CHAPTER 10 CONSULTANT SELECTION

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CHAPTER 10 CONSULTANT SELECTION

10.1 GENERAL

INTRODUCTION

A local agency may engage consultants to perform architectural, engineering, and related services needed to develop a federal-aid and/or state funded project. Local agencies requesting federal and/or state funds to reimburse Architectural and Engineering (A&E) Consultants must follow the selection and contracting procedures detailed in this chapter.

FEDERAL LEGISLATION

The provisions of the Brooks Act (40 USC 544) require local agencies to award federally funded engineering and design contracts on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 CFR, Section 172).

The following are two of the Required Contract Provisions including exhibits:

Disadvantaged Business Enterprise

- *Notice to Bidders/Proposers Disadvantaged Business Enterprise Information* (Exhibit 10-I)
- *Standard Agreeement for Subcontractor/DBE Participation* (Exhibit 10-J)
- *Local Agency Proposer DBE* (Consultant Contract) Information (Exhibit 10-O)
- *Final Report-Utilization of DBE, First-Tier Subcontractors* (Chapter 17, Exhibit 17-F)

Federal Lobbying Restrictions, Title 31 U.S.C. Section 1352

- *Nonlobbying Certification for Federal-aid Contracts* (Exhibit 10-Q)
- *Disclosure of Lobbying Activities, Standard Form – LLL and Instructions* (Exhibit 10-R)

STATE LEGISLATION

Architectural and Engineering (A&E) Consultants - Those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services are termed "Architectural and Engineering (A&E) Consultants." California law requires selection of A&E contract services on the basis of demonstrated competence and professional qualifications. Cost may not be included as criteria for rating such consultants. Negotiations shall begin with the most qualified consultant. Should negotiations result in not a price the local agency considers to be fair and reasonable, negotiations shall be formally terminated and the local agency shall then undertake negotiations with the second most qualified consultant. If the negotiations with the second most qualified firm is not successful, negotiations shall be formally terminated and the local agency shall then undertake negotiations with the third most qualified consultant, etc. until the price is determined to be fair and reasonable by the local agency (*California Government Code*, Chapter 10, Sections 4525 through 4529.5).

Consultants, other than A&E consultants, may be selected using cost as one of, or the sole selection criteria. The procedures outlined in this chapter could be modified for selecting non-A&E consultants, by adding a cost item to the proposal. Similarly in selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a draft contract would be required.

Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages. Section 1720 of the *State Labor Code* which states in part:

> "For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work."

Wage guidelines entitled, *Consultant Guidelines for Prevailing Wage and Labor Compliance on Architectural and Engineering (A&E) Contracts* is used to administer Caltrans Consultant contracts and is available at: http://www.dot.ca.gov/hq/construc/A&E_Guidelines/A&EGuidelines.pdf

Wage information is available through the Caltrans Division of Local Assistance website at: http://www.dir.ca.gov/dlsr/statistics_research.html

SELECTING THE PROJECT

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

SUBCONTRACTED SERVICES

The consultant is responsible for performing the work required under the agreement in a manner acceptable to the local agency. The consultant's organization and all associated consultants and subcontractors must be identified at the time of the proposal.

If the consultant wishes to use a firm not specified in the proposal, prior written approval must be obtained from the local agency. If a subcontract for work, or services to be performed by such firms exceeds $25,000, the subcontract shall contain all required provisions of the prime contract.

PRE-AWARD AUDIT

A pre-award audit is required for consultant contracts with state or federal-aid highway funds in the contract as outlined below.

Case 1: Contracts less than $250,000

For consultant contracts which total less than $250,000,a pre-award audit is not required unless the consultant has been previously identified as a "high-risk" as described in 49 CFR, Part 18 Section 12.

Part 18 Section 12, 49 CFR, states that a grantee or subgrantee may be considered "high-risk," if an awarding agency determines that a grantee or subgrantee:

- Has a history of unsatisfactory performance, or
- Is not financially stable, or

- Has a management system which does not meet the management standards set forth in this part, or
- Has not conformed to terms and conditions of previous awards, or
- Is otherwise, not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high-risk condition and shall be included in the award.

For further clarification of the term "high-risk" contact Caltrans Audits and Investigations.

Case 2: Contracts in excess of $250, 000

Consultant contracts in excess of $250,000 require a pre-award audit. The pre-award audit examines the consultant's accounting, estimating, administrative systems, proposed costs, financial condition and the proposed contract language. The audit is as broad in scope as necessary to meet the objectives found in Exhibit 10-M "Standard Audit Program Procedures" in this chapter.

A pre-award audit is also required under the following situations:

- Accumulative amendments that increase the total amount of the contract by over $250,000, regardless of the number of amendments.
- Any single amendment over $250,000.
- Any subcontract over $250,000.

Procedures to perform the pre-award audit will depend on who the local agency selects to perform the audit. The local agency may perform the pre-award audit with their own personnel; employ a Certified Public Accountant (CPA) to perform the pre-award audit; or request Caltrans to perform the pre-award audit.

CALTRANS PERFORMS PRE-AWARD AUDIT

For situations where a local agency selects Caltrans to perform the audit, the local agency must transmit a *Pre-award Audit Request Letter and Checklist* (see Exhibit 10-A in this chapter) to Caltrans Audits and Investigations with copies of the proposed consultant contract and cost proposal (also a copy to the DLAE). The consultant's cost proposal for the prime and all proposed subcontractors must contain a breakdown of all components of cost to include: labor base, rate, other direct costs, overhead, and fee. For "Sample Cost Proposals," see Exhibit 10-H in this chapter. The agency must advise the consultant that an audit needs to be performed and that cooperation with the auditors is expected. Thirty working calendar days from the date of receipt of a complete and acceptable package (whichs includes the request, draft contract, and a cost proposal for the consultant and subcontractors, each with a cost breakdown) should be allowed as a guideline After receipt of the pre-award audit report from Caltrans Audits and Investigations,with the resolution of outstanding issues by the local agency; the "Audit Disposition" (Exhibit 10-K in this chapter) shall be completed by the local agency and sent to Caltrans Audits and Investigations with a copy to the DLAE.

Section 4.3 of the Caltrans *Service Contracts Manual* provides additional details about the audit process and is available at: http://admin.dot.ca.gov/pc/pdfshell.shtml

LOCAL AGENCY/ HIRED CERTIFIED PUBLIC ACCOUNTANT PERFORMS PRE-AWARD AUDIT

The local agency shall notify Caltrans Audits and Investigations of their decision to perform the pre-award audit using its own forces, or by contracting with a Certified Public Accounting firm. The notification will be in writing, using the sample "Pre-award Audit Notification Letter" (Exhibit 10-L in this chapter). As a part of this notification process, the local agency shall also submit pre-award audit procedures.

Caltrans Audits and Investigations may perform a review of such procedures and express an opinion on them as needed. Caltrans shall retain the right to audit, or review the work of the local agency or designee at any time.

The audit must be completed before the consultant contract is executed. Failure to do this will result in loss of funds for the consultant services**. The audit must be performed in accordance with generally accepted government auditing standards required by the United States General Accounting Office at:** www.gao.gov/govaud/ybk01.htm **.**

The local agency shall follow the information in the "Accounting and Auditing Guidelines for Contracts with Caltrans" (Exhibit 10-N in this chapter) to assure that the audit objectives are clear as to the basic elements of an accounting system. In addition, S*tandard Audit Program Procedures* shall be used as the minimum procedures to be performed for the pre-award audit.

Negotiation may begin with the consultant while the audit is being performed. The contract shall not be executed until the audit report has been completed, and the following are found to be satisfactory by the auditor: consultant's accounting system, rates charged, knowledge of FHWA's cost eligibility, and documentation requirements. The local agency shall be proactive to resolve any audit comments before execution of the consultant contract.

The "Request for Authorization to Proceed with Preliminary Engineering" (Exhibit 3A in Chapter 3 of the LAPM) includes boxes that indicate compliance with the pre-award audit requirement when there is federal-aid and or state participation.

The "Audit Disposition" (Exhibit 10-K in this chapter) must be signed by the local agency financial officer and submitted to the DLAE at completion of the pre-award audit. A courtesy copy of pre-award audits conducted by the local agency shall be mailed to:

Department of Transportation
Caltrans Office Audits and Investigations
P.O. Box 942874
Sacramento, CA 94272-0001

The local agency is responsible for complying with these pre-award audit procedures and determining the eligibility of costs reimbursed to the consultant. The local agency will be subject to the sanctions mentioned in Chapter 20, "Deficiencies and Sanctions," of the LAPM if Caltrans, FHWA, or Federal Transportation Agency (FTA) determines that any reimbursements to the consultant are the results of lack of proper contract provisions, unallowable charges to unsupported activities, or an inadequate accounting system.

AUTHORIZATION TO PROCEED

FHWA or Caltrans acting in their behalf must give the local agency an "Authorization to Proceed" with the work prior to the performance of any work for which federal reimbursement is to be requested, including the pre-award audit (see Chapter 3, "Project Authorization," of the LAPM). For state funded projects, see Chapter 23, "Local Agency State Transportation Improvement Program Projects," of the *Local Assistance Program Guidelines* (LAPG) for guidance as to when work may proceed.

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

10.2 IDENTIFYING & DEFINING A NEED FOR CONSULTANTS

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

If the local agency determines that there is a need to solicit assistance from another local agency, or to use a consultant, the DLAE should be notified if federal-aid or state funds are to be requested for the project segment to be contracted out.

APPOINTING THE CONTRACT ADMINISTRATOR

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions and in the administration of the consultant's work. The Contract Administrator must be a qualified local agency employee, or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract. The Contract Administrator or staff members must be thoroughly familiar with the work to be contracted out and the standards to be used.

The Contract Administrator's duties include the following:

- Provides direction to ensure the proposed work is advertised properly.
- The Request for Qualifications (RFQ); description of work, and Request for Proposals (RFP), if used, are prepared and distributed.
- 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.
- Serves as the local agency's primary contact person for the successful consultant.
- Monitors the consultant's progress and providing direction.
- Reviews billings and makes a determination whether costs billed are reasonable in relation to the work performed during billing period.
- Approves the consultant's progress payments.
- Identifies other local agency persons for the consultant to contact, if needed.

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

DETERMINING THE PROJECT SCHEDULE

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

- Selecting the consultant.
- Developing the consultant contract.

- Completing the pre-award audit.
- Conducting meetings and project reviews.

SEGMENTING CONSULTANT WORK

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see Chapter 6, "Environmental Procedures," of the LAPM and Chapters 31 and 32 of the *Standard Environmental Reference* [SER]). Final detailed design must be delayed until environmental clearance has been received if federal reimbursement is desired.

Refer to Figure 10-1 "Segmenting Consultant Work" in this chapter, which illustrates several satisfactory ways to segment consultant activities.

VALUE ENGINEERING ANALYSIS

For projects on the federal-aid system with a total project cost of $25 million or more and a bridge project with a total project cost of $20 million or more, federal requirements included in "SAFETEA-LU" Section 1904 "Stewardship and Oversight" mandate that a "value engineering analysis" be performed on these projects. For more information on this subject, please see Chapter 12 "Plans, Specifications & Estimate," Section 12.5 "Value Engineering Analysis" of this manual.

For bridge projects, the multi-discipline team shall also include bridge substructure requirements based on construction material and be evaluated as follows:

- On engineering and economic bases taking into consideration acceptabl;e designs for bridges.
- Using anlaysis of life-cycle and duration of project construction.

SPECIFY PRODUCTS TO BE DELIVERED

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

DEFINE SCOPE OF CONSULTANT WORK

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

DBE PARTICIPATION

The provisions of 49 CFR, Part 26 require that a local agency receiving federal-aid funds comply with the Disadvantaged Business Enterprise (DBE) program, and that DBE firms have the opportunity to participate in the projects (see Chapter 9, "Civil Rights and Disadvantaged Business Enterprises," of the LAPM). Such steps include the considering of DBE firms by the proposing consultants. When feasible, organize 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. Below are some examples of subcontracting opportunities for various types of contracts:

- For the design of a bridge (surveys, geotechnical, hydraulics, hydrology, seismic studies, cost estimating, traffic control, as-builts, etc.).
- For the seismic retrofit of an existing bridge (surveys, geotechnical, forensic studies, seismic studies, cost estimating, as-builts, etc.).
- For the design of roadways (surveys, hydrology, geotechnical, cost estimating, traffic control, as-builts, etc.).

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

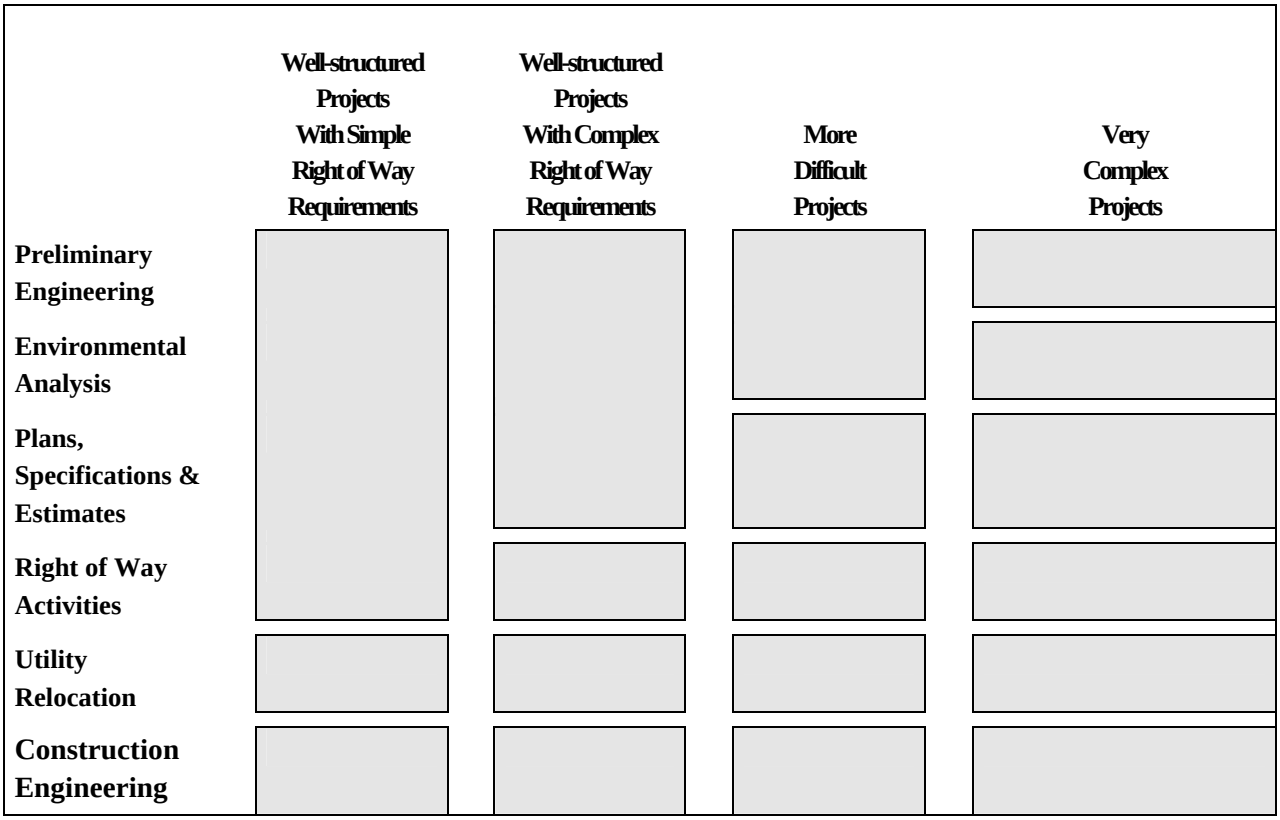
REPORTING DBE PARTICIPATION

DBE language must be included in the RFQ or RFP, if the proposed contract will include federal-aid funds. "Notice to Bidders/Proposers Disadvantaged Business Enterprise Information" (see Exhibit 10-I), is to be included in all consultant contracts with federal-aid funds. In addition, certain DBE contract clauses must be included in the consultant contract.

"Local Agency Proposer/Bidder DBE (Consultant Contract) Information" (see Exhibit 10-O) should be submitted by the successful consultant to the local agency with the award.

For reporting purposes, immediately after award of the contract, a copy of the completed "Local Agency Proposer/Bidder DBE (Consultant Contract) Information" should be sent by the local agency to the DLAE. Upon completion of the contract, regardless of whether DBE participation is obtained, a summary of the DBE records shall be prepared, certified correct, and submitted on the form"Final Report - Utilization Of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors" (Exhibit 17-F) or equivalent, by the consultant contractor to the local agency showing total dollars paid to each DBE subcontractor and supplier. The local agency will send one copy of the completed "Final Report-Utilization Of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors" with the final invoice to the DLAE within 30 days after completion of the contract for purposes of reporting DBE utilization.

Figure 10-1 Segmenting Consultant Work



ESTIMATED COST OF CONSULTANT WORK

An independent cost estimate is needed for consultant contracts (required for contracts over $100,000) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance, so the local agency's negotiating team has a detailed 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.

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

It should be stressed that all work to be derived from the consultant services (i.e., preliminary design, environmental, final design) must be clearly identified in the solicitation of consultant services (i.e., RFQ, RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible.

The cost estimate must include a breakdown of:

- Direct labor costs
- Indirect costs
- General and administrative costs
- Other direct costs such as equipment and materials
- Subcontractor costs
- Net fee or profit

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.

DETERMINE TYPE OF CONTRACT

The type of contract must be specified. Four types are permitted depending on the scope of services to be performed.

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

ACTUAL COST-PLUS-FIXED FEE

The consultant is reimbursed for actual costs incurred and receives an additional predetermined amount as a fixed fee. 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 unless there is a significant change in the scope of the work; in which case the fee may be renegotiated.

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. Fixed fees over fifteen (15) percent must be justified and documented in the files prior to commencement of work. (See Exhibit 10-H “Sample Cost Proposal” form and Exhibit 10-E “Sample Payment Clauses” form in this chapter.)

COST PER UNIT OF WORK

The consultant is paid based on the work performed such as: per plan sheet, report, etc. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance; but the extent of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item.

SPECIFIC RATES OF COMPENSATION

The consultant is paid at an agreed and supported specific fixed hourly, daily rate, weekly or monthly, for each class of employee engaged directly in the work. Such rates of pay include the consultant's estimated costs and net fee (profit). The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, salary additives, indirect costs, and net fee.
Other direct costs may be set forth as an element of the specific rate or may be includedas independent cost items. This type of contract is used for on-call contracts and is considered only when none of the other three contract types can be used. It is used only for emergency work when the tasks are relatively minor, or for equipment (such as material testing equipment), and vehicles.

LUMP SUM

The consultant performs the services stated in the agreement for an agreed amount as compensation. It is appropriateonly 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.

10.3 CONSULTANT SELECTION METHODS

Flow Chart 10-1 "Selecting Consultant" shows the three methods normally used in selecting a consultant. They are:

- One-Step Request for Proposals (RFP)
- One-Step Request for Qualifications (RFQ)
- Two-Step Request for Qualifications/Proposals (RFQ/RFP)

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

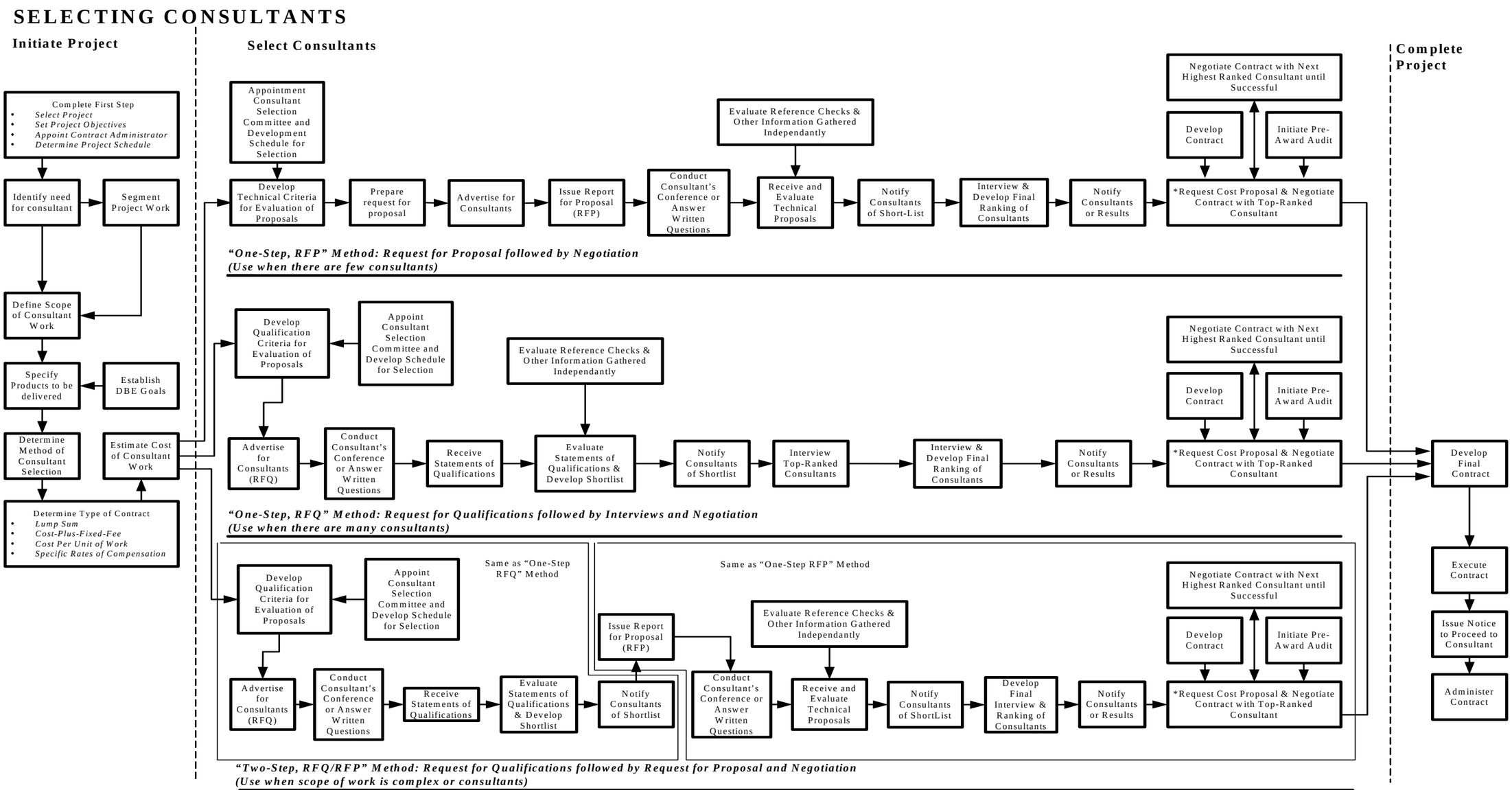
Beginning with Section 10.4 "Consultant Selection Using the One-Step RFP Method," each of the selection methods is explained in detail.

ONE-STEP RFP (REQUEST FOR PROPOSAL)

The One-Step RFP method may be used when the scope of the project is well defined. Other considerations include when the consultant's services is highly specialized and there are few qualified consultants. This method is also used when a local agency has a modest number of projects per year, and the expected number of proposals is small—generally, less than ten.

ONE-STEP RFQ (REQUEST FOR QUALIFICATIONS)

The most common selection process is the One-Step RFQ method. It is used when typical services (such as preparation of PS&E, environmental documents, or construction management services) are required, and there are many consultants. The One-Step RFQ method is also used when a local agency produces many projects, and there are numerous consultants who wish to participate.



Flow Chart 10-1 Selecting Consultants

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TWO-STEP RFQ/RFP (REQUEST FOR QUALIFICATIONS, FOLLOWED BY REQUEST FOR PROPOSAL)

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 requires substantially more work and time than the other two methods described above.

NONCOMPETITIVE NEGOTIATED AGREEMENTS (SOLE-SOURCE)

A noncompetitive, negotiated contract may be developed when special conditions arise. FHWA considers these types of agreement as "Sole Source" agreements. A Public Interest Finding prepared by the local agency is required. 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.
- Conduct negotiations to ensure a fair and reasonable cost.

The local agency must carefully documents details of the special conditions and retains them in the files for future Caltrans' or FHWA's review.

ENGINEERING SERVICES UNDER $100,000

The procurement of consultant services by Small Purchase Procedures is in accordance with 23 CFR 172.5(a)(2) modified by FHWA Memorandum dated June 26, 1996, and 49 CFR 18.36(d).

Local agencies should be fully aware that consultant services costing in aggregate no more than $100,000 per contract, may be obtained through a relatively simply and informal method of procurement. This informal method must be sound and appropriate for the consulting services procured and provide justification for the selection. It shall be documented and supported. The method of procurement shall be an open and competitive process in selecting consultants and should consider a minimum of three different consultants whenever possible.

Price or rate quotation may be considered in the selection. 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 be included.

PERSONAL SERVICES CONTRACTS

A personal services contract is characterized by the employer-employee relationship created between the local agency and the contract personnel. When personal engineering services less than $100,000 are needed and federal and/or state reimbursement will be sought; these services may be obtained through Small Purchase Procedures up to a limit of $100,000 each.

The $100,000 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.

10.4 CONSULTANT SELECTION USING THE ONE-STEP RFP METHOD

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. For non-A&E consulting contracts, a cost proposal may be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted proposal.

APPOINT CONSULTANT SELECTION COMMITTEE

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and a representative 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.

DEVELOP TECHNICAL CRITERIA FOR EVALUATION OF PROPOSALS

The Contract Administrator is responsible for developing the technical criteria, and their relative weights which are used to evaluate and rank the consultant proposals.
The criteria and relative weights must be included in the RFP. Exhibit 10-B, "Suggested Evaluation Sheet" is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

DEVELOP SCHEDULE FOR CONSULTANT SELECTION

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

PREPARE REQUEST FOR PROPOSAL (RFP)

The information required in a RFP includes the following:

- Description of project
- Scope of work
- Schedule of work
- Proposal format
- Method and criteria for selection
- Whether or not a DBE "availability advisory percentage" is specified if a federal-aid contract

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. A minimum of four weeks is usually allowed between the time the RFP is mailed and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered)
- Organization chart
- Schedule and deadlines
- Staffing plan
- Staff resumes
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm
- References

ADVERTISE FOR CONSULTANTS

The local agency advertises the availability of the RFP in a major newspaper of general circulation or technical publication of widespread circulation. The local agency shall send the RFPs to organizations qualified to do the specified work, as well as professional societies, and recognized DBE organizations (if federal-aid funds are being used). In some cases, it may be desirable to advertise nationwide for a particular project or service.

ISSUE REQUEST FOR PROPOSAL

The local agency shall issue the RFP to all consultants responding to the advertisement.

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 mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

RECEIVE AND EVALUATE TECHNICAL PROPOSALS

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

The members of the consultant selection committee must evaluate each proposal in terms of the technical criteria listed in the RFP. The committee must also evaluate reference checks and other information that is gathered independently. Reference checks shall be completed and other information that is gathered before the interviews are conducted. If necessary, the results of the reference checks and/or other information may be discussed with the highest ranked qualified consultants at the interviews.

DEVELOP FINAL RANKING AND NOTIFY CONSULTANTS OF RESULTS

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

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected should 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.

Since the technical proposal normally contains information about the method(s) a consultant will use for the work and potential problems and solutions for a specific project or segment; this method of consultant selection should not be used to establish a list of qualified consultants (pre-qualified list).

NEGOTIATE CONTRACT WITH TOP-RANKED CONSULTANT

The top-ranked consultant is requested to submit a cost proposal. Alternatively, if time is of the essence and it can be justified; cost proposals may be requested from all of the consultants on the shortlist. After review of the cost proposal, the local agency begins the negotiations with the most qualified consultant. If agreement cannot be reached, then negotiations proceeds to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency.

The independent cost estimatedeveloped in advance by the local agency is an important basis and tool for negotiations and/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 pre-award audit of the consultant may be required (see Section 10.1, "General", in this chapter). If so, cost negotiations cannot be completed until after the audit report is received. Discussions on other aspects of the contract may occur concurrently with the preparation of the audit.

Items typically negotiated include:

- Work plan
- Schedule and deadlines
- Products to be delivered
- Classification, wage rates, and experience level of personnel to be assigned
- Cost items, payments, and fees

For federal-aid consultant contracts, see Chapter 9, "Civil Rights and Disadvantaged Business Enterprises," of the LAPM and Exhibit 10-I, "Notice to Bidders/Proposers Disadvantaged Business Enterprise Information" in this chapter.

Before executing the consultant contract, the local agency must make a review to ensure that all federal and /or state requirements have been met (see Exhibit 10-C, "Consultant Agreement Reviewers Checklist," in this chapter). 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 within 30 days after award of the contract.

10.5 CONSULTANT SELECTION USING THE ONE-STEP RFQ METHOD

APPOINT CONSULTANT SELECTION COMMITTEE

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and a representative 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 local agency and subject to the availability of the DLAE staff.

DEVELOP SCHEDULE FOR CONSULTANT SELECTION

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

PREPARE REQUEST FOR QUALIFICATIONS (RFQ)

As a minimum, the RFQ generally includes the following:

- General description of the project(s)
- Scope of work
- Schedule of work
- Request for Statement of Qualifications (SOQ)
- Proposal format to be submitted
- Method and criteria for selection

The RFQ should state that the following items are required in the SOQ:

- Qualifications of key personnel proposed for the contract
- Related projects that key personnel have worked on
- Qualifications/experience of the firm
- Organization chart
- References

ADVERTISE FOR CONSULTANTS

Advertisements may take one of two approaches. The most common is advertisement or publication of the RFQ in a major newspaper of general circulation, or technical publication of widespread circulation. The RFQ shall contain sufficient project work information, so that interested consultants can submit an appropriate "SOQ."

In the second approach, the local agency advertises the availability of the RFQ in a major newspaper of general circulation or technical publication of widespread circulation, and request interested consultants to send for the RFQ. The RFQs shall be sent to professional societies, if a federal-aid project, to recognized DBE organizations. In some cases, it may be desirable to advertise nationwide for a particular project or service.

The RFQ also specifies the content of a proposal, number of copies required, due date, mailing address, and physical address where the submittals may be hand delivered, if different from the mailing address. A minimum of two weeks is usually allowed between the time the RFQ is mailed, and time that proposals must be submitted. More time may be required for complex contracts or projects.

RECEIVE/EVALUATE STATEMENTS OF QUALIFICATIONS AND DEVELOP SHORTLIST

The first step in the evaluation process is to determine that each proposal 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.

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

NOTIFY CONSULTANTS OF SHORTLIST

All consultants that submitted an "SOQ" must be notified of the results of the review. The notification also identifies those consultants that are to 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 should be objective reasons. Consultants should not be compared with

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

INTERVIEW TOP-RANKED CONSULTANTS

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed project requirements and others. 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 project segment 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 and receive their answers 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 to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process.

Additional information requested should be kept at a minimum, that is only information required to select the most qualified consultant for the contract. The selection committee or local agency shall not gather additional information concerning the consultants after the interviews are completed.

DEVELOP FINAL RANKING AND NOTIFY CONSULTANTS OF RESULTS

The selection committee discusses and documents the strengths and weaknesses of each proposal and develops a final ranking of the most qualified consultants. All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

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

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

CONDUCT SCOPING MEETING

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

REQUEST COST PROPOSAL

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, 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 subcontractors, the prime consultant must include a separate cost proposal for each subcontractor. Each subcontractor's cost proposal must follow the same format as the prime consultant's cost proposal.

NEGOTIATE CONTRACT WITH TOP-RANKED CONSULTANT

After the top-ranked consultant submits a 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 in advance by the local agency, 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, etc. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. A pre-award audit of the consultant's operations may be required (see Section 10.1"General," in this chapter). If so, cost negotiations may not conclude until after the audit report is received. Discussions on other aspects of the contract may occur concurrently with the preparation of the audit. The items typically negotiated include:

- Work plan
- Schedule
- Products to be delivered
- Classification, wage rates, and experience level of personnel to be assigned
- Cost items, payments and fee

Lists of qualified consultants (prequalified lists) established through the RFQ process must be reestablished at least once every 12 months, to give new consultants the opportunity to qualify.

10.6 CONSULTANT SELECTION USING THE TWO-STEP RFQ/RFP METHOD

COMBINED RFQ AND RFP

Selecting consultants using the Two-StepRFQ/RFP method requires combining certain steps from each of the other two methods previously described. The consultants are rated based upon both their qualifications and their technical proposals.

The initial steps in this method (up to the development and notification of the shortlist) are the same as the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps are indicated on the Flow Chart 10-1 "Selecting Consultants" in this chapter.

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

Since the technical proposal normally contains information about the method(s) and potential problems and solutions for a specific project or segment, this method of consultant selection should not be used to establish pre-qualified lists.

10.7 COMPLETING THE PROJECT

DEVELOP THE FINAL CONTRACT

The Contract Administrator requests a revised cost proposal from the consultant after: (1) negotiations have been completed, (2) the local agency and consultant have agreed to a fair and reasonable price, and (3) any pre-award audit problems have been resolved. The Contract Administrator should review the revised cost proposal to ensure that all the items and changes discussed during negotiation were included. This revised cost proposal then becomes the final cost proposal, is attached to and made a part of the consultant contract. For informational purposes, sample contract language and format have been included as Exhibit 10-S, "A&E Sample Contract Language."

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

REVIEW AND APPROVAL OF AGREEMENTS

Proposed contracts for consultant services including those for subcontracted work exceeding $100,000, must be reviewed by the local agency to verify that:

- Appropriate conditions are included and objectionable features are deleted.
- Compensation is fair and reasonable and includes prevailing wage (state) wages, if applicable.
- Work activities and schedules are consistent with the nature and scope of the project.
- A pre-award audit has been conducted and implemented when appropriate (see Section 10.1 "General" in this chapter).

The "Consultant Agreement Reviewers Checklist" (Exhibit 10-C) and "Consultant Agreement Outline" (Exhibit 10-D) in this chapter shall be used to ensure that required documentation has been provided. A "Cost Proposal" (Exhibit 10-H in this chapter), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

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

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 subcontractors 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 and/or state, such records and documents may be microfilmed 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 and/or state.

Contracts with consultants covered by this manual must not be approved by the local agency until the certifications shown in Exhibits 10-F, "Certification of Consultant," and 10-G, "Certification of Local Agency" in this chapter are executed and incorporated into the agreement. The certifications shall be executed by a principal or authorized corporate official of the consultant, and by a principal administrative officer of the governmental agency responsible for the selection of the consultant. It is essential that these certifications be preserved in the project files.

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.

REVIEW OF LOCAL AGENCY ACTIONS

Contracts between local agencies and consultants are not subject to Caltrans' approval to qualify for federal and/or state reimbursement, but they still must meet all federal and/or state requirements. Also, any questions raised during the pre-award audit shall be resolved before the local agency executes the contract.

Federal-aid and/or state reimbursement is contingent on meeting the federal and/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 and/or Caltrans process reviews and audits.

As specified in Section 10.4, "Consultant Selection," the Contract Administrator before execution must review the proposed consultant contract. The "Consultant Agreement Reviewer's Checklist "(Exhibit 10-C in this chapter) is to be completed and signed. A copy shall be sent to the DLAE within 30 days after contract award. This signed document must be retained in the local agency project files.

EXECUTE CONTRACT AND ISSUE NOTICE TO PROCEED TO CONSULTANT

The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for costs incurred before the "Caltrans 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 are reimbursable.

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.

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.
- Receiving and reviewing state prevailing wages. See Caltrans "*Consultant Guidelines for Prevailing Wage and Labor Compliance on Architectural and Engineering* (A&E) *Contracts*" at:
  http://www.dot.ca.gov/hq/construc/A&E_Guidelines/A&EGuidelines.pdf
- Reviewing invoices and approving payments.
- Record keeping and reporting.
- Controlling costs.
- Identifying changes to the scope of work and preparation of amendments.
- Completing performance evaluations.

SUBSTITUTION OF CONSULTANT PERSONNEL AND SUBCONTRACTORS

The consultant should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or subcontractors without prior written approval from the local agency. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subcontractor on the contract. The proposed substituted person must be as qualified as the original, and at the same or lower cost.

For engineering types of consultant contracts, the consultant's Project Manager must be a registered Engineer in the State of California.

INVOICING (OR PROGRESS PAYMENTS)

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements need to have been prepared prior to any payments being requrested. 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.

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 subcontractors, a separate invoice for each subcontractor 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 subcontractor.

The local agency is to follow the procedures given in Chapter 5, "Accounting/Invoices," of the LAPM to obtain reimbursement of federal and/or state funds.

CONTRACT AMENDMENTS (SUPPLEMENTAL AGREEMENTS)

Contract amendments, sometimes called Supplemental Agreements, are required to modify the terms of the original agreement for changes such as extra time, added work, or increased costs. There is no prescribed format. 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. 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.

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.

CLOSEOUT PROJECTS

Local agencies are encouraged to close out consultant contracts quickly. If the contract was for preparation of PS&E, environmental, preliminary material testing and/or material reports, or preliminary surveys, such closeouts should be delayed within the requirements of the "Timely Use of Fund" policy until after physical construction of the project is completed, and all construction claims are settled. Delaying the closeout until project completion ensures the consultant's availability, if problems arise, or if the need for a change occurs relative to the consultant's work.

After making final payment of consultant invoices, the local agency is to follow the requirements in this chapter and in Chapter 5, "Accounting/Invoices," of the LAPM to request final reimbursement.

PERFORMANCE EVALUATION

The Contract Administrator evaluates the consultant's performance after the consultant's final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant's project manager. See Exhibit 10-S, "Consultant Performance Evaluation" form of a suggested format for use by the local agency.

PROJECT RECORDS

For audit purposes, project records and documentation shall be kept for three (3) years after payment of the final federal and/or state voucher. Among the records to be retained as follows:

- Copies of RFPs and RFQs
- Documentation of DBE participation, when applicable
- Solicitation/advertisement records
- Identification of selection committee members
- Evaluation and ranking records
- Independent cost estimate
- Record of negotiations
- Pre-award audit when applicable
- Executed consultant contracts and amendments
- Construction oversight/progress meetings
- Progress and final payments
- Performance evaluation
- Consultant contract checklists
- Accounting records documenting compliance with state and federal administrative requirements

10.8 MISCELLANEOUS CONSIDERATIONS

RETAINING A CONSULTANT AS AN AGENCY ENGINEER

A local agency may retain a qualified consultant as an Agency Engineer. The retained consultant can be an individual or firm providing professional services. Eligibility for federal and/or state reimbursement for these services requires the following:

- Compliance with the selection procedures specified in this chapter.

- Existence of a contract between the local agency and the consultant specifying the services to be performed.
- Written designation as Agency Engineer.
- Selection on an open and competitive basis within the last three (3) years.

If engineering services for a project are within the scope of the services described in the retained consultant's agreement, they may be performed by the person or firm designated as an Agency Engineer. If the services are not within the scope, a new consultant agreement must be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the request for proposals qualifications may not compete for the resulting work.

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 activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is responsible in-charge. These activities may include 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 agreement defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant's construction engineering staff.
If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this chapter's requirements. The agreement shall provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the local agency.

10.9 REFERENCES

- 23 CFR 172.5
- 49 CFR 18.36
- 49 CFR 18.12
- 41 USC 403(11)
- 48 CFR 31
- 23 CFR, Section 172
- 41 CFR 1-9.1
- 49 CFR 26, Appendix A
- OMB Circular A-110
- *Standard Environmental Reference* (SER)
- *Government Code* Sections 4525 through 4529.5
- *California Labor Code*, Section 1775
- 49 CFR 26, Appendix A
- *Caltrans Service Contracts Manual*

Exhibit 10-A Pre-Award Audit Request Letter and Checklist

EXAMPLE PRE-AWARD AUDIT REQUEST LETTER AND CHECKLIST

Local Agency Letterhead

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

Date:_____
(Federal Number)
(Project Description)
_____

Dear External Audit Manager:

Attached is a copy of the following information for proposed contract number _____ with (Consultant's Name, Address, Contact Name, Phone Number).

____Proposed contract between the local agency and the consultant

____Proposed cost proposal for prime consultant and all subcontractors

____Name of local agency contact person, phone number and fax number

The subcontractors proposed for this contract are as follows: (List all Subcontractors Name, Address, Phone Number).

Please arrange a pre-award evaluation and forward a copy of the written report to us. Services to be performed under this contract are (describe work to be performed).

The (Local Agency Name) understands that any work with costs incurred prior to the approval of the "Authorization to Proceed (E-76)" is not eligible for federal fund reimbursement.

Please notify us of the estimated completion date of the audit.

If you need further information, please contact (Name) at (Phone #).

Sincerely,

Signed _____
Title _____
Agency _____

Attachments: Proposed Contract
Draft Cost Proposal(s)
cc: DLAE

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Exhibit 10-B Suggested Evaluation Sheet

SUGGESTED EVALUATION SHEET*		
Criteria	Maximum Points	Rating
Understanding of the work to be done	25	
Experience with similar kinds of work	20	
Quality of staff for work to be done	15	
Capability of developing innovative or advanced techniques	10	
Familiarity with state and federal procedures	10	
Financial responsibility	10	
Demonstrated Technical Ability	10	
Total	100	

*For projects other than "Architectural & Engineering" services, as defined in Section 10.1, cost is one of the criteria, or may be the sole criterion. DBE participation by the consultant shall not be used as one of those criteria listed above.

The evaluation criteria and suggested maximum points shown above are not mandatory, but are reccomended in the interest of maintaining consistency among the hundreds of agencies utilizing federal and/or state funds.

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Exhibit 10-C Consultant Agreement Reviewers Checklist

CONSULTANT AGREEMENT REVIEWERS CHECKLIST

Date: _____
Agency Name: _____

_____

Federal or State Project Number: _____
Project Location: _____

_____

Project File Location
Tab/Page No.

I. SELECTION PROCEDURES ITEMS NEEDED FOR REVIEW

A. DESCRIPTION OF NEED FOR CONSULTANT	☐ YES	☐ NO	_____
B. RECORDS OF PUBLICATION OF RFP OR RFQ	☐ YES	☐ NO	_____
C. SOLICITATION RECORDS	☐ YES	☐ NO	_____
D. INDEPENDENT COST ESTIMATE (FOR CONTRACTS OVER $100,000)	☐ YES	☐ NO	_____
E. EVALUATION CRITERIA	☐ YES	☐ NO	_____
F. DOCUMENTATION OF SELECTION	☐ YES	☐ NO	_____
G. PLAN TO MONITOR WORK	☐ YES	☐ NO	_____

II. CONSULTANT AGREEMENT

A. INTRODUCTION

1. Date of execution of agreement	Date: _____		
2. Names, addresses, identifying data of agreeing parties	☐ YES	☐ NO	_____
3. Location and description of project	☐ YES	☐ NO	_____
4. Name of Local Agency Contract Administrator	☐ YES	☐ NO	_____
5. Name of Consultant Project Manager	☐ YES	☐ NO	_____

B. AGREEMENT

1. Type of work to be done

a) Detailed Scope of Work	☐ YES	☐ NO	_____
b) Consultant services	☐ YES	☐ NO	_____
c) Right of Way	☐ YES	☐ NO	_____
d) Subsurface investigations	☐ YES	☐ NO	_____

e) Obligations of local agency to consultant	☐ YES	☐ NO	_____
f) Conferences, visits to site, inspection of work	☐ YES	☐ NO	_____
g) Checking of shop drawings	☐ YES	☐ NO	_____
h) Consultant services during construction	☐ YES	☐ NO	_____
i) Deliverables and number of copies	☐ YES	☐ NO	_____
j) Milestones and description of work for each	☐ YES	☐ NO	_____
2. Date of beginning of contract	☐ YES	☐ NO	_____
3. Payment methods	☐ YES	☐ NO	_____
4. Record retention (three years) and right to audit	☐ YES	☐ NO	_____
5. Contract Cost Principles and Procedures and Administrative Requirements (CFR 48, *Federal Acquisition Regulation System*, Chapter 1, Part 31 and CFR 49, Part 18)	☐ YES	☐ NO	_____
a) Covenants Against Contingent Fees Exhibit 10-D, (B6 [a])	☐ YES	☐ NO	_____
b) Design Standards - Exhibit 10-D, (B6 [b])	☐ YES	☐ NO	_____
c) Documentation - Exhibit 10-D, (B6 [c])	☐ YES	☐ NO	_____
d) Ownership of Documents - Exhibit 10-D, (B6 [d])	☐ YES	☐ NO	_____
e) Patent Rights - Exhibit 10-D, (B6 [e])	☐ YES	☐ NO	_____
f) Copyrights - Exhibit 10-D, (B6 [f])	☐ YES	☐ NO	_____
g) Changes in work - Exhibit 10-D, (B6 [g])	☐ YES	☐ NO	_____
h) Delays and Extensions - Exhibit 10-D, (B6 [h])	☐ YES	☐ NO	_____
i) Termination or Abandonment - Exhibit 10-D, (B6 [I])	☐ YES	☐ NO	_____
j) Remedies - Exhibit 10-D, (B6 [j])	☐ YES	☐ NO	_____
k) Disputes - Exhibit 10-D, (B6 [k])	☐ YES	☐ NO	_____
l) Responsibility for Claims and Liability - Exhibit 10-D, (B6 [l])	☐ YES	☐ NO	_____
m) General Compliance With Laws & Wage Rates - Exhibit 10-D, (B6 [m])	☐ YES	☐ NO	_____
n) Subcontracting, Assignment and Transfer - Exhibit 10-D, [B6 (n)]	☐ YES	☐ NO	_____
o) Consultant's Endorsement on Plans, etc. - Exhibit 10-D, (B6 [o])	☐ YES	☐ NO	_____
p) DBE Considerations, Exhibit 10-D, (B6 [p])	☐ YES	☐ NO	_____
q) Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information – Exhibit 10-O	☐ YES	☐ NO	_____
r) Nonlobbying Certification for Federal-aid Contracts Exhibit 10-P *	☐ YES	☐ NO	_____

s) Debarment and Suspension Certification – Exhibit 12-E, Attachment E * ☐ YES ☐ NO _____

t) Notice to Bidders/Proposers Disadvantaged Business Enterprise Information – Exhibit 10-I. ☐ YES ☐ NO _____

* Use form prepared for construction contracts

6. Insurance requirements ☐ YES ☐ NO _____
7. Ending date of contract:_____

C. CONCLUSIONS (ACCEPTED LEGAL EXPRESSION, ETC.) ☐ YES ☐ NO _____

D. SIGNATURES ☐ YES ☐ NO _____

E. CERTIFICATIONS OF CONSULTANT AND AGENCY - Exhibits 10 F & G ☐ YES ☐ NO _____

F. COST PROPOSAL - Exhibit 10-H ☐ YES ☐ NO _____

_____ _____
Contract Administrator **Date**

Distribution: All Projects: Original to the Caltrans DLAE , one copy for the Local Agency Project file

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Exhibit 10-D Consultant Agreement Outline

CONSULTANT AGREEMENT OUTLINE

A. INTRODUCTION

The introduction includes the following information:

1. **Date of Agreement**
2. **Names, Addresses and Other Data Identifying Agreeing Parties**

   State the complete name and address of each party to the agreement together with information with respect to whether the party is an individual, an agency of government, a partnership, or a corporation. If a corporation is one of the parties, show the State of Incorporatioand the location of the office, where the consultant's work will be available for inspection by local agency and state representatives. For the sake of brevity, a suitable short title, such as "State," "County," "Engineer" or "Consultant," is designated and defined for each of the parties and used throughout the remainder of the agreement.

3. **Location and Description of the Project.**

   State the location and description of the project as precisely, and as briefly as possible. Give the name of the project, if one exist. If major structures are to be included their approximate locations, lengths, and types, if known, are to be shown.

4. **Name of Contract Administrator**

   All (3 or 4) references to . . ."NEPA compliance not being complete until Caltrans approves the CE, EA/FONSI or EIS/ROD". . . need to be expanded to read: "Compliance with the provisions of NEPA occurs only after Caltrans signs the Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) and all mitigation commitments have been fully incorporated (constructed and/or implemented) into the action." (Ref: 23 CFR 771.105 [d] Measures necessary to mitigate adverse impacts be incorporated into the action).

B. AGREEMENT

1. **Description of Work to be Done**

   a) Consultant Services

   Detail based on the services to be furnished by the consultant. Nature and extent verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. It also includes any milestones and due date of each milestone; description of the deliverables; form of the deliverables; and effort involved in each deliverable. Describes acceptance criteria. Environmental documents are not considered complete until Caltrans District SEP signed the CE, Caltrans Deputy District Director signs FONSI, or the Caltrans District Director signs the ROD (see Chapter 6, "Environmental Procedures" of the *Local Assistance Procedures Manual* [LAPM]).

   b) Right of Way

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

c) Subsurface Investigations

State specifically whether or not the consultant has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of the consultant, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in Volume 2, Cultural SER.

d) Surveys

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

e) Local Agency Obligations

All data applicable to the project referred to in the agreement and are in possession of the local agency or another agency, or government are to be made available to the consultant,. Any other assistance or services to be furnished to the consultant are to be stated clearly.

f) Conferences, Meetings, Visits to Site, Inspection of Work

The agreement provides for conferences as needed, visits to the site, and inspection of the work by representatives of the state or FHWA

g) Checking Shop Drawings

For agreements requiring the preparation of construction drawings, make provision for checking shop drawings.

h) Consultant's Services During Construction

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

i) Number of Copies

The number of copies of papers or documents to be furnished, such as reports, brochures, sets of plans, specifications or Right of Way plots are specified. The type of media reports, plans, specifications, etc., are to be submitted. Provisions may be made for payment for additional copies.

2. Date of Beginning and Completion

Beginning and ending dates must be specified for work under the agreement. Usually the beginning date is a given number of days after a letter of notification has been sent to the consultant. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the agreement. It is desirable that Critical Path Method (CPM) networks be prepared and incorporated into the contract by reference.

3. Payments

State the basis of payment for the services to be furnished. The services may be considered as a whole or by units. The agreement establishes a method of payment as the work progresses, or as each unit is completed; and for final settlement after all work is delivered, accepted, and approved. The agreement sets a maximum limit on the total amount payable. This also applies to all subcontracts in excess of $25,000.

4. Record Retention

The agreement states the period of time that the consultant's records shall be retained for inspection by the state, FHWA, or their duly authorized representatives. This time period must be at least three (3) years after final payment to the consultant by federal statue. This also applies to all subcontracts in excess of $25,000.

5. Cost Principles

The agreement must state that the Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., are the governing factors regarding allowable elements of cost. Also, the agreement must include the administrative requirements set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. This also applies to all subcontracts in excess of $25,000.

6. Miscellaneous Provisions

a) Covenant Against Contingent Fees

All agreements for consultant services in which federal funds are to participate shall contain the following clause:

> "The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant; to solicit or secure this agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this warranty, the local agency shall have the right to annul this agreement without liability, or at its discretion; to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee."

b) Design Standards

The agreement includes reference to the appropriate standards for design or other standards for work performance stipulated in the consultant agreement.

c) Documentation

Agreements, where appropriate, shall provide that the consultant document the results of the work to the satisfaction of the local agency, and if applicable, the state & FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the agreement objectives.

d) Ownership of Documents

The agreement provides that tracings, plans, specifications, and maps prepared, or obtained under the terms of the agreement be delivered to and become the property of the local agency. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under such agreement shall be made available upon request to the local agency without restriction or limitation on their use. When an agreement is for preliminary plans only, no commitment should be stated or implied that would constitute a limitation of the subsequent use of the plans, or ideas incorporated therein for preparation of construction plans.

e) Patent Rights

Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions shall be included in agreements as appropriate.

f) Copyrights

The local agency may permit copyrighting reports or other agreement products. If copyrights are permitted, the agreement shall provide that the FHWA and state shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use the work for government purposes.

g) Changes in Work

The agreement contains provisions that permit mutually acceptable changes in the scope, character, or complexity of the work; if such changes become desirable or necessary as the work progresses. A method should be established for making adjustments to the basis of payment, and to the time for performance of the work. Provision are made for special cases where it is essential that the extra work be performed immediately with execution of a supplemental agreement covering the changes as soon as possible.

h) Delays and Extensions

The agreement provides for an appropriate extension of time in case of unavoidable delays and for consideration of corresponding warranted adjustments in payment.

i) Termination or Abandonment

A procedure covering among other things, the ownership of work completed or partially completed, including the basis of payment, is established in the event of termination of the agreement prior to completion of the work. Conditions for termination due to default and circumstances beyond the control of the contractor are included.

j) Remedies

Provision(s) are included allowing administrative, contractual, or legal remedies for violation or breach of contract terms, citing appropriate sanctionsand penalties.

k) Disputes

The agreement provides for a procedure to resolve any dispute concerning a question of fact in connection with the work not settled by agreement between the parties. Such procedures should conform to the practice followed by the local agency in resolving disputes in other contractual matters.

l) Responsibility for Claims and Liability

The consultant shall be required to save harmless the local agency or other agency of government from all claims and liability due to his/her negligent acts, or the negligent acts of his/her subcontractors, agents or employees.

m) General Compliance with Laws and Wage Rates

The consultant shall be required to comply with all federal, state and local laws and ordinances applicable to the work. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

n) Subcontractors, Assignment and Transfer

Consultant services are considered to be a personal relationship between client and principal; therefore, agreements in which participating federal and/or state funds are furnished shall contain a clause expressly prohibiting the subcontracting, assignment, or transfer of any of the work except, as otherwise, provided for in the executed agreement. All contracts shall provide that subcontracts exceeding $25,000 in cost shall contain all required provisions of the prime contract.

o) Consultant's Endorsement on PS&E/Other Data

The responsible consultant/engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

p) Disadvantaged Business Enterprise Considerations

Consultants must give consideration to DBE firms as specified in 23 CFR 172.5(b), 49 CFR Part 26, and in Exhibit 10-I "*Notice to Bidders/Proposers Disadvantaged Business Enterprise Information*."

q) Insurance

The contract should provide for professional liability insurance and vehicle liability insurance limits. The contract should specify the reasonable amounts of such insurance, as required by the local agency. A method of verifying that the insurance is in effect should be included. Also, a method of notifying the local agency, if the specific insurance has been changed or cancelled should also be in the contract.

r) Signature Blocks

A signature block for each of the parties to the agreement should be provided.

C. CONCLUSION

The concluding clause may be any one of the many accepted legal expressions commonly used for that purpose.

D. SIGNATURE

E. CERTIFICATIONS

Exhibits 10-F "Certification of Consultant, Commisssions & Fees" and 10-G, "Certification of Agency" must be included as attachments to the contract and made a part of.

F. COST PRICE PROPOSAL

The consultant's and subconsultant(s) final cost proposal must be attached to the contract (see Exhibit 10-H "Sample Cost Proposal").

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Exhibit 10-E Sample Payment Clauses

SAMPLE PAYMENT CLAUSES*

COST-PLUS-FIXED FEE

The basis of payment for the services provided under this agreement shall be cost-plus-a-fixed fee.

1. The local agency shall reimburse the consultant for actual costs (including labor costs, employee benefits, overhead and other direct costs) incurred by the consultant in performance of the work, in an amount not to exceed $_____ exclusive of any fixed fee. Actual costs shall not exceed the estimated wage rates and other costs set forth in the consultant's proposal.
2. In addition to the costs referred to in paragraph 1 of this article, the local agency shall pay the consultant a fixed fee of $_____. Said fixed fee shall not be altered, unless there is a significant alteration in the scope, complexity, or character of the work to be performed which is documented as an amendment.
3. The Consultant shall be reimbursed for actual travel expenses incurred in the performance of this work, including the use of private vehicles at the rate of _____ cents per mile, while traveling away from consultant's headquarters, which is hereby designated as _____. In addition, consultant's personnel shall be reimbursed for per diem expenses at a rate not to exceed the currently authorized rates for state employees under State Department of Personnel Administration rules.
4. Total expenditures made under this agreement, including the fixed fee shall not exceed the sum of _____.

LUMP SUM

The basis of payment for the services provided under this agreement shall be lump sum.

1. Pursuant to satisfactory completion of this agreement, a lump sum payment of $_____,which includes all expenses incurred will be made to the consultant.
2. The above lump sum payment includes: salary, fringe benefits, overhead, profit, and all other expenses incurred by the consultant.

*The other methods of payment are not addressed here.

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Exhibit 10-F Certification of Consultant, Commissions & Fees

CERTIFICATION OF CONSULTANT

I HEREBY CERTIFY that I am the _____, and duly authorized representative of the firm of _____, whose address is _____ , and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, foror in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.

_____ _____
(Date) (Signature)

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Exhibit 10-G Certification of Local Agency

CERTIFICATION OF LOCAL AGENCY

I HEREBY CERTIFY that I am the _____ of the _____(local agency)_____ , and that the consulting firm of _____ ,or its representative has not been required (except as herein expressly stated), directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

(a) employ, retain, agree to employ or retain, any firm or person, or

(b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

_____ _____
(Date) (Signature)

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Exhibit 10-H Sample Cost Proposal

SAMPLE COST PROPOSAL (EXAMPLE #1)

Contract No._____ Date _____

Consultant _____

DIRECT LABOR

Classification	Name	Range	Hours	Initial Hourly Rate	Total
Project Manager	_____	_____	_____	@_____	$_____
Highway Engineer	_____	_____	_____	@_____	$_____
	_____	_____	_____	@_____	$_____
Bridge Engineer	_____	_____	_____	@_____	$_____
	_____	_____	_____	@_____	$_____
Technician	_____	_____	_____	@_____	$_____
Project Manager	_____	_____	_____	@_____	$_____
	_____	_____	_____	@_____	$_____
	_____	_____	_____	@_____	$_____
	_____	_____	_____	@_____	$_____

Subtotal Direct Labor Costs $_____
Anticipated Salary Increases $_____
Total Direct Labor Costs $_____

Fringe Benefits	Rate	Total	
	_____%	$_____	
Total Fringe Benefits			$_____

Indirect Costs			
Overhead	_____%	$_____	
General and Administrative	_____%	$_____	
Total Indirect Costs			$_____

FEE (Profit) $_____

OTHER COSTS

Travel Costs	$_____	
Equipment and Supplies (Itemize)	$_____	
Other Direct Costs (Itemize)	$_____	
Total Other Costs		$_____

Subcontractor Costs (attach detailed cost estimate for each subcontractor) $_____

TOTAL COST $_____

SAMPLE COST PROPOSAL (EXAMPLE #2)

	Fringe Benefit %		Overhead %		General Administration %		Combined %
NORMAL		+		+		=	
OVERTIME		+		+		=	

FEE %

BILLING INFORMATION — CALCULATION INFORMATION

Name/Classification[1]	Hourly Billing Rates			Effective date of hourly rate		Actual/ average hourly rate[2]	% or $ increase	Hourly range for class
	Straight	OT(1.5x)	OT(2x)	From	To			

1. Names and classifications of team members at a level of _____ must be listed. FOR ALL OTHER EMPLOYEES USE CLASSIFICATIONS ONLY.

2. For named employees enter the actual hourly rate. For classifications only, list the average hourly rate for that classification.

EXHIBIT 10-I Notice to Bidders/Proposers Disadvantaged Business Enterprise Information

LOCAL AGENCY LETTERHEAD
(DATE)

NOTICE TO BIDDERS/PROPOSERS
DISADVANTAGED BUSINESS ENTERPRISE INFORMATION

1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "bidder" also means "proposer" or "offerer."
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

B. Bidders/Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

A "Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information" form will be included in the Agreement documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the bidder's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

E. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.

F. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

5. RESOURCES

A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Bidder/Proposer may call (916) 440-0539 for web or download assistance.

B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: http://www.dot.ca.gov/hq/bep/.

- Click on the link in the left menu titled Find a Certified Firm
- Click on Query Form link, located in the first sentence
- Click on Certified DBE's (UCP) located on the first line in the center of the page
- Click on Click To Access DBE Query Form
- Searches can be performed by one or more criteria
- Follow instructions on the screen
- "Start Search," "Requery," "Civil Rights Home," and "Caltrans Home" links are located at the bottom of the query form

C. How to Obtain a List of Certified DBEs without Internet Access

DBE Directory: If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

6. WHEN REPORTING DBE PARTICIPATION, MATERIAL OR SUPPLIES PURCHASED FROM DBES MAY COUNT AS FOLLOWS:

A. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies toward DBE participation. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by -Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

7. WHEN REPORTING DBE PARTICIPATION, PARTICIPATION OF DBE TRUCKING COMPANIES MAY COUNT AS FOLLOWS:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

EXHIBIT 10-J STANDARD AGREEEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION

STANDARD AGREEEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION

1. Subcontractors

A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Agency and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the Agency for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the Agency's obligation to make payments to the Contractor.

B. Any subcontract in excess of $25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.

C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the Agency.

D. Any substitution of subcontractors must be approved in writing by the Agency’s Contract Manager in advance of assigning work to a substitute subcontractor.

2. Disadvantaged Business Enterprise (DBE) Participation

A. This Agreement is subject to 49 CFR, Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.” Bidders who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

.

3. Performance of DBE Contractors and other DBE Subcontractors/Suppliers

A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

5. Prompt Payment of Funds Withheld to Subcontractors

(Local agency to use either A,B, or C below; delete the other two.)

A. No retainage will be withheld by the Agency from progress payments due the prime contractor. Retainage by the prime contractor or subcontractors is prohibited, and no retainage will be held by the prime contractor from progress due subcontractors. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor or deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

B. No retainage will be held by the Agency from progress payments due the prime contractor. Any retainage held by the prime contractors or subcontractors from progress payments due subcontractors shall be promptly paid in full to subcontractors within 30 days after the subcontractor's work is satisfactorily completed. Federal law (49CFR26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

C. The Agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30-days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

6. DBE Records

A. The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM-2402F (Exhibit 17-F in Chapter 17 of the LAP), certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)"is submitted to the Contract Manager.

1) Prior to the fifteenth of each month, the Contractor shall submit documentation to the Agency's Contract Manager showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Agency's Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

(2) The Contractor shall also submit to the Agency's Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans"Monthly DBE Trucking Verification, CEM-2404(F) form provided to the Contractor by the Agency's Contract Manager.

7. DBE Certification and De-certification Status

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the Agency's Contract Manager within 30 days.

When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:

A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

(Add the following to contracts which require trucking)

When Reporting DBE Participation, Participation of DBE trucking companies may count as follows:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insure, and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

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Exhibit 10-K Audit Disposition

AUDIT DISPOSITION

Date:_____

Agency Name: _____

Federal Project Number: _____

To document the disposition of the required pre-award (pre-negotiation) audit prescribed in 23 CFR 172, this form shall be completed for each consultant contract with participating state or federal-aid highway funds exceeding $250,000 and each contract under $250,000, where the consultant was previously identified as a "high-risk" recipient as described in 49 CFR Part 18.12.

(Check appropriate box)

Caltrans Performs Pre-award Audit

☐ Caltrans' Audits and Investigations performed the pre-award audit and informed the local agency of its findings. The local agency resolved any outstanding issues and found the consultant satisfactory.

Local Agency (or hired CPA) Performs Pre-award Audit

☐ Pre-award audit completed. Consultant found satisfactory.

☐ A courtesy copy of the completed pre-award audit was mailed to Caltrans' Audits and Investigations on (date).

_____
Signature of local agency financial/auditing officer

Title:_____

Distribution: 1) Caltrans, Audits and Investigations (original), DLAE, local agency project files
2) Project Files

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Exhibit 10-L Pre-Award Audit Notification Letter

PRE-AWARD AUDIT NOTIFICATION LETTER

Local Agency Letterhead

To: (External Audit Manager Name)
External Audit Manager
Caltrans, Audits & Investigations, MS 2
P.O. Box 942874
Sacramento, CA 94274-0001

Date:
Federal Number:
Project Description:

Dear (External Audit Manager Name):

We are executing the pre-award audit and have contracted with the CPA firm of _____ to perform the work. The audit will be conducted following Generally Accepted Government Auditing Standards. The audit procedures that the firm will be following are:

List or identify procedures ("Standard Audit Program Procedures," Exhibit 10-M in this chapter).

At the end of the pre-award audit, a copy of the audit report will be forwarded to your offices for review. Should you have any questions, please call (Telephone Number).

Sincerely,

Local Representative Name_____
Title_____
Agency_____

Attachments: Proposed Contract
Draft Cost Proposal(s)

cc: DLAE

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Exhibit 10-M Standard Audit Program Procedures

Pre-Award Audit
(Name of Contractor)
Sample-Audit Program

W/P No:_____
Audit No:_____
Contract No:_____
Auditor:_____
Reviewer:_____

ITEM No.		Auditor Init/date	WorkPaper Ref.
1	***PURPOSE*** The purpose of a pre-award evaluation is to provide the approving authority with professional advice on accounting and financial matters and to assist in the award and administration of proposed consultant contracts. It also alerts both the consultant and the approving authority to potential problems relative to the Consultant's basic agreement, cost/price proposal, procurement procedures, or cost accounting system.		
11	***SCOPE*** The examination shall include reviews of applicable laws and regulation, contract requirements, and Contractor's system of internal control. Audit tests of accounting records and such other auditing procedures considered necessary to meet the objectives will be conducted. Applications of audit procedures will be governed by the individual contract under audit.		
111	***STANDARDS*** The audit is to be conducted in accordance with generally accepted governmental auditing standards.		
1V	***APPLICABLE RULES AND REGULATIONS*** 1. Contract Provisions 2. CFR 48, Part 31-Federal Cost Eligibility 3. CFR 49, Part 18-Uniform Administrative Requirements		
V	***OBJECTIVES*** 1. To determine if the consultant agreement specifically provides for the following: • specific performance period • three-year record retention period and right to audit. • method of payment. • references to cost principles set forth in CFR 48, Chapter 1, Part 31 for allowability of individual items of cost; CFR 49, Part 18, for administrative procedures; and OMB Circular 1-110, for nonprofit subrecipients. 2. To determine if the Consultant's cost proposal contains a breakdown of the estimate for performing the work, and that the proposed costs are reasonable in relation to actual historic costs and estimating procedures. 3. To determine if the Consultant's cost accounting system is capable of accumulating and reasonable allocable, and allowable costs		

V1	***PRELIMINARY AUDITS STEPS*** 1. Review the proposed contract. a. Document your review and note any exceptions needed to be included on the audit report. 2. Review the permanent file. a. Ascertain the nature, timing, and extent of the last internal control and accounting system review 3. Review the cost proposal a. Determine if the Consultant's cost/price proposal contains a breakdown of the estimate for performing the work. b. Foot and extend cost data. a. Obtain missing cost proposal information, if necessary. b. Compare data with permanent file. Obtain updated cost information if necessary c. Comment on usual amounts unfavorable trends or differences between current and past costs d. Recalculate cost proposal in consideration of any audit exceptions 4. Determine scope of audit. a. Omit step 2 (field work) if: - a recent audit found the accounting system adequate, and the accounting system is adequate to accumulate and segregate additional contract costs b. If the accounting system has not recently been reviewed or does not appear to be able to take on additional contract costs discuss the nature timing and extent of audit procedures with superior 5. Prepare preliminary Audit Plan and Time Budget 6. Contact the Contract Administrator to inform him/her of the following: - Scheduled date of field work - Tentative completion date - Any anticipated problems etc additional contract costs. **Note**: The Contract Administrator should be kept abreast of all pertinent audit issues. Any problems in obtaining necessary information, etc., should be discussed with him/her immediately and documented in the work papers.		
V11	***AUDIT STEPS-FIELD WORK*** 1. Contact the Contractor and arrange a date for the audit. a. Inform the Contractor of the type of information, records, personnel needed, and arrange for work space. b. Request that the Contractor prepare schedules of the calculations of all billing rates such as overhead, fringe benefits, in-house direct cost billing rates, and any other rates used in billing. If possible, have these schedules sent to the auditor for review before the date of field work. c. Inquire whether the Contractor has been audited within the previous year by the DCAA or similar federal agencies, or has had an independent CPA review overhead, internal controls, or project costing systems. If so, obtain a copy of the audit report and/or review working papers for consideration when evaluating internal controls, overhead rates, etc.		

	- Prepare and send engagement letter to the Contractor to confirm the above discussion. Send a copy of the letter to the Contract Administrator. 2. Conduct an entrance conference with the Consultant to ensure coverage of the following: • Purpose, scope and objective of the pre-award evaluation. • Anticipated timeframe of audit fieldwork. • Whether the Consultant is familiar with CFR 48, Chapter 1, Part 31. If not, Consultant can obtain a copy of these regulations at: http://www.access.gpo.gov/nara/cfr/waisidx_05/48cfr31_05.html. • Intention to keep Consultant updated on audit progress, and to discuss all audit exceptions prior to issuance of an audit report. • Documentation of the entrance conference in the work papers.		
V111	***CONTROL STRUCTURE SURVEY*** 1. Review and evaluate the Contractor's internal control structure. a. Prepare or update a written narrative, flowchart and/or completed internal control questionnaire which adequately describes the accounting system including significant internal controls over contract costs, in order to adequately plan the audit and test the various applications. This understanding should include knowledge of the Contractor's control environment, accounting system and control procedures. Generally, the relevant policies and procedures pertain to a Contratcor's ability to record, process, summarize, and report contract and financial information ;and to ensure compliance with applicable laws and regulations. b. Selectively examine (test) the accounting records and underlying source documents only to the extent necessary; to determine if the system has the ability to accumulate and segregate reasonable, allocable, and allowable costs through the use of a cost accounting system. The following are some of the attributes which should ideally be found in such a system: • Chart of accounts (direct and indirect accounts). • Segregation of costs by contract, category of cost and milestone (if applicable). • Proper recording of direct and indirect costs. For example, separate accounts should be used for direct labor, indirect labor, vacation, holiday, sick leave,etc. • Consistent accounting treatment of costs in recording and reporting. • Ability to trace from invoices billed to job cost records and original, approved source documents to the general ledger. 2. Prepare a summary of the internal control structure and cost accounting system. The summary should include or reference to a control risk assessment and a finalized Audit Planning document. 3. Evaluation of cost/price data. a. Obtain source documents and/or other criteria used to establish the cost/price proposal.		

	4. Evaluate the propriety of direct labor costs. a. Select a representative sample of employee timesheets (cards) and test the hourly extension. b. Trace hours to the payroll journal and compare hourly rates paid to the rates submitted with the cost/price proposal. c. If applicable, compare proposed direct labor rates to prevaililng wage and union labor rates. d. If overtime is proposed, does the Consultant have procedures to ensure and document equitable overtime charges to government and nongovernment contracts? e. Prepare a labor rate analysis and comment on variances. 5. Analyze indirect cost rates (fringe benefits, overhead, general and administrative). a. Request written verification of an approved overhead rate, if available (DCAA or other qualified entity). b. Obtain a written breakdown /schedule of costs included in the rates. • Trace the indirect rate schedule to the general ledger. • Scan the indirect cost accounts in the general ledger for unallowable costs. • Test the Consultant's proposed rate, by comparing the individual items of cost for allowability and fair presentation with CFR 48, Chapter 1, Part 31. c. Schedule all disallowed costs. d. Recalculate the overhead rate and comment on variances. 6. Evaluate the propriety of other direct costs (materials, transportation, equipment, per diem, etc.) and Subcontrators. a. Determine the methods used to establish the cost of materials, transportation, and per diems, etc. b. Compare proposed rates, or costs with prevailing rates, or past experiences. c. Determine if direct costs are independent from the indirect cost pool. d. Schedule all costs which do not appear to meet the criteria established in CFR 48, Chapter 1, Subpart 31.2. 7. Evaluate the proposed fixed fee. As field work progresses, keep the Controller or other contact person aware of the findings or problems, as they arise. Resolve the matters if possible. Document these conversations in the work papers. 8. Evaluate the Contractor's financial capability – Ratio Analysis. 9. Prior to completion of field work, discuss all exceptions with the consultant ensuring coverage of: • scope and objectives of the pre-award audit • the condition, criteria, cause, effect, and recommendation for each exception noted.		

	. • Caltrans' review process and reporting procedures. • any questions, the Consultant may have. 10. Obtain a management representation letter.		
IX	***COMPLETION*** 1. Complete work papers to assure that they are properly headed, indexed, signed, dated, and cross-referenced. In addition, each work paper should include, or be reference to, a statement of purpose, source, analysis and conclusion. 2. Prepare an audit summary which documents the purpose, objectives, procedures, results/conclusions and recommendations. 3. Cross-reference all exceptions to the appropriate papers. 4. Prepare draft audit report. 5. If necessary, schedule a closeout conference with the Consultant to discuss any exceptions not discussed, or resolved as of completion of fieldwork. Also, if material findings are identified, the Contract Administrator should also be contacted. Document these conversation/conferences. 6. Complete audit assignment card. 7. Update the permanent file. 8. Submit completed work papers and draft audit report to supervisor for final review. 9. Prepare final report and distribute as follows: • Original – Requester • If Requester is headquarters, then: 1 copy- Headquarters Contract Office • If Requester is District, then: 1 copy - District Contract Officer or District Consultant Services or DLAE • 1 copy - Audit file (Section B) • 1 copy - Chronological File (Audit Reports Binder) • 1 copy - P# File (Audit Reports Binder) • 1 copy -Audit Office • 1 copy – Supervisor **Note:** A "cc" notation is needed on the final report for reports distributed outside of the Audits Office.		

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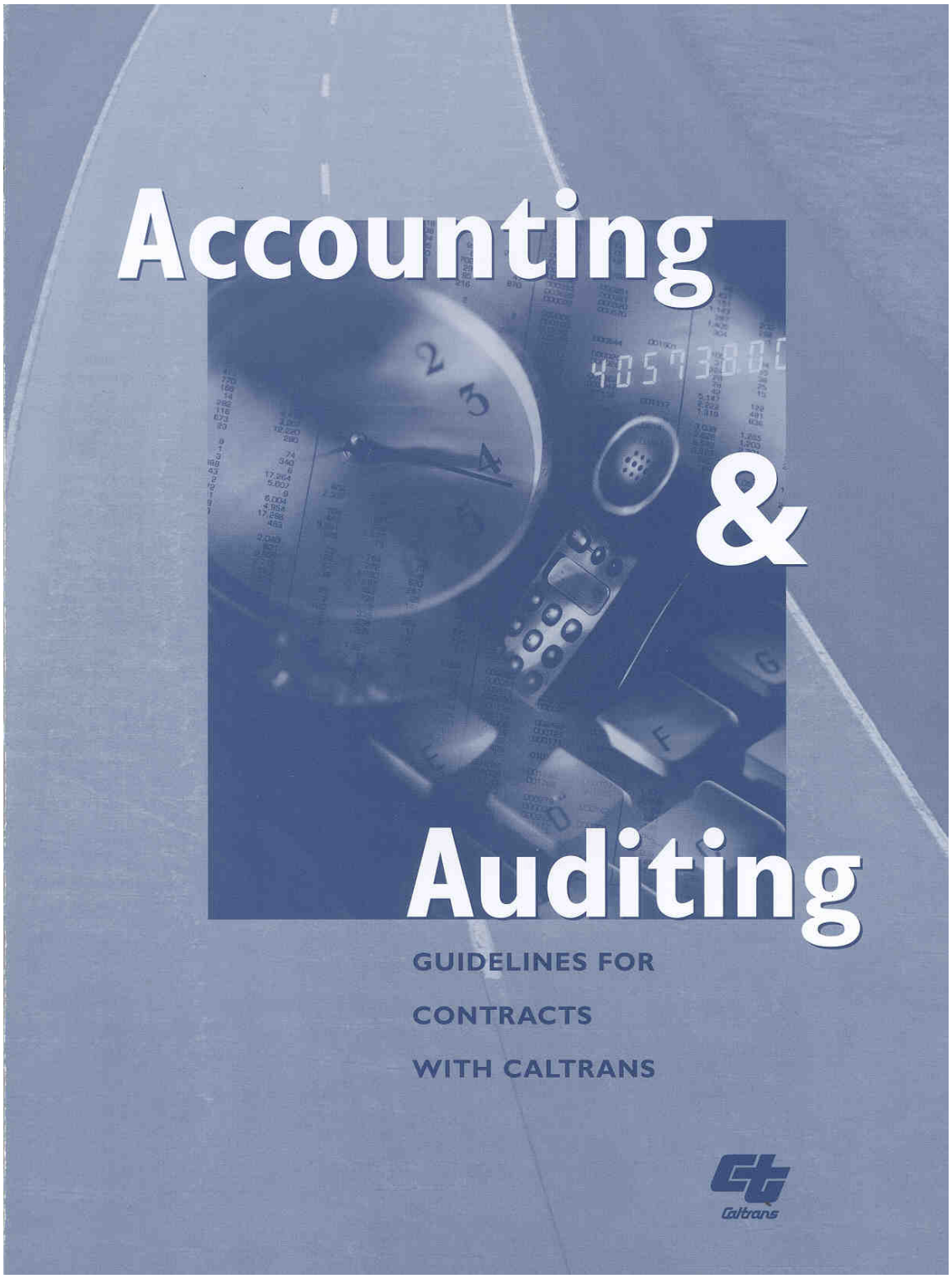
Exhibit 10-N Accounting & Auditing Guidelines for Contracts with Caltrans



INTRODUCTION

The purpose of this brochure is to outline for you, a potential contractor with the California State Department of Transportation (Caltrans), the basic elements of an adequate accounting system, and the types and objectives of audits that will be performed in relation to your contract. In order to successfully compete for a contract and meet the audit requirements, a contractor (whether a prime or subcontractor) must have a system of record keeping and internal control. Although a specific cost accounting system is not required, a contractor needs a system which will assure compliance with the terms of the agreement. A preaward audit will be preformed to assure you meet these requirements prior to contract execution. If your system is deficient, the contract will not be executed.

Caltrans reimburses, through your overhead rate, the costs attributable to establishing and maintaining a cost accounting system.

Staff time and other costs related to an audit performed of your contract are normally reimbursed through your overhead rate.

ACCOUNTING SYSTEM

Contractors (whether a prime or subcontractor) planning to contract with Caltrans must have an accounting system which meets the following objectives:

- The ability to record and report financial data in accordance with generally accepted accounting principles.
- A system of record keeping to ensure that costs billed to Caltrans are:
  - **a.** Supported by adequate documentation.
  - **b.** In compliance with the terms of the contract and applicable Federal and State regulations specified in the contract.
- A system of record keeping ideally includes the following:
  - **a. General ledger**
  - **b. Job cost ledger**
  - **c. Labor distributions**
  - **d. Time records**
  - **e. Subsidiary journals**
  - **f. Chart of accounts**
  - **g. Financial statements**
- The ability to accumulate and segregate reasonable, allocable (incurred solely for a project) and allowable (per terms of the contract) costs through the use of a cost accounting system. The following are some of the attributes which would ideally be found in such a system:
  - **a.** A chart of accounts which includes indirect and direct general ledger accounts. Indirect costs are not specifically identified to a project, for example, rent and/or utilities. Direct costs are specifically identified with a project, for example, drafting hours and/or design hours.
  - **b.** Segregation of costs by contract, category of cost and milestones (if applicable).
  - **c.** Proper recording of direct and indirect costs. For example, recording of labor costs should provide that non-project indirect hours be recorded on a time sheet and in the accounting records to an administration, vacation, sick leave or other indirect cost account/code. Direct project hours should be recorded on a time sheet and in the accounting records to a direct project cost account/code.

d. Consistent accounting treatment of costs in recording and reporting. For example, if travel expense is charged directly to a project, all travel expense incurred on any project should be considered a direct costs. As a result, project-related travel, whether reimbursable per the contract terms or not, should be included as a direct cost.

e. Ability to trace from invoices submitted to Caltrans to job cost records and original, approved source documents, for example, time sheets, vendor invoices, cancelled checks.

f. Ability to reconcile job cost records to the accounting records.

- Compliance with cost principles described in the Code of Federal Regulations 48, Federal Acquisition Regulations System (FAR), Chapter 1, Part 31. Information on how to obtain this regulation is described under "Audit Criteria" on the following page.
- Procedures to monitor and adjust projected overhead rates to actual rates.
- Controls to ensure that written approval is obtained prior to any changes to the contract.
- Procedures to retain accounting records and source documentation as required by the terms of the contract.
- A system of internal control which provides reasonable assurance that assets are protected; financial data, records and statements are reliable; and errors and irregularities are promptly discovered, reported and corrected. The elements of a system of internal control should include, but not be limited to, the following:

a. Separation of duties for proper protection of assets. Incompatible duties are those that place any person in a position to both perpetrate and conceal errors or irregularities in the normal course of business. For example, the person who writes checks should be different from the person who reconciles bank statements and the person who purchases goods should be different from the person who receives goods.

b. Limiting access to assets to only authorized personnel who require these assets in the performance of their assigned duties. For example, blank check stock should be locked in a safe when not in use.

c. Authorization and record keeping procedures which provide effective accounting control over assets, liabilities, revenues, and expenditures.

d. A system of practices to be followed in the performance of duties and functions. Such a system normally includes policies and procedures which establish the purpose and requirements of the accounting system. For example, timekeeping practices should ideally provide for the following:

- Time sheets be prepared, signed and dated by all employees.
- Time sheets be completed in non-erasable ink.
- Time sheet corrections be crossed out and initialed by the employee.
- Time sheets be signed by a supervisor as reviewed and retained on file as required by the contract.

e. Personnel with skills and training commensurate with their responsibilities.

f. A system of internal review. For example, bank reconciliations and travel expense claims should be reviewed, approved, and signed by a supervisor.

AUDITS

Contractors, whether a prime or subcontractor, performing under a negotiated contract with Caltrans are subject to the following audits.

- **Preaward Audits:** Prior to the award of a contract, Caltrans Audits and Investigations will conduct a preaward audit to determine if the contractor's accounting system is adequate to accumulate and segregate costs as detailed in the previous section and to determine if the proposed costs are reasonable. The audit alerts both the contractor and Caltrans management to problems relative to the contractor's cost proposal and cost accounting system. Due to time constraints in the award process, your cooperation in scheduling the preaward audit with short notice will expedite the execution of your contract.
- **Interim Audits:** Interim audits are performed on an as needed basis. During the preaward audit, if it is determined that the contractor's accounting system is new or minor deficiencies are noted, an interim audit is scheduled to determine that the system is functioning adequately to ensure that billed costs are supported and that any deficiencies were corrected. An interim audit may be requested by the contract administrator or by Caltrans management to address concerns during the course of the contract. Also, an audit manager may initiate an interim audit of a multi-year contract to ensure that costs reimbursed to date are allowable.
- **Post Audits:** Post audits of contracts are performed routinely after project completion. Post audits are performed to determine whether the costs claimed are allowable, allocable, reasonable, and in compliance with the Federal and State laws and regulations as well as the fiscal provisions stipulated in the contract. The examination includes reviews of applicable laws and regulations, the contract requirements and the contractor's internal control system. Audit tests of the contractor's accounting records and other auditing procedures considered necessary will also be performed. Applications of all audit procedures would also be governed by the individual contract under audit. Unsupported or unallowable costs are normally the result of weaknesses in the accounting system and will be reimbursed to Caltrans.

To provide contractors with a procedure for obtaining prompt and equitable resolution to a dispute arising from a post audit of a non-highway construction cost reimbursement contract, Caltrans has established an Audit Review Committee (ARC). Information explaining the ARC should be found in your contract and/or as an attachment to the post audit report.

AUDIT CRITERIA

For specific information regarding basic cost accounting systems and applicable State and Federal regulations, please see the following:

- **Code of Federal Regulations 48, Federal Acquisition Regulations System, Chapter 1, Part 31:** This regulation contains cost principles and procedures for the pricing of contracts/subcontracts and the determination, negotiation, or allowance of costs. Contact:

  Superintendent of Documents
  Government Printing Office
  Washington, DC 20402

  Washington, D.C. (202) 512-1800
  San Francisco (415) 512-2770
  Los Angeles (213) 239-9844

- **California State Administrative Manual:** A reference source for statewide policies, procedures, regulations and information. Contact:

  Office of State Publishing,
  Department of General Services.
  Call for order form: (916) 445-2295.

For review of the above references, contact your local library or the California State Library.

California State Library
Library and Courts Building
914 Capitol Mall, P.O. Box 942837
Sacramento, CA 94237-0001

Information: (916) 654-0261

For assistance in establishing an accounting system which will meet the objectives outlined in this brochure, you should contact an accountant and/or bookkeeper who is familiar with cost accounting systems.

Caltrans is an affirmative action employer. Equal opportunity is offered to all regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, age or sexual orientation. Contractors that contract with Caltrans are responsible for taking necessary and reasonable steps to achieve these same goals.

Exhibit 10-O Local Agency Proposer/Bidder-DBE (Consultant Contract) Information

Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information

This information shall be provided by the successful Proposer/Bidder with the award document.
.

☐**Preliminary Engr.** ☐ **Studies** ☐**Environmental Document** ☐**Prelim Design**

☐**Final Design Right of Way** ☐**Right of Way Engineering** ☐**Right of Way Utility Relocation**

☐**Construction** ☐**Constructiion Engineering** ☐**Construction Management**

AGENCY:_____ LOCATION:_____
PROJECT DESCRIPTION: _____
CONTRACT NUMBER:_____
FEDERAL-AID PROJECT NUMBER: _____
TOTAL CONTRACT AMOUNT: $_____
FEDERAL SHARE (For local agency to complete) : $_____
PROPOSAL/BID DATE: _____
PROPOSER'S/BIDDER'S NAME:_____

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED [2]	DBE Cert. No. AND EXPIRATION DATE	NAME OF DBEs [1] (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Copies of the DBE quotes are helpful. Names of the First-Tier DBE Subcontractors and their respective item(s) of work listed above shall be consistent with the names and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions.

1. Enter DBE prime and subcontractors certification number. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own DBE forces.

2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE.

Total Claimed Participation $_____ _____%

_____
Signature of Proposer/Bidder

_____
Date (Area Code) Tel. No.

_____
Person to Contact (Please Type or Print)

CT Bidder - DBE Information (Rev 4/28/06)

Distribution: (1) Copy - Fax immediately to the Caltrans District Local Assistance Engineer (DLAE) upon award.
(2) Copy - Include in award package to Caltrans District Local Assistance
(3) Original - Local Agency files

INSTRUCTIONS - LOCAL AGENCY PROPOSER/BIDDER-DBE (CONSULTANT CONTRACTS) INFORMATION FORM (Revised 10/05)

The form requires specific information regarding the consultant contract: Agency, Location, Project Descriptions, Contract Number (assigned by local agency), Federal Aid Project Number (assigned by Caltrans Local Assistance), Total Dollar Contract Amount, Proposal/Bid Date, and Proposer's/Bidder's Name.

The form has a column for the Contract Item Number (or Item No's) and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. The DBE should provide a certification number to the Contractor. Notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (include DBE address and phone number).

There is a column for the total DBE dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your proposal/bid pursuant to the Contract Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.)

Exhibit 10-O must be signed and dated by the person proposing/bidding. Also list a phone number in the space provided and print the name of the person to contact.

Exhibit 10-P Nonlobbying Certification For Federal-Aid Contracts

NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies by signing and submitting this bid or proposal to the best of his or her knowledge and belief that:

(l) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

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Exhibit 10-Q Disclosure of Lobbying Activities

DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action:

☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:

☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:

☐ a. initial
b. material change

For Material Change Only:
year_____ quarter_____
date of last report _____

4. Name and Address of Reporting Entity

☐ Prime ☐ Subawardee
Tier _____, if known

Congressional District, if known

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, if known

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable_____

8. Federal Action Number, if known:

9. Award Amount, if known:

10. a. Name and Address of Lobby Entity
(If individual, last name, first name, MI)

b. Individuals Performing Services (including address if different from No. 10a)
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

11. Amount of Payment (check all that apply)

$ _____ ☐ actual ☐ planned

12. Form of Payment (check all that apply):

☐ a. cash
☐ b. in-kind; specify: nature_____
Value _____

13. Type of Payment (check all that apply)

☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e deferred
☐ f. other, specify _____

14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) if necessary)

15. Continuation Sheet(s) attached: Yes ☐ **No** ☐

16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Authorized for Local Reproduction

Standard Form - LLL

Federal Use Only:

Standard Form LLL Rev. 04-28-06

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4. checks "Subawardee" then enter the full name, address, city, State and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in Item 4. to influenced the covered federal action.
    (b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (Ml).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

SF-LLL-Instructions Rev. 06-04-90«ENDIF»

Exhibit 10-R A &E Sample Contract Language

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

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A&E SAMPLE CONTRACT LANGUAGE

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ARTICLE I INTRODUCTION

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

The name of the CONSULTANT is as follows:

_____

Incorporated in the State of (*NAME OF STATE*)
The Project Manager for the "CONSULTANT" will be *(NAME)*
The name of the "LOCAL AGENCY" is as follows:

_____

The Contract Manager for the LOCAL AGENCY will be (NAME)

B. The work to be performed under this contract is described in Article II entitled Statement of Work and the approved CONSULTANT's Cost Proposal dated *(DATE)*. The approved CONSULTANT's Cost Proposal is attached hereto (Attachment I) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.

C. The CONSULTANT agrees to indemnify and hold harmless the LOCAL AGENCY, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of the CONSULTANT. The CONSULTANT will reimburse the LOCAL AGENCY for any expenditure, including reasonable attorney fees, incurred by the LOCAL AGENCY in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of the CONSULTANT.

D. The CONSULTANT and the agents and employees of CONSULTANT, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the LOCAL AGENCY.

E. The LOCAL AGENCY may terminate this agreement with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, the LOCAL AGENCY may proceed with the work in any manner deemed proper by the LOCAL AGENCY. If the LOCAL AGENCY terminates this agreement with the CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due the CONSULTANT under this agreement prior to termination, unless the cost of completion to the LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due the CONSULTANT under this agreement and the balance, if any, shall be paid the CONSULTANT upon demand.

F. Without the written consent of the LOCAL AGENCY, this agreement is not assignable by CONSULTANT either in whole or in part.

G. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

H. The consideration to be paid CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II STATEMENT OF WORK

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

A Consultant Services

Detail based on the services to be furnished should be provided by the CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in the CONSULTANT Agreement should be included. Describe acceptance criteria, and if the responsible CONSULTANT/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the contract including registration number. Environmental documents are not considered complete until a Caltrans District SEP signs the Categorical Exclusion (CE), a Caltrans Deputy District Director signs the Finding of No Significant Impact (FONSI), or the Caltrans District Director signs the Record of Decision (ROD) (see Chapter 6, "*Environmental Procedures,*" in the LAPM and the *Standard Environmental Reference* [SER]).

B Right of Way

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

C Subsurface Investigations

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

D Local Agency Obligations

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

E Conferences, Visits to Site, Inspection of Work

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

F Checking Shop Drawings

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

G Documentation

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

H Number of Copies

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

ARTICLE III CONSULTANT'S REPORTS AND/OR MEETINGS

(Choose either Option 1 or Option 2.)

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

A. The CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Manager to determine, if the CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

B. The CONSULTANT's Project Manager shall meet with the LOCAL AGENCY's Contract Manager, as needed, to discuss progress on the contract.

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

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

B. The CONSULTANT's Project Manager shall meet with the LOCAL AGENCY's Contract Manager or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE IV PERFORMANCE PERIOD

(A time must be set for beginning and ending the work under the agreement. Usually, the beginning date is a given number of days after a letter of notification has been sent to the CONSULTANT. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the agreement. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by the CONSULTANT, they should be identified and incorporated into the contract.

(Choose either Option 1 or Option 2.)

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

A. This contract shall go into effect on (DATE), contingent upon approval by the LOCAL AGENCY, and the CONSULTANT shall commence work after notification to proceed by the LOCAL AGENCY'S Contract Manager. The contract shall end on (DATE), unless extended by contract amendment.

B. The CONSULTANT is advised that any recommendation for contract award is not binding on the LOCAL AGENCY until the contract is fully executed and approved by the LOCAL AGENCY.

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

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

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

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

(Option 1 - Use paragraphs A through G below for standard contracts.)

A. The method of payment for this contract will be based on actual cost-plus-a-fixed fee. The LOCAL AGENCY will reimburse the CONSULTANT for actual costs (including labor costs, employee benefits,

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

B. In addition to the allowable incurred costs, the LOCAL AGENCY will pay the CONSULTANT a fixed fee of $(AMOUNT). The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.

C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

D. When milestone cost estimates are included in the approved Cost Proposal, the CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Manager before exceeding such cost estimate.

E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of the CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, the LOCAL AGENCY shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions of Article VI Termination.

F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.

G. The CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the LOCAL AGENCY's Contract Manager of itemized invoices in triplicate. Invoices shall be submitted no later than 45-calendar days after the performance of work for which the CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due the LOCAL AGENCY including any equipment purchased under the provisions of Article XVI Equipment Purchase of this contract. The final invoice should be submitted within 60-calendar days after completion of the CONSULTANT's work. Invoices shall be mailed to the LOCAL AGENCY's Contract Manager at the following address:

(*LOCAL AGENCY/NAME OF CONTRACT MANAGER*)
(*ADDRESS*)

H. The total amount payable by the LOCAL AGENCY including the fixed fee shall not exceed $(Amount).

I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by the LOCAL AGENCY's Contract Manager.

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

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

(*Option 2- When specified rates of payment are to be made for certain items, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and reletter the remaining paragraphs. Adjust as necessary for items specific to your project*.)

A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to the CONSULTANT for the item as described, including but not limited to, any repairs, maintenance or insurance, and no further compensation will be allowed therefore.

B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be $(Amount) per (Insert time period, usually day). This rate shall be for a fully equipped vehicle, with radio and flashing yellow light (if needed), as specified in Article II of this agreement.

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

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

D. In addition to the allowable incurred costs and specified rates of payment, the LOCAL AGENCY will pay the CONSULTANT a fixed fee of $(Amount). The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.

E. All subcontracts in excess of $25,000 shall contain the above provisions.

(Option 3 - Use paragraphs A through L below for on-call contracts.)

A. Specific projects will be assigned to the CONSULTANT through issuance of Task Orders (Attachment II).

B. After a project to be performed under this contract is identified by the LOCAL AGENCY, the LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to the CONSULTANT for review. The CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both the LOCAL AGENCY and the CONSULTANT.

C. The CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANTs Cost Proposal (Attachment Number). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee.

D. In addition, the CONSULTANT will be reimbursed for incurred direct costs other than salary costs, and other costs that are identified in the executed Task Order.

E. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

F. When milestone cost estimates are included in the approved Cost Proposal, the CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Manager before exceeding such estimate.

G. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

H. The CONSULTANT shall not commence performance of work or services until this contract has been approved by the LOCAL AGENCY, and notification to proceed has been issued by the LOCAL AGENCY'S Contract Manager. No payment will be made prior to approval or for any work performed prior to approval of this contract.

I. A Task Order is of no force or effect until returned to the LOCAL AGENCY and signed by an authorized representative of the LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by the LOCAL AGENCY.

J. The CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the LOCAL AGENCY'S Contract Manager of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45-calendar days after the performance of work for which the CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number, project title and Task Order number. Credits due the LOCAL AGENCY that include any equipment purchased under the provisions of Article XVI Equipment Purchase of this contract, must be reimbursed by the Consultant prior to the expiration or termination of this contract. Invoices shall be mailed to the LOCAL AGENCY's Contract Manager at the following address:

(NAME OF LOCAL AGENCY/ NAME OF CONTRACT MANAGER)
(*ADDRESS*)

K. The total amount payable by the LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.

L. The total amount payable by the LOCAL AGENCY for all Task Orders resulting from this contract, shall not exceed $ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.

M. All subcontracts in excess of $25,000 shall contain the above provisions.

(Option 4 - Use paragraphs A through E below for lump sum contracts.)

A. The method of payment for this contract will be based on lump sum. The total lump sum price paid the consultant will include compensation for all work and deliverables, including travel and equipment described in Article II Statement of Work of this contract. No additional compensation will be paid to the CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between the Consultant and the LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by contract amendment and approved by the LOCAL AGENCY.

B. Progress payments may be made monthly in arrears based on the percentage of work completed by the CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, the LOCAL AGENCY shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions of Article VI Termination.

C. The CONSULTANT shall not commence performance of work or services until this contract has been approved by the LOCAL AGENCY and notification to proceed has been issued by the LOCAL AGENCY'S Contract Manager. No payment will be made prior to approval of any work, or for any work performed prior to approval of this contract.

D. The CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by the LOCAL AGENCY'S Contract Manager of itemized invoices in triplicate. Invoices shall be submitted no later than 45-calendar days after the performance of work for which the CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due the LOCAL AGENCY that include any equipment purchased under the provisions of Article XVI Equipment Purchase of this contract. The final invoice should be submitted within 60-calendar days after completion of the CONSULTANT's work. Invoices shall be mailed to the LOCAL AGENCY's Contract Manager at the following address:

(*LOCAL AGENCY/NAME OF CONTRACT MANAGER*)
(*ADDRESS*)

E. The total amount payable by the LOCAL AGENCY shall not exceed $(Amount).

F. All subcontracts in excess of $25,000 shall contain the above provisions.

ARTICLE VI TERMINATION

The LOCAL AGENCY reserves the right to terminate this contract upon thirty (30)-calendar days written notice to the CONSULTANT with the reasons for termination stated in the notice.

ARTICLE VII FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the agreement were executed after that determination was made.

B. This agreement is valid and enforceable only, if sufficient funds are made available to the LOCAL AGENCY for the purpose of this contract. In addition, this agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this contract in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

D. The LOCAL AGENCY has the option to void the contract under the 30-day cancellation clause, or by mutual agreement to amend the contract to reflect any reduction of funds.

ARTICLE VIII CHANGE IN TERMS

A. This contract may be amended or modified only by mutual written agreement of the parties.

B. The CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the LOCAL AGENCY's Contract Manager.

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

ARTICLE IX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

(Use this Article when federal participating funds are used;incorporate Exhibits 10-I and 10-J as required.)

ARTICLE X COST PRINCIPLES

A. The CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

B. The CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to the LOCAL AGENCY.

ARTICLE XI CONTINGENT FEE

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

ARTICLE XII RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; the CONSULTANT, subcontractors, and the LOCAL AGENCY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, the State Auditor, LOCAL AGENCY, FHWA, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Subcontracts in excess of $25,000shall contain this provision.

ARTICLE XIII DISPUTES

(Choose either Option 1 or Option 2.)

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

A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the LOCAL AGENCY's Contract Manager and (Insert Department Head or Official), who may consider written or verbal information submitted by the CONSULTANT.

B. Not later than 30 days after completion of all work under the contract, the CONSULTANT may request review by the LOCAL AGENCY GOVERNING BOARD of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

C. Neither the pendency of a dispute, nor its consideration by the committee will excuse the CONSULTANT from full and timely performance in accordance with the terms of this contract.

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

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

ARTICLE XIV AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the LOCAL AGENCY'S CHIEF FINANCIAL OFFICER.

B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the LOCAL AGENCY'S CHIEF FINANCIAL OFFICER of unresolved audit issues. The request for review will be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by the LOCAL AGENCY will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this contract.

ARTICLE XV SUBCONTRACTING

A. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the LOCAL AGENCY'S Contract Manager, except that, which is expressly identified in the approved Cost Proposal.

B. Any subcontract in excess of $25,000 entered into as a result of this contract, shall contain all the provisions stipulated in this contract to be applicable to subcontractors.

C. Any substitution of subconcontractors must be approved in writing by the LOCAL AGENCY's Contract Manager.

ARTICLE XVI EQUIPMENT PURCHASE

A. Prior authorization in writing, by the LOCAL AGENCY's Contract Manager shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding $5,000 for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service or consulting work not covered in the CONSULTANT's Cost Proposal and exceeding $5,000 prior authorization by the LOCAL AGENCY's Contract Manager; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased as a result of this contract is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of $5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the LOCAL AGENCY shall receive a proper refund or credit at the

conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit the LOCAL AGENCY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the LOCAL AGENCY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the LOCAL AGENCY."

D. All subcontracts in excess $25,000 shall contain the above provisions.

ARTICLE XVII INSPECTION OF WORK

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

ARTICLE XVIII SAFETY

(Use on all contracts regardless of funding source)

A. The CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. The CONSULTANT shall comply with safety instructions issued by the LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Section 591 of the Vehicle Code, the LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. The CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

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

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

ARTICLE XIX INSURANCE

(Choose either Option 1 or Option 2.)

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

A. Prior to commencement of the work described herein, the CONSULTANT shall furnish the LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for the CONSULTANT with a combined single limit (CSL) of not less than one million dollars ($1,000,000) per occurrence.

B. The Certificate of Insurance will provide:

1. That the insurer will not cancel the insured's coverage without 30-days prior written notice to the LOCAL AGENCY.
2. That the LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this contract are concerned.
3. That the LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.

C. The CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, the CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the LOCAL AGENCY. In the event the CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, the LOCAL AGENCY may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

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

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

ARTICLE XX OWNERSHIP OF DATA

A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in the LOCAL AGENCY; and no further agreement will be necessary to transfer ownership to the LOCAL AGENCY. The CONSULTANT shall furnish the LOCAL AGENCY all necessary copies of data needed to complete the review and approval process.

B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.

C. The CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the LOCAL AGENCY of the machine-readable information and data provided by the CONSULTANT under this agreement; further, the CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by the LOCAL AGENCY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by the CONSULTANT.

D. Applicable patent rights provisions described in 41 CFR 1-91, regarding rights to inventions shall be included in the Agreements as appropriate.

E. The CONSULTANT is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the LOCAL AGENCY of the machine readable information and data provided by the CONSULTANT under this agreement; further, the CONSULTANT is not liable for claims, liabilities or losses arising out of, or connected with, any use by the LOCAL AGENCY of the project documentation on other projects; for additions to this project, or for the completion of this project by others, except only such use as may be authorized, in writing, by the CONSULTANT.

F. The LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

G. Any subcontract in excess of $25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXI CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR

A. If claims are filed by the LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from the CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with the LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. CONSULTANT's personnel that the LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the CONSULTANT's personnel services under this agreement.

C. Services of the CONSULTANT's personnel in connection with the LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this agreement in order to finally resolve the claims.

D. Any subcontract in excess of $25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXII CONFIDENTIALITY OF DATA

A. All financial, statistical, personal, technical, or other data and information relative to the LOCAL AGENCY's operations, which are designated confidential by the LOCAL AGENCY and made available to the CONSULTANT in order to carry out this contract, shall be protected by the CONSULTANT from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by the LOCAL AGENCY relating to the contract, shall not authorize the CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

C. The CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the LOCAL AGENCY's actions on the same, except to the LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

D. The CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the LOCAL AGENCY, and receipt of the LOCAL AGENCY'S written permission.

E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

(For PS&E contracts add paragraph F, below, to paragraphs A through E, above.)

F. All information related to the construction estimate is confidential, and shall not be disclosed by the CONSULTANT to any entity other than the LOCAL AGENCY.

ARTICLE XXIII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

ARTICLE XXIV EVALUATION OF CONSULTANT

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

ARTICLE XXV STATEMENT OF COMPLIANCE

The CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

ARTICLE XXVI DEBARMENT AND SUSPENSION CERTIFICATION

A. The CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the LOCAL AGENCY.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

ARTICLE XXVII STATE PREVAILING WAGE RATES

(Choose either Option 1 or Option 2.)

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

A. The CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 177, and all federal, state, and local laws and ordinances applicable to the work.

B. Any subcontract entered into as a result of this contract if for more than $25,000 for public works construction or more than $15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

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

A. The State of California's General Prevailing Wage Rates are not applicable to this contract.
Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

ARTICLE XXVIII CONFLICT OF INTEREST

A. The CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this contract, or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing LOCAL AGENCY construction project, which will follow.

B. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

C. Any subcontract in excess of $25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

(Choose either Option 1 or Option 2 if appropriate.)

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

D. The CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

E. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

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

D. The CONSULTANT hereby certifies that neither the CONSULTANT, its employees, nor any firm affiliated with the CONSULTANT providing services on this project prepared the Plans, Specifications, and Estimates for any construction project included within this contract.
An affiliated firm is one, which is subject to the control of the same persons through joint- ownership, or otherwise.

E. The CONSULTANT further certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT, will bid on any construction subcontracts included within the construction contract. Additionally, CONSULTANT certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract.

F. Except for subcontractors whose services are limited to materials testing, no subcontractor who is providing service on this contract shall have provided services on the design of any project included within this contract.

ARTICLE XXIX REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

ARTICLE XXX PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

(Include this article in all contracts where federal funding will exceed $100,000. If less than $100,000 in federal funds will be expended on the contract; delete this article and re-number the notification article which follows.)

A. The CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONSULTANT shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed $100,000, and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XXXI NOTIFICATION

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

CONSULTANT:

_____*(CONSULTANT)*_____
_____*(NAME)*_____, Project Manager
_____*(ADDRESS)*_____
_____

LOCAL AGENCY:

___(*LOCAL AGENCY)*_____
_____*(NAME)*_____, Contract Manager
_____*(ADDRESS)*_____
_____

Retention

ARTICLE XXXII AGREEMENT

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

ARTICLE XXXIII SIGNATURES

(Name of CONSULTANT)	(Name of LOCAL AGENCY)
__(Signature)_____	__(Signature)_____
(Name of Signer)	(Name of Signer)

DATE:_____

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Exhibit 10-S Consultant Performance Evaluation

(Name of Agency)

Consultant Performance Evaluation

Section 1 The purpose of this form is to provide historical data to Agency staff when selecting consultants File No. _____

1. PROJECT DATA	2. CONSULTANT DATA
1a. Project (include title, location, and Activity/CIP No.)	2a. Consultant Name and Address
1b. Brief Description of Project (design, study, etc.)	2b. Consultant's Manager
1c. Budget Cost for Project: $_____	2c. Phone: (____)_____

3. AGENCY DEPARTMENT/SECTION RESPONSIBLE

3a. Department (include section and division)	3b. Agency Project Manager (name & phone)

4. CONTRACT DATA (Engineering Services)

4a. Contact No.: _____ Termination date: _____ Base Fee: $_____

Agreement date: _____ Date terminated: _____ Contingency: $_____

4b. Amendments $_____ / #_____ $_____ / #_____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4c. Changes Orders $_____ / #_____ $_____ / #_____
(Total Value) (Initiated by Agency) (Total Value) (initiated by Agency)

4d. Total Fee per Agreement (4a. + 4b. + 4c.) $_____ Total Fee Paid $_____
(Do not include Contingency Listed in 4a.)

4e. Type of Services (Design, study,etc.)

4f. Historical Record of Key Submittal Dates (enter date or n/a if not applicable)

	Preliminary	30%	70%	90%	100%	Final
Per Agreement						
Delivery Date						
Acceptance Date						

4g. Notice To Proceed _____ (date)

4h. Number of Days _____ (number)

4i. Actual Number of Days _____ (number)

4j. Reasons for Change Orders: (Indicate total for each reason)

Errors/Omissions	$	% of Base Fee		%
Unforeseen Conditions	$	% of Base Fee		%
Changed Scope	$	% of Base Fee		%
Changed Quantities	$	% of Base Fee		%
Program Task Options	$	% of Base Fee		%

5.OVERALL RATING (Complete Section II on reverse, include comments as appropriate.)

		Outstanding	Above Average	Average	Below Average	Poor	N/A
5a.	Plans/Specifications accuracy						
5b.	Consistency with budget						
5c.	Responsiveness to County Staff						
5d.	Overall Rating						

6. AUTHORIZING SIGNATURES

6a. Agency Design Team Leader _____ Date: _____

6b. Agency Project Manager _____ Date: _____

6c. Agency Public Works Manager _____ Date: _____

6d. Consultant Representative _____ Date: _____

SEE REVERSE SIDE

Section II							**Specific Ratings**						
PLANS/SPECIFICATIONS ACCURACY	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A	Responsiveness To Staff	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
Plans Specifications clear and concise							Timely Responses						
Plans/Specs Coordination							Attitude toward Client and review bodies						
Plans/Specs properly formatted							Follows directions and Chain of responsibility						
Code Requirements covered							Work product delivered on time						
Adhered to Agency Standard Drawings/Specs							Timeliness in notifying Agency of major problems						
Drawings reflect existing conditions							Resolution of field Problems						
As-Built Drawings							Consistency with budget	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
Quality Design							Reasonable Agreement negotiation						
Change Orders due to design deficiencies are minimized							Adherence to fee schedule						
							Adherence to project Budget						

Section III **EXPLANATIONS AND SUPPLEMENTAL INFORMATION**
(Attach additional documentation as needed)

Item _____: _____
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Item _____: _____
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Item _____: _____
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Item _____: _____
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Item _____: _____
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Item _____: _____
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***Indicates supporting documentation attached.**