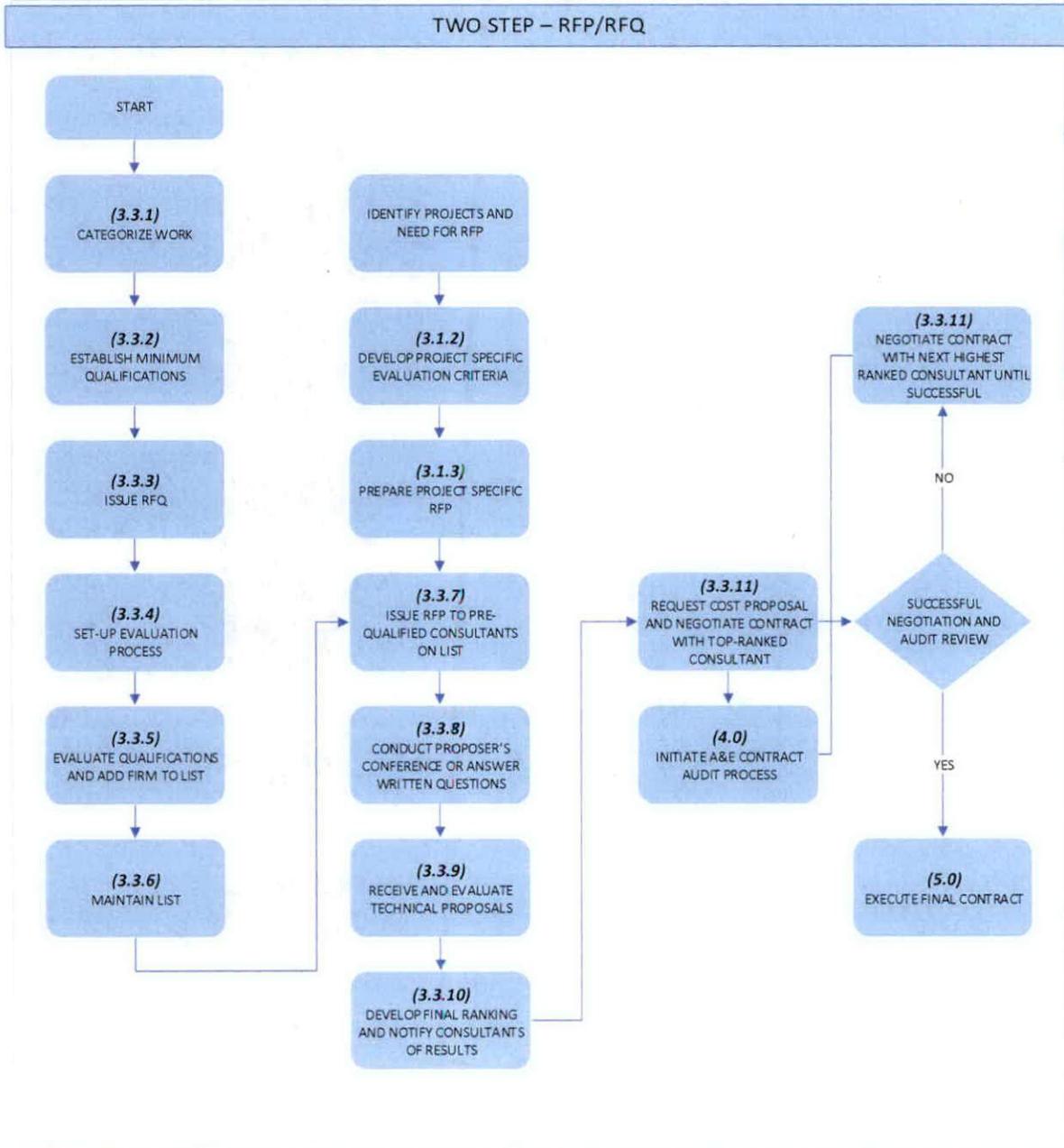
For on-call contracts, typically a price agreement is reached based on specific rate of compensation for the term of the contract. The subsequent task orders (or mini agreements for individual project work) is negotiated based on actual cost plus fee or lump sum which is derived from the wage rates agreed upon earlier for the on-call contract.

Before executing the consultant contract, the local agency must review the contract to ensure that all federal and state requirements have been met (see [Exhibit 10-C](#)), 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.

TIP:  
Consultant Contract Reviewer Checklist [Exhibit 10-C](#) must be filled out by the Local Agency.

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

Figure 3-3: Consultant Procurement Using Two-Step RFQ/RFP Method Flowchart



Local agencies may use this method to develop and maintain a file/list of consultant firms by specific work categories or areas of expertise. This data file or interest list can be updated annually or every two years, upon issuance of a RFQ.

Development of a pre-qualified list of 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 step in this method (up to the development and notification of the pre-qualified list) is the same as the One-Step RFQ method. Once the pre-qualified list is established, project-specific RFPs may be issued to the consultants from the list. The next step is the same as the One-Step RFP method.

The Two-Step RFQ/RFP is also well suited for procuring multiple on-call contracts through a single solicitation. The outcome of the RFQ will be multiple on-call contracts with qualified consultants with cost/price agreements. The subsequent project work will be procured through individual competition or mini-RFPs amongst the on-call consultants. The mini-RFP or the task order will be negotiated with the first ranked firm from each competition. Task order cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.

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 when the scope of work is very complex or unusual.

### **3.3.1 Categorize work**

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

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

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

### **3.3.2 Establish Minimum Qualifications**

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

General criteria guidelines should be established for consultant selection for a pre-qualified list. The criteria may be established by an individual or a panel of subject matter experts for the specific task of developing the criteria. Some agencies also establish appropriate weights for each criterion. It may be

necessary to modify the criteria to fit specific cases. When a RFQ is published, it should state the criteria that will be used in the selection process.

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

- Special expertise and experience of the firm's key employees
- Proposed staffing (include number of licensed and specialized staff) for the project and previous experience of those identified
- Experience of the firm and their personnel on previous projects similar to the one under consideration
- Location of the firm's office where the work will be done
- Consultant DBE Commitment document (see [Exhibit 10-01](#))
- Professional references by the firm with the local agency
- Understanding of the project by the firm as demonstrated by their approach to organizing and management of the work
- Current workload of the firm and their ability to meet the proposed project schedule
- Quality of previous performance by the firm with the local agency
- Use of sub-consultants to accomplish work on the project
- Equipment the firm has available and proposes to use as compatibility with Computer-Aided Drafting and Design (CADD) and other equipment proposed to be used in accomplishing the work
- Familiarity with federal, state, and local codes, requirements, standards, and procedures

Examples of minimum qualifications for work categories above are provided here based on Caltrans best practices.

### 3.3.3 Issue RFQ

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

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

Both state and federal regulations require that any procedures related to pre-qualifying consultant cannot restrict competition.

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

Another practice is to qualify consultants on a project-by-project basis. This is accomplished for some agencies by advertising or publishing notices in national, state, and local publications for needed services

for specific, individual projects. These notices include a precise project location, a defined preliminary scope of services to be performed, a specific schedule within which the work is to be completed, and a list of products and deliverables to be provided by the consultant. Specific project advertisements usually are published when the proposed project is large and complex, in-house resources are not available, special expertise is required, or the objectivity of an outside authority is desired.

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

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

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

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

Local agency must establish a process by which SOQs are evaluated and consultants who are deemed meeting the minimum qualifications are accepted and placed on a pre-qualified list. Whether the Local agency has a "committee" of experts evaluating the SOQs or individuals responsible for the evaluation, the process must be well defined, open and transparent. The pre-qualification process must also allow for consultants to be re-evaluated in cases of denials. The local agency must specify how long the pre-qualified list last, not to exceed two years. Federal regulation recommend refreshing the SOQs on an annual basis.

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](#).

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

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

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

#### **3.3.6 Maintain List**

Pre-qualification of a consultant expires in two years. Pre-qualified consultants must renew their pre-qualification status every two years. Firms can apply to be on the list at any time. After a period of two years, firms should re-apply (repeat the process of submitting SOQs) to be on the list. In addition to the required two-year renewal process, the consultant should also be required to update the firm's

organizational structure within one year when there is a corporate/affiliate change, ownership control, type of work expertise, capacity, or any other major change.

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

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

### **3.3.7 Issue RFP to Pre-Qualified Consultants on List**

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

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

Items typically required in a technical proposal include:

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

### **3.3.8 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.

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

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

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

If only two technical proposals are received, a justification must be documented to proceed with the procurement. If only one technical proposal is received, a Non-Competitive process must be justified and a Public Interest Finding ([LAPM Exhibit 12-F](#)) 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.

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

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

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

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

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

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

Cost proposal (for both prime and all subconsultants) and contract audit and review documents, such as [Exhibit 10-K](#) and [Exhibit 10-A](#), whichever applicable (see *Section 4.0, A&E Consultant Audit and Review Process*), will be submitted in a separate sealed envelope.

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

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

A contract audit and review may be required (see *Section 4.0, A&E Consultant Audit and Review Process*). 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.

Items typically negotiated include:

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

**TIP:**

Price/fee negotiations must be documented.

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

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

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see [Exhibit 10-C](#)), 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.

**TIP:**

Consultant Contract Reviewer Checklist [Exhibit 10-C](#) must be filled out by the Local Agency.

## 4.0 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 4-2: A&E Consultant Audit and Review Process, shows an overview of the audit and review process.

### 4.1 Applicable Standards

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

- Caltrans Local Assistance Procedures Manual
- Project Program Supplemental Agreements
- 23 CFR, Chapter 1, Part 172 – Administration of Engineering and Design Related Service Contracts
- 48 CFR, Federal Acquisitions Regulation Systems (FAR), Chapter 1 FAR, Part 31- Contract Cost Principles and Procedures
- 48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900
- 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR Part 200.302 – Standards for Financial and Program Management
- 23 USC, Part 112 – Letting of Contracts
- United States Government Accountability Office, Government Auditing Standards (GAS)
- Proposed contract terms and conditions

See *Section 12.0, References* of this manual for links to above referenced standards.

### 4.2 Audit Guidance Available

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

The local agency may seek financial and accounting assistance from its own internal audit staff.

The consultant may also seek professional guidance in selecting its independent CPA. See also the *AASHTO Audit Guide, Chapter 2.5 C, Selection of CPA Firm as Overhead Auditor* for guidance in the selection process.

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

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

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

A proposed contract or consultant 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, but are not limited to, the consultant's:

- History of satisfactory performance
- Prior FAR compliant history and audit frequency
- Financial stability
- Conformance to terms and conditions of previous contracts
- General responsiveness and responsibility
- The approximate dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency in California within the last three calendar years
- The number of states in which the consultant does business
- The type and complexity of the consultant's accounting system
- The relevant professional experience of any CPA performing audits of the consultant's indirect cost rate
- Responses to internal control questionnaire (ICQ), see *AASHTO Audit Guide, Appendix B*

- Changes in the organizational structure

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

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

#### 4.4 Subconsultant Impacts

Subconsultants are required to follow all the federal, state, and contract requirements outlined above in *Section 4.1, Applicable Standards*. In addition, all subconsultants are required to:

- Certify their contract costs and financial management system ([Exhibit 10-K](#)) 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](#)) when the total (prime plus subs) proposed contract is \$1M or more.

#### 4.5 Cognizant Letters of Approval

Cognizant audits and reviews have been developed to assign primary responsibility for an ICR audit to a single entity (the cognizant agency) to avoid duplication of audit work performed in accordance with Government Auditing Standards. The objective of these audits and reviews is to obtain reasonable assurance that claimed costs are in accordance with the FAR cost principles. A cognizant agency may be the home state Department of Transportation (DOT) (the state where the consultant's financial records are located), a federal agency, or a non-home state DOT to whom the home state has transferred cognizance. When providing cognizant ICR approval the cognizant agency may either perform an ICR audit themselves, or they may review and rely on the work/workpapers related to an ICR audit performed by a CPA. The desired outcome of a cognizant audit or CPA Workpaper Review is for the cognizant agency to issue a Cognizant Letter of Approval so that the ICR can be relied upon on future contracts with the consultant for a given year and for reliance by other state agencies using the same consultant.

A&I will accept a consultant's cognizant approved ICR for the applicable one-year accounting period, if rates are not under dispute. The consultant is responsible for providing documentation of its cognizant approved ICR and Cognizant Letter of Approval.

## 4.6 Most Common Audits and Reviews to be Performed

### Indirect Cost Rate (ICR) Audits

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

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

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

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

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

### CPA Audited ICR Workpaper Reviews

During a CPA Audited ICR Workpaper Review, A&I will review the CPA's workpapers of its ICR audit to determine whether it is appropriate to issue a Cognizant Letter of Approval. The Workpaper Review is conducted to determine whether: (a) the CPA's audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with FAR 48 CFR Part 31 and related laws and regulations, and (c) the audit report format is acceptable. Chapter 11 of the *AASHTO Audit Guide* includes a recommended format for the audit report and required disclosures.

CPA Audited ICR Workpaper Reviews apply to Case 3 contracts (see Case descriptions below) selected for review. Cognizant Letters of Approval are issued with CPA Workpaper Reviews.

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

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

## 4.7 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 2 CFR Part 200, Subpart E, Cost Principles

### **4.8 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](#)). 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 2 CFR Part 200.302.
- The consultant has provided the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to the consultant within the last three calendar years, and for all state DOT and local agency contracts, and the number of states in which the firm does business.
- All direct costs included in the proposed contract are reasonable, allowable, and allocable in accordance with FAR 48 CFR, Part 31, in compliance with applicable accounting principles, and in compliance with the terms of the proposed contract.

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

#### **Local Agencies**

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

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

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

#### **4.9 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 requirements outlined in this section and [LAPM](#)

Chapter 10.3. 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):

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

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

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

- A state DOT's approved ICR schedule and the Cognizant Letter of Approval

OR

- CPA Audited ICR Audit Report and a copy of the CPA audited financial statements, if any

Through A&I's risk-based approach, CPA Audited ICR Workpaper Reviews may be performed. Local agencies are responsible for ensuring both the Consultant and its CPA provide full access to the CPA's

workpapers, including making copies upon request. Failure to do so may be considered a breach of contract. If a review is performed and the CPA's work is in compliance with the FAR principles, a Cognizant Letter of Approval will be issued. See bottom of this section for A&I's Email or mailing address.

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

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

Requirements for a Conformance Letter include:

- [Exhibit 10-A](#) 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 2.13*, and [Exhibit 10-H](#) for required formats and example cost 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](#) for sample language and requirements):
  1. Performance Period (begin and end date) (Article IV)
  2. Allowable Costs and Payments (Article V)
  3. Termination (Article VI)
  4. Cost Principles and Administrative Requirements; (Article VII)
  5. Retention of Records/Audit; (Article VIII)
  6. Audit Review Procedures, (Article IX)
  7. Subcontracting (Article X)
  8. Equipment Purchase (Article XI)
  9. State Prevailing Wage Rates (Article XII)
  10. Conflict of Interest (Article XIII)
  11. Rebates, Kickbacks or other Unlawful Consideration (Article XIV)
  12. Prohibition of Expending Local Agency State or Federal Funds for Lobbying (Article XV)

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

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

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

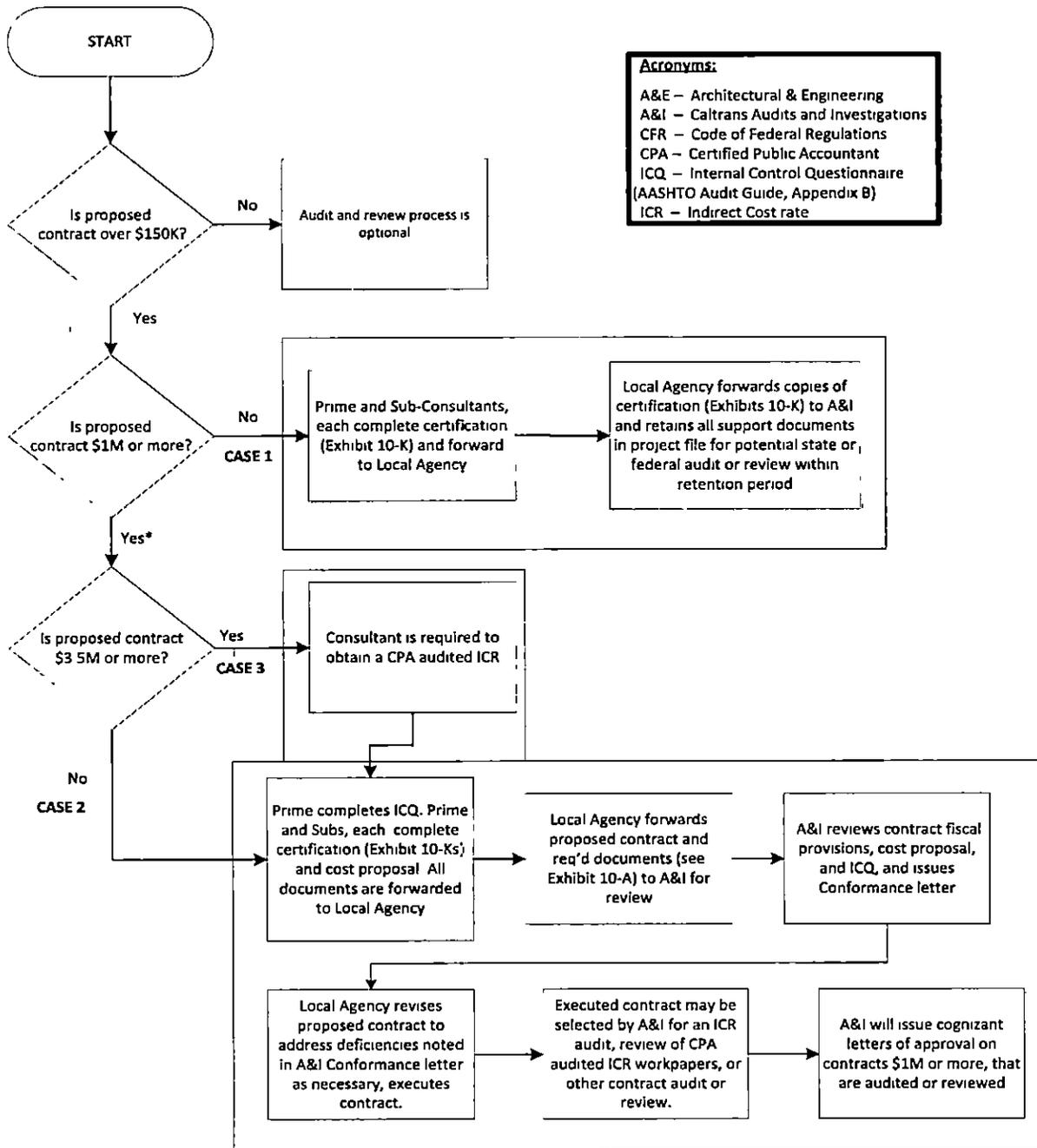
A&I mailing address:

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

**Figure 4-1: Summary of Contracts to be Audited or Reviewed**

Proposed Contract Amount	Documents Required	Conformance Letter Required?	Audit/Review Performed?	If Audited or Reviewed, Will Cognizant Letter of Approval be Issued?
Small Purchase Procedure Less than \$150K	None	No	Audit/review not required	N/A
<b>Case 1.</b> Between \$150K and \$1M	<ul style="list-style-type: none"> <li>• Certification by Prime and Subconsultants (<a href="#">Exhibit 10-K</a>)</li> </ul>	No	May be selected for Audit or Review.	<i>If</i> Indirect Cost Rate (ICR) Audit is performed
<b>Case 2.</b> Between \$1M and \$3.5M	<ul style="list-style-type: none"> <li>• Certification for Prime and Subconsultants (<a href="#">Exhibit 10-K</a>)</li> <li>• Cost proposals for Prime and Subconsultants</li> <li>• All other applicable documents listed on <a href="#">Exhibit 10-A</a></li> </ul>	Yes	May be selected for ICR or Contract Audit, or other Review.	Yes
<b>Case 3.</b> \$3.5M or greater	<ul style="list-style-type: none"> <li>• Certification for Prime and Subconsultants (<a href="#">Exhibit 10-K</a>)</li> <li>• Cost proposals for Prime and Subconsultants</li> <li>• All other applicable documents listed on <a href="#">Exhibit 10-A</a></li> </ul> <p>AND            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 4-2: A&E Consultant Audit and Review Process**

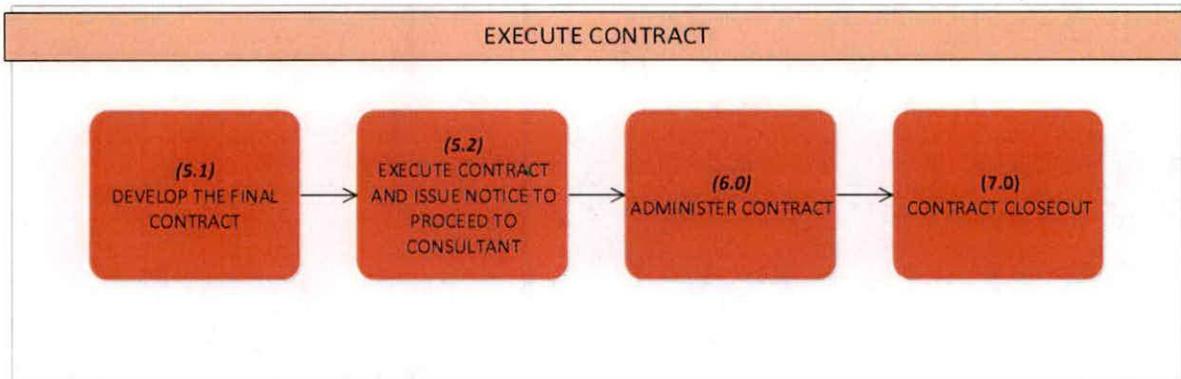


**Acronyms:**  
 A&E – Architectural & Engineering  
 A&I – Caltrans Audits and Investigations  
 CFR – Code of Federal Regulations  
 CPA – Certified Public Accountant  
 ICQ – Internal Control Questionnaire (AASHTO Audit Guide, Appendix B)  
 ICR – Indirect Cost rate

**\* 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.

## 5.0 EXECUTE CONTRACT

Figure 5-1: Execute Contract Flow Chart



### 5.1 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 items and changes discussed during negotiations were included. This revised cost proposal then becomes the final cost proposal and is attached to, and made part of, the consultant contract. For informational purposes, sample contract language and format have been included as [Exhibit 10-R](#).

The Contract Administrator has the 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.

#### 5.1.1 Review and Approval of Contracts

Proposed contracts for consultant services (including subcontracted work) exceeding \$150,000, must be reviewed by the local agency to verify that:

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable
- Work activities and schedules are consistent with the nature and scope of the project
- DBE goal is included if there are subcontracting opportunities and available DBE firms
- [Exhibit 10-K](#) (for Prime and Subs), and [Exhibit 10-A](#) and all required supporting documents, if applicable, have been submitted to Caltrans A&I
- 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](#), Article IX, paragraph D)

[Exhibit 10-C](#) must be used to ensure that required documentation has been provided. A cost proposal (see [Exhibit 10-H](#)) must include the cost of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and supporting calculations.

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

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

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

The contract shall also provide that the consultant establish a working office at a place acceptable to the local agency. The contract shall provide that the consultant and subconsultants shall maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, state, and local agency authorized representatives, and copies thereof shall be furnished, if requested.

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

### **5.1.2 Retention Clauses**

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

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

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

Federal-aid or state reimbursement is contingent on meeting the federal or state requirements and can be withdrawn if these procedures are not followed and documented. The local agency files are to be maintained in a manner to facilitate future FHWA or Caltrans process reviews and audits.

As specified in the Review and Approval of Contracts above, the Contract Administrator must review the proposed consultant contract before execution. [Exhibit 10-C](#) is to be completed and signed. A copy shall be sent to the DLAE within 30 days of contract execution. This signed document must be retained in the local agency project files.

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

The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the Authorization to Proceed is issued, or for consultant costs incurred prior to the execution of the consultant contract. Local agency consultant selection and contract execution costs may be reimbursable.

For on-call contracts, a fully executed copy of the contract with original signatures will be sent to the consultant. Each subsequent task order (for individual project) will be accompanied by a copy of the signed task order and a Notice to Proceed, once it is negotiated and approved.

## 6.0 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](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
  - [DIR Wage Determination website: http://www.dir.ca.gov/oprl/DPreWageDetermination.htm](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, and 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 [LAPM Exhibit 10-S: Consultant Performance Evaluation \(Exhibit 10-S\)](#))

### 6.1 Substitution of Consultant Personnel and Subconsultants

After contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written approval from the local agency. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subconsultant on the contract. The proposed substituted person must be as qualified as the original, and at the same or lower cost.

For engineering types of consultant contracts, the consultant's project manager must be a registered engineer in the State of California.

### 6.2 Invoicing (or Progress Payments)

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements (see [LAPM Chapter 4, 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 federal or state reimbursement of consultant costs on a project, the local agency must submit the following to the DLAE for each consultant or consulting firm used on the project (failure to do so will result in the consultant's invoices for reimbursement being returned to the agency unprocessed):

- Copy of Executed Consultant contract
- [Exhibit 10-C](#)
- [Exhibit 10-O1](#) (federally funded projects only)
- [Exhibit 10-O2](#) (federally funded projects only)

The DLAE must confirm that the local agency has submitted copies of [Exhibit 10-K](#) (for prime and subconsultants) to Caltrans A&I.

Caltrans A&I maintains a list (spreadsheets) of all local agency consultant contracts that have submitted [Exhibit 10-K's](#). The spreadsheets list contracts by fiscal year, local agency contract number, and federal project ID.

The DLAE must confirm that the local agency consultant contract is listed (meaning that Caltrans A&I has received all Exhibit 10-Ks for the contract) prior to processing the invoice for reimbursement of consultant expenditures.

Invoices should include the following:

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

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

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

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

### 6.3 Contract Amendments

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services shall be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement (see [Q&As: \[http://www.fhwa.dot.gov/programadmin/172qa\\\_01.cfm\]\(http://www.fhwa.dot.gov/programadmin/172qa\_01.cfm\)](#)).

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

A consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement.

For on-call consultant contracts, the amendment is restricted to the work (task order) that has already been started by the consultant and cannot 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 4.0, A&E Consultant Audit and Review Process* of this manual, shall apply to the entire contract, and must be completed prior to execution of the contract amendment.

## 7.0 CONTRACT CLOSEOUT

### 7.1 Final DBE Utilization

Upon completion of the contract, a summary of the DBE final utilization must be prepared, certified correct, and submitted on [LAPM Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise \(DBE\) And First-Tier Subcontractors \(Exhibit 17-F\)](#) 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.

### 7.2 Performance Evaluation

Pursuant to 23 CFR §172.9(d) 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](#) for a suggested format for use by the local agency.

### 7.3 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. These records shall be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters.

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

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder's list
- Documentation of DBE participation (including [Exhibit 10-01](#) and [Exhibit 10-02](#))
- Solicitation and advertisement records
- Identification of selection committee members
- Record of receiving technical proposals, or SOQs
- Evaluation and ranking records such as original score sheets from all panel members, shortlist questions and other documentation (see [Exhibit 10-B](#))
- Independent cost estimate (prepared in advance of receipt of RFPs and RFQs)
- Record of negotiations (to include a separate negotiations of profit in accordance with federal guidelines)
- Conformance and Cognizant Agency Letters, when applicable

- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any
- Consultant Certification of Costs and Financial Management ([Exhibit 10-K](#)) 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](#)) for contracts over \$1,000,000, and all supporting documentations
- Executed consultant contracts, cost proposals and amendments (see [Exhibit 10-R](#) and [Exhibit 10-H](#))
- Contract oversight and progress meeting documents
- Progress and final payments, and supporting documentation
- Performance evaluation (see [Exhibit 10-S](#))
- Consultant contract checklists (see [Exhibit 10-C](#))
- Report of DBE Utilization (see [Exhibit 17-F](#))
- Accounting records documenting compliance with State and federal administrative requirements
- Certifications and Conflict of Interest forms ([Exhibit 10-T](#), [Exhibit 10-U](#) and [LAPM Exhibit 10-Q: Disclosure of Lobbying Activities](#), as appropriate)

## 8.0 ENGINEERING SERVICES UNDER \$150,000

The procurement of consultant services by Small Purchase Procedures is in accordance with 23 CFR §172.

Local agencies should be fully aware that consultant services costing in aggregate (including sub-contracts) no more than \$150,000 per contract (48 CFR 2.101) 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 shall consider a minimum of three different consultants whenever possible. A formal RFQ process is not required. The reasons for selecting a firm needs to be thoroughly documented.

The local agency must prepare a well-defined scope of work and an independent cost estimate done prior to seeking technical/cost proposals.

The Brooks Act and the consultant audit process described in *Section 4.0, A&E Consultant Audit and Review Process* of this manual do not apply to consultant service contracts under \$150,000. Although this method of procurement is informal, it must still comply with *Sections 1.0, General, 2.0, Procurement Planning, 7.0, Contract Closeout, and 11.0, Miscellaneous Considerations*, of this manual.

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"> <li>• Competitive process (collect three bids)</li> <li>• Conflict of interest determination</li> <li>• Assigned Contract Administrator</li> <li>• Defined scope of work/schedule of deliverables/start and end dates for contract</li> <li>• Defined deliverables/prime and subconsultant responsibilities</li> <li>• DBE goal for contract; <a href="#">Exhibits 10-01</a>, <a href="#">Exhibit 10-02</a></li> <li>• Cost estimate prior to receiving bids</li> <li>• Best method of payment determination</li> <li>• Contract provisions/clauses</li> <li>• Evaluation of consultant, justification of selection</li> <li>• Contract management responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>• No RFP/RFQ</li> <li>• No Selection/Evaluation Panel</li> <li>• No evaluation criteria disclosure requirements</li> <li>• No record of costs/profit negotiations</li> <li>• No audit and review requirement of contract (no <a href="#">Exhibit 10-K</a>)</li> </ul>

Price or rate quotation may be considered in the selection of A&E consultants on contracts below \$150,000 and must be documented in the project files. DBE requirements apply to all contracts. 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. All small purchase contracts shall have a start and end date.

## **8.1 Personal Services Contracts**

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

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

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

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

## 9.0 NON-A&E CONSULTANTS

### 9.1 Definition

Services and planning studies that are not included in the definition of A&E related services or are not directly related to a construction project may be considered non-A&E. These services include Right-of-Way appraisal and acquisition activities, conducting public outreach during environmental clearance or construction, and Active Transportation Program educational and outreach activities.

The determining factor for the required use of competitive negotiation/qualifications based selection procedures is whether the services being procured are related to a specific construction project and whether the services require work to be performed, provided by, or under the direction of a registered engineer or architect. If a planning study is to determine the need for improvements within a corridor, to conduct travel demand studies, or to obtain information on costs for planning and programming processes, the consultant may not need to be procured under a qualifications based selection process.

### 9.2 Intelligent Transportation System (ITS) Projects

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

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

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding.

If the ITS project involves considerable software development, system integration, hiring engineers and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it would be considered an engineering services contract and the contract must be procured as an A&E consultant contract.

However, if an ITS project does not meet either the definition of construction or engineering and design services, then the contract may be considered to be a Non-A&E service contract. Examples of Non-A&E service contracts are:

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

For more information regarding procurement requirements for ITS projects, refer to *LAPG, Chapter 13 - ITS*.

### **9.3 Non-Infrastructure Projects**

Non-infrastructure (NI) projects are those transportation-related projects that do not involve either engineering design, Right-of-Way acquisition, or the eventual physical construction of transportation facilities. Examples of non-infrastructure projects include:

- Public awareness campaigns and outreach
- Traffic Demand Management (TDM)
- Traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety
- Freeway service patrol
- Ridesharing activities
- Commuter incentives
- Purchase of alternative-fueled vehicles

Procurement of these types of contracts must follow Non-A&E contract procurement procedures. For more information on NI projects, refer to *LAPM Chapter 3 Project Authorization*.

### **9.4 Procurement**

Local agencies must use their own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal laws and regulations (2 CFR Part 200). Compliance with the Brooks Act and qualification based selection is optional for non-A&E consultant procurement.

All non-A&E procurements for federal-aid funded projects must be conducted by competitive proposals in a manner providing full and open competition consistent with federal and state standards. Refer to California State Public Contract Code 10335-10381 for more information.

- a. Request for proposals must be publicized and all evaluation factors and their relative importance identified
- b. Proposals must be solicited from an adequate number of qualified sources (no less than three)
- c. Local agency must have a written procedure for evaluating proposals
- d. Consultants other than A&E consultants may be selected using cost or cost and qualifications (best value)
- e. Contract audit and review process described in Section 4.0 of this manual is optional for non-A&E contracts
- f. Public agencies contracting with other public agencies to perform work need an executed Memorandum of Understanding (MOU) or interagency agreement

- g. A consultant firm that was instrumental or listed in the application process for projects, such as ATP, is not entitled to be awarded a contract for its implementation without a competitive procurement. All federal/state funded contracts must be competitively solicited.

## 9.5 Determining Need for Consultant

To identify if a non-A&E professional services contract is needed, consider the following:

- Types of services needed
- Special licensing (not considered A&E)
- How necessary are the services
- When are the services needed
- One-time or on-going services
- Routine or extraordinary/unique
- Scope of Work

## 9.6 Preparing the Request for Proposal

An RFP for professional services should be as detailed and precise as possible and include minimum qualification requirements, solicitation and award time frames, term of agreement, scope of work, evaluation criteria and process, and technical proposal and performance specifications.

Be sure to attach complete scopes of work outlining local agency and consultant responsibilities and all special provisions for the work/services needed, and have all funding approved. Local agency contacts, or the Contract Administrator should be identified in the RFP.

An example RFP is provided on the Local Assistance Website at <http://www.dot.ca.gov/hq/LocalPrograms/AE/index.htm> and may be modified.

## 9.7 Scope of Work

Clear and concise scopes of work are critical elements of service contracts. SOWs must be detailed and specific and be organized in a logical manner. Sort work details by similar actions or requirements. Clearly define roles and responsibilities of consultant and local agency. Agency Contract Administrator should write SOWs to indicate what qualifications are required to perform the work and to express when, where, and how the work/service is to be performed.

## 9.8 Technical Proposal

The Technical proposal should include the following information:

1. **Consultant Project Manager** – qualifications, roles and responsibilities.
2. **Methodology** - description of work and overall approach, specific techniques that will be used and specific administrative and operations expertise to be used.
3. **Workplan and Work Schedule** - the technical proposal should include activities and tasks, and their delivery schedule.
4. **Personnel** - List of personnel who will be working on the project, and their resumes.
5. **Facilities and resources** (If applicable) - Explanation of where the services will be provided and what type of equipment is needed to perform services.

6. **Sub-contracts** - Identify all sub-contracts that are to be used, description of each and the work by each sub-consultant/sub-contractor. No work shall be subcontracted unless listed in the technical proposal. Sub-consultant resumes should be provided.
7. **References** - The technical proposal should provide at least three (3) clients for whom the proposer has performed work of similar nature to the request

## 9.9 Cost Proposal Worksheet

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

## 9.10 DBE Consideration

DBE consideration is required on all federal-aid funded contracts including non-A&E. Zero DBE goals must be approved by the DLAE prior to contract execution.

## 9.11 Solicitation and Award of Contracts

Advertisement for RFPs may be through the local agency website, local publications, and national publications. Minimum solicitation time is 14 calendar days.

The solicitation should inform potential bidders that questions must be submitted in writing to the Agency Contract Manager/Administrator by a specified date and time. All pertinent technical information and answers to bidder's questions shall be provided to all potential bidders. Written responses to all questions will be collectively compiled and provided as an addendum.

Contracts may be modified or amended only if the contracts so provide. Amendments must be requested and executed **prior to the termination** date of the most recently approved original or amended contract. All records of contract activities shall be kept for three years after federal final voucher E-76 or state final voucher for State-Only funds.

Costs are reimbursable after state allocation by the California Transportation Commission (CTC) and/or the issuance of the federal E-76. The per diem rate shall not exceed the state rate. Contract Managers are responsible for monitoring expenditures on all contracts and verifying categories of work that require prevailing wage. A person in Responsible Charge of contract management is required for all federally funded projects.

## 9.12 Evaluation Criteria

Review all eligible proposals (i.e., those filed on time and in the manner prescribed) to determine which ones meet the format requirements and the standards specified in the RFP. Proposals meeting the minimum standards and format requirements can then be rated or scored. Those proposals shall be submitted to an agency evaluation committee. The evaluation committee will evaluate and score proposals using the methods specified in the RFP. The contract must be awarded to the responsible proposer whose proposal is given the highest score by an evaluation committee.

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. Proposals without information regarding, or not meeting, the required DBE utilization goal or without a Good Faith Effort documentation, late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

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

To establish effective competition, a minimum of three proposal must be 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) ([LAPM Exhibit 12-F](#)) 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.

### **9.13 Oral Presentations**

Oral presentations are optional. The evaluation criteria must include factors/sub-factors and weights used to score the proposers performance at the oral presentation. The evaluation committee will only be able to score each proposer based upon this criteria.

The Contract Manager/Administrator should develop a set of questions related to the scope of work or the project to be asked during the evaluation committee question and answer (Q & A) section of the oral presentations. All proposers are asked the same questions for consistency.

### **9.14 Debriefing**

The committee chairperson or designee will complete a final evaluation criteria scoresheet that will become part of the contract file. It can later be used during debriefing of unsuccessful proposer(s) to point out deficiencies and weaknesses for each criterion.

### **9.15 Protest/appeals/reinstatement procedures**

Both state and federal regulations require well-defined protest/reinstatement procedures. It is essential that the procedures include a reasonable opportunity for the prospective consultant to present his/her case. The appeals procedures strengthens the process by which the contracting agency reaches its ultimate goal and helps defends its action against a claim of lack of due process. A termination clause and a provision for settlement of contract disputes are required. Protest procedures and dispute resolution processes should be in accordance with 2 CFR 200.318(k).

## 10.0 RETAINING CONSULTANT AS AGENCY ENGINEER OR MANAGEMENT ROLE

A consultant acting in a management role may be defined as a consulting firm or individual representative of a firm acting on the contracting agency's behalf to perform inherently governmental functions or fulfilling a program or project administration role typically performed by the contracting agency. This could include providing oversight of a program element on behalf of the contracting agency or serving as a general engineering consultant (GEC) to manage and provide oversight of a major project, series of projects, and/or the work of other consultants and contractors on behalf of a contracting agency.

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 manual.

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

- Compliance with the selection procedures specified in this manual.
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed.
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer.
- For a state funded or federal-aid project, completion of [Exhibit 10-T](#) 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 2 CFR Part 200 Subpart E Cost Principles.

- For a state funded or federal-aid project, completion of [Exhibit 10-U](#) by all consultant engineering staff in management positions.
- A completed [Exhibit 10-U](#) shall be submitted to FHWA for approval prior to execution of the contract for which federal or state funds are being sought. Local agencies must submit an approved [Exhibit 10-U](#) prior to seeking federal or State reimbursement.
- Selection of consultants for A&E management positions shall be by the use of qualification based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years.

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

If engineering services for a project are within the scope of the services described in the retained consultant's contract, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal or state reimbursement for these services require a new consultant contract to be developed using the selection procedures in this manual. 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:

- Subparagraph of 2 CFR §200.318 (c)(1) "The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity."
- Subparagraph of 23 CFR §172.7 (b)(5)(i) Consultant services in management support roles. "When FAHP funds participate in a consultant services contract, the contracting agency shall receive approval from FHWA, or the recipient as appropriate, before utilizing a consultant to act in a management support role for the contracting agency; unless an alternate approval procedure has been approved."
- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

## 11.0 MISCELLANEOUS CONSIDERATIONS

### 11.1 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.

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 also see [LAPM Exhibit 12-F: Request for Approval of Cost-Effectiveness/Public Interest Finding \(Exhibit 12-F\)](#).

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

If only two proposals have been received, the contracting agency shall analyze the solicitation to determine if it contained conditions or requirements which arbitrarily limited competition. By calling prospective proposers or firms who obtained the advertisement documents or downloaded electronic version of the solicitation, determine if re-advertisement will result in improved competition. If the administering agency determines that the outcome of the solicitation will not change, the agency may proceed with the procurement process with two proposers.

If the contracting agency receives only one proposal, the local agency must re-advertise. Prior to re-advertising, the local agency should thoroughly review the solicitation and advertisement document and remove any restrictive requirements or conditions that may limit possible responses.

Generally speaking, if the re-advertisement for the same contract yields only one response, this may be justification for a non-competitive procurement. The local agency must carefully document details of the special conditions, obtain Caltrans approval on a Public Interest Finding and retain all documents in the project files for future Caltrans' or FHWA's review.

A Public Interest Finding (see [Exhibit 12-F](#)) 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/legisregs/directives/policy/indirectcost.htm>).

## **11.2 Construction Engineering Services**

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

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

If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this manual'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.

## 12.0 REFERENCES

- [23 CFR, Part 172](#) – Procurement, Management, and Administration of Engineering and Design Related Service Contracts  
<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3>
- [40 USC, Section 1104](#) – Brooks Act  
<http://www.fhwa.dot.gov/programadmin/121205.cfm>
- [41 CFR](#) – Public Contracts and Property Management  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl)
- [41 USC](#) – Public Contracts  
<http://law.onecle.com/uscode/41/index.html>
- [23 USC, Section 112](#) – Letting of Contracts  
<http://www.fhwa.dot.gov/map21/docs/title23usc.pdf>
- [48 CFR, Chapter 1, Part 15.404](#)
- [48 CFR, Chapter 1, Part 31](#)  
<https://www.acquisition.gov/far/html/FARTOCP15.html>
- [Title 48, Part 16](#) – Types of Contracts  
<http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1>
- [48 CFR 27, Subpart 27.3](#) – Patent Rights under Government Contracts  
<https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3>
- [48 CFR 31.201-3](#)  
<https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf>
- [48 CFR, Chapter 99](#) – Cost Accounting Standards, Subpart 9900  
<https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99>
- [2 CFR Part 200 Subpart D and E](#)  
<http://www.ecfr.gov/cgi-bin/text-idx?SID=4b69d749161cd85282e3853c10f1825a&mc=true&node=sp2.1.200.e&rgn=div6>
- [49 CFR, Part 26](#) – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

- [American Association of State Highway and Transportation Officials \(AASHTO\) Uniform Audit and Accounting Guide](http://audit.transportation.org/Pages/default.aspx)  
<http://audit.transportation.org/Pages/default.aspx>
- [Caltrans Division of Procurement and Contracts Website](http://www.dot.ca.gov/dpac/index.html)  
<http://www.dot.ca.gov/dpac/index.html>
- [California Labor Code, Section 1775](http://law.onecle.com/california/labor/1775.html)  
<http://law.onecle.com/california/labor/1775.html>
- [Government Auditing Standards \(GAS\) issued by the United States Government Accountability Office](http://www.gao.gov/yellowbook/overview)  
<http://www.gao.gov/yellowbook/overview>
- [Government Code Sections 4525 through 4529.5](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5)  
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5>
- [OMB Circular A-110 – Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations](https://www.whitehouse.gov/omb/circulars_a110)  
[https://www.whitehouse.gov/omb/circulars\\_a110](https://www.whitehouse.gov/omb/circulars_a110)
- [Standard Environmental Reference \(SER\)](http://www.dot.ca.gov/ser/)  
<http://www.dot.ca.gov/ser/>