Local Programs Procedures

LPP 13-01 **Manual Update**
Subject: **LAPM Chapter 10 *Consultant Selection* & Other Technical Changes**

Reference: *Local Assistance Procedures Manual* (LAPM)
Chapter 10 *Consultant Selection*
Chapter 3 *Project Authorization*
Chapter 5 *Accounting/invoices*
Chapter 15 *Advertise and Award project*
Chapter 20 *Deficiencies and Sanctions*
Local Assistance Program Guidelines (LAPG)
Chapter 23 *Local Agency State Transportation Improvement Program Projects*

Effective Date: May 8, 2013 Approved: **Original Signed By**
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WHAT IS AN LPP

LPPs are Local Programs Procedures. These documents are used to deploy policy and procedure updates to the Local Assistance Procedures Manual and Local Assistance Program Guidelines. They are numbered according to calendar year and order in which released.

PURPOSE

The purpose of this LPP is to incorporate Office Bulletin DLA-OB 12-03R *LAPM Chapter 10 Consultant Selection* (OB 12-03R) and other technical changes into the LAPM.

BACKGROUND

On November 30, 2012, OB 12-03R replaced LAPM Chapter 10 in its entirety. It replaced the previous pre-award audit process with a new risk-based Architectural and Engineering consultant audit process and incorporated several other clarifications and technical changes. Since then, extensive stakeholder suggestions have been received. Many of those suggestions have been incorporated into this LPP as well.

POLICY & PROCEDURE

In addition to incorporating OB 12-03R into the LAPM, this LPP:

- Makes further refinements to the audit process and associated LAPM Exhibits (10-A *A&E Consultant Audit Request Letter and Checklist*, 10-B *Suggested Evaluation Sheet*, 10-C *Consultant Contract Reviewers Checklist*, 10-D *Consultant Contract Outline*, 10-H *Sample Cost Proposal*, 10-K *Consultant Certification of Contract Costs and Financial Management System*, 10-L *Local Agency Certification of Cost Analysis* and 10-R *A&E Sample Contract Language*);
- Addresses recent changes to the Disadvantaged Business Enterprise (DBE) Program and associated LAPM Exhibits (10-I *Notice to Proposers DBE Information*, 10-J *Standard Contract Provisions for Subcontractor/DBE Participation*, 10-O1 *Consultant Proposal DBE Commitment*, and 10-O2 *Consultant Contract DBE Information*);
- Clarifies State prevailing wages, methods of payment, on-call contract requirements, consultants in management roles, conflicts of interest, records and sole source from LAPM Chapter 10;
- Deletes the LAPM Chapter 10 sections on "Value Engineering Analysis" and "Closeout Projects" which are covered in other LAPM chapters;
- Deletes Exhibit 10-G (Formerly *Certification of Local Agency*) and makes minor changes to Exhibits 10-E *Sample Payment Clauses*, 10-F *Certification of Consultant, Commissions & Fees*, and Exhibit 10-V *Non-Discrimination Clause;*
- Makes technical changes to LAPM Chapters 3, 5, 15 and 20, and LAPG Exhibit 23-N *Funding Allocation Checklist* as a result of audit process, DBE program or other changes.

Office Bulletin DLA-OB 12-03R expires upon issuance of this LPP.

ACCESSIBILITY

- These new procedures are incorporated in the LAPM and LAPG at the Division of Local Assistance (DLA) website at: http://www.dot.ca.gov/hq/LocalPrograms/public.htm.
- Sidebars are used to indicate where revisions were made to affected pages. However, when a chapter is released in its entirety, sidebars are not indicated. The revised pages in this LPP are to replace the pages affected in the hard copy of the LAPM and/or LAPG.
- To receive an electronic notification when new information is posted on the DLA web site, please subscribe to the DLA list server at: http://www.dot.ca.gov/hq/LocalPrograms/sub.htm.
- Comments and suggestions for improvement to our process or procedures are welcome. They may be submitted to David Saia at David.Saia@dot.ca.gov.

SUMMARY OF CHANGES

LAPM Item	Change
Chapter 10	Replaced Chapter 10 in its entirety: • Clarifies State prevailing wages, methods of payment, on-call contract requirements, consultants in management roles, conflicts of interest, records and sole source contracts in various sections. • Significant changes made to the Disadvantaged Business Enterprise (DBE) Program in Section 10.2. • Deletes "Value Engineering Analysis" formerly in Section 10.2 since it is covered in LAPM Chapter 12 *PS&E*. • Significant changes made to Section 10.3 Audit and Review Process. • Deletes "Closeout Projects" formerly in Section 10.8 which is covered in other LAPM chapters. • Significant changes made to Exhibits 10-A, 10-B, 10-C, 10-D, 10-H, 10-I, 10-J, 10-K, 10-L, 10-O1, 10-O2 and 10-R); • Makes minor changes to Exhibits 10-E, 10-F and 10-V. • Deletes Exhibit 10-G (formerly *Certification of Local Agency*).
Chapter 3 Exhibits 3-A, 3-B, 3-C, 3-D and 3-Q	• Removed "relocation" from Invoice Submittal section on page 2 of Exhibit 3-A. Exhibits 3-A, 3-B, 3-C, 3-D and 3-Q: • Changed "EA" to "Project ID" on p. 1. • Reformatted all Exhibit names. • Corrected the names of Exhibits 10-O1 and 10-O2 under DBE and changed 15 days to 30 days. • Made minor format changes to make all five Exhibits look similar.
Chapter 5	• Reformatted all Exhibit names on p. 5-5. • Definition 5 under Phases of Work on p. 5-6 was updated from "pre-award" to "Consultant" Audit costs. • The last paragraph in section 5.8 on p. 5-18 pertaining to financial audit of State funded projects over $500,000 was deleted. • The first sentence in section 5.10 on p. 5-18 pertaining to financial audit of State funded projects over $500,000 was deleted.
Exhibit 15-C	• In checklist on p. 23, replaced DBE "Annual Submittal Form" with "contract goal".
Exhibit 15-I	• On p. 15-35 replaced Exhibit "15-G1" with "15-G".
Exhibit 15-L	• Added "Estimated construction completion date" to checklist.
Chapter 20	• The third bullet on page 20-4 was modified from "pre-award audit".

LAPG Item	Change
Chapter 23 Exhibit 23-N	• Replaced “EA” with “Project ID” on page 23-1 • Removed “Consultant Contract Preaward Audit Requirements” section on page 23-4 and repaginated remaining pages.

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

ARCHITECTURAL AND ENGINEERING CONSULTANTS

The provisions of the Brooks Act (40 USC, Section 1104) require local agencies to award federally funded engineering and design related contracts on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172), at a fair and reasonable price (48 CFR 31.201-3). Both federal and California state law (Government Code 4525-4529 et al) requires selection of A&E contract services on the basis of demonstrated competence and professional qualifications.

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

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

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

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

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

NON A&E CONSULTANTS

Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value) or other critical selection criteria. The procedures outlined in this chapter can be modified for selecting non-A&E consultants by adding a cost item to the contract proposal. The Brooks Act and the audit and review process described in Section 10.3 of this chapter are optional for non A&E Consultant contracts.

SELECTING THE PROJECT

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

SUBCONTRACTED SERVICES

The consultant is responsible for performing the work required under the contract in a manner acceptable to the local agency. The consultant's organization and all associated consultants and subconsultants must be identified at the time of the proposal. If the consultant wishes to use a subconsultant not specified in the proposal, prior written approval must be obtained from the local agency.

If a subcontract for work or services to be performed exceeds $25,000, the subcontract must contain all required provisions of the prime contract.

ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

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

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

FEDERAL REGULATION GOVERNING CONFLICT OF INTEREST (23 CFR 1.33) REQUIRES THAT:

- No contracting agency employee who participates in the procurement, management, or administration of federal or state funded contracts or subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;
- No person or entity performing services for a contracting agency in connection with a federal or state funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a FAHP funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project.

CONSULTANTS PERFORMING WORK ON MULTIPLE PHASES OF FEDERAL-AID PROJECTS

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

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

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform design phase services may not be the most qualified firm to provide construction phase services. Similarly, the qualifications and capacity of a firm may change over time. *As such, it may not be appropriate to contract with a consulting firm to provide construction phase services at the outset of a design phase, knowing that these services may not be needed for an extended period of time until the preconstruction phase of the project is complete and construction funding authorized*.

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

All consultants acting in a management role must complete Exhibit 10-U *Consultant in Management Position Conflict of Interest and Confidentiality Statement* and retain it in the local agency files.

AUTHORIZATION TO PROCEED

The Federal Highway Administration (FHWA) must give the local agency an "Authorization to Proceed" with the work prior to the performance of any work for which federal reimbursement is to be requested, (see 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 local agency project files for future audit purposes.

10.2 IDENTIFYING & DEFINING A NEED FOR CONSULTANTS

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

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

APPOINTING THE CONTRACT ADMINISTRATOR

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

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

- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;
- Arranges for preparation in advance of an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant's cost proposal;
- Serves as the local agency's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- Reviews billings and determines whether costs billed are reasonable in relation to the work performed during billing period;
- Approves the consultant's progress payments and ensures that billings are in accordance with the terms and conditions of the contract;
- Identifies other local agency staff for the consultant to contact, if needed.

DETERMINING THE PROJECT SCHEDULE

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

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

SEGMENTING CONSULTANT WORK

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see Chapter 6, "Environmental Procedures," of the LAPM and Chapters 31 and 32 of the *Standard Environmental Reference* [SER]). Final detailed design shall not begin until environmental clearance has been received if federal reimbursement is desired.

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

FIGURE 10-1 SEGMENTING CONSULTANT WORK

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

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.

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.

NON-DISCRIMINATION CLAUSE

The Non-Discrimination Clause (Exhibit 10-V) must be included in each consultant contract. The consultant must include the nondiscrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

When administering federal-aid projects, federal regulations (49 CFR, Part 26) require a local agency to comply with the DBE program, and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Such steps include the setting of goals to ensure DBE firms are considered by the proposing consultants and, when feasible, organizing the project schedule and task requirements to encourage participation in the contract by DBE firms. Local agencies should be fully aware of all of the subcontracting opportunities in their consultant contracts. For detailed information and requirement on DBE Program, see Chapter 9 *Civil Rights and Disadvantaged Business Enterprises* of the LAPM.

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

A DBE goal must be established by the local agency for each contract if there are subcontracting opportunities and available DBE firms. The consultant must meet the goal by using DBEs, or if not able to meet the DBE goal, document that a good faith effort was made to meet the contract goal. Good faith efforts must be documented by the consultant and approved by the local agency (see Exhibit 15-H *DBE Information-Good Faith Efforts* of the LAPM). If the consultant's documented good faith efforts are found to be inadequate by the local agency, the consultant must be offered an opportunity for reconsideration.

If a DBE subconsultant is unable to perform its subcontracted services and the goal is not otherwise met, the consultant must make a good faith effort to replace it with another DBE subconsultant to the extent needed to meet the DBE goal. For more detailed information see Exhibit 10-I *Notice to Proposers DBE Information*. For sample contract clauses with and without specified DBE goals see Exhibit 10-J *Standard Contract Provisions for Subconsultant/DBE Participation*.

Exhibit 10-I *Notice to Proposers DBE Information* must be included in the RFQ or RFP, if the proposed contract will include federal-aid funds. Exhibit 10-J *Standard Contract Provisions for Subconsultant/DBE Participation* must be included in the award package in all consultant contracts with federal-aid funds.

REPORTING DBE COMMITMENTS AND DBE INFORMATION

FOR CONTRACTS WITH DBE GOALS

If the local agency has set a DBE goal, Exhibit 10-O1 *Consultant Proposal DBE Commitment* must be included in the proposal package provided to the local agency by each (prime consultant) proposer. The purpose of Exhibit 10-O1 is to demonstrate the proposer's commitment to meet the DBE goal set by the local agency.

Exhibit 10-O2 *Consultant Contract DBE Information* of the LAPM must be completed and included in the award package. The purpose of this form is to capture DBE participation in accordance with 49 CFR, Part 26. This form must include the names, addresses, and phone numbers of DBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a subcontracted item of work is not to be performed or furnished by the DBE firm, a description of the exact portion of work to be performed or furnished by that DBE must be included in the DBE commitment, including the planned location of that work. A proposer certified as a DBE firm must describe the work it has committed to be performed with its own forces, as well as any other work that it has committed to be performed by the DBE subconsultant, suppliers, and trucking companies.

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

FOR CONTRACTS WITH NO DBE GOALS

For contracts with 0% no DBE contract goal, Exhibit 10-O1 is not necessary and only Exhibit 10-O2 *Consultant Contract DBE Information* must be included in the award package and provided by the winning proposer.

REPORTING DBE FINAL UTILIZATION (CONTRACTS WITH OR WITHOUT GOALS)

Upon completion of the contract a summary of the DBE final utilization must be prepared, certified correct, and submitted on Exhibit 17-F *Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultant* or equivalent to the local agency showing total dollars paid to each subconsultant and supplier. Exhibit 17-F is reviewed by the local agency and certified as complete and accurate.

The local agency must send the original, plus one copy of the completed Exhibit 17-F with the final invoice to the DLAE within thirty (30) days after completion of the contract.

ESTIMATED COST OF CONSULTANT WORK

An independent estimate for cost or price analysis is needed for all consultant contracts (49 CFR 18.36(f)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency's negotiating team has a 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 (such as preliminary design, environmental or final design) must be clearly identified in the solicitation of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible.

The cost estimate must include a detail cost breakdown of:

- Direct labor costs;
- Indirect costs;
- General and administrative costs;
- Other direct costs;
- Subconsultant 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

Type of contract to be used are described as follows:

- Project-specific contract is between the local agency and consultant for the performance of services and a defined scope of work related to a specific project or projects.
- Multi-purpose contract is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses.
- On-call contract is a contract for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity are needed for a number of different projects (such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, field surveying, etc.). Many agencies use these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172).

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

  - Must define a general scope of work, complexity, and professional nature of services.
  - Specify a “task order” procedure the local agency uses to procure project specific work under the contract.
  - If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services:
    - Identify the number of consultants that may be selected or contracts that may be awarded.

- Specify procedures in the contracts the local agency will use to award/execute task orders among the consultants:
  - Either through an additional qualification-based selection process, OR
  - On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only.

DETERMINE METHOD OF PAYMENT

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

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

ACTUAL COST-PLUS-FIXED FEE

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

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

COST PER UNIT OF WORK

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious and measurable, such as geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance; but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work must be amended into the contract before work is performed. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H, Example #3).

SPECIFIED RATES OF COMPENSATION

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

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

This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method is recommended for on-call contracts for specialized or support type services, such as construction engineering and inspection, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of consultant's level of effort and the classification of employees used to perform the contracted work. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H, Example #2).

LUMP SUM OR FIRM FIXED PRICE

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

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

10.3 A&E Consultant Audit and Review Process

This section outlines the audit and review process for state or federally funded A&E contracts. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Audits and Investigations (A&I), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach. Figure 2, near the end of this section, shows an overview of the audit and review process.

Applicable Standards

State and federal requirements listed below, as well as specific contract requirements, serve as the standards for audits and reviews performed. The local agencies, consultants, and subconsultants are responsible for complying with state, federal and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants. Applicable standards are:

- Caltrans' Local Assistance Procedures Manual (LAPM);
- Project Program Supplemental Agreements;
- 23 CFR, Chapter 1, Part 172 – *Administration of Engineering and Design Related Service Contracts*;
- 48 CFR, *Federal Acquisitions Regulation Systems*, Chapter 1 – *Federal Acquisition Regulation*, Part 31- *Contract Cost Principles and Procedures*;
- 48 CFR –FAR;
- 48 CFR, Chapter 99 – *Cost Accounting Standards*, Subpart 9900;

- 49 CFR, Transportation, Subtitle A, Office of the Secretary of Transportation, Volume 1, Part 18, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government*;
- 49 CFR, Part 18.20 – *Standards for Financial Management Systems*;
- 23 U.S.C. – *Letting of Contracts*;
- United States Government Accountability Office, *Government Auditing Standards* (GAS);
- Proposed contract terms and conditions.

See section 10.10 of this Chapter for links to above referenced standards.

AUDIT GUIDANCE AVAILABLE

The American Association of State Highway Officials, Uniform Audit & Accounting Guide (AASHTO Audit Guide), which is referred to frequently in this section, is an invaluable tool to guide local agencies, consultants and certified public accountants (CPAs) through the requirements for establishing, and audits of, FAR compliant indirect cost rates (ICRs). The AASHTO Audit Guide is used extensively as an industry guide in the audit and review process.

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

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

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

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

CONTRACTS AND CONSULTANTS SELECTED FOR AUDIT OR REVIEW

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

Dollar thresholds for audits or reviews are stratified as follows:

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

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

Risk factors considered include the consultant's:

- History of satisfactory performance;
- Prior FAR compliant history and audit frequency;
- Financial stability;

- Conformance to terms and conditions of previous contracts;
- General responsiveness and responsibility;
- The approximate dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultant's indirect cost rate (ICR);
- Responses to internal control questionnaire (ICQ), see AASHTO Audit Guide, Appendix B;
- Changes in the organizational structure.

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

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

SUBCONSULTANT IMPACTS

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

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

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

COGNIZANT LETTERS OF APPROVAL

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

Cognizant Letter of Approval so that the ICR can be relied upon on future contracts with the consultant for a given year, and for reliance by other state agencies using the same consultant.

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

MOST COMMON AUDITS AND REVIEWS TO BE PERFORMED

INDIRECT COST RATE (ICR) AUDITS

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

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

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

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

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

CPA AUDITED ICR WORKPAPER REVIEWS

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

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

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

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

OTHER AUDITS AND REVIEWS THAT MAY BE PERFORMED

CONTRACT AUDITS

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

- The consultants' accounting system is adequate to accumulate and segregate costs;
- Proposed costs are reasonable;
- The contract contains all necessary fiscal provisions.

RISK ASSESMENTS

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

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

INCURRED COST AUDITS

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

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

FINANCIAL MANAGEMENT SYSTEM REVIEW

During a Financial Management System Review auditors will determine whether:

- The accrual basis of accounting was used to prepare the ICR;
- There is a job cost accounting system adequate to accumulate and segregate allocable and allowable project costs;
- The consultant complied with 49 CFR, Part 18.20, Standards for Financial Management Systems.

CASE 1: PROPOSED A&E CONSULTANT CONTRACTS OF $150,000 OR MORE

CONSULTANTS:

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

Components include certification that:

- All costs included in the proposed contract to establish final ICR are allowable in accordance with the cost principle of the FAR, 48 CFR, Part 31.
- The proposed contract does not include any costs which are expressly unallowable under the cost principles of the FAR, 48 CFR, Part 31.
- All known material transactions or events that have occurred affecting the firm's ownership, organization, and ICRs have been disclosed.
- The consultant's financial management system meets the standards for financial reporting, accounting records, internal and budget controls set forth in the FAR 49 CFR, Part 18.20.
- The consultant has provided the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to the consultant within the last three calendar years, and for all state DOT and local agency contracts, and the number of states in which the firm does business.
- All direct costs included in the proposed contract are reasonable, allowable, and allocable in accordance with FAR 48 CFR, Part 31, in compliance with applicable accounting principles, and in compliance with the terms of the proposed contract.

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

LOCAL AGENCIES:

Local agencies are to forward copies of the consultant and subconsultant, if any, certification (Exhibit 10-K *Consultant Certification of Contract Costs and Financial Management System*) to A&I. All supporting documentation, including Exhibit 10-L *Local Agency Certification of Cost Analysis*, must be retained in the project files for the required retention period in the event an audit or review is performed.

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

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

CASE 2: PROPOSED A&E CONSULTANT CONTRACTS OF $1 M OR MORE

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

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

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

1. Proposed contract between the local agency and consultant;

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

And one of the following, **if available**:

- A copy of the prior fiscal year, and most recently completed fiscal year cognizant approved ICR and approved state DOT Cognizant Letter of Approval;
- A copy of the prior fiscal year, and most recently completed fiscal year, ICR Schedules and audited report by an independent CPA. If a CPA audited ICR is available for the appropriate fiscal year (applicable one-year accounting period), then the consultant must use the audited ICR, or a lower ICR *(see 23 CFR 172.7(b) for guidelines)*;
- A copy of the prior, and most recently completed fiscal year, ICR(s) evaluation or audit report on a prior Caltrans or local agency contract, and any other governmental agency report/review/attestation.

Through A&I's risk-based approach, consultants may be selected for an ICR Audit. If an ICR Audit is performed and the consultant's ICR is in compliance with the FAR principles, a Cognizant Letter of Approval will be issued.

CASE 3: PROPOSED A&E CONSULTANT CONTRACTS OF $3.5 M OR MORE

Local agencies and consultants with proposed contracts of $3.5 million or more must comply with all the requirements in Case 1 and 2 above. Also, consultants must provide the following to the local agency:

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

  OR
- CPA Audited ICR Audit Report; **And**
- A copy of the CPA audited financial statements, if any.

Through A&I's risk-based approach, CPA Audited ICR Workpaper Reviews may be selected. If a review is performed and the CPA's work is in compliance with the FAR principles, a Cognizant Letter of Approval will be issued.

REQUIREMENTS FOR A CONFORMANCE LETTER

The cost proposal(s) must be presented in the applicable format for the method of payment for the prime consultant and all subconsultants in the proposed contract (see Determine Method of Payment in Section 10.2 and Exhibit 10-H for the example formats). Cost proposals must contain a breakdown of all cost components outlined in the appropriate cost proposal format. A completed ICQ (see AASHTO Audit Guide, Appendix B) must be completed by the consultant if the contract is $1M or more.

Consultants and subconsultants must use the accrual basis of accounting to prepare ICR(s), and must have an adequate financial management system (job cost accounting system).

The required fiscal provisions specified below must be included in the proposed contract (see Exhibit 10-R for provisional language and requirements):

1. Performance Period, begin and end date (Article IV);
2. Allowable Costs and Payments (Article V);
3. Termination (Article VI);
4. Cost Principles and Administrative Requirements (Article X);
5. Retention of Records/Audit (Article XII);
6. Audit Review Procedures, AUDIT CLAUSE (Article XIV. D.);
7. Subcontracting (Article XV);
8. Equipment Purchase (Article XVI);
9. State Prevailing Wage Rates (Article XXVII);
10. Conflict of Interest (Article XXVIII);
11. Rebates, Kickbacks or other Unlawful Consideration (Article XXIX);
12. Prohibition of Expending State or Federal Funds for Lobbying (Article XXX).

Contracts cannot be executed until the Conformance Letter is issued and noted deficiencies, if any, are corrected. Corrected deficiencies, however, do NOT need to be cleared through A&I before executing the contract.

Once executed, the local agency shall forward a copy of the executed contract to A&I for possible future audit or review at:

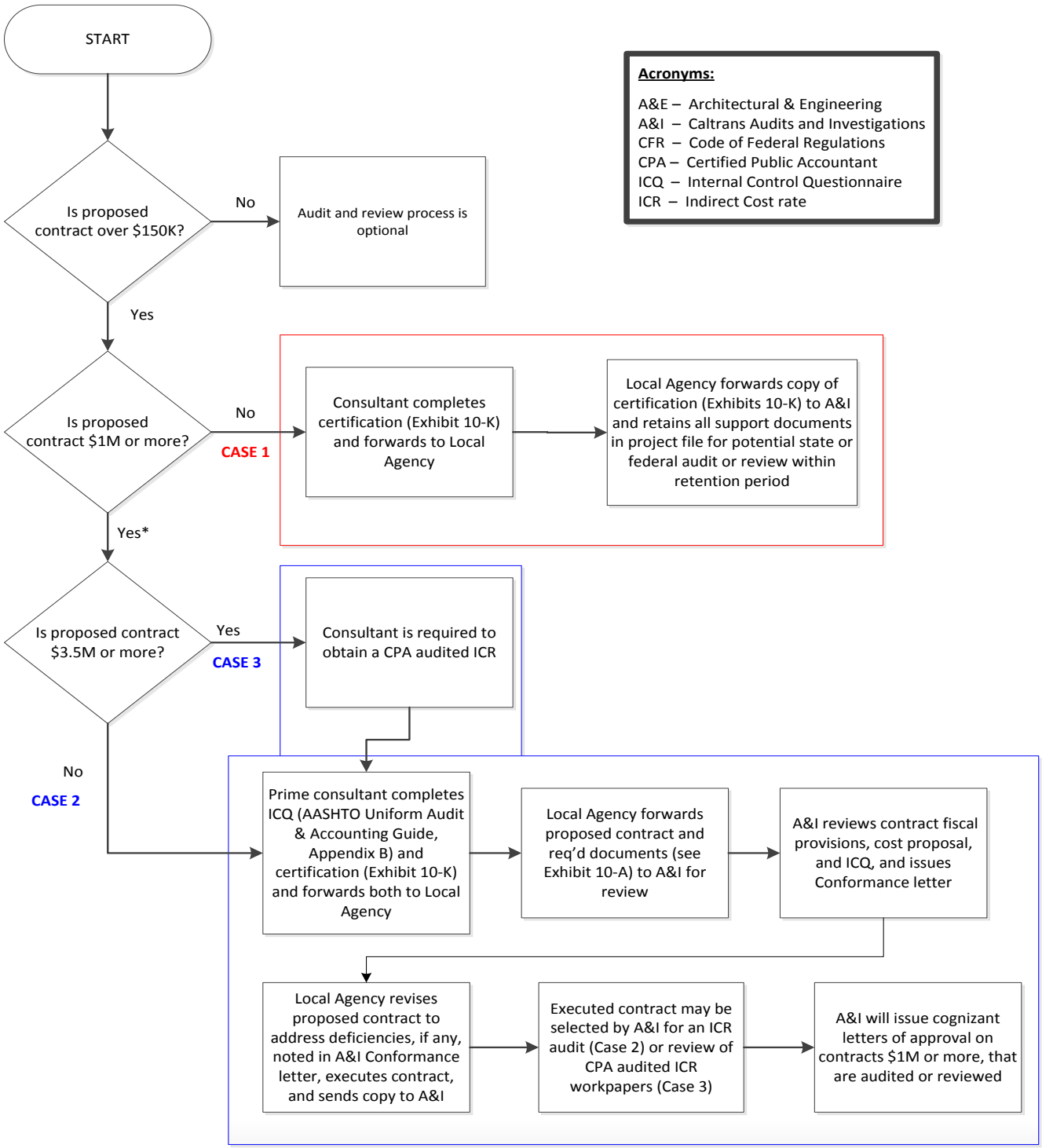
Department of Transportation
Audits and Investigations, MS 2
Attention: External Audit Manager
P.O. Box 942874
Sacramento, CA 94274-0001

Any deficient or missing supporting documentation noted in the Conformance Letter must also be forwarded to A&I.

SUMMARY OF CONTRACTS TO BE AUDITED OR REVIEWED

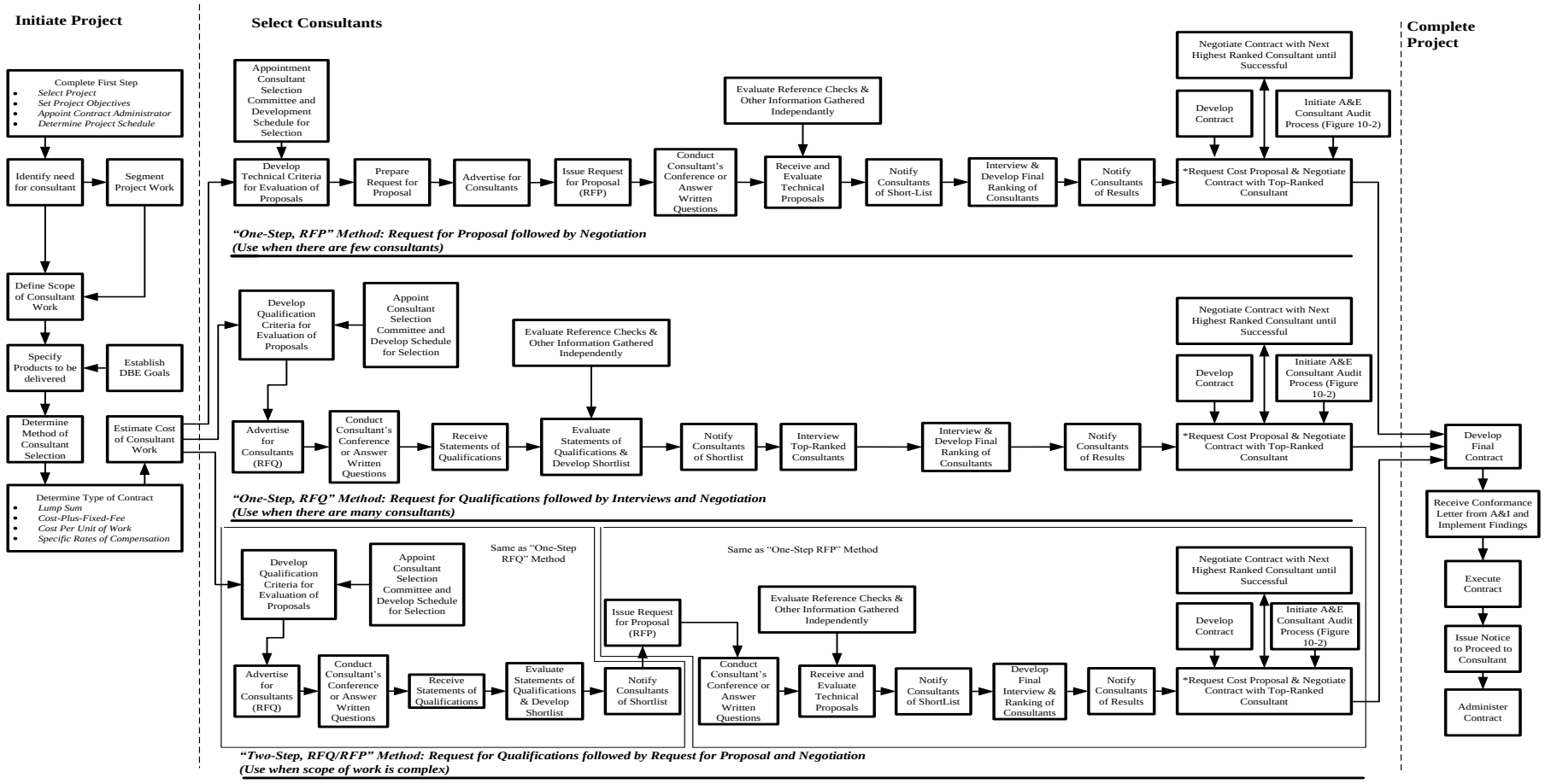
Proposed Contract Amount	***Documents Required***	***Conformance Letter Required?***	***Audit/Review Performed?***	***If Audited or Reviewed will Cognizant Letter of Approval be Issued?***
Small Purchase Procedure Less than $150K	None	No	Audit/review optional	N/A
Case 1. Between $150K and $1M	Certification by Consultants (Exhibit 10-K)	No	May be selected for Audit or Review.	***If*** Indirect Cost Rate (ICR) Audit is performed.
Case 2. Between $1M and $3.5M	Proposed contract, certifications, Internal Control Questionnaire, etc. (see Exhibit 10-A.)	Yes	May be selected for ICR Audit.	Yes
Case 3. $3.5M or greater	Proposed contract, certifications, Internal Control Questionnaire, etc. **AND** CPA Audited ICR. (see Exhibit 10-A.)	Yes	May be selected for Review of CPA's workpapers of audited ICR	Yes

FIGURE 10-2 A&E CONSULTANT AUDIT AND REVIEW PROCESS



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

FIGURE 10-3 CONSULTANT SELECTION FLOWCHART



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10.4 CONSULTANT SELECTION METHODS

Figure 10-3 "Consultant Selection Flowchart" shows the three methods normally used in selecting a consultant. They are:

- One-Step RFP;
- One-Step RFQ;
- Two-Step RFQ/RFP.

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

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

Beginning with Section 10.4 "Consultant Selection Using the One-Step RFP Method," each of the selection methods is explained in detail. Regardless of the method used, the local agency shall retain all consultant selection documentation in their project files (as required by 49 CFR 18.36(b)(9).

ONE-STEP RFP

The One-Step RFP method may be used 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

The most common selection process is the One-Step RFQ method. It is used when typical services (such as preparation of Plans Specifications and Estimate (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. Either this process or the two step selection process is used for preparing an "on-call" list for the local agency.

TWO-STEP (RFQ FOLLOWED BY RFP)

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method requires substantially more work and time than the other two methods described above.

10.5 CONSULTANT SELECTION USING THE ONE-STEP RFP METHOD

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

APPOINT CONSULTANT SELECTION COMMITTEE

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and 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. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

DEVELOP TECHNICAL CRITERIA FOR EVALUATION OF PROPOSALS

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

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

DEVELOP SCHEDULE FOR CONSULTANT SELECTION

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

PREPARE RFP

The information required in a RFP includes the following:

- Description of project;
- Scope of work;
- Schedule of work (including estimated start and end dates);
- Proposal format;
- Method, criteria and weighting for selection;
- A DBE contract goal is specified (see Exhibit 10-I *Notice to Proposers DBE Information*), if a federal-aid contract;
- Protest procedures and dispute resolution process per 49 CFR 18.36(b)(12).

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFP is 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);

- Organizational chart;
- Schedule and deadlines;
- Staffing plan;
- Proposed Team—complete for prime consultant and all key subconsultants;
- Key personnel names and classifications—key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm;
- References.

FINANCIAL MANAGEMENT AND ACCOUNTING SYSTEM REQUIREMENTS

The local agency must ensure that consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 49 CFR Part 18, and 48 CFR Part 31.

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. Placing an RFP on the local agencies web site is not considered adequate advertising.

ISSUE RFP

The local agency shall issue the RFP to all consultants responding to the advertisement and keep a record of all consultants that received an RFP to ensure that any inquiry responses, addendums, or amendments to the RFP are given to all consultants that received the RFP.

CONDUCT PROPOSER'S CONFERENCE OR ANSWER WRITTEN QUESTIONS

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

RECEIVE AND EVALUATE TECHNICAL PROPOSALS

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

must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

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

DEVELOP FINAL RANKING AND NOTIFY CONSULTANTS OF RESULTS

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

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

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

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

An audit may be required (see Section 10.3 *A&E Consultant Audit and Review Process* in this chapter). Negotiations may be completed after receipt of the Caltrans A&I Conformance Letter. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan;
- Schedule and deadlines (including contract begin and end dates);

- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fees.

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

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

Before executing the consultant contract, the local agency must make a review to ensure that all federal and state requirements have been met (see Exhibit 10-C *Consultant Contract Reviewers Checklist*). The completed checklist is to be signed by the Contract Administrator and the original retained in the project file, one copy is to be sent to the DLAE (for review of completeness) and filing within 30 days after awarding the contract.

10.6 Consultant Selection Using the One-Step RFQ Method

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. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

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 RFQ

As a minimum, the RFQ generally includes the following:

- General description of the project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);
- Request for Statement of Qualifications (SOQ);
- Proposal format to be submitted;
- Method and criteria for selection;
- DBE Requirements.

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

- Qualifications of key personnel proposed for the contract. Key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Related projects that key personnel have worked on;
- Qualifications/experience of the firm;
- Organizational chart;
- References.

FINANCIAL MANAGEMENT AND ACCOUNTING SYSTEM REQUIREMENTS

The local agency must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 49 CFR Part 18, and 48 CFR Part 31.

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. Placing an RFP on the local agencies web site is not considered adequate advertising. The RFQ must 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 and, 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 and time, mailing address, and physical address where the submittals may be hand delivered, if different from the mailing address. Two to four weeks is usually allowed between the time the RFQ is 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. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

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

NOTIFY CONSULTANTS OF SHORTLIST

All consultants that submitted an SOQ must be notified of the results of the review. The notification also identifies those consultants that will be requested to attend interviews.

Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

INTERVIEW TOP-RANKED CONSULTANTS

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed project requirements and other information. This should be sent with the initial notification of the interview.

Between the time of the notification of the shortlist and interviews, the local agency may answer any questions concerning the 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 about the RFQ and receive their answers from the local agency in writing. It is important that all consultants on the shortlist receive the questions and answers and are given the same information.

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

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

Two types of questions may be asked:

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

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process.

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

DEVELOP FINAL RANKING AND NOTIFY CONSULTANTS OF RESULTS

The selection committee discusses and documents the strengths and weaknesses of each SOQ 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 as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not

being selected must be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

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

CONDUCT SCOPING MEETING

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

REQUEST COST PROPOSAL

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

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

NEGOTIATE CONTRACT WITH TOP-RANKED CONSULTANT

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

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. An audit of the consultant's operations may be required (see Section 10.1"General," in this chapter). Negotiations may be completed after receipt of the Caltrans A&I Conformance Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments and fee.

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

10.7 Consultant Selection Using the Two-Step RFQ/RFP Method

Combined RFQ and RFP

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

The initial steps in this method (up to the development and notification of the shortlist) are the same as the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps are indicated in Figure 10-3 *Consultant Selection Flowchart*.

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

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.

10.8 Completing the Project

Develop the Final Contract

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

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

Review and Approval of Contracts

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

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
- Work activities and schedules are consistent with the nature and scope of the project;
- DBE goal is included if there are subcontracting opportunities and available DBE firms;

- If applicable, the issues identified in the Conformance Letter have been addressed;
- Contract modification language entitling the local agency to retroactively adjust ICRs within the retention period has been included in the contract (see Section 10.1 "General" in this chapter).

Exhibit 10-C *Consultant Contract Reviewers Checklist* and Exhibit 10-D *Consultant Contract Outline* must be used to ensure that required documentation has been provided. A cost proposal (see Exhibit 10-H *Sample Cost Proposal*), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

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

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

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

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

Following final settlement of the contract accounts with the FHWA or State, such records and documents may be 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 or State.

Contracts with consultants covered by this manual (exceeding $150,000) must not be approved by the local agency until the certification shown in Exhibit 10-F *Certification of Consultant, Commissions & Fees* is executed and incorporated into the contract. The certification 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 this certification 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

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

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

As specified in Section 10.4, "Consultant Selection," the Contract Administrator must review the proposed consultant contract before execution. Exhibit 10-C *Consultant Contract Reviewers Checklist* is to be completed and signed. A copy shall be sent to the DLAE within 30 days of contract award. This signed document must be retained in the local agency project files.

EXECUTE CONTRACT AND ISSUE NOTICE TO PROCEED TO CONSULTANT

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

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 to ensure costs claimed are in accordance to the method of payment and contract cost proposal, 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 SUBCONSULTANTS

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

subconsultant on the contract. The proposed substituted person must be as qualified as the original, and at the same or lower cost.

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

INVOICING (OR PROGRESS PAYMENTS)

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

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

- Copy of Executed Consultant contract;
- Exhibit 10-C *Consultant Contract Reviewers Checklist*;
- Exhibit 10-O1 *Consultant Proposal DBE Commitment* (federally funded projects only);
- Exhibit 10-O2 *Consultant Contract DBE Information* (federally funded projects only.

Invoices should include the following:

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

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

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

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

CONTRACT AMENDMENTS

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services shall be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or

state reimbursement (see Q&As): http://www.fhwa.dot.gov/programadmin/172qa_01.cfm).

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

A consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract.

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

All contract amendments must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment. If an emergency exists of such magnitude that a delay cannot be tolerated, the local agency and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of local agency funding.

If an amendment increases the contract to over $1M then the procedures in Case 2 under in Section 10.3 *A&E Consultant Audit and Review Process* of this chapter of the LAPM shall apply to the entire contract.

PERFORMANCE EVALUATION

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

PROJECT RECORDS

Federal-Aid Highway Program funding recipients and sub-recipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records considered pertinent to the grant agreement and in compliance with Federal laws and regulations (e.g. 23 U.S.C. 112; 40 U.S.C. 1101-1104, 23 CFR 172, 48 CFR 31, and 49 CFR 18.) These records shall be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (49 CFR 18.42(b)).

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

- Copies of RFPs and RFQs;
- Documentation of DBE participation (including Exhibit 10-O1 *Consultant Proposal DBE Commitment* and 10-O2 *Consultant Contract DBE Information*);

- Solicitation and advertisement records;
- Identification of selection committee members;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see Exhibit 10-B *Suggested Consultant Evaluation Sheet*);
- Independent cost estimate (prepared in advance of receipt of RFPs and RFQs);
- Record of negotiations (to include a separate negotiations of profit in accordance with federal guidelines);
- Conformance and Cognizant Agency Letters, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management (Exhibit 10-K *Consultant Certification of Contract Costs and Financial Management System*) for contracts over $150,000;
- Executed consultant contracts, cost proposals and amendments (see Exhibit 10-R *A&E Sample Contract Language* and Exhibit 10-H *Sample Cost Proposal*);
- Contract oversight and progress meeting documents;
- Progress and final payments;
- Performance evaluation (see Exhibit 10-S *Consultant Performance Evaluation*);
- Consultant contract checklists (see Exhibit 10-C *Consultant Contract Reviewer's Checklist*);
- Accounting records documenting compliance with State and federal administrative requirements;
- Certifications and Conflict of Interest forms (Exhibit 10-F *Certification of Consultant, Commission & Fees*, Exhibit 10-L *Local Agency Certification of Cost Analysis*, Exhibit 10-T *Panel Member Conflict of Interest and Confidentially Statement*, Exhibit 10-U *Consultant in Management Position Conflict of Interest and Confidentiality Statement* and *Exhibit 10-Q Disclosure of Lobbying Activities*, as appropriate).

10.9 MISCELLANEOUS CONSIDERATIONS

ENGINEERING SERVICES UNDER $150,000

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

Local agencies should be fully aware that consultant services costing in aggregate no more than $150,000 per contract may be obtained through a relatively simple and informal method of procurement. This informal method must be sound and appropriate for the consulting services procured and the project files must contain justification for the selection. The method of procurement shall be an open and competitive process in selecting consultants and should consider a minimum of three different consultants whenever possible. The Brooks Act and the consultant audit process described in Section 10.2 of this Chapter do not apply to consultant service contracts under $150,000. Although this method of procurement is informal, it must still comply with Sections 10.1, 10.2, 10.7 and 10.8 of this Chapter.

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

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

NONCOMPETITIVE NEGOTIATED CONTRACTS (SOLE-SOURCE)

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals (49 CFR Part 18.36).

FHWA considers these types of contracts as "Sole Source" contracts and should be used only in very limited circumstances. A Public Interest Finding prepared by the local agency and approved by Caltrans is required before establishing these services (23 CFR 172.5; also see LAPM Exhibit 12-F *Request for Approval of Cost-Effectiveness/Public Interest Finding*).

Conditions under which noncompetitive negotiated contracts may be acceptable include:

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

The local agency shall:

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

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

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

PERSONAL SERVICES CONTRACTS

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

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

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

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

RETAINING A CONSULTANT AS AN AGENCY ENGINEER OR IN MANAGEMENT ROLE

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

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

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

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed;
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer;
- Completion by the consultant designated as an agency engineer of the conflict of interest for public agency officials "Form 700" as required by State law;
- For a state funded or federal-aid project, completion of Exhibit 10-T *Panel Member Conflict of Interest and Confidentiality Statement* by all members (both consultants and employees) <u>prior to</u> participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered;
- For a state funded or federal-aid project, a local agency consultant in a management role shall not:
    - Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or subconsultant to a proposing firm;

- Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the local agency consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.
- Apply for or receive reimbursement of federal-aid funds for the local agency's federal-aid project if either of the foregoing has occurred. However reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
- Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management role shall be distributed consistent with the cost principles applicable to the contracting agency in 49CFR 18.22.

- For a state funded or federal-aid project, completion of Exhibit 10-U *Consultant in Management Position Conflict of Interest and Confidentiality Statement* by all consultant engineering staff in management positions that exercise authority over the A&E selection panel pertaining to the specific selection process and the firms being considered.
- A completed Exhibit 10-U *Consultant in Management Position Conflict of Interest and Confidentiality Statement* form shall be submitted to the DLAE by the local agency concurrently with submitting the request for the funding authorization of an A&E contract which will contain federal or state funds.
- Selection of consultants for A&E management positions shall be by the use of qualification based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years.

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

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

- Subparagraphs of 49 CFR §18.36(b)(2) "…maintain a contract administration system…."; and (3) "…maintain a written code of standards…. No employee, officer or agent of the …subgrantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved…."
- Subparagraph of 23 CFR §172.9(d) "Consultant in management roles," requires that if a local agency has or intends to have a consultant in a management role (except as the designated public official, City Engineer or equivalent, as provided for under the terms of the local agency contract), the local agency shall receive approval from Caltrans. In addition, any federal-aid projects designated as "High Profile" projects may also need approval from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

CONSTRUCTION ENGINEERING SERVICES

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

All activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is in 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 contract defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant's construction engineering staff.

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

10.10 REFERENCES

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

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EXHIBIT 10-1 A&E CONSULTANT AUDIT REQUEST LETTER AND CHECKLIST

(For Proposed A&E Consultant Contracts of $1 Million or More)

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

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

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

Dear External Audit Manager:

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

1. ☐ Proposed contract between the local agency and the consultant.
2. ☐ Cost proposal(s) for prime consultant and all subconsultant contracts of $150,000 or more.
3. ☐ Names, mailing addresses, phone numbers, and email addresses for all subconsultants.
4. ☐ Name of local agency contact person, phone number, and e-mail address.
5. ☐ Consultant generated Indirect Cost Rate(s) schedule prepared in accordance with applicable Code of Federal Regulations (CFRs).
6. ☐ A completed Internal Control Questionnaire (*AASHTO Uniform Audit and Accounting Guide*, Appendix B).
7. ☐ Exhibit 10-K *Consultant Certification of Contract Costs and Financial Management System* completed for the prime and subcon*sultant contracts of $150,000 or more.*
8. *Include one of the following; if applicable*:
   a. ☐ A copy of the prior fiscal year and most recently completed fiscal year Cognizant approved indirect cost rate(s) and approved State Department of Transportation letters for the consultant, (must be provided if issued);
   b. ☐ A copy of the prior fiscal year and most recently completed fiscal year Indirect Cost Rate(s) Schedule and audited report by an independent Certified Public Accountant (CPA). If a CPA-audited indirect cost rate is available for the appropriate fiscal year (applicable one-year accounting period), then the consultant must use the indirect cost rate(s), or lower *(see 23 CFR 172.7(b) for guidelines)*, in the cost proposal.
   c. ☐ A copy of the prior and most recently completed fiscal year Indirect Cost Rate(s) Evaluation or audit report on a prior Caltrans or local agency contract; and any other governmental agency report, review or attestation.

9. ☐ Check this box if the proposed cost (including amendments) is $3.5M or more, in which case the indirect cost rate provided by the prime consultant has been audited by a CPA. Forward the following documents to Caltrans Audits & Investigations:

   a. ☐ A copy of the consultant's approved State DOT Cognizant Indirect Cost Rate(s) Schedule and Report (must be provided if issued), and the Cognizant Approved State DOT Cognizant Concurrent Letter (if issued); OR

   b. ☐ A CPA Audited Indirect Cost Rate Audit Report (if there is not an approved State DOT Cognizant Indirect Cost Rate); AND

   c. ☐ A copy of the CPA audited financial statements, if any.

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

If you need further information, please contact _____[Local Agency Contact Name]_____ at _____[Phone # and email address]_____.

Sincerely,

Signed _____

Title _____

Agency _____

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

cc: Caltrans District Local Assistance Engineer

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

EXHIBIT 10-B SUGGESTED CONSULTANT EVALUATION SHEET

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	

*Notes:

1. To maintain the integrity of a competitive negotiation/qualifications based selection procurement, the total of all allowable non-qualifications based evaluation criterion (such as locality preference or DBE participation) cannot exceed ten (10) percent of the total evaluation criteria. The ten percent limitation applies only to non-qualifications based evaluation criterion and should not be considered as a limitation for specific DBE contract goals established by a contracting agency in accordance with its approved DBE program. (see http://www.fhwa.dot.gov/programadmin/172qa_07.cfm).
2. 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.
3. The evaluation criteria and suggested maximum points shown above are not mandatory, but are recommended in the interest of maintaining consistency among the hundreds of agencies utilizing federal or state funds.
4. The evaluation criteria and weighted value must be identified in the RFP. If the RFP has different evaluation criteria or weighed values then the information above would have to be changed to match.
5. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and requirements are met.

Distribution: Local Agency Project Files

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EXHIBIT 10-C CONSULTANT CONTRACT REVIEWERS CHECKLIST

Date: _____

Agency Name: _____

Federal or State Project Number: _____

Project Location: _____

Consultant Name: _____

Contract Begin and End Dates: _____ to _____

Contract Max Dollar Amount: $_____

I. SELECTION PROCEDURES ITEMS NEEDED FOR REVIEW

			Project File Location Tab No.
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 ESTIMATES (FOR CONTRACTS OVER $150,000)	☐ YES	☐ NO	_____
E. EVALUATION CRITERIA	☐ YES	☐ NO	_____
F. DOCUMENTATION OF SELECTION	☐ YES	☐ NO	_____
G. PLAN TO MONITOR WORK	☐ YES	☐ NO	_____
H. AUDIT DOCUMENTS - EXHIBIT 10-A (FOR CONTRACTS OVER $1M), EXHIBITS 10-K (FOR CONTRACTS OVER $150,000), PAST AUDITS IF AVAILABLE	☐ YES	☐ NO	_____

II. CONSULTANT CONTRACT REVIEWERS CHECKLIST(see Exhibit 10-D – Consultant Contract Outline and Exhibit 10-R A&E Sample Contract Language)

			Consultant Contract Page No.
A. INTRODUCTION			
1. Date of Contract	☐ YES	☐ NO	_____
2. Names, Address and 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. CONTRACT

1. Description 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 ☐ YE ☐ NO _____
   e) Surveys ☐ YES ☐ NO _____
   f) Obligations of Local Agency to Consultant ☐ YES ☐ NO _____
   g) Conferences, Meetings, Site Visits, Inspection of Work ☐ YES ☐ NO _____
   h) Checking of Shop Drawings ☐ YES ☐ NO _____
   i) Consultant Services During Construction ☐ YES ☐ NO _____
   j) Deliverables and Number of Copies ☐ YES ☐ NO _____
   k) Milestones and Description of Work for Each ☐ YES ☐ NO _____

2. Date of Beginning of Contract and Completion ☐ YES ☐ NO _____
3. Payment Methods ☐ YES ☐ NO _____
4. Record Retention and Right to Audit ☐ YES ☐ NO _____
5. Cost Principles (48 CFR, *Federal Acquisition Regulation System*, Chapter 1, Part 31 and 49 CFR, Part 18) ☐ YES ☐ NO _____
6. Miscellaneous Provisions

   a) Covenant 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 PS&E/Other Data. - Exhibit 10-D, (B6 [o])	☐ YES ☐ NO _____
p) DBE Considerations, Exhibit 10-D, (B6 [p])	☐ YES ☐ NO _____
• Notice to Proposers – DBE Information - Exhibit 10-I	☐ YES ☐ NO _____
• Standard Contract for Subconsultant/DBE Participation - Exhibit 10-J	☐ YES ☐ NO _____
• Local Agency Consultant DBE Commitment - Attach completed Exhibit 10-O1	☐ YES ☐ NO _____
• Local Agency Consultant DBE Information - Attach completed Exhibit 10-O2	☐ YES ☐ NO _____
• *Final Report – Utilization of DBEs – Exhibit 17-F	☐ YES ☐ NO _____
q) Insurance Requirements	☐ YES ☐ NO _____
r) Nonlobbying Certification for Federal-aid Contracts - Exhibit10-P	☐ YES ☐ NO _____
s) *Debarment and Suspension Certification - Exhibit 12-E, Attachment E	☐ YES ☐ NO _____
t) Non-Discrimination Clause included – Exhibit 10-V	☐ YES ☐ NO _____
u) Mandatory Provisions (*) from A&E Sample Contract Language, Exhibit 10-R	☐ YES ☐ NO _____
C. CONCLUSIONS (accepted legal expressions, etc.)	☐ YES ☐ NO _____
D. SIGNATURES	☐ YES ☐ NO _____
E. CERTIFICATIONS OF CONSULTANT AND AGENCY - Exhibit 10-F is to be included	☐ YES ☐ NO _____
F. COST PROPOSAL – Final Cost proposal to be included - Exhibit 10-H	☐ YES ☐ NO _____

_____ _____

Local Agency Contract Administrator **Date**

* Use form prepared for construction contracts.

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

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EXHIBIT 10-D CONSULTANT CONTRACT OUTLINE

(*see Exhibit 10-R *A&E Sample Contract Language* for mandatory contract provisions to be included in contract)

A. INTRODUCTION

The introduction includes the following information:

1. **Date of Contract: _____** (leave blank until known)
2. **Names, Addresses and Other Data Identifying Agreeing Parties**

   State the complete name and address of each party to the contract 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 Incorporation and 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 contract.
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 exists. If major structures are to be included their approximate locations, lengths, and types, if known, are to be shown.

4&5. All Inquiries during the term of this Contract will be directed to the project representatives identified below:

Local Agency Contract Administrator

Name: _____

Phone: _____

E-mail: _____

Consultant Project Manager

Name: _____

Phone: _____

E-mail: _____

B. CONTRACT

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

   a) Detailed Scope of Work:

   Briefly describe the scope of the project work to be performed or the responsibility of the consultant.

   b) 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 final FHWA and

State approval. A signed "Categorical Exclusion", "Finding of No Significant Impact" or published "Record of Decision" is to be approved or completed by FHWA (see Chapter 6, "Environmental Procedures" of the LAPM).

c) 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.

d) 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 Chapter 8 of "Caltrans' Environmental Handbook" Volume 2 *Cultural Resources*.

e) Surveys:

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

f) Local Agency Obligations to Consultant:

All data applicable to the project referred to in the contract 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.

g) Conferences, Meetings, Visits to Site, Inspection of Work:

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

h) Checking Shop Drawings:

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

i) 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 contract together with the method of payment for such services.

j) Deliverables & 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.

k) Milestones and Description of Work for Each:

Identify milestones, dates and describe the work to be completed for each milestone/date.

2. Date of Beginning of Contract and Completion

Beginning and ending dates must be specified for work under the contract. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the contract. It is desirable that Critical Path Method (CPM) networks be prepared and incorporated into the contract by reference.

3. Payment Methods

State the basis of payment for the services to be furnished. The services may be considered as a whole or by units. The contract 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 contract sets a maximum limit on the total amount payable. This also applies to all subcontracts in excess of $25,000.

4. Record Retention and Right to Audit

The contract 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 statute. This also applies to all subcontracts in excess of $25,000.

5. Cost Principles

The contract 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 contract 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 contracts 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 contract; 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 contract. For breach or violation of this warranty, the local agency shall have the right to annul this contract without liability, or at its discretion; to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee."

b) Design Standards

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

c) Documentation

Contracts, 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 contract objectives.

d) Ownership of Documents

The contract provides that tracings, plans, specifications, and maps prepared, or obtained under the terms of the contract 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 contract shall be made available upon request to the local agency without restriction or limitation on their use. When a contract 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 contracts as appropriate.

f) Copyrights

The local agency may permit copyrighting reports or other contract products. If copyrights are permitted, the contract 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 contract 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. Provisions are made for special cases where it is essential that the extra work be performed immediately with execution of a supplemental contract covering the changes as soon as possible.

h) Delays and Extensions

The contract 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 contract prior to completion of the work. Conditions for termination due to default and circumstances beyond the control of the consultant are included.

j) Remedies

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

k) Disputes

The contract provides for a procedure to resolve any dispute concerning a question of fact in connection with the work not settled by contract 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 hold 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 subconsultants, 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 California prevailing wage rates, certified payrolls, and payment in accordance with California Labor Code, Section 1775.

n) Subcontracting, Assignment and Transfer

Consultant services are considered to be a personal relationship between client and principal; therefore, contracts in which participating federal 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 contract. 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 Proposers DBE Information*. If the contract has a DBE goal, the consultant must meet the goal by using DBEs as subconsultants or document a good faith effort to have met the goal. If a DBE subconsultant is unable to perform, the consultant must make a good faith effort to replace him/her with another DBE subconsultant if the goal is not otherwise met. LAPM Exhibits 10-I, 10-J, 10-O1, 10-O2, and 17-F are to be included in the consultant contract.

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) Nonlobbying Certification (Exhibit 10-P) to be included with solicitation and contract.

s) Debarment and Suspension Certification (Exhibit 12-E, Attachment E) is to be included in the consultant contract.

t) Exhibit 10-V *Non-Discrimination Clause* is to be included in the consultant contract.

u) Mandatory provisions (*) from Exhibit 10-R *A&E Sample Contract Language*.

C. CONCLUSION

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

D. SIGNATURES

All parties signing the Consultant Contract Agreement must have the authority to bind their agency/firm to the contract.

E. CERTIFICATION

Exhibits 10-F *Certification of Consultant, Commissions & Fees* must be included as attachments to the contract and made a part of the contract.

F. COST PRICE PROPOSAL

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

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EXHIBIT 10-E SAMPLE PAYMENT CLAUSES

COST-PLUS-FIXED FEE

The basis of payment for the services provided under this contract shall be cost-plus-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 the 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 the State Department of Personnel Administration rules.
4. Total expenditures made under this contract, including the fixed fee shall not exceed the sum of _____.

LUMP SUM (FIRM FIXED PRICE)

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

1. Pursuant to satisfactory completion of this contract, 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.

Note: Other methods of payment are not addressed here and may be viewed in Exhibit 10-R *A&E Sample Contract Language*.

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EXHIBIT 10-F CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES

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 contract; 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 contract; 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, for or in connection with, procuring or carrying out this contract.

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

_____ _____
(Date) (Signature)

Distribution: 1) Local Agency Project File (Original & Contract)
2) DLAE (with contract copy)

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EXHIBIT 10-G [RESERVED FOR FUTURE USE]

(FORMERLY CERTIFICATION OF LOCAL AGENCY)

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

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Consultant _____ Contract No. _____ Date _____

DIRECT LABOR

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

LABOR COSTS

a) Subtotal Direct Labor Costs $ _____

b) Anticipated Salary Increases (see page 2 for sample) $ _____

c) **TOTAL DIRECT LABOR COSTS [**(a) + (b)] **$ _____**

FRINGE BENEFITS

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

INDIRECT COSTS

f) Overhead (Rate: _____%) g) Overhead [(c) x (f)] $ _____

h) General and Administrative (Rate: _____%) i) Gen & Admin [(c) x (h)] $ _____

j) **TOTAL INDIRECT COSTS** [(g) + (i)] **$ _____**

FIXED FEE (Profit)

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

OTHER DIRECT COSTS (ODC)

l) Travel/Mileage Costs (supported by consultant actual costs) **$ _____**

m) Equipment Rental and Supplies (itemize) **$ _____**

n) Permit Fees (itemize), Plan sheets (each), Test Holes (each), etc. **$ _____**

o) Subconsultant Costs (attach detailed cost proposal in same format as prime consultant estimate for each subconsultant) **$ _____**

p) **TOTAL OTHER DIRECT COSTS** [(l) + (m) + (n) + (o)] **$ _____**

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

NOTES:

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

Page 1

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

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS

(SAMPLE CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant _____ Contract No._____ Date _____

1. Calculate average hourly rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

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

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

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

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

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

4. Calculate Total Costs including Escalation (multiply average hourly rate by the number of hours)

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

NOTES:

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

Page 2

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

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

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant or Subconsultant _____ Contract No. _____ Date _____

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

FEE % = _____

BILLING INFORMATION / CALCULATION INFORMATION

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

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

Note:

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

Page 1

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

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

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant or Subconsultant _____ Contract No. _____ Date _____

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

IMPORTANT NOTES:

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

Page 2

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

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

Consultant _____ Contract No._____ Date _____

Page ___ of ___

Unit/Item of Work:
(Example: Log of Test Boring for Soils Report, or ADL Testing for Hazardous Waste Material Study)
Include as many Items as necessary.

DIRECT LABOR	Hours	Hourly Billing Rate ($)	Total ($)
Professional (Classification)	_____	_____	_____
Sub-professional/Technical*	_____	_____	_____
EQUIPMENT (with Operator)	_____	_____	_____
OTHER DIRECT COST			
Mobilization/De-mobilization			_____
Supplies/Consumables (Itemize)			_____
Travel/Mileage			_____
Report (if applicable)			_____
TOTAL COST PER UNIT OF WORK			_____

Notes:

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

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EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

The Agency has established a DBE goal for this Contract of _____%

OR

The Agency has not established a goal for this Contract. However, proposers are encouraged to obtain DBE participation for this contract.

1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- 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 Contracts 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 Consultant must 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 proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

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

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-O1 *Consultant Proposal DBE Commitment* must be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included with the Request for Proposal. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer'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 consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:

1. The proposer is a DBE and will meet the goal by performing work with its own forces.
2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.

D. 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.

E. 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.

F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.

G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

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.

B. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity Web site at: http://www.dot.ca.gov/hq/bep/.

1. Click on the link in the left menu titled *Disadvantaged Business Enterprise*;
2. Click on Search for a DBE Firm link;
3. Click on *Access to the DBE Query Form* located on the first line in the center of the page.

Searches can be performed by one or more criteria. Follow instructions on the screen.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. 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 Contract and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. 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 Contract 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.

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EXHIBIT 10-J STANDARD CONTRACT PROVISIONS FOR SUBCONSULTANT/DBE PARTICIPATION

1. Subconsultants

A. Nothing contained in this Contract or otherwise, shall create any contractual relation between the Agency and any subconsultants, and no subcontract shall relieve the Consultant of his/her responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the Agency for the acts and omissions of its subconsultants 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 Consultant. The Consultant's obligation to pay its subconsultants is an independent obligation from the Agency's obligation to make payments to the Consultant.

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 subconsultants.

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

D. Any substitution of subconsultants must be approved in writing by the Agency's Contract Administrator in advance of assigning work to a substitute subconsultant.

2. Disadvantaged Business Enterprise (DBE) Participation

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

B. If the contract has a DBE goal, the Consultant must meet the goal by committing DBE participation or document a good faith effort to meet the goal. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met. A DBE is a firm meeting the definition of a DBE as specified in 49 CFR.

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

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

E. A DBE may be terminated only with prior written approval from the local agency and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting local agency consent for the termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

3. Performance of DBE Consultant and other DBE Subconsultants/Suppliers

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

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

C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work force, or the DBE subcontracts a greater portion of the work of the Contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

4. Prompt Payment of Funds Withheld to Subconsultants

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

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

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

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

D. The Agency shall hold retainage from the prime consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime consultant based on these acceptances. The prime consultant, or subconsultant, shall return all monies withheld in retention from a subconsultant within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR26.29) 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 consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime Consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

5. DBE Records

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

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

6. DBE Certification and Decertification Status

If a DBE subconsultant is decertified during the life of the Contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify the Consultant in writing with the date of certification. Any changes should be reported to the Agency's Contract Administrator within 30 days.

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

Certification of Final Indirect Costs:

Consultant Firm Name: _____

Indirect Cost Rate: _____

Date of Proposal Preparation (mm/dd/yyyy): _____

Fiscal Period Covered (mm/dd/yyyy to mm/dd/yyyy): _____

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

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

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

Certification of Financial Management System:

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

Certification of Dollar Amount for all A&E contracts:

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

Certification of Direct Costs:

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

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

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

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

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

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

_____ $_____
_____ $_____
_____ $_____
_____ $_____
_____ $_____

* Consultant Certification Signature: _____

Consultant Certifying (Print Name and Title):

Name: _____

Title: _____

Consultant Contact Information:

Email: _____

Phone number: _____

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

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

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

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

EXHIBIT 10-L LOCAL AGENCY CERTIFICATION OF COST ANALYSIS

(48 CFR, CHAPTER 1, PART 15.404)

I, the undersigned, certify that I have performed a cost analysis in connection with this contract and will perform a cost analysis for any future contract modification for the fiscal period as specified below.

*Local Agency Certification Signature: _____

Local Agency Certifying Name and Title (Print):

Name: _____

Title: _____

Local Agency Contact Information

Email: _____

Phone number: _____

Consultant(s) Firm Name: _____

Date of Cost Analysis (mm/dd/yyyy): _____

Fiscal Period Covered: _____

Contract/Federal Project Number: _____

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

*The Chief Financial Officer, Procurement Officer, Contract Administrator, or equivalent, who has authority to evaluate the quality and reasonableness of the consultant contract products or services and is able to certify on the local agency's behalf that an adequate cost analysis was conducted in conjunction with the contract.

Distribution: 1) Retained in Local Agency Project files

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EXHIBIT 10-M [RESERVED FOR FUTURE USE]

(Formerly Standard Audit Procedures)

EXHIBIT 10-N [RESERVED FOR FUTURE USE]

(Formerly Accounting and Auditing Guidelines for Contracts with Caltrans)

EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

(Inclusive of all DBEs listed at bid proposal. Refer to instructions on the reverse side of this form)

Consultant to Complete this Section

1. Local Agency Name: _____

2. Project Location: _____

3. Project Description: _____

4. Consultant Name: _____

5. Contract DBE Goal %: _____

DBE Commitment Information

6. Description of Services to be Provided	**7.** DBE Firm Contact Information	**8.** DBE Cert. Number	**9.** DBE %

10. Total % Claimed	_____ %

Local Agency to Complete this Section

16. Local Agency Contract Number: _____

17. Federal-aid Project Number: _____

18. Proposed Contract Execution Date: _____

Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate:

_____
19. Local Agency Representative Name (Print)

_____ _____
20. Local Agency Representative Signature **21.** Date

_____ _____
22. Local Agency Representative Title **23.** (Area Code) Tel. No.

_____
11. Preparer's Signature

_____
12. Preparer's Name (Print)

_____
13. Preparer's Title

_____ _____
14. Date **15.** (Area Code) Tel. No.

Distribution: (1) Original – Consultant submits to local agency with proposal
(2) Copy – Local Agency files

INSTRUCTIONS - CONSULTANT PROPOSAL DBE COMMITMENT

Consultant Section

The Consultant shall:

1. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
4. **Consultant Name** - Enter the consultant's firm name.
5. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I *Notice to Proposers DBE Information* form. See LAPM Chapter 10.
6. **Description of Services to be Provided** - Enter item of work description of services to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
7. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
8. **DBE Cert. Number** - Enter the DBEs Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
9. **DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
10. **Total % Claimed –** Enter the total DBE participation claimed. If the Total % Claimed is less than item "6. Contract DBE Goal", an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H *DBE Information - Good Faith Efforts* of the LAPM).
11. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
12. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
13. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
14. **Date** - Enter the date this section of the form is signed by the preparer.
15. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the consultant.

Local Agency Section:

The Local Agency representative shall:

16. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
17. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
18. **Contract Execution Date** - Enter date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
19. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
20. **Local Agency Representative Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
21. **Date** - Enter the date the Local Agency Representative signs the form.
22. **Local Agency Representative Title -** Enter the position/title of the person signing this section of the form.
23. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

EXHIBIT 10-O2 CONSULTANT CONTRACT DBE INFORMATION

(Inclusive of all DBEs listed at contract award. Refer to instructions on the reverse side of this form)

Consultant to Complete this Section

1. Local Agency Name: _____

2. Project Location: _____

3. Project Description: _____

4. Total Contract Award Amount: $ _____

5. Consultant Name: _____

6. Contract DBE Goal %: _____

7. Total Dollar Amount for all Subconsultants: $ _____

8. Total Number of all Subconsultants: _____

Award DBE/DBE Information

9. Description of Services to be Provided	**10.** DBE/DBE Firm Contact Information	**11.** DBE Cert. Number	**12.** DBE Dollar Amount

Local Agency to Complete this Section

20. Local Agency Contract Number: _____

21. Federal-aid Project Number: _____

22. Contract Execution Date: _____

Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate:

_____
23. Local Agency Representative Name (Print)

_____ _____
24. Local Agency Representative Signature **25.** Date

_____ _____
26. Local Agency Representative Title **27.** (Area Code) Tel. No.

13. Total Dollars Claimed $ _____

14. Total % Claimed _____ %

_____
15. Preparer's Signature

_____
16. Preparer's Name (Print)

_____
17. Preparer's Title

_____ _____
18. Date **19.** (Area Code) Tel. No.

Caltrans to Complete this Section

Caltrans District Local Assistance Engineer (DLAE) certifies that this form has been reviewed for completeness:

_____ _____ _____
28. DLAE Name (Print) **29.** DLAE Signature **30.** Date

Distribution: (1) Copy – Email a copy to the Caltrans District Local Assistance Engineer (DLAE) within 30 days of contract award. Failure to send a copy to the DLAE within 30 days of contract award may result in delay of payment.
(2) Copy – Include in award package sent to Caltrans DLAE
(3) Original – Local agency files

INSTRUCTIONS - CONSULTANT CONTRACT AWARD DBE INFORMATION

Consultant Section

The Consultant shall:

1. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
4. **Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
5. **Consultant Name** - Enter the consultant's firm name.
6. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I *Notice to Proposers DBE Information* form. See LAPM Chapter 10.
7. **Total Dollar Amount for all Subconsultants –** Enter the total dollar amount for all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
8. **Total number of all subconsultants –** Enter the total number of all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
9. **Description of Services to be Provided** - Enter item of work description of services to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
10. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
11. **DBE Cert. Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
12. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE, and include DBEs that are not identified as subconsultants on the Exhibit 10-O1 *Consultant Proposal DBE Commitment* form. See LAPM Chapter 9 for how to count full/partial participation.
13. **Total Dollars Claimed** – Enter the total dollar amounts for column 13.
14. **Total % Claimed –** Enter the total DBE participation claimed for column 13. SUM = (item "14. Total Participation Dollars Claimed" divided by item "4. Total Contract Award Amount"). If the Total % Claimed is less than item "6. Contract DBE Goal", an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H *DBE Information - Good Faith Efforts* of the LAPM).
15. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
16. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
17. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
18. **Date** - Enter the date this section of the form is signed by the preparer.
19. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the consultant.

Local Agency Section:

The Local Agency representative shall:

20. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
21. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
22. **Contract Execution Date** - Enter the date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
23. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
24. **Local Agency Representative Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
25. **Date** - Enter the date the Local Agency Representative signs the form.
26. **Local Agency Representative Title -** Enter the position/title of the person signing this section of the form.
27. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

Caltrans Section:

Caltrans District Local Assistance Engineer (DLAE) shall:

28. **DLAE Name (Print)** – Clearly enter the name of the DLAE.
29. **DLAE Signature** – DLAE must sign this section of the form to certify that it has been reviewed for completeness.
30. **Date** - Enter the date that the DLAE signs this section the form.

EXHIBIT 10-P NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

(1) 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/her proposal/bid that he/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.

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

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

(attach Continuation Sheet(s) if necessary)

12. Amount of Payment (check all that apply)

$ _____ ☐ actual ☐ planned

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

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

14. Type of Payment (check all that apply)

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

15. 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)

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

17. 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

Distribution: Orig- Local Agency Project Files

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q 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 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. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.

11. 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).

12. 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.

13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

14. Check all boxes that apply. If other, specify nature.

15. 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.

16. Check whether or not a continuation sheet(s) is attached.

17. The certifying official shall sign and date the form, and 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

EXHIBIT 10-R A &E SAMPLE CONTRACT LANGUAGE

(For Local Assistance Federal-aid Projects)

(NOTE TO LOCAL AGENCY - BE SURE THAT YOUR LEGAL STAFF REVIEWS AND APPROVES ALL CONSULTANT CONTRACTS BEFORE EXECUTION. THIS CONTRACT LANGUAGE IS ONLY SUGGESTED LANGUAGE. MODIFY AS RECOMMENDED BY YOUR OWN LEGAL STAFF AND TO FIT YOUR PARTICULAR REQUIREMENTS AND PROJECT. ARTICLES MARKED WITH AN (*) INDICATE MANDATORY PROVISIONS TO BE INCLUDED IN CONTRACT.)

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ARTICLE I INTRODUCTION

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

The name of the "CONSULTANT" is as follows:

_____

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

_____

The Contract Administrator for LOCAL AGENCY will be (NAME)

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

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

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

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

F. Without the written consent of LOCAL AGENCY, this contract 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 to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II STATEMENT OF WORK

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

A. Consultant Services

Detail based on the services to be furnished should be provided by CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in CONSULTANT contract should be included. Describe acceptance criteria, and if the responsible CONSULTANT/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the contract including registration number. Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion (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 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 CONSULTANT has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of CONSULTANT, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in the SER.

D. Local Agency Obligations

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

E. Conferences, Visits to Site, Inspection of Work

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

F. Checking Shop Drawings

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

G. Documentation

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

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 is specified. Provision may be made for payment for additional copies.

ARTICLE III CONSULTANT'S REPORTS OR MEETINGS

(Choose either Option 1 or Option 2.)

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

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

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

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

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

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

ARTICLE IV PERFORMANCE PERIOD

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

(Choose either Option 1 or Option 2.)

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

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

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

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

C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this contract, the terms of the contract 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 J below for Actual Cost-Plus-Fixed Fee contracts. Use Exhibit 10-H, Example #1 for Cost Proposal Format.)

A. The method of payment for this contract will be based on actual cost plus a fixed fee. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by contract amendment. In

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

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

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

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

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

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

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

(*LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR*)

(*ADDRESS*)

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

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

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

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

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

A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described,

including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.

B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be $(Amount) per (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 contract.

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

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

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

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

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

A. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.

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

C. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's Cost Proposal.

D. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANTs Cost Proposal (Attachment Number). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.

E. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

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

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

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

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

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

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

(NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR)

(*ADDRESS*)

L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Contract.

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

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

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

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

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

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

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

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

(*LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR*)

(*ADDRESS*)

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

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

ARTICLE VI TERMINATION

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

B. The maximum amount for which the Government shall be liable if this contract is terminated is _____ dollars.

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 contract were executed after that determination was made.

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

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

D. LOCAL AGENCY has the option to void the contract under the 30-day 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. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.

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

ARTICLE IX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

(Use this Article when federal participating funds are used; incorporate Exhibits 10-I "Notice to Proposers DBE Information" and 10-J "Standard Contract Provisions for Subconsultant/DBE Participation" as required.)

Consultants must give consideration to DBE firms as specified in 23 CFR §172.5(b), 49 CFR, Part 26. If the contract has a DBE goal, CONSULTANT must meet the goal by using DBEs as subconsultants or document a good faith effort to have met the goal. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant if the goal is not otherwise met.

A DBE may be terminated only with written approval by LOCAL AGENCY and only for the reasons specified in 49 CFR 26.53 (f). Prior to requesting LOCAL AGENCY's consent for the proposed termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

ARTICLE X COST PRINCIPLES

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

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

C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to LOCAL AGENCY.

ARTICLE XI CONTINGENT FEE

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

ARTICLE 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; CONSULTANT, subconsultants, and LOCAL AGENCY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, LOCAL AGENCY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested Subcontracts in excess of $25,000 shall 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 LOCAL AGENCY's Contract Administrator and

(Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.

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

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

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

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

ARTICLE 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 LOCAL AGENCY'S Chief Financial Officer.

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

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

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

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

ARTICLE XV SUBCONTRACTING

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

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 subconsultants.

C. Any substitution of subconsultants must be approved in writing by LOCAL AGENCY's Contract Administrator prior to the start of work by the subconsultant.

ARTICLE XVI EQUIPMENT PURCHASE

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

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

C. Any equipment purchased as a result of this contract is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of $5,000 or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than $5,000 is credited to the project.

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

ARTICLE XVII INSPECTION OF WORK

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

ARTICLE XVIII SAFETY

(Use on all contracts regardless of funding source)

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

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

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

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

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

ARTICLE XIX INSURANCE

(Choose either Option 1 or Option 2.)

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

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

B. The Certificate of Insurance will provide:

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

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

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

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

ARTICLE 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 LOCAL AGENCY; and no further agreement will be necessary to transfer ownership to LOCAL AGENCY. CONSULTANT shall furnish LOCAL AGENCY all necessary copies of data needed to complete the review and approval process.

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

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

D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).

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

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

ARTICLE XXI CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR

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

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

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

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

ARTICLE XXII CONFIDENTIALITY OF DATA

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

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

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

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

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

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

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

ARTICLE XXIII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXIV EVALUATION OF CONSULTANT

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

ARTICLE XXV STATEMENT OF COMPLIANCE

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

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

ARTICLE XXVI DEBARMENT AND SUSPENSION CERTIFICATION

A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to LOCAL AGENCY.

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

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

ARTICLE XXVII STATE PREVAILING WAGE RATES

(Choose either Option 1 or Option 2.)

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

A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 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. CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this contract, or any ensuing LOCAL AGENCY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing LOCAL AGENCY construction project, which will follow.

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

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

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

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

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

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

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

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

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

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

ARTICLE XXIX REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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 $150,000. If less than $150,000 in federal funds will be expended on the contract; delete this article and re-number the notification article which follows.)

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

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

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

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, 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. 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 Administrator
_____*(ADDRESS)*_____
_____

ARTICLE XXXII CONTRACT

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

ARTICLE 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

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. Contract 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 Agency 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

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 _____: _____
_____

Item _____: _____
_____

Item _____: _____
_____

Item _____: _____
_____

Item _____: _____
_____

Item _____: _____
_____

***Indicates supporting documentation attached.**

Distribution: Local Agency Project Files

EXHIBIT 10-T PANEL MEMBER CONFLICT OF INTEREST AND CONFIDENTIALITY STATEMENT

RFP/RFQ PROCUREMENT NUMBERS: _____

PROJECT NAME:
_____

APPLICABILITY: Applicable to local agency consultant procurements which will contain Federal or State funds in the consultant contract.

☐ I am an employee of the local agency that is responsible for this procurement.

☐ I am an employee of a consultant under contract to the local agency that is responsible for this procurement but I am not in a management position with the local agency.

☐ I have a personal, financial, or business interest in past employment activity or a personal relationship regarding the firms (including subconsultants) that are the subject of this evaluation. A brief description is provided on the back of this form.

☐ I certify that I have no current contractual relationship with any of the firms (including subconsultants) that are the subject of this evaluation.

☐ I certify that I have no personal or financial interest and no present or past employment activity or personal relationship or prior contractual relationship which would be incompatible with my participation in this solicitation process and I am fully able to give full, fair and impartial consideration to all proposals/bids as an appointee to the related evaluation.

☐ I certify that I have read **49 CFR 18.36(b)(3)** below and I agree not to participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. **Note:** Caltrans is the Grantee and the local agency is the sub-grantee.

49CFR 18.36(b)(3)

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer, or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents.

The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

☐ I fully understand and agree to immediately disqualify myself as soon as I am aware of a conflict of interest that may compromise my fair and impartial consideration of the proposals/bids.

☐ I certify that I will hold in the strictest confidence all bids, proposals, correspondence, memoranda, working papers, or any other media which has any bearing on, or disclose any aspect of, any respondent or potential respondent to the RFP/RFQ above. I will not discuss the evaluation process with anyone not involved in the evaluation process until its completion.

☐ I fully understand that it is unlawful for a person to utilize any organization name or auxiliary organization information, which is not a matter of public record, for personal gain.

☐ I fully understand that any violation of the above is a basis for disciplinary action, up to and including termination or referral to the appropriate authorities for further investigation.

☐ I am aware that the following firms and subconsultants/subcontractors have submitted proposals in response to the above referenced solicitation:

List firms including subconsultants/subcontractors:

1. _____

2. _____

3. _____

4. _____

etc. _____

Date: _____ Signed: _____

Name: _____

Title: _____

Dept./Local Agency: _____

Employer: _____

CONTRACT ADMINISTRATOR'S REVIEW

I have reviewed the foregoing "Conflict of Interest and Confidentiality Statement" and have determined, according to the information provided, that this individual:

☐ does not have a conflict of interest and can participate in the "Selection Panel"

☐ does have a conflict of interest and cannot participate in the "Selection Panel

Date: _____

Signed: _____

Name: _____

Title: _____

Dept./Local Agency: _____

Employer: _____

Distribution: Original – Local Agency Consultant File

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EXHIBIT 10-U CONSULTANT IN MANAGEMENT POSITION CONFLICT OF INTEREST AND CONFIDENTIALITY STATEMENT

RFP/RFQ PROCUREMENT NUMBERS: _____

PROJECT NAME:
_____

APPLICABILITY: Applicable to local agency consultants in management positions that exercise authority over the Architect & Engineering Selection Panel from which the local agency has or plans to have one or more consultant contracts containing Federal or State funds.

☐ I am an employee of a consultant under contract to the local agency that is responsible for the procuring and administering of one or more consultant contracts containing either Federal or State funds.

☐ I am in a management position with the local agency, my title is listed below and I have attached my duty statement.

☐ The procedures followed to procure and execute the contract, between the local agency and the consulting firm of which I am employed, comply with all Federal and State requirements. Also this contract has a specific beginning and ending date.

☐ I hereby certify as follows:

1. I will not directly or indirectly participate in, manage, or oversee any consultant selection procurement process in which the consulting firm of which I am employed is competing as a consultant or subconsultant.
2. I will not directly or indirectly influence any employee, staff member, or other individual participating in any consultant selection procurement process in which the consulting firm of which I am employed is as a consultant or subconsultant.
3. I will not directly or indirectly participate in, manage, or oversee any local agency contract that is with the consulting firm of which I am employed, regardless of whether the involvement of my employer in the contract is as a consultant or subconsultant. Among other things, this includes my not being involved in managing the work; and not approving changes in the schedule, scope, deliverables or invoices.
4. I understand that if I am involved in any local agency contract that is with the consulting firm of which I am employed, in violation of 1. or 2. above, that local agency contract will no longer be eligible for Federal or State reimbursement because of my involvement.

☐ I certify that I have read **49 CFR 18.36(b)(3)** below and I agree not to participate in selection, or in the award or administration of a contract supported by Federal or State funds if a conflict of interest, real or apparent, would be involved. **Note:** Caltrans is the Grantee and the local agency is the sub-grantee.

49CFR 18.36(b)(3)

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer, or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

☐ I fully understand that it is unlawful for a person to utilize any organization name (i.e. local agency) or auxiliary organization information, which is not a matter of public record, for personal gain.

☐ I fully understand that any violation of the above could be a basis for ineligibility of reimbursement of State or Federal project funds.

Date: _____ Signed: _____

Name: _____

Title: _____

Dept./Local Agency: _____

Employer: _____

REVIEW BY SUPERVISOR OF CONSULTANT IN MANAGEMENT POSITION

I have reviewed the foregoing "Conflict of Interest and Confidentiality Statement" and will ensure:

☐ that the foregoing named local agency consultant who is under contract and in a management position with our local agency, abides by the foregoing terms and conditions;

☐ that should the foregoing named local agency consultant, who is under contract and in a management position with our local agency, violate any of the foregoing terms and conditions,

the Caltrans DLAE will be notified and such violation will be considered a breach of ethics and could be a basis for ineligibility of State or Federal project funds.

Date: _____ Signed: _____

Name: _____

Title: _____

Dept./Local Agency: _____

Employer: _____

REVIEWED/CONCURRENCE BY DISTRICT LOCAL ASSISTANCE ENGINEER

I have reviewed the foregoing "Conflict of Interest and Confidentiality Statement" and Supervisor's statement.

☐ Based upon the foregoing, I concur that the consultant, who is under contract and in a management position with the local agency, does not appear to present a conflict of interest. The local agency and the consultant should be considered eligible for Federal and State reimbursement.

☐ Based upon the foregoing, I do not concur as I believe that the consultant, who is under contract and in a management position with the local agency, does appear to present a conflict of interest.

☐ The consultant's time is not considered eligible for either Federal or State reimbursement.

☐ The local agency is not considered eligible for either Federal or State reimbursement.

Date: _____ (DLAE) Signed: _____

Name: _____

Distribution: 1) Copy to: DLAE for each Federal/State funded project
2) Copy to be returned to Local Agency by DLAE with signature

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EXHIBIT 10-V NON-DISCRIMINATION CLAUSE

(To be included in Consultant Contract)

NON-DISCRIMINATION CLAUSE

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

Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

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EXHIBIT 3-A REQUEST FOR AUTHORIZATION TO PROCEED WITH PRELIMINARY ENGINEERING

[Place this form on Local Agency Letterhead]

To: (DLAE Name)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(District Address)

Date: _____
FTIP/FSTIP ID: _____
Federal Project No: _____
Project ID: _____
PPNO (For STIP Projects): _____
High-Risk ITS: _____
Project Description: _____
_____

Dear (DLAE Name):

In order to begin federally reimbursable preliminary engineering work for the above-referenced project, we request that you secure Federal Authorization to Proceed and Obligation of Funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- [ ] Completed Exhibit 3-E *Request for Authorization to Proceed Data Sheet*
- [ ] Copy of FTIP/FSTIP Reference
- [ ] Completed Exhibit 3-O *Finance Letter*
- [ ] For High-Risk ITS Projects: FHWA approved Systems Engineering Management Plan (SEMP). (Federal approval of the SEMP is contingent on prior federal approval of the Systems Engineering Review Form [SERF])
- [ ] Copy of Executed Cooperative Agreement (only for projects on State Highway System)
- [ ] Exhibit 3-H *Request for Capital Subvention Reimbursement Allocation* (only for projects on State Highway System)

Toll Credit Usage

- [ ] This project will use Toll Credit. It is fully funded.
- [ ] This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

- [ ] Completed Exhibit 7-B *Field Review Form*, or
- [ ] A Field Review Form will be submitted within four (4) months of the Federal Authorization date, otherwise, it is understood the authorization to proceed will be canceled automatically. It is further understood that a Program Supplement Agreement will NOT be prepared until after the Field Review Form is submitted.

Environmental Document

- [ ] Type of NEPA Document. Approval Date: _____.
  - [ ] Categorical Exclusion (CE)
  - [ ] Findings of No Significant Impact (FONSI)
  - [ ] Record of Decision (ROD)
  - [ ] Revalidation

[ ] This agency has not completed the environmental process. The NEPA Document will be submitted at a later date, prior to beginning of final design (PS&E).

Disadvantaged Business Enterprise (DBE)

[ ] All work for this phase of the project will be performed by local agency staff.
[ ] For consultant contracts a Disadvantaged Business Enterprise (DBE) goal will be established for each contract, and Exhibit 10-O1 *Consultant Proposal DBE Commitment* will be submitted with each proposal. Within 30 days of contract award, Exhibit 10-O2 *Consultant Contract DBE Information* shall be forwarded to the DLAE.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

[ ] A CTC allocation is not required, or
[ ] A CTC allocation of $ _____ (federal/state) funds for the PA/ED and/or PS&E component(s) of work was made at the _____ meeting of the CTC, or
[ ] A CTC allocation of funds has been scheduled for the _____ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the "Authorization to Proceed" and Agency submittal of the Exhibit 7-B *Field Review Form*, a "Program Supplement Agreement" will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for disbursement for limited period(s) of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act, to the applicable Fund Reversion date shown on the State approved project finance letter (unless an extension is granted by the Department of Finance). It is anticipated that this phase of work will be completed by _____(month, year)_____.

Invoice Submittal

This Agency understands that only work performed after federal "Authorization to Proceed" (E-76) is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed "Program Supplement Agreement" and/or State approval Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated /encumbered as well as for all costs it incurred prior to receiving the FHWA issued "Authorization to Proceed." I further understand that all subsequent phases of the project will require a separate "Federal Authorization to Proceed."

For High-Risk and Low-Risk ITS projects, I understand that our project shall be consistent with the Regional ITS Architecture, adhere to ITS Standards, and undergo Systems Engineering analysis. A SERF will be included in the Field Review Package. For High-Risk ITS projects, I understand that this Agency shall not proceed with component detailed design until after FHWA approval of the SEMP and receipt of "Authorization to Proceed."

Please advise us as soon as the "Federal Authorization to Proceed" has been issued. You may direct any questions to: (Name of Local Agency Contact) at (phone number and e-mail address) .

_____
Signature of Local Agency Representative

_____
Print Name

_____
Title

_____
Agency

Distribution: DLAE

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EXHIBIT 3-B REQUEST FOR AUTHORIZATION TO PROCEED WITH RIGHT OF WAY

[Place this form on Local Agency Letterhead]

To: (DLAE Name)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(District Address)

Date: _____
FTIP/FSTIP ID: _____
Federal Project No: _____
Project ID : _____
PPNO (For STIP Projects): _____
Project Description: _____
_____

Dear (DLAE Name):

In order to proceed with right of way phase of work for the above-referenced project, we request that you secure Federal Authorization to Proceed and obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

[ ] Completed Exhibit 3-E *Request for R/W Authorization Data Sheet*
[ ] Copy of FTIP/FSTIP Reference Sheet
[ ] Completed Exhibit 3-O *Finance Letter*
[ ] Copy of Executed Cooperative Agreement, if not previously submitted (only for projects on the State Highway System)
[ ] Completed Exhibit 3-H *Request for Capital Subvention Reimbursement Authority* (only for projects on the State Highway System)

Toll Credit Usage

[ ] This project will use Toll Credit. It is fully funded.
[ ] This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

[ ] Completed Exhibit 7-B *Field Review Form*, or
[ ] The Field Review Form was submitted previously on _____.

Environmental Document

[ ] Type of NEPA Document. Approval Date:_____.
- [ ] Categorical Exclusion (CE) Form
- [ ] Findings of No Significant Impact (FONSI)
- [ ] Record of Decision (ROD)
- [ ] Revalidation

Disadvantaged Business Enterprise (DBE)

[ ] All work for this phase of the project will be performed by local agency staff.
[ ] For consultant contracts a Disadvantaged Business Enterprise (DBE) goal will be established for each contract and the Exhibit 10-O1 *Consultant Proposal DBE Commitment* will be submitted with each proposal. Within 30 days of contract execution, Exhibit 10-O2 *Consultant Contract DBE Information* shall be forwarded to the DLAE.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

[ ] A CTC allocation is not required, or
[ ] A CTC allocation of funds for the right of way component of work was made at the _____ meeting of the CTC, or
[ ] A CTC allocation of funds has been scheduled for the _____ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds
Upon FHWA issuance of the "Authorization to Proceed" (and agency submittal of Exhibit 7-B *Field Review Form* if not previously submitted), a "Program Supplement Agreement" and/or state approved "Finance Letter" will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for disbursement for limited period(s) of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act, to the applicable Fund Reversion date shown on the State approved project finance letter (unless an extension is granted by the Department of Finance). It is anticipated that this phase of work will be completed by _____(month, year)_____.

Invoice Submittal
This Agency understands that only work performed after federal "Authorization to Proceed" (E-76) is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed "Program Supplement Agreement" and/or state approval Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended.

CERTIFICATION
I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered as well as for all costs it incurred prior to receiving the Federal Highway Administration issued "Authorization to Proceed."

Please advise us as soon as the Authorization to Proceed has been issued. You may direct any questions to: ____(Name of Local Agency Contact)___ at ___(phone number and e-mail address)___ .

_____
Signature of Local Agency Representative

_____
Print Name

_____
Title

_____
Agency

Distribution: DLAE

EXHIBIT 3-C REQUEST FOR AUTHORIZATION TO PROCEED WITH UTILITY RELOCATION

[Place this form on Local Agency Letterhead]

To: (DLAE Name)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(District Address)

Date: _____
FTIP/FSTIP ID: _____
Federal Project No: _____
Project ID: _____
PPNO (For STIP Projects): _____
Project Description: _____
_____

Dear (DLAE Name):

In order to proceed with Utility Relocation phase of work for the above-referenced project, we request that you secure Federal Authorization to Proceed and obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

[ ] Completed Exhibit 3-B *Request For Authorization to Proceed With Right of Way*
[ ] Completed Exhibit 3-E *Request for Authorization to Proceed with Data Sheet*
[ ] Copy of FTIP/FSTIP Reference Sheet
[ ] Completed Exhibit 3-O Finance Letter
[ ] Copy of Executed Cooperative Agreement, if not previously submitted (only for projects on State Highway System)
[ ] Exhibit 3-H *Request for Capitol Subvention Reimbursement Authority* (only for projects on State Highway System)

Toll Credit Usage

[ ] This project will use Toll Credit. It is fully funded.
[ ] This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

[ ] Completed Exhibit 7-B *Field Review Form*, or
[ ] The Field Review Form was submitted previously on _____.

Environmental Document

[ ] Type of NEPA Document. Approval Date: _____.
  [ ] Categorical Exclusion (CE) Form
  [ ] Findings of No Significant Impact (FONSI)
  [ ] Record of Decision (ROD)
  [ ] Revalidation

Disadvantaged Business Enterprise (DBE)

[ ] All work for this phase of the project will be performed by local agency staff.
[ ] For consultant contracts a Disadvantaged Business Enterprise (DBE) goal will be established for each contract and the Exhibit 10-*O1Consultant Proposal DBE Commitment* will be submitted with each proposal. Within 30 days of contract execution, Exhibit 10-O2 *Consultant Contract DBE Information* shall be forwarded to the DLAE.

Utility Relocation

[ ] This Agency agrees to comply with 23 CFR 645.119 "Alternate Procedure" (as explained in Chapter 13 *Right of Way*, and Chapter 14 *Utility Relocations* of the LAPM). This alternate procedure is provided to simplify the processing of utility relocations or adjustments under the provisions of 23 CFR 645. Under this procedure, the FHWA authorized the Department of Transportation (Caltrans) to act in relative position of the FHWA for review and approval of the arrangements, fees, estimates, plans, utility agreements, and other related matters required by such regulation as prerequisites for authorizing the utility owner to proceed with and complete the work.

It is understood that the scope of the Department's approval authority under the Alternate Procedure includes all actions necessary to advance and complete all types of utility work under the provisions of such regulation, except Section 645.119 (B)(1) and 645.119 (b)(2). Two of such documents that need the Department's approval are FHWA Specific Authorization and FHWA Approval of the Utility Agreement(s). See Chapter 14, "Utility Relocations," of the LAPM for more information on the activities necessary for federal participation in utility relocations. The approval authority has been delegated to the Right of Way District Utility Coordinators.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

[ ] A CTC allocation is not required, or
[ ] A CTC allocation of funds for the right of way component of work was made at the _____ meeting of the CTC, or
[ ] A CTC allocation of funds has been scheduled for the _____ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the "Authorization to Proceed" (and agency submittal of Exhibit 7-B *Field Review Form* if not previously submitted), a "Program Supplement Agreement" and/or state approved "Finance Letter" will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for disbursement for limited period(s) of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act, to the applicable Fund Reversion date shown on the State approved project finance letter (unless an extension is granted by the Department of Finance). It is anticipated that this phase of work will be completed by _____(month, year)___.

Invoice Submittal

This Agency understands that only relocation work performed after federal "Authorization to Proceed" (E-76), approval of the Specific Authorization, and appropriate Utility Agreement is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed "Program Supplement Agreement" and/or state approval Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered, as well as, for all costs it incurred prior to receiving the FHWA issued Authorization to Proceed

Please advise us as soon as the Authorization to Proceed has been issued. You may direct any questions to: ___(Name of Local Agency Contact)___ at ___(phone number and e-mail address)___ .

_____
Signature of Local Agency Representative

_____
Print Name

_____
Title

_____
Agency

Distribution: DLAE

EXHIBIT 3-D REQUEST FOR AUTHORIZATION TO PROCEED WITH CONSTRUCTION

[Place this form on Local Agency Letterhead]

To: (DLAE Name)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(District Address)

Date: _____
FTIP/FSTIP ID: _____
Federal Project No: _____
Project ID: _____
PPNO (For STIP Projects only): _____
Project Description: _____
_____

Dear (DLAE Name):

In order to advertise, award and administer the construction contract for the above-referenced project, we request that you secure Federal Authorization to Proceed and obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package
- [ ] Completed Exhibit 3-E *Request for Authorization to Proceed with Data Sheet*
- [ ] Copy of FTIP/FSTIP Reference Sheet
- [ ] Completed Exhibit 3-O *Finance Letter*
- [ ] Copy of Executed Cooperative Agreement (only for projects on State Highway System)
- [ ] Exhibit 3-H *Request for Capital Subvention Reimbursement Allocation* (only for projects on State Highway System)

Toll Credit Usage
- [ ] This project will use Toll Credit. It is fully funded.
- [ ] This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)
- [ ] Completed Exhibit 7-B *Field Review Form*, or
- [ ] The Field Review form previously was submitted on _____.

Environmental Document
- [ ] Type of NEPA Document. Approval Date: _____.
  - [ ] Categorical Exclusion (CE) Forms
  - [ ] Findings of No Significant Impact (FONSI)
  - [ ] Record of Decision (ROD)
  - [ ] Revalidation

Disadvantaged Business Enterprise (DBE)
- [ ] All work for this phase of the project will be performed by local agency staff.
- [ ] For construction contracts a Disadvantaged Business Enterprise (DBE) goal will be established for each contract and Exhibit 15-G *Local Agency Bidder DBE Commitment* will be submitted in accordance with contract special provisions. Within 30 days of contract execution, Exhibit 15-G *Local Agency Bidder DBE Commitment* shall be forwarded to the DLAE.

Right of Way Certification (Exhibit 13-A or 13-B)

Right of Way Certification #_____ which was approved on _____ is:

[ ] Attached, or
[ ] Previously submitted.

PS&E Package and PS&E Certification

[ ] Completed PS&E package including Exhibit 12-C *PS&E Certification*, and Exhibit 12-D *PS&E Checklist*, or
[ ] The PS&E package including Exhibit 12-C *PS&E Certification*, and Exhibit 12-D *PS&E Checklist* submitted and accepted on _____.

Local Agency Construction Contract Administration Checklist

[ ] Exhibit 15-A Local Agency Construction Contract Administration Checklist, or
[ ] The Local Agency Construction Administration Checklist was submitted previously and our procedures have not changed.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

[ ] A CTC allocation is not required, or
[ ] A CTC allocation of funds for the construction component of work was made at the _____ meeting of the CTC, or
[ ] A CTC allocation of funds has been scheduled for the _____ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the "Authorization to Proceed" (and agency submittal of Exhibit 7-B *Field Review Form*, if not previously submitted), a "Program Supplement Agreement" and/or state approved "Finance Letter" will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for disbursement for limited period(s) of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act, to the applicable Fund Reversion date shown on the State approved project finance letter (unless an extension is granted by the Department of Finance). It is anticipated that this phase of work will be completed by _____(month, year)____.

Invoice Submittal

This Agency understands that project construction contracts advertised prior to federal authorization are NOT eligible for reimbursement. It is also understood that construction engineering (CE) cost must be specifically included and authorized in the federal Authorization to Proceed with Construction to be eligible for reimbursement. If CE is authorized after construction begins, only those construction-engineering costs incurred after the date the CE is authorized are eligible for reimbursement.

Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed "Program Supplement Agreement" and/or state approved Finance Letter. It is understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended.

CERTIFICATION

I certify that the facts and statements in this "Request for Authorization Package" are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that upon submittal of this request and a completed Field Review Form, the federal and/or state funds will be encumbered via a Program Supplement Agreement and /or state approved Finance Letter. This Agency will comply with the liquidation deadlines as explained in Government Code 16304.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered and all costs it incurred prior to receiving the FHWA issued "Authorization to Proceed" for this phase of the project

Please advise us as soon as the "Authorization to Proceed" has been issued. You may direct any questions to: (Name of Local Agency Contact) at (phone number and e-mail address) .

_____
Signature of Local Agency Representative

_____
Print Name

_____
Title

_____
Agency

Distribution: DLAE

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EXHIBIT 3-Q REQUEST FOR AUTHORIZATION TO PROCEED WITH NON-INFRASTRUCTURE PROJECT (CONSTRUCTION PHASE)

[Place this form on Local Agency Letterhead]

To: (DLAE Name)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(District Address)

Date: _____
FTIP/FSTIP ID: _____
Federal Project No: _____
Project ID: _____
PPNO (For STIP Projects): _____
Project Description: _____
_____

Dear (DLAE Name):

In order to begin federally reimbursable work for the above-referenced non-infrastructure project, we request that you secure Federal Authorization to Proceed and the obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

[ ] Completed Exhibit 3-E *Request for Authorization to Proceed Data Sheet*
[ ] Copy of FTIP/FSTIP Reference
[ ] Completed Exhibit 3-O *Finance Letter*
[ ] NI project work plan, budget, schedule and deliverables

Toll Credit Usage

[ ] This project will use Toll Credit. It is fully funded.
[ ] This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

[ ] Completed Exhibit 7-B *Field Review Form*, or
[ ] Project Application for SRTS-NI, or TE

Environmental Document

[ ] Categorical Exclusion (CE). Approval Date: _____.
[ ] Preliminary Environmental Screening Form for Non-Infrastructure Projects (PES-NI)

Disadvantaged Business Enterprise (DBE)

[ ] All work for this phase of the project will be performed by local agency staff.
[ ] For consultant contracts a Disadvantaged Business Enterprise (DBE) goal will be established for each contract and Exhibit 10-O1 *Consultant Proposal DBE Commitment* will be submitted with each proposal. Within 30 days of contract execution, Exhibit 10-O2 *Consultant Contract DBE Information* shall be forwarded to the DLAE.

California Transportation Commission (CTC) Allocation

[ ] A CTC allocation is not required, or

[ ] A CTC allocation of $ _____ (federal/state) funds was made at the _____ meeting of the CTC, or

[ ] A CTC allocation of funds has been scheduled for the _____ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the "Authorization to Proceed" and Agency submittal of Exhibit 7-B *Field Review Form*, a "Program Supplement Agreement" will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for disbursement for a limited period of time. It is anticipated that this phase of work will be completed by (month, year).

Invoice Submittal

This Agency understands that only work performed after federal "Authorization to Proceed" (E-76) is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed "Program Supplement Agreement" and/or State approval Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated /encumbered as well as for all costs it incurred prior to receiving the FHWA issued "Authorization to Proceed." I further understand that all subsequent phases of the project will require a separate "Federal Authorization to Proceed."

Please advise us as soon as the "Federal Authorization to Proceed" has been issued. You may direct any questions to: (Name of Local Agency Contact) at (phone number and e-mail address) .

_____

Signature of Local Agency Representative

_____

Print Name

_____

Title

_____

Agency

Distribution: DLAE

AWARD PACKAGE

The local agency must submit a complete Award Package to the DLAE immediately after the award of the construction contract. A copy of the Award Package **must also be included** with the local agency's **first invoice for construction** to LPA at:

Department of Transportation
Division of Accounting
Local Program Accounting Branch - MS 33
Attn: Invoice Control
P.O. Box 942874
Sacramento, CA 94274-0001

If LPA does not receive a copy of the award package with the first invoice for the construction phase, the invoice will be returned to the local agency unpaid.

For construction work involving force account, the submittal of the award package is required if the work is contracted out to a contractor. No award package is required if the local agency utilizes its own work force. In this case, submit a brief memo explaining why the award package is not included.

The Award Package for Federal-Aid projects includes the following:

1. LAPM, Exhibit 15-L *Local Agency Contract Award Checklist* with attachments
2. LAPM, Exhibit 15-M *Detail Estimate*
3. LAPM, Exhibit 15-N *Finance Letter*
4. LAPM, Exhibit 15-B R*esident Engineer's Construction Contract Administration Checklist*
5. LAPM, Exhibit 15-G *Local Agency Bidder DBE Information*.

Award Package for State Transportation Improvement Program (STIP) projects

The Award Package for state-only funded construction contract shall consist of the completed Award Information for STIP projects. (See LAPG, Chapter 23, Exhibit 23-A *Award Information for STIP Project*").

5.3 REIMBURSABLE PROJECT COSTS

The costs of salaries, wages and related project costs may be reimbursable for the following activities. All costs must be broken down into eligible direct and/or indirect cost components.

PHASES OF WORK

1. **Preliminary Engineering**: Preliminary Engineering is the initiation, design, and related work preparatory to the advancement of a project to physical construction. For local STIP Projects, the Preliminary Engineering costs must be segregated into:
   - Environmental Studies and Permits
   - Plans, Specifications & Estimate
2. **Right of Way:** Acquisition of right of way, real property, or rights thereto is included. It also includes the preparation of right of way plans, making economic studies and other related preliminary work, appraisal for parcel acquisition, review of appraisals, preparation for and trial of condemnation cases, management of properties acquired, furnishing of relocation advisory assistance, utility relocation, and other related labor expenses.

   Note: Right of Way rental income and the proceeds from the sale of excess land may be retained by local agencies **if it is used for a valid Title 23 purpose.** It is the local agency's responsibility to assure they comply with Title 23 if this option is selected.

   For additional information about Right of Way topics, see LAPM, Chapter 13 - Right of Way.
3. **Construction Engineering:** Construction Engineering is the supervision and inspection of construction activities, additional staking functions considered necessary for effective control of the construction operations, testing materials incorporated into construction, checking shop drawing, and measurements needed for the preparation of pay estimates. **Construction Engineering costs must be listed on the "Authorization to Proceed" (E-76) to be eligible for reimbursement.**
4. **Construction:** Eligible construction costs include the actual costs to construct the transportation facility and its appurtenant facilities. It also includes: removal, adjustment or demolition of buildings or major construction; utilities or railroad work that is a part of the physical construction of the project; and administrative settlement cost of contract claims.
5. **Consultant Audit Costs: The** Consultant audit and review process applies to all engineering and design related service contracts and subcontracts at or above $150,000. See LAPM, Chapter 10 *Consultant Selection* for more information.
6. **Administrative Settlement Costs:** These are service costs related to contract claims related to the review and defense of claims against federal-aid-projects. See LAPM, Chapter 16 "Federal-Aid-Participation."

- The following are shown, for each phase of work:

  Total Costs

  Participating Costs

  Nonparticipating Costs

  Federal Funds

  Other Funds (local, state, etc.)

- The costs shown, by phase of work, are the same on the:

  Final Invoice

  Final Detailed Estimate (federal-funded projects)

  Final Detailed Estimate Summary (federal-funded projects)

  Final Report of Expenditures – report (state-funded projects)

- If there are Liquidated Damages, they are shown on both the Final Invoice and the Final Detail Estimate. If there were none, write "None".
- A Change Order Summary is provided, whether there were change orders or not. If there were none, write "None".
- Contractor Claims are listed. If there were no claims, write "None".

5.7 FINAL PROJECT COSTS

The final project cost listed in the local agency's Final Report of Expenditures will be analyzed by LPA to determine if the costs reported for each phase of work are eligible for federal reimbursement. Eligible amounts for each phase of work, as determined from the analysis are reconciled with the costs recorded in the Caltrans' accounting system.

If it is determined that the funds paid to the local agency are more than the amount eligible for reimbursement, LPA will initiate an Accounts Receivable billing to the local agency for recovery of the overpayment. However, if it is determined that the amount paid is less than the amount eligible for reimbursement, LPA will send the additional amount to the local agency.

5.8 AUDIT OF LOCAL AGENCY EXPENDITURES

The local agency shall maintain written source document records that account for agency costs and payments made to consultants, vendors, and contractors. Contract records must be retained by the local agency for a minimum period of three years from the date of the final payment by the state. Refer to Title 49, Code of Federal Regulations (CFR), Section 18.42 for federal requirements for retention and access of records.

Local agency expenditures for all local assistance programs are subject to financial and compliance audits by the SCO and Caltrans Office of External Audits (OEA). The OEA's evaluation of a local agency's system of controls will determine if an on-site audit of the local agency's records (underlying the reported project) is necessary.

The auditors typically discuss any audit findings with the local agency before finalizing their report. The local agency should provide any clarifications or raise any objections to the audit findings at this meeting.

Local agencies are also subject to the audit requirements of the Federal Office of Management and Budget's Circular A-133. A single audit is required if an agency receives more than $500,000 in federal funds from all sources in their fiscal year. Normally, project audits are not necessary if the expenditures for a project are covered by a single audit report accepted by the appropriate federal agency.

5.9 FINAL REPORT OF EXPENDITURES ON PROJECTS ADMINISTERED BY THE STATE

The final report of expenditures for state administered local assistance projects is prepared by LPA.

On some projects, the state performs only specific phases of work associated with a local assistance project. For example, design engineering, right of way acquisition, or striping may be performed by the local agency for a construction project administered by the state. In such instances, LPA is responsible for preparing a Final Report of Expenditures for the work performed by state staff. The local agency is responsible for preparing the Final Report of Expenditures for work it performed and for any expenditure it incurred.

5.10 AUDIT OF STATE EXPENDITURES

Caltrans' internal procedures and controls for major contracts do not require a formal audit of each construction project. However, projects may be selected on a random basis for an audit of extra work paid by a force account method of payment (see LAPM, Chapter 12, "Plans, Specifications & Estimate").

EXHIBIT 15-I LOCAL AGENCY BID OPENING CHECKLIST

Project Sponsor: _____

Federal-aid Project Number: _____

Project Location: _____
(Caltrans District, County, Road/Street or route, Jurisdiction)

Project Limits: _____
(Physical limits reference post miles or intersections)

Bid opening date and time	
Bid opening by	Name:
Bids publicly opened and read aloud?	(Yes/No)
Addenda certified by	
Advertisement date	
Engineers Estimate Compared?	(Yes/No)
Low Bidder Name	
Amount	
Number of Bidders	
Bid irregularities?	(Yes/No)
Noncollusion affidavit included (Exhibit 12-E, Attachment D)?	(Yes/No)
Low Bid signed?	(Yes/No)
Exhibit 15-G *Local Agency Bidder DBE Commitment* included?	(Yes/No)
All Addenda certified by all bidders?	(Yes/No)

Reviewed by: _____
(Name of Local Agency Representative)

Title: _____

Date: _____

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EXHIBIT 15-L LOCAL AGENCY CONTRACT AWARD CHECKLIST

Project Sponsor: _____

Federal-aid project #: _____

Project Location: _____
(Caltrans District, County, Road/Street or Route, Jurisdiction)

Project Limits: _____
(Physical limits reference, Post miles or Intersections)

Has Caltrans issued an "Authorization to Proceed" in writing with federal funds included for construction, and is the amount correct?	(yes/no)
Copy of engineers estimate	to be attached
Is material testing and sampling arranged?	(yes/no)
Copy of low bidder's proposal	to be attached
Low Bid signed in ink?	(yes/no)
Is a Good Faith Effort Statement of DBE Participation (Exhibit 15-H) included in the low bidder's proposal? (Only required if DBE goal is not achieved)	(yes/no/not applicable)
Local Agency Bidder DBE Information (Exhibit 15-G)	to be attached
Is the Noncollusion Affidavit (Exhibit 12-E *PS&E Checklist Instructions, Attachment D*) included in the low bidders' proposal?	(yes/no)
Is the Bid summary (itemized bids for 3 lowest bidders) complete?	(yes/no)
Addendum procedures adhered to?	(yes/no)
TIP information, Authorized amount	($ amount)
Include TIP page number or amendment number here:	
Bid opening procedures were adhered to?	(yes/no)
Date DLA's Federal Wage Rate website was checked for updates *	(date)
Date of bid opening	(date)
Date of award	(date)
Amount of award	($ amount)
Detail Estimate (Exhibit 15-M)	to be attached
Finance Letter (Exhibit 15-N)	to be attached
Resident Engineer's Construction Contract Administration Checklist	to be attached
Is successful bidder licensed?	(yes/no)
Estimated construction completion date	(date)

Reviewed by: _____
(Signature of Local Agency Representative)

_____
(Name printed or typed)

Title: _____

Date: _____

Phone Number: _____

NOTE: If the answer is " no" to any of the above questions, a letter of explanation is required. The DLAE shall review the explanation and determine if the local agency is eligible for federal funds.

* **If the date listed is more than 10-calendar days before bid opening, local agency must provide documentation that web site was subsequently checked within the 10-calendar day period or after bid opening, and there were no changes in the applicable federal wage rates.**

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- In the absence of prior approval documentation, the use of publicly owned equipment, mandatory use of borrow/disposal sites, use of patented/proprietary materials, use of warranty/guaranties, and use of agency-furnished materials, shall make all or part of the construction phase ineligible for reimbursement with federal funds (see Chapter 12, "Plans, Specifications & Estimate," of the LAPM
- Failure to submit a "Material Certificate" shall result in a partial loss of funding for the construction phase. Failure to adequately document and address all exceptions to the certification will result in all or partial loss of reimbursement. Failure to implement an approved materials and testing program for the project will result in the loss of federal funds for the project (see Chapter 16, "*Administer Construction* Project," and Chapter 17, "Project Completion," of the LAPM).
- Failure to enforce the Contract DBE provisions with regard to utilization or substitution will make all or part of the construction phase ineligible for reimbursement with federal funds (see Chapter 9, "Civil Rights and Disadvantaged Business Enterprises," of the LAPM). (*This applies to Contracts executed before May 1, 2006 with race-conscious DBE goals.*)
- Failure to maintain the completed project (roadway and appurtenances constructed with federal funds and/or mitigation sites), or portions of the project shall result in repayment of all or a portion of the federal reimbursement. (See Chapter 18, "Maintenance," of the LAPM).

Examples of some of most common (found by Caltrans) Major Project Deficiencies (State) are:

- RTPAs that use Exchange Funds for non-Article XIX purposes or for other than projects will have to return the funds given to them (see Chapter 18, "Optional Federal Exchange and State Match Programs," in the LAPG).
- Counties that use Exchange Funds for other the non-Article XIX purposes will have to return the funds given to them (see Chapter 18, "Optional Federal Exchange and State Match Programs," in the LAPG).
- On Environmental Enhancement and Mitigation (EEM) projects, reimbursable costs must be invoiced for by the end of the first state fiscal year following the fiscal year, during which funds were allocated by the CTC. Failure to comply will result in loss of the federal reimbursement (see Chapter 20, "Environmental Enhancement and Mitigation," in the LAPG).

UNRECOVERABLE PROJECT DEFICIENCY

An Unrecoverable Project Deficiency is defined as "a deficiency of such magnitude as to create doubt that the policies and objectives of Title 23 of the USC (or other applicable federal codes) will be accomplished by the project," (quote from "PS&E Certification") and the project has proceeded to the point that the deficiency cannot be corrected. <u>This level of deficiency shall result in the withdrawal of all or a portion of the federal and/or state funds from the project</u>.

Examples of some of the most common (found by Caltrans and FHWA) Unrecoverable Project Deficiencies (Federal) are:

- Projects that are not on an approved FTIP/FSTIP are not eligible for reimbursement with federal funds for any project activities prior to approval of the FTIP/FSTIP and project authorization (see Chapter 2, "Financing the Federal-Aid Highway Program," in the LAPG.)

- Any preliminary engineering, right of way and construction activities done prior to authorization are not eligible for reimbursement (see Chapter 3, "Project Authorization," of the LAPM
- Violation(s) of permit requirements or conditions obtained as a requirement of the environmental process, or failure to secure required permits, or NEPA approvals will result in a loss of all or part of the federal project funding (see Chapter 6, "Environmental Procedures," of the LAPM).
- Not complying with the audit and review process on A&E consultant contracts of $150,000 or more.
- Consultant contract awarded, but not through competitive negotiations, when a noncompetitive negotiated contract is not warranted.
- Design work (over and above what is required for NEPA compliance) prior to NEPA approval is not eligible for reimbursement with federal funds (see Chapter 3, "Project Authorization," Chapter 6, "Environmental Procedures," and Chapter 12, "Plans, Specifications & Estimate," of the LAPM).
- Failure to include required contract provisions, Form FHWA-1273 and other contract provisions - certifications, in the bid documents shall make the construction phase of the project ineligible for federal reimbursement (see Chapter 12, "Plans, Specifications & Estimate," of the LAPM).
- Right of Way Acquisition prior to NEPA approval (except for hardship and protection with FHWA prior approval) is not eligible for federal reimbursement (see Chapter 3, "Project Authorization," Chapter 6, "Environmental Procedures," and Chapter 13, "Right of Way," of the LAPM).
- Additional costs resulting from incorrect statements on Right of Way Certification are not eligible for federal reimbursement (see Chapter 13, "Right of Way," of the LAPM).
- Failure to open the bids publicly, failure to read the bids aloud, or failure to discuss reason(s) for not reading bid(s) aloud shall make the construction phase ineligible (see Chapter 15, "Advertise and Award Project," of the LAPM).
- Award of the construction contract to other than the lowest, responsive bidder for bids based on competition shall make the construction phase ineligible for reimbursement with federal funds (see Chapter 15, "Advertise and Award Project," of the LAPM).
- Negotiations with bidder(s) prior to award, except for force account projects, shall make the construction phase ineligible for reimbursement with federal funds (see Chapter 12, "Plans, Specifications & Estimate," and Chapter 15, "Advertise and Award Project," of the LAPM).
- Award of the contract to a suspended or debarred contractor shall make the construction phase ineligible for reimbursement with federal funds (see Chapter 15, "Advertise and Award Project," of the LAPM).

FUNDING ALLOCATION CHECKLIST
(LOCAL STIP PROJECTS)

PPNO:_____
Project ID: _____

_____
(Brief Project Description.)

☐ Reimbursable work was started prior to this request for allocation.

Output/Outcome: _____
_____
(Action taken/quantifiable benefits or results)

This checklist is to be completed by the local agency and attached to the Request for Funding Allocation. (Not required for PPM and Rideshare Projects.)

TYPE OF PROJECT

- ☐ New Highway Facility
- ☐ Widen Existing Facility
- ☐ Pedestrian and bicycle facilities
- ☐ Soundwalls
- ☐ Grade separation
- ☐ Intermodal facilities
- ☐ Transportation Enhancement (TE)
- ☐ Storm Damage Repair
- ☐ Local Road Rehabilitation
- ☐ Reconstruction (See Section III.A.3 of Procedures for definition)(describe)_____
- ☐ Transportation System Management
- ☐ Safety
- ☐ Other (describe)_____

Fund Allocation Summary

20 STIP (as amended) Regional Improvement Program			**Fund Allocation**		
Project Component	Amount	Fiscal Year	Previous	This Request	Total
Environmental Studies & Permits	$_____	_____/_____	$_____	$_____	$_____
Plans, Specifications & Estimate	$_____	_____/_____	$_____	$_____	$_____
Right of Way	$_____	_____/_____	$_____	$_____	$_____
Construction	$_____	_____/_____	$_____	$_____	$_____
Total	$_____		$_____	$_____	$_____

HIGHWAY FUNCTIONAL CLASSIFICATION

(Check appropriate box)

A Eligible for Federal-aid

- ☐ Urban Principal Arterial
- ☐ Urban Minor Arterial
- ☐ Urban Collector
- ☐ Rural Principal Arterial
- ☐ Rural Minor Arterial
- ☐ Rural Major Collector

B Ineligible for Federal-aid

- ☐ Urban Local
- ☐ Rural Minor Collector
- ☐ Rural Local

STATE-ONLY FUNDING APPROVAL

1. Indicate type of funding
   - ☐ Federal/Local (Skip to question #5)
   - ☐ Federal/State (Skip to question #5)
   - ☐ State-only

2. Is the State-only funding approved?
   - ☐ Yes
   - ☐ No

   If "Yes," indicate the type of approval and then skip to question #5
   - ☐ Project included in an approved projects list (attach approved projects list)
     - ☐ 1998 STIP Projects Flagged for State-Only
     - ☐ Grandfathered Projects – '96 STIP
     - ☐ Projects Granted SOF
   - ☐ Capital project under $750,000 (total amount programmed for all components in the STIP)
   - ☐ State funds used to match federal funds
   - ☐ Granted state-only funding exception by Caltrans after publication of the current approved projects list (attached copy of approval)

3. Is this a local road rehabilitation project equal to or greater than $750,000 identified in the 1998 STIP Augmentation?
   - ☐ Yes
   - ☐ No

   In accordance with CTC policy, state-only funding was to be provided for all rehabilitation projects identified in the 1998 STIP Augmentation, regardless of cost. However, this was not a commitment that state-only funding would be available at the time of allocation. If the answer to this question is "Yes," attach specific reasons why federal funds should not be used on the project at this time. See the current "STIP State-Only Funding Policy"(http://www.dot.ca.gov/hq/transprog/)for evaluation criteria Caltrans will consider before approving this request.

4. If the answers to questions 2 and 3 are both "No," complete the Checklist and submit the "Request for Exception to STIP State-Only Funding Policy" form, for approval by the CTC. (Regional Transportation Planning Agency concurrence required.)

LOCAL ROAD REHABILITATION PROJECTS

5. Has the RTPA certified that the project meets the standard for rehabilitation?
   ☐ Yes
   ☐ No
   If "Yes," attach copy of Local Road Rehabilitation Project Certification and skip to next section.
   If "No," this Request for Funding Allocation will not be processed until the Certification is provided.

ENVIRONMENTAL CLEARANCE REQUIREMENTS

6. Is this request limited to funding for the Environmental Studies component?
   ☐ Yes
   ☐ No
   If "No," a completed CEQA Environmental Document is required.
   For certain types of projects that do not result in either direct or indirect change in the physical environment, a formal CEQA document may not be needed. An example of this type of project is installing bicycle racks on buses. Consult Caltrans Environmental office for interpretations.

7. Is final CEQA determination a categorical exemption (CE)?
   ☐ Yes
   ☐ No
   If "Yes," skip to question #9.
   If "No," go to question #8.

8. Did local agency submit final CEQA environmental documentation to CTC?
   ☐ Yes
   ☐ No
   If "Yes", please provide Resolution E#:_____. This can be obtained from the CTC "Action Taken Report" at http://www.dot.ca.gov/hq/transprog/ctcliaison.htm. If "No," local agency needs to submit environmental documentation to support CEQA determination to: CTC, 1120 N Street, MS 52, Sacramento, CA 95814. This is required to obtain subsequent allocation approval by CTC.
   (Note: Notice of Preparation (NOP) and Draft Environmental Impact Report (DEIR) should be forwarded to the CTC to allow the CTC to provide comments in its role as a responsible agency – see CEQA Lead Agency Responsibilities letter dated 4/20/2009 from Division of Local Assistance.)

9. Is this request for a project with any federal funds (STIP or non-STIP)?
   ☐ Yes
   ☐ No
   If "No," skip question 8, a NEPA Environmental Document is not required.

10. Is this request for Right of Way or Construction funding?
    ☐ Yes
    ☐ No
    If "Yes," a completed NEPA Environmental Document is required.

11. [Reserved for Future Use]

12. [Reserved for Future Use]

ESTIMATED TIMELY USE OF FUNDS DEADLINES

13. Requested Funding Allocation Approval date _____

14. Is this request for Project Development costs (Environmental Studies or PS&E)?
    - ☐ Yes
    - ☐ No

    If "Yes," complete the following:

    Estimated expenditure deadline for this project development allocation: _____
    (Enter June 30th of the end of the second fiscal year after the requested approval date.) **Expenditures after this date will not be reimbursed and no adjustment will be made to the county share balance for the under-expenditure unless the CTC extends the deadline.**

15. Is this request for Right of Way costs?
    - ☐ Yes
    - ☐ No

    If "Yes," complete the following:

    Estimated expenditure deadline for this right of way allocation: _____
    (Enter June 30th of the end of the second fiscal year after the requested approval date.) **Expenditures after this date will not be reimbursed and no adjustment will be made to the county share balance for the under-expenditure unless the CTC extends the deadline.**

16. Is this request for Construction costs?
    - ☐ Yes
    - ☐ No

    If "Yes," complete the following:

    Estimated award deadline for this allocation: _____
    (Enter the date that is 6 months after the date of the requested approval date.) **If the project is not awarded by this date, the funding will be rescinded with no adjustment to county shares unless the CTC extends the deadline.**

    Based on the requested funding approval date shown above, we estimate that we will award a contract for this project on _____ (enter date) and complete the contract on _____ (enter date).

    Estimated expenditure deadline for this construction allocation _____ (Enter the date that is 36 months after the estimated award date shown above.) **If it is estimated the contract will not be completed and accepted by this date, attach justification for the extra time required to complete the contract.**

REGIONAL TRANSPORTATION PLANNING AGENCY CONCURRENCE

17. Will this request require approval of an exception to the policy described in the current CTC-adopted "STIP State-Only Funding Policy?" (Question 2)

- ☐ Yes
- ☐ No

18. Will this request change the project description, scope, exceed the amount programmed, or require an advance? (Questions 7, 8 and 9)
    - ☐ Yes
    - ☐ No

19. Has the RTPA passed a resolution requiring their concurrence on all requests for STIP funding allocations?
    - ☐ Yes
    - ☐ No

If the answer to question 17, 18, or 19 is "Yes," the RTPA must sign the "Request for Funding Allocation" form.

Prepared by: _____ Date: _____ Phone No. _____

Title: _____

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