CHAPTER 10 CONSULTANT SELECTION

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CHAPTER 10 CONSULTANT SELECTION

10.1 GENERAL

INTRODUCTION

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

FEDERAL LEGISLATION

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

STATE LEGISLATION

Architectural and Engineering (A&E) Consultants - Those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or construction project management services are termed "Architectural and Engineering (A&E) Consultants." California law requires selection of A&E contract services on the basis of demonstrated competence and professional qualifications. Submitted cost shall be sealed and may not be included as criteria for rating such consultants. After ranking, 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 shall be formally terminated and the local agency shall then undertake negotiations with the second most qualified consultant.

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

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

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

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

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

Wage information is available through the California Department of Industrial Relations web site at: http://www.dir.ca.gov/dlsr/statistics_research.html

Sample forms, documents and "Questions & Answers" that are applicable to Caltrans A&E contracts for California State highway projects can be found at: http:/Caltrans-opac.ca.gov/aeinfo.htm

Non Architectural and Engineering (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.

SELECTING THE PROJECT

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

SUBCONTRACTED SERVICES

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

If the consultant wishes to use a 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 by such firms exceeds $25,000, the subcontract shall contain all required provisions of the prime contract.

AUTHORIZATION TO PROCEED

FHWA or Caltrans acting in FHWA's behalf must give the local agency an "Authorization to Proceed" with the work prior to the performance of any work for which federal reimbursement is to be requested, (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 DLAE should be notified if federal-aid or state funds are to be requested for the project segment to be contracted out.

POTENTIAL CONFLICT OF INTERESTS

No consultant performing design, investigation or environmental service, nor any firm affiliated with the consultants, shall bid on a construction contract or contract to provide construction inspection of a construction project resulting from the consultant's contract.

APPOINTING THE CONTRACT ADMINISTRATOR

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions and in the administration of the consultant's work. The Contract Administrator must be a qualified local agency employee, or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract. The Contract Administrator or staff members must be thoroughly familiar with the work to be contracted out and the standards to be used. The Contract Administrator must also abide by the laws, regulations and policies required as part of accepting federal and/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 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 providing direction.
- Reviews billings and makes a determination whether costs billed are reasonable in relation to the work performed during billing period.
- Approves the consultant's progress payments.
- Identifies other local agency persons for the consultant to contact, if needed.

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

DETERMINING THE PROJECT SCHEDULE

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

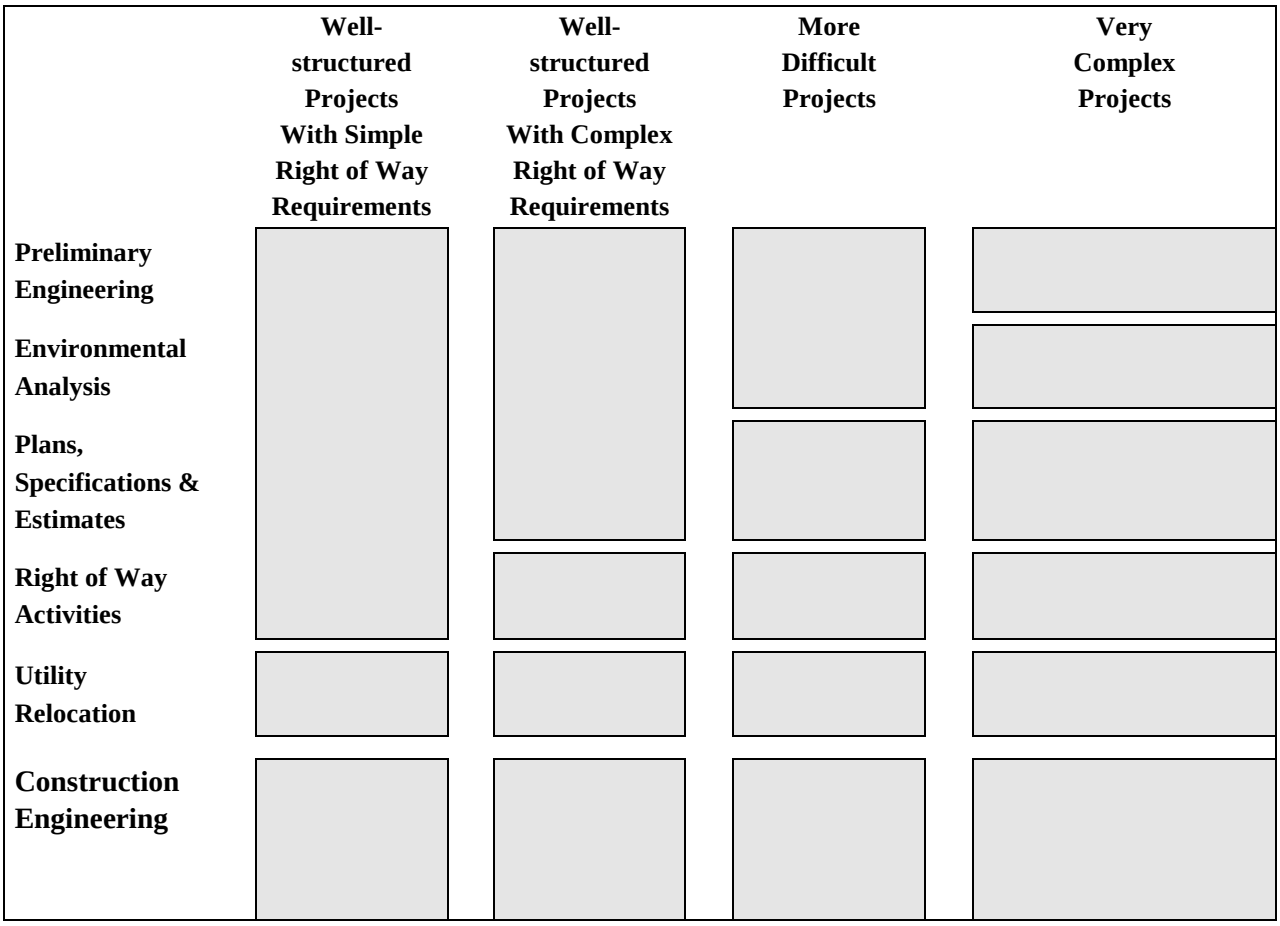
- Selecting the consultant.
- Developing the consultant contract.
- Completing the A&E consultant contract audit process.
- Conducting meetings and project reviews.

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 must be delayed until environmental clearance has been received if federal reimbursement is desired.

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

FIGURE 10-1 SEGMENTING CONSULTANT WORK



VALUE ENGINEERING ANALYSIS

For projects on the federal-aid system with a total project cost of $25 million or more and a bridge project with a total project cost of $20 million or more, federal requirements

included in "SAFETEA-LU" Section 1904 "Stewardship and Oversight" mandate that a "value engineering analysis" be performed on these projects. For more information on this subject, please see Chapter 12 "Plans, Specifications & Estimate," Section 12.5 "Value Engineering Analysis" of this manual.

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

- On engineering and economic bases taking into consideration acceptable designs for bridges.
- Using analysis of life-cycle and duration of project construction.

SPECIFY PRODUCTS TO BE DELIVERED

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

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) shall be included in each consultant agreement/contract. The consultant shall include the nondiscrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the agreement/contract.

DBE PARTICIPATION

The provisions of 49 CFR, Part 26 require that a local agency receiving federal-aid funds comply with the DBE program, and that DBE firms have the opportunity to participate in the projects (see Chapter 9, "Civil Rights and Disadvantaged Business Enterprises," of the LAPM). Such steps include the setting of goals to ensure DBE firms are considered by the proposing consultants. When feasible, organize the project schedule and task requirements to encourage participation in the contract by DBE firms. Local agencies should be fully aware of all of the subcontracting opportunities in their consultant contracts.

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

An Underutilized DBE (UDBE) goal should be established by the local agency for each contract if there are subcontracting opportunities and available UDBE firms. The consultant must meet the goal by using UDBEs, or document a good faith effort to meet the contract goal. Good faith efforts shall be documented and verified (Chapter 15, Exhibit 15-H "UDBE Information-Good Faith Efforts," form of the LAPM). If a UDBE subconsultant is unable to perform and the goal is not otherwise met, the consultant must make a good faith effort to replace him/her with another UDBE subconsultant to the extent needed to meet the UDBE goal. For more detailed information see Exhibit 10-I, "Notice to Proposers Disadvantaged Business Enterprises Information." For sample contract clauses with and without specified UDBE goals see Exhibit 10-J, "Standard Agreement for Subcontractor/DBE Participation."

REPORTING DBE PARTICIPATION

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

REPORTING UDBE COMMITMENTS AND DBE INFORMATION

For contracts with UDBE goals:
The "Local Agency Proposer UDBE Commitment (Consultant Contracts) (Exhibit 10-O1) must be included in the proposal package and provided by each proposer. The completed form must be submitted to the DLAE at the time of award.

This form must include the names, addresses, and phone numbers of UDBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each UDBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by the UDBE, a description of the exact portion of work to be performed or furnished by that UDBE should be included in the UDBE commitment, including the planned location of that work. A proposer certified as a DBE and is owned by an African American, Asian-Pacific American, Native American, or a Woman should 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 UDBE subcontractors, suppliers, and trucking companies.

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

The "Local Agency Proposer DBE Information (Consultant Contracts)" (Exhibit 10-O2) shall also be included in the proposal package and provided by each proposer. The purpose of this form is to capture DBE participation in accordance with 49 CFR, Part 26. On contracts with a UDBE goal, this form captures certified DBEs that are owned by Hispanic American and Subcontinent Asian American males (include persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka.

For contracts with no UDBE contract goal, Exhibit 10-O2 shall be included in the proposal package and provided by each proposer. The purpose of including this form is to capture all DBE participation, including UDBE participation that was acquired through normal contracting procedures (i.e., no goal was placed on the contract).

Reporting DBE (including UDBE) Final Utilization (Contracts with or without goals)

Upon completion of the contract, regardless of whether UDBE or other DBE participation is obtained, a summary of the UDBE and DBE final utilization shall be prepared, certified correct, and submitted on Exhibit 17-F "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors" or equivalent by the contractor to the local agency showing total dollars paid to each subcontractor and supplier whether UDBE, DBE, or non-DBE. 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 cost estimate is needed for consultant contracts (required for contracts over $150,000) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance, so the local agency's negotiating team has a detailed cost analysis of the project to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the local agency's negotiating team, is to be kept confidential.

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

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

The cost estimate must include a detail cost breakdown of:

- Direct labor costs
- Indirect costs
- General and administrative costs
- Other direct costs
- Subcontractor costs
- Net fee or profit

If more than one project or phase of work is to be developed within the consultant contract, separate cost estimates are required for each project or phase of work. Separate cost estimates are required for each milestone and portion of the work expected to be subcontracted.

DETERMINE TYPE OF CONTRACT

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

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

ACTUAL COST-PLUS-FIXED FEE

The consultant is reimbursed for actual costs incurred and receives an additional predetermined amount as a fixed fee (profit). The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract unless there is a significant change in the scope of the work; in which case the fee may be renegotiated.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. Fixed fees apply to the total direct and indirect costs. (See Exhibit 10-H "Sample Cost Proposal" form and Exhibit 10-E "Sample Payment Clauses" form in this chapter.)

COST PER UNIT OF WORK

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

SPECIFIC RATES OF COMPENSATION

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

hourly breakdown, direct salary costs, salary additives, indirect costs, and net fee.

Other direct costs may be included as independent cost items. This type of contract is recommend for on-call contracts and should be considered only when none of the other three contract types can be used. It is used only for emergency work when the tasks are relatively minor, or for equipment (such as material testing equipment), and vehicles.

LUMP SUM

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

10.3 A&E CONSULTANT AUDIT

Consistent with 23 CFR § 172.7 and Caltrans oversight responsibilities, all State or federally funded A&E consultant contracts exceeding the Small Purchase Procedures threshold of $150,000 shall comply with one of the applicable three case requirements outlined below. The local agency is responsible for complying with these requirements and determining the eligibility of costs reimbursed to the consultant.

All consultant proposals and supporting documents for the project contract are subject to audit or review by Caltrans or FHWA. Audit adjustments should be made to conform to the audit recommendations. The type of audit or review could consist of pre/post award audit, incurred cost audit, overhead audit, financial management system review, or any other audit procedures deemed necessary. The following clause is required to be included in the contract at time of execution:

> **"The Cost Proposal is subject to an audit or Certified Public Accountant (CPA) Indirect Cost (Overhead) Audit Workpaper Review. The Cost Proposal shall be adjusted by the Consultant and approved by the Local Agency Contract Manager to conform to the Workpaper Review recommendations or audit recommendations. The Consultant agrees that individual terms of cost identified in the audit report shall be incorporated into the Agreement by this reference if directed by the Local Agency at its sole discretion. Refusal by the Consultant to incorporate the Workpaper Review recommendations or audit recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement"**

The local agency will be subject to the sanctions mentioned in Chapter 20, "Deficiencies and Sanctions," of the LAPM if Caltrans, FHWA, or Federal Transit Administration (FTA) determines that any reimbursements to the consultant are the result of lack of

proper contract provisions, unallowable charges to unsupported activities, or an inadequate financial management system.

Figure 10-2 shows the A&E Consultant Audit Process. As noted in Figure 10-2, the audit confirmation process is performed by the local agency after selection of the consultant has been made.

Case 1: Proposed A&E Consultant Contracts of $150,000 or More

The Prime Consultant must certify (See Exhibit 10-K "Certification of Financial Management System and Contract Costs") that:

- The Consultant's financial management system meets the financial standards set forth in 49 CFR § 18.20
- The proposed costs in the prime and subconsultant cost proposals are in compliance with the cost principles established in 48 CFR, Chapter 1, Part 31 – *Contract Cost Principles*
- The approximate dollar amount of all A&E contracts awarded to the Prime Consultant by Caltrans or a local agency in California within the last three (3) calendar years, and the number of states the firm does business in, has been provided in Exhibit 10-K, Certification of Financial Management System and Contract Costs

All prime consultants and subconsultants must have an indirect cost rate that has been prepared in accordance with the following criteria and in the acceptable indirect cost rate schedule formats (refer to the American Association of State Highway and Transportation Officials (AASHTO) Uniform Accounting & Audit Guide, Chapter 5, for guidance and schedule examples), and retained in the project files:

- Government Auditing Standards (GAS) issued by the United States Government Accountability Office
- 23 Code of Federal Regulations (CFR), Chapter 1, Part 172 – Administration of Engineering and Design Related Service Contracts
- 48 CFR, Chapter 1, Part 31 – *Contract Cost Principles*
- 48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900, if applicable

The Local Agency must also certify on Exhibit 10-K that a cost analysis, including an independent cost estimate, has been performed in connection with this procurement action, and a cost analysis will be performed for any contract modifications exceeding the Small Purchase Procedures threshold of $150,000.

Local agencies will require prime and sub consultant firms to provide copies of prior and current Certified Public Accountant (CPA) indirect cost rate (ICR) audit reports and rate schedules, if any. All prior and current audits, and supporting documents shall be retained in the local agency project files and made available for a state or federal audit or process review at any time. Consultants shall use no more than the indirect cost rate (s) established by a cognizant agency audit, if available, for that fiscal year, or the CPA audited, reviewed, or compiled indirect cost rate. Also, in all cases the financial statements should include representation from the consultant's management that the amounts are current, accurate, and are prepared in compliance with regulations that apply to the specific circumstance as specified in the AASHTO Uniform Accounting & Audit Guide.

The same indirect cost rate may be used for multi-year contracts if agreed to by both the Consultant and the local agency per 23 CFR § 172.7(b).

Although not required to be submitted on A&E contracts under $1 million, all prime consultants should be prepared to submit a completed Internal Control Questionnaire (AASHTO Uniform Audit & Accounting Guide, Appendix B) upon request by Caltrans or the FHWA.

For additional guidance regarding the existing policies and procedures set forth in the Federal Regulations, and acceptable samples of indirect rate(s) schedules, refer to the AASHTO Uniform Audit and Accounting Guide.

For guidance on proposal cost and price analysis techniques refer to 48 CFR, Chapter 1, Part 15.404.

Case 2: Proposed A&E Consultant Contracts of $1 Million or More

A&E prime and subconsultant contracts at $1million or more must comply with all the requirements in Case 1 above, and are subject to a Caltrans Audits and Investigations risk-based audit selection process. A&E proposed contracts and cost proposals totaling $1million or more must be sent to Caltrans A&I for review of conformance with this chapter of the LAPM. Specifically, the cost proposal must be presented in the applicable format for the method of payment (See Exhibit 10-H) for the prime and all subconsultants and must contain a breakdown of all cost components to include: unloaded labor base rate, other direct costs, indirect cost rate, escalation and net fee. The proposed A&E Contract must contain the required fiscal provisions as specified by an "*" in Exhibit 10-R.

The Local Agency is required to provide the following to Caltrans A&I along with the A&E draft Agreement and prime and sub consultant Cost Proposals (see Exhibit 10-A Sample A&E Consultant Audit Request and Checklist):

- Consultant generated Indirect Cost Rate(s) schedule prepared in accordance with applicable CFRs.
- A completed Internal Control Questionnaire (AASHTO Accounting and Audit Guide, Appendix B)
- Consultant Certification of Final Indirect Costs (Exhibit 10-L)
- Certification of Financial Management System and Costs (Exhibit 10-K)

And one of the following; as applicable:

- A copy of the prior and current fiscal year Cognizant approved indirect cost rate(s) and approved State DOT letters for the consultant, if available; or
- A copy of the prior and current fiscal year indirect cost rate(s) audited by an independent CPA, if available. If a CPA-audited indirect cost rate is available for the appropriate fiscal year, then the consultant must use the indirect cost rate, or lower, in the cost proposal; or
- A copy of the prior and current fiscal year indirect cost rate(s) evaluated on a prior Caltrans or Local Agency contract, if any.

A&I will respond to the local agency with a Conformance Letter within 30 business days of receiving complete documentation bulleted above. The Conformance Letter will provide information about the fiscal provisions and cost proposal presentation of the contract in conformance with the LAPM Chapter 10. Negotiations may be completed after receipt of the Conformance Letter. An indirect cost audit may be performed within the record retention period of the contract. The Local Agency must retroactively adjust indirect cost rate for the contract, if deemed necessary by A&I, and is responsible for ensuring the audit findings are resolved.

The review program as set forth in the AASHTO Uniform Audit & Accounting Guide, Appendix A, will be used to conduct the indirect cost audit.

The Federal Acquisition Regulations (FAR) compliance audits (which may result in cognizant approved indirect cost rates), desk reviews, and other alternate procedures are performed to provide effective assurance of compliance with the FAR cost principles for the firms doing business within the State. Risk factors to be considered for audit selection will include, if applicable:

- History of satisfactory performance
- Prior FAR-compliant history and audit frequency
- Financial Stability
- Conformance to terms and conditions of previous contract awards
- General responsiveness and responsibility
- The approximate dollar amount of all A&E contracts awarded to the Prime Consultant by Caltrans or a local agency in California within the last three (3) calendar years
- The number of States in which the firm does business
- The type and complexity of the accounting system used by the consultant
- The relevant professional experience of the CPA performing audits on the firm's indirect cost rate
- The engineering consultant's responses to the Internal Control Questionnaire
- Changes in the engineering consultant's organizational structure

Case 3: Proposed A&E Consultant Contracts of $3.5 Million or More

A&E Consultant Contracts at $3.5 million or more must comply with all the requirements in Case 1 and 2 above, and the CPA audited indirect cost rate is subject to Caltrans A&I risk-based audit selection process. Also, Prime Consultants must provide the following to Caltrans A&I:

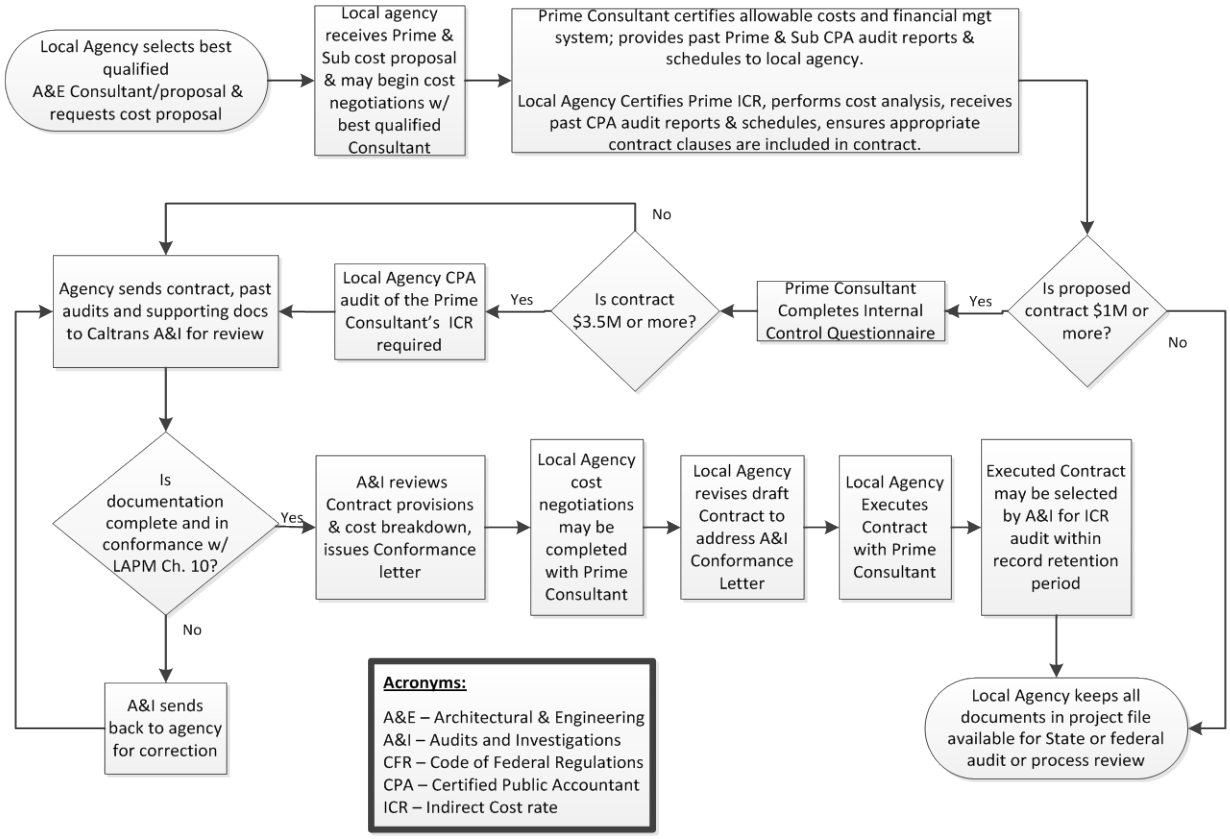
- Approved State DOT Cognizant Indirect Rate, if any; or
- CPA Audited Indirect Cost Rate Audit Report (if there is not an approved State DOT Cognizant Indirect Rate.) See AASHTO Uniform Audit & Accounting Guide, Chapter 11 for audit reports and minimum disclosures; and
- A copy of the CPA audited financial statements, if any

Government auditors will use the CPA Workpaper Review Program when performing indirect cost rate audits or when reviewing the workpapers of others, to determine whether it is appropriate to issue a cognizant letter of concurrence. The workpaper review program is a tool to determine whether:

- The CPA's audit was conducted in accordance with Government Auditing Standards issued by the United States Government Accountability Office
- The CPA adequately considered the auditee's compliance with 48 CFR, Chapter 1, Part 31, and related rules and regulations
- The audit report format is acceptable as shown in the AASHTO Uniform Audit & Accounting Guide, Chapter 11.

The CPA Workpaper Review Program appears in Appendix A of the AASHTO Uniform Audit & Accounting Guide.

FIGURE 10-2 A&E CONSULTANT AUDIT PROCESS



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

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

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.

ONE-STEP RFP (REQUEST FOR PROPOSAL)

The One-Step RFP method may be used when the scope of the project is well defined. Other considerations include when the consultant's services is highly specialized and there are few qualified consultants. This method is also used

when a local agency has a modest number of projects per year, and the expected number of proposals is small—generally, less than ten.

ONE-STEP RFQ (REQUEST FOR QUALIFICATIONS)

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

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

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

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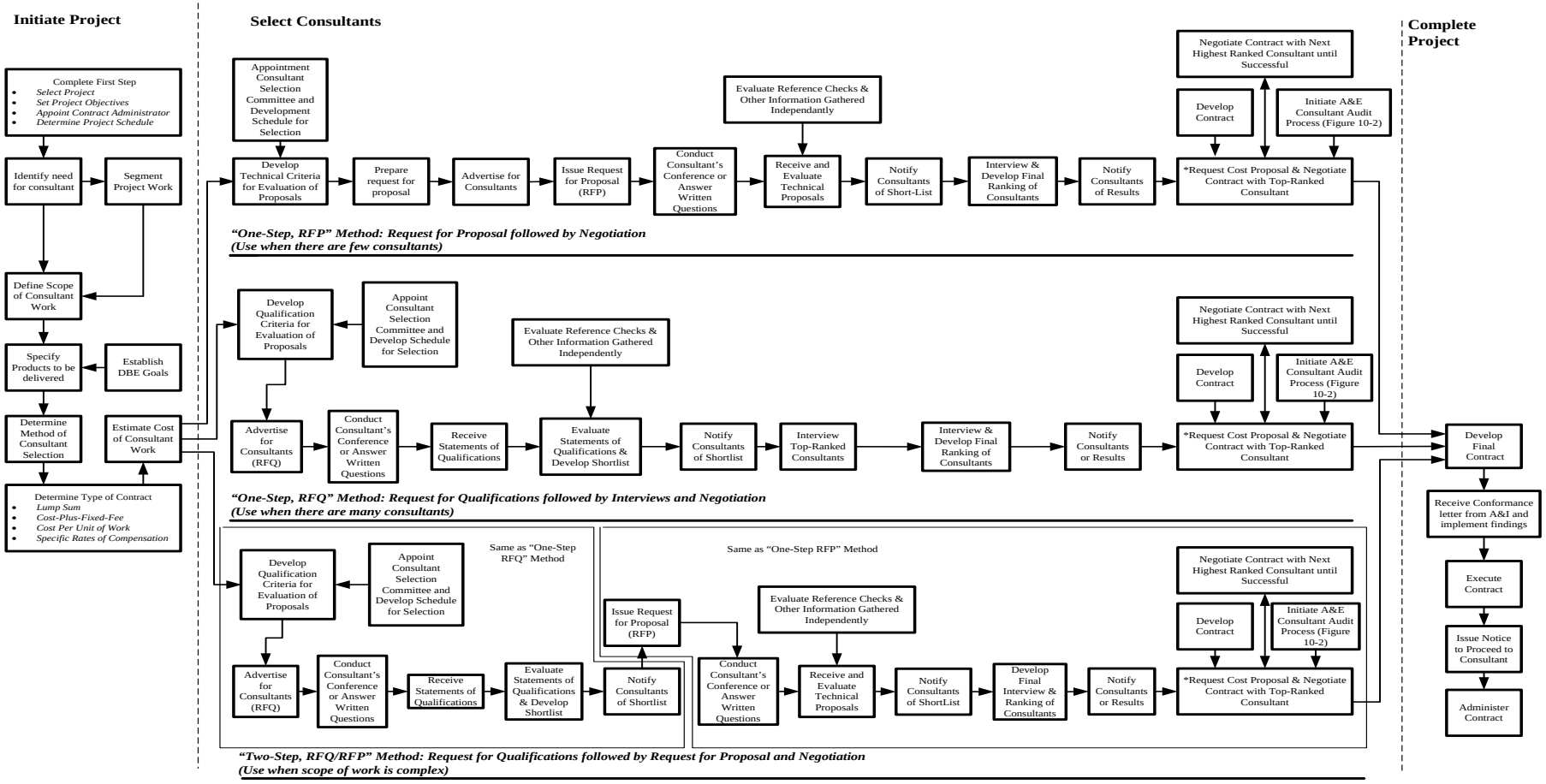
FIGURE 10-3 CONSULTANT SELECTION FLOWCHART



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10.5 CONSULTANT SELECTION USING THE ONE-STEP RFP METHOD

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

APPOINT CONSULTANT SELECTION COMMITTEE

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and 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 weights which are used to evaluate and rank the consultant proposals.
The criteria and relative weights must be included in the RFP. Exhibit 10-B, "Suggested Evaluation Sheet" is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

DEVELOP SCHEDULE FOR CONSULTANT SELECTION

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

PREPARE REQUEST FOR PROPOSAL (RFP)

The information required in a RFP includes the following:

- Description of project
- Scope of work
- Schedule of work
- Proposal format
- Method and criteria for selection
- A UDBE contract goal is specified (see Exhibit 10-I), if a federal-aid contract

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. 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)
- Organization chart
- Schedule and deadlines
- Staffing plan
- Proposed Team- Complete for prime consultant and all key subconsultants
- Key Personnel Names and Classifications
- Staff resumes
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm
- References

ADVERTISE FOR CONSULTANTS

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

ISSUE REQUEST FOR PROPOSAL

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

CONDUCT PROPOSER'S CONFERENCE OR ANSWER WRITTEN QUESTIONS

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

RECEIVE AND EVALUATE TECHNICAL PROPOSALS

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

The members of the consultant selection committee must evaluate each proposal in terms of the technical criteria listed in the RFP. The committee must also evaluate reference checks and other information 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/or other information may be discussed with the highest ranked qualified consultants at the interviews.

DEVELOP FINAL RANKING AND NOTIFY CONSULTANTS OF RESULTS

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

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

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

NEGOTIATE CONTRACT WITH TOP-RANKED CONSULTANT

The top-ranked consultant is requested to submit a 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 in advance by the local agency is an important basis and tool for negotiations and/or terminating unsuccessful negotiations with the most qualified consultant. It can be revised, if needed, for use in negotiations with the next most qualified consultant.

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.

Items typically negotiated include:

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

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

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

As a minimum, the RFQ generally includes the following:

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

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

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

ADVERTISE FOR CONSULTANTS

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

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

The RFQ also specifies the content of a proposal, number of copies required, due date, mailing address, and physical address where the submittals may be hand delivered, if different from the mailing address. 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.

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

NOTIFY CONSULTANTS OF SHORTLIST

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

INTERVIEW TOP-RANKED CONSULTANTS

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

Between the time of the notification of the shortlist and interviews, the local agency may answer any questions concerning the project segment to be contracted out, if not done

earlier during the solicitation. In addition, the local agency may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions about the RFP 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 proposal and develops a final ranking of the most qualified consultants. All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

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

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

CONDUCT SCOPING MEETING

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

REQUEST COST PROPOSAL

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

be justified, 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 subcontractors, the prime consultant must include a separate cost proposal for each subcontractor. Each subcontractor's cost proposal must follow the same format as the prime consultant's cost proposal.

NEGOTIATE CONTRACT WITH TOP-RANKED CONSULTANT

After the top-ranked consultant submits a 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 in advance by the local agency, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, etc. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. 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
- Products to be delivered
- Classification, wage rates, and experience level of personnel to be assigned
- Cost items, payments and fee

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 on the Flow Chart 10-1 "Selecting Consultants" in this chapter.

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

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

10.8 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 AGREEMENTS

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

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

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

- 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

subcontractors shall maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, state, and local agency authorized representatives; and copies thereof shall be furnished, if requested.
Following final settlement of the contract accounts with the FHWA and/or state, such records and documents may be microfilmed at the option of the local agency, but in any event shall be retained for a three-year period after processing of the final voucher by the FHWA and/or state.

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

RETENTION CLAUSES

At the option of the local agency, a retention clause may be included in the consultant contract. The usual retained amount is five percent; appropriate securities on deposit may be substituted for the retention. A retention clause in the consultant contract is recommended.

REVIEW OF LOCAL AGENCY ACTIONS

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

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

As specified in Section 10.4, "Consultant Selection," the Contract Administrator before execution must review the proposed consultant contract. The "Consultant Agreement Reviewer's Checklist "(Exhibit 10-C in this chapter) is to be completed and signed. A copy shall be sent to the DLAE within 30 days 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 <u>not</u> 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 are reimbursable.

ADMINISTER THE CONTRACT

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the local agency manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget.

Contract Administration activities help to ensure that contractual obligations are completed satisfactorily. Generally, these activities include:

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

SUBSTITUTION OF CONSULTANT PERSONNEL AND SUBCONTRACTORS

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

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

INVOICING (OR PROGRESS PAYMENTS)

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements need to have been prepared prior to any payments being 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 and/or state reimbursement of consultant costs on a project, the local agency must submit the following to the DLAE, for each consultant and/or consulting firm (prime and sub consultant) 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 Agreement reviewer's Checklist
- Exhibit 10-O1 – Local Agency Proposer UDBE Commitment (federally funded projects only)
- Exhibit 10-O2 – Local Agency Proposer UDBE/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 subcontractors, a separate invoice for each subcontractor should be attached in the same format as the prime consultant's invoice and should be included in the summary of the prime consultant's invoice

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

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

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

CONTRACT AMENDMENTS (SUPPLEMENTAL AGREEMENTS)

Contract amendments, sometimes called Supplemental Agreements, are required to modify the terms of the original agreement for changes such as extra time, added work, or increased costs. There is no prescribed format. They may take the form of letter-type agreements meeting the legal requirements of the local agency, clearly outlining the changes and containing a mutually agreed upon method of compensation. Such agreements must conform to the requirements of this manual with regard to payment.

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

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

If an amendment increases the contract to over $1million then the procedures in Case 2 under A&E Consultant Audit in Section 10.1 of this chapter of the LAPM shall apply to the entire contract.

CLOSEOUT PROJECTS

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

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

PERFORMANCE EVALUATION

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" form of 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 and/or state voucher. Among the records to be retained are as follows:

- Copies of RFPs and RFQs
- Documentation of DBE participation
- Solicitation/advertisement records
- Identification of selection committee members
- Evaluation and ranking records
- Independent cost estimate
- Record of negotiations
- Local agency certification that a cost or price analysis has been performed (Exhibit 10-K "Certification of Financial Management System and Contract Costs"
- Conformance and Cognizant Agency Letters, when applicable
- CPA-audited Indirect Cost Rate Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any
- Consultant Certification of Final Indirect Costs (Exhibit 10-L)
- Executed consultant contracts, cost proposals and amendments
- Construction oversight/progress meetings
- Progress and final payments
- Performance evaluation
- Consultant contract checklists
- Accounting records documenting compliance with state and federal administrative requirements
- Conflict of Interest (Exhibit 10-T, "Panel Member Conflict of Interest & Confidentially Statement" & Exhibit 10-U, "Consultant in Management Position Conflict of Interest & Confidentiality Statement")

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 simply and informal method of procurement. This informal method must be sound and appropriate for the consulting services procured and provide justification for the selection. It shall be documented and supported. The method of procurement shall be an open and competitive process in selecting consultants and should consider a minimum of three different consultants whenever possible.

Price or rate quotation may be considered in the selection. Qualified small business firms shall be considered for selection on federal-aid and state reimbursed contracts. Additionally, on federal-aid contracts, qualified DBE firms shall be considered for selection, and the appropriate federal contract language 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 AGREEMENTS (SOLE-SOURCE)

A noncompetitive, negotiated contract may be developed when special conditions arise. FHWA considers these type of agreements as “Sole Source” agreements. A Public Interest Finding prepared by the local agency and approved by Caltrans is required before establishing these services. Conditions under which noncompetitive negotiated contracts may be acceptable include:

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

The local agency shall:

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

The local agency must carefully 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 is not required for a local agency to be reimbursed for conract administration activities associated with non-infrastructure type projects in the Safe Routes to School, Transportation Enhancement or Scenic Byways Programs. 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 and/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

PREQUALIFIED OR ON-CALL CONSULTANT CONTRACTS

On-call consultant contracts or lists of qualified consultants (prequalified lists) are typically used when specialized services will be needed on a number of projects. Many agencies use these contracts to address peaks in workload of in-house engineering staff and/or perform a specialized service which the agency does not have the capability or resources to perform. “On-call” refers to a type of contract and not a method of procurement. The maximum contract dollar amount allowed is based on the method of procurement utilized to obtain the desired services. In general, competitive negotiation/qualifications based selection procedures must be followed when procuring engineering and design related services using Federal-aid highway program funds where those services are directly related to a construction project (as specified in 23 U.S.C. 112(b)(2)(A) and 23 CFR §172.5(a)(1)). Federal regulations do not prescribe a maximum contract dollar amount permitted for services procured under competitive negotiation/qualifications based selection procedures. (See Q&As: http://www.fhwa.dot.gov/programadmin/172qa_01.cfm).

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 be reestablished at least once every 24 months, to give new consultants the opportunity to qualify. Any extension of the prequalified list beyond 24 months must be justified in writing by the local agency and shall not exceed an additional 12 months. Consultant contracts for Architect/Engineer services shall be limited to five years unless they are project specific and the scope of the project work will exceed the five year limit. Any extensions to the five year period shall be annual only, and approved by the local agency board of Supervisors, City Council, etc.

RETAINING A CONSULTANT AS AN AGENCY ENGINEER

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

Eligibility for federal and/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 an "Exhibit 10-T Panel Member Conflict of Interest and Confidentiality Statement" form by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered
- For a state funded or federal-aid project, a local agency consultant in a management role shall not:
    - Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or sub-consultant 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 sub-consultant. This would include, but not 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.
- For a state funded or federal-aid project, completion of "Exhibit 10-U Consultant in Management Position Conflict of Interest and Confidentiality Statement" form 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 District Local Assistance Engineer (DLAE) by the local agency concurrently with submitting the request for the funding authorization of an Architect Engineer 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. Any extensions to the five year period must be annual by contract only, and approved by the local agency Board of Supervisors, City Council etc.

If engineering services for a project are within the scope of the services described in the retained consultant's agreement, 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 and/or state reimbursement for these services require a new consultant agreement to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the Request for Proposal (RFP), or Request for Qualifications (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 responsible in-charge. These activities may include construction surveys, foundation investigations, measurement, and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant's agreement defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant's construction engineering staff.

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

10.10 REFERENCES

- 23 CFR, Part 172 - ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICE CONTRACTS
- 49 CFR, Part 26 - PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS
- 41 CFR - Public Contracts and Property Management
- 41 USC – Public contracts
- 48 CFR, Chapter 1, Part 15.404
- 48 CFR, Chapter 1, Part 31
- 48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900
- 49 CFR, Part 18
- 49 CFR, Part 26, Appendix A
- American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit and Accounting Guide - http://audit.transportation.org/Documents/2010_Uniform_Audit_and_Accounting_Guide.pdf
- *California Labor Code*, Section 1775
- Caltrans Division of Procurement and Contracts Website
- Government Auditing Standards (GAS) issued by the United States Government Accountability Office
- *Government Code* Sections 4525 through 4529.5
- OMB Circular A-110
- *Standard Environmental Reference* (SER)

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EXHIBIT 10-A EXAMPLE 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 for prime consultant and all subconsultants
3. ☐ Names, addresses and phone numbers 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 CFRs.
6. ☐ A completed Internal Control Questionnaire (AASHTO Accounting and Audit Guide, Appendix B)
7. ☐ Consultant Certification of Final Indirect Costs (Exhibit 10-L)
8. ☐ Certification of Financial Management System and Costs (Exhibit 10-K)
9. Include one of the following; as applicable:
   a. ☐ A copy of the prior and current fiscal year Cognizant approved indirect cost rate(s) and approved State DOT letters for the consultant, if available; or
   b. ☐ A copy of the prior and current fiscal year indirect cost rate(s) audited by an independent CPA, if available. If a CPA-audited indirect cost rate is available for the appropriate fiscal year, then the consultant must use the indirect cost rate, or lower, in the cost proposal; or
   c. ☐ A copy of the prior and current fiscal year indirect cost rate(s) evaluated on a prior Caltrans or Local Agency contract, if any.
10. ☐ Check this box if the Proposed Cost (including amendments) is $3.5 Million or more, in which case the indirect cost rate provided by the prime consultant has been audited by a Certified Public Accountant.

Please arrange an audit and forward a copy of the Indirect Rate Schedule, supporting documentation, and/ or Approved State DOT Cognizant Concurrent Letter/ or CPA Indirect Cost Rate Audit Report and Schedules to us. Services to be performed under this contract are (describe work to be performed).

[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 #]__.

Sincerely,

Signed _____
Title _____
Agency _____

Attachments: Proposed Contract, Draft Cost Proposal(s), and supporting documentation

cc: DLAE

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

EXHIBIT 10-B SUGGESTED EVALUATION SHEET

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

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

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

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 AGREEMENT REVIEWERS CHECKLIST

Date: _____

Agency Name: _____

_____

Federal or State Project Number: _____

Project Location: _____

_____

Project File Location

Tab/Page No.

I. SELECTION PROCEDURES ITEMS NEEDED FOR REVIEW

A. DESCRIPTION OF NEED FOR CONSULTANT	☐ YES	☐ NO	_____
B. RECORDS OF PUBLICATION OF RFP OR RFQ	☐ YES	☐ NO	_____
C. SOLICITATION RECORDS	☐ YES	☐ NO	_____
D. INDEPENDENT COST ESTIMATES (FOR CONTRACT OVER $150,000)	☐ YES	☐ NO	_____
E. EVALUATION CRITERIA	☐ YES	☐ NO	_____
F. DOCUMENTATION OF SELECTION	☐ YES	☐ NO	_____
G. PLAN TO MONITOR WORK	☐ YES	☐ NO	_____

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

A. INTRODUCTION

1. Date of Agreement	☐ 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. AGREEMENT

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 ☐ YES ☐ 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 ☐ YES ☐ NO _____
Requirements (48 CFR, *Federal Acquisition Regulation System*, Chapter 1, Part 31 and 49 CFR, Part 18)

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 Agreement for Subcontractor/DBE Participation - Exhibit 10-J ☐ YES ☐ NO _____
- Local Agency Consultant UDBE Commitment - Exhibit 10-O1 ☐ YES ☐ NO _____
- Local Agency Consultant UDBE/DBE Information - Exhibit 10-O2 ☐ YES ☐ NO _____
- *UDBE Information - Good Faith Efforts - Exhibit 15-H ☐ YES ☐ NO _____
- *Final Report – Utilization of DBEs – Exhibit 17-F ☐ YES ☐ NO _____

q) Insurance Requirements ☐ YES ☐ NO _____

r) Nonlobbying Certification for Federal-aid Contracts Exhibit 10-P ☐ YES ☐ NO _____

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

t) 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 - Exhibits 10-F & 10-G are to be included ☐ YES ☐ NO _____

F. COST PROPOSAL – Final Cost proposal to be included (see Exhibt 10-H Sample Cost Proposal) ☐ YES ☐ NO _____

_____ _____
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 AGREEMENT 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 Agreement: _____** (Leave blank until known)
2. **Names, Addresses and Other Data Identifying Agreeing Parties**

   State the complete name and address of each party to the agreement together with information with respect to whether the party is an individual, an agency of government, a partnership, or a corporation. If a corporation is one of the parties, show the State of 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 agreement.
3. **Location and Description of the Project.**

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

4. & 5. All Inquiries during the term of this Agreement 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. AGREEMENT

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

   a) Detailed Scope of Work

   Breifly describe the scope of the project work to be performed and/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/or State approval. A signed CE, FONSI, or published ROD is to be approved or completed by FHWA (see Chapter 6, "Environmental Procedures" of the *Local Assistance Procedures Manual* [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 agreement and are in possession of the local agency or another agency, or government are to be made available to the consultant. Any other assistance or services to be furnished to the consultant are to be stated clearly.

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

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

h) Checking Shop Drawings

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

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

4. Record Retention and Right to Audit

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

5. Cost Principles

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

6. Miscellaneous Provisions

a) Covenant Against Contingent Fees

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

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

b) Design Standards

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

c) Documentation

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

d) Ownership of Documents

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

commitment should be stated or implied that would constitute a limitation of the subsequent use of the plans, or ideas incorporated therein for preparation of construction plans.

e) Patent Rights

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

f) Copyrights

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

g) Changes in Work

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

h) Delays and Extensions

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

i) Termination or Abandonment

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

j) Remedies

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

k) Disputes

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

l) Responsibility for Claims and Liability

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

m) General Compliance with Laws and Wage Rates

The consultant shall be required to comply with all federal, state and local laws and ordinances applicable to the work. This includes compliance with 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, agreements in which participating federal and/or state funds are furnished shall contain a clause expressly prohibiting the subcontracting, assignment, or transfer of any of the work except, as otherwise, provided for in the executed agreement. All contracts shall provide that subcontracts exceeding $25,000 in cost shall contain all required provisions of the prime contract.

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

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

p) Disadvantaged Business Enterprise Considerations

Consultants must give consideration to DBE firms as specified in 23 CFR §172.5(b), 49 CFR, Part 26, and in Exhibit 10-I "Notice to Proposers Disadvantaged Business Enterprise Information." If the contract has an underutilized DBE (UDBE) goal, the consultant must meet the UDBE goal by using UDBEs as subconsultants or document a good faith effort to have met the goal. If a UDBE subconsultant is unable to perform, the consultant must make a good faith effort to replace him/her with another UDBE subconsultant if the goal is not otherwise met. LAPM Exhibits 10-I, 10-J, 10-O1, 10-O2, 15-H 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 Agreement.

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

t) Non-Discrimination Clause (Exhibit 10-V) 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. CERTIFICATIONS

Exhibits 10-F "Certification of Consultant, Commissions & Fees" and 10-G, "Certification of Agency" 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 negociated, must be attached to the contract Agreement (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 agreement shall be cost-plus-a-fixed fee.

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

LUMP SUM

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

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

The **other** methods of payment are not addressed here and 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 agreement; nor

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

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

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

_____ _____
(Date) (Signature)

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

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EXHIBIT 10-G CERTIFICATION OF LOCAL AGENCY

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

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

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

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

_____ _____
(Date) (Signature)

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

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EXHIBIT 10-H SAMPLE COST PROPOSAL

(EXAMPLE #1)

Contract No._____ Date _____

Consultant _____

DIRECT LABOR

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

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

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

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

FEE (Profit) $_____

OTHER COSTS

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

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

TOTAL COST $_____

(EXAMPLE #2)

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

FEE % = _____

BILLING INFORMATION | CALCULATION INFORMATION

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

1. Names and classifications of prime and subconsultant team members (Key Personnel): _____
2. For named Key Personnel employees enter the actual hourly rate. For non-Key Personnel prime and subconsultant classifications, list the average hourly rate for that classification unless names are provided, then enter their actual hourly rate.

Distribution: Project files

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

The Agency has established an Underutilized DBE goal for this Agreement of _____%

OR

The Agency has not established an Underutilized goal for this Agreement. However, proposers are encouraged to obtain DBE participation for this Agreement.

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, Part 26.5, Code of Federal Regulations (CFR).
- The term "Underutilized Disadvantaged Business Enterprise" or "UDBE" Refers to the following socially and economically disadvantaged groups: African Americans, Native Americans, Asian-Pacific Americans, and Women.
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer shall 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 UDBE AND DBE INFORMATION

If there is a UDBE goal on the contract, a "Local Agency Proposer UDBE Commitment (Consultant Contract)" (Exhibit 10-O1) form shall 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. Only UDBE participation will be counted towards the contract goal; however, all DBE participation shall be collected and reported.

A "Local Agency Proposer DBE Information (Consultant Contract)" (Exhibit 10-O2) form shall be included with the Request for Proposal. The purpose of the form is to collect data required under 49 CFR 26. For contracts with UDBE goals, this form collects DBE participation by DBEs owned by Hispanic American and Subcontinent Asian Americans males (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka). For contracts with no goals, this form collects information on all DBEs, including UDBEs. 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 contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A UDBE 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 UDBE and will meet the goal by performing work with its own forces.

2. The proposer will meet the goal through work performed by UDBE subcontractors, 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 subcontractor for each portion of work as defined in their proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.

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

5. RESOURCES

A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.

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

- Click on the link in the left menu titled *Disadvantaged Business Enterprise*
- Click on *Search for a DBE Firm* link
- 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

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

DBE Directory - If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered from the Caltrans Publications Unit at (916) 263-0822, 1900 Royal Oaks Drive, Sacramento, CA 95815-3800.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS DBE CREDIT, AND IF A DBE IS ALSO A UDBE, PURCHASES WILL COUNT TOWARDS THE UDBE 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 Agreement 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 Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

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

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

7. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBES WILL COUNT TOWARDS DBE CREDIT, AND IF A DBE IS A UDBE, CREDIT WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Agreement, and there cannot be a contrived arrangement for the purpose of meeting the UDBE goal.

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

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

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

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

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

EXHIBIT 10-J STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION

1. Subcontractors

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

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

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

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

2. Disadvantaged Business Enterprise (DBE) Participation

A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." 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 an underutilized DBE (UDBE) goal, the Consultant must meet the UDBE goal by committing UDBE participation or document a good faith effort to meet the goal. If a UDBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another UDBE subconsultant, if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Native Americans, Asian-Pacific Americans, or Women.

C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. 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 Agreement, which may result in the termination of this Agreement or such other remedy as the local agency deems appropriate.

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

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

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

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

4. Prompt Payment of Funds Withheld to Subcontractors

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

A. No retainage will be withheld by the Agency from progress payments due the prime contractor. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime contractor from progress due subcontractors. Any violation of this provision shall subject the violating prime 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.

B. 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.

C. 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 contractor 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 contractor, deficient subconsultant performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

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

5. DBE Records

A. The Consultant shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime 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 Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," 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 Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25% 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 Subcontractors" is submitted to the Contract Manager.

6. DBE Certification and Decertification Status

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

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

Consultant Certification:

Consultant Firm Name: _____

Cost Proposal Date: _____

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

I, the undersigned, certify that all costs in this proposal (prime consultants and all subconsultants) are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of title 48, Code of Federal Regulations (CFR), Part 31 and the indirect cost rate(s) have been prepared or audited in accordance with the following criteria and in the acceptable indirect cost rate schedule formats, and retained in the project files:

1. Generally Accepted Government Auditing Standards (GAGAS) issued by the United States Government Accountability Office, if applicable.

2. 23 Code of Federal Regulations (CFR), Chapter 1, Part 172 – Administration of Engineering and Design Related Service Contracts.

3. 48 CFR, Chapter 1, Part 31 – Contract Cost Principles

4. 48 CFR, Chapter 99, Cost Accounting Standards, Subpart 9900

5. All known material transactions or events that have occurred affecting the firm's ownership, organization, and indirect cost rates have been disclosed.

I, the undersigned, further certify 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.

In addition, 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 _____.

*Consultant Certification Signature: _____

Consultant Certifying Name and Title (Print): _____

_____

Consultant Contact Information – Email and Phone number _____

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

*An Individual executive or financial officer of the contractor'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.

Local Agency Certification – Cost Analysis:

I, the undersigned, certify that I have performed a cost analysis in connection with this contract including, contract modifications exceeding $150,000, for the fiscal period as specified above.

Local Agency Certification Signature: _____

Local Agency Certifying Name and Title (Print): _____

_____

Local Agency Contact Information – Email and Phone number: _____

_____

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

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

Distribution: 1) Original to Caltrans Audits and Investigations with Cost Analysis if $1M or more
2) Local Agency Project Files

EXHIBIT 10-L CONSULTANT CERTIFICATION OF FINAL INDIRECT COSTS

Firm Name: _____

Indirect Cost Rate: _____

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

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

I 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:

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.

1. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR 31.
2. All known material transactions or events that have occurred affecting the firm's ownership, organization, and indirect cost rates have been disclosed.

*Consultant Signature: _____

Name and Title (Print) _____

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

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

Distribution: 1) Original to Caltrans Audits and Investigations with Cost Proposal if $1M or more
2) Local Agency Project Files

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EXHIBIT 10-O1: LOCAL AGENCY CONSULTANT UDBE COMMITMENT

(Inclusive of all UDBEs at time of proposal)

NOTE: Please 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 UDBE Goal %: _____

UDBE Commitment Information

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

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 UDBE 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 – Submit with Award Package
(2) Copy – Local Agency files

INSTRUCTIONS - LOCAL AGENCY CONSULTANT UDBE 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 UDBE Goal %** - Enter the contract UDBE goal percentage, as it was reported on the Exhibit 10-I 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 UDBEs including work performed by the prime consultant's own forces, if the prime is a UDBE. If 100% of the item is not to be performed or furnished by the UDBE, describe the exact portion to be performed or furnished by the UDBE. See LAPM Chapter 9 to determine how to count the participation of UDBE firms.
7. **UDBE Firm Contact Information** - Enter the name and telephone number of all UDBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a UDBE.
8. **DBE Cert. Number** - Enter the UDBEs Certification Identification Number. All UDBEs must be certified on the date bids are opened. (UDBE 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. **UDBE %** - Percent participation of work to be performed or service provided by a UDBE. Include the prime consultant if the prime is a UDBE. See LAPM Chapter 9 for how to count full/partial participation.
10. **Total % Claimed –** Enter the total participation claimed. If the Total % Claimed is less than item "6. Contract UDBE Goal", a Good Faith Effort (GFE) is required.
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 the 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: LOCAL AGENCY CONSULTANT UDBE/DBE INFORMATION

(Inclusive of all DBEs including the UDBEs listed at bid proposal)
NOTE: Please 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 UDBE Goal %: _____

7. Total Dollar Amount for all Subcontractors: $ _____

8. Total Number of all Subcontractors: _____

Award UDBE/DBE Information

9. Description of Services to be Provided	**10.** UDBE/DBE Firm Contact Information	**11.** DBE Cert. Number	**12.** UDBE Dollar Amount	**13.** DBE Dollar Amount
		14. Total Dollars Claimed	$ _____	$ _____
		15. Total % Claimed	_____ %	_____ %

Local Agency to Complete this Section

21. Local Agency Contract Number: _____

22. Federal-aid Project Number: _____

23. Contract Execution Date: _____

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

_____
24. Local Agency Representative Name (Print)

_____ _____
25. Local Agency Representative Signature **26.** Date

_____ _____
27. Local Agency Representative Title **28.** (Area Code) Tel. No.

_____
16. Preparer's Signature

_____
17. Preparer's Name (Print)

_____
18. Preparer's Title

_____ _____
19. Date **20.** (Area Code) Tel. No.

Caltrans to Complete this Section

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

_____ _____ _____
29. DLAE Name (Print) **30.** DLAE Signature **31.** 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 - LOCAL AGENCY CONSULTANT UDBE/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 UDBE Goal %** - Enter the contract UDBE goal percentage, as it was reported on the Exhibit 10-I form. See LAPM Chapter 10.
7. **Total Dollar Amount for all Subcontractors –** Enter the total dollar amount for all subcontracted consultants. SUM = (UDBE's + DBE's + all Non-U/DBE's). Do **not** include the prime consultant information in this count.
8. **Total number of all subcontractors –** Enter the total number of all subcontracted consultants. SUM = (UDBE's + DBE's + all Non-U/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 UDBE/DBEs including work performed by the prime consultant's own forces, if the prime is a UDBE/DBE. If 100% of the item is not to be performed or furnished by the UDBE/DBE, describe the exact portion to be performed or furnished by the UDBE/DBE. See LAPM Chapter 9 to determine how to count the participation of UDBE/DBE firms.
10. **UDBE/DBE Firm Contact Information** - Enter the name and telephone number of all UDBE/DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a UDBE/DBE.
11. **DBE Cert. Number** - Enter the UDBE/DBE's Certification Identification Number. All UDBE/DBEs must be certified on the date bids are opened. (UDBE/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. **UDBE Dollar Amount** - Enter subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a UDBE. See LAPM Chapter 9 for how to count full/partial participation.
13. **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 subcontractors on the Exhibit 10-O1 form. See LAPM Chapter 9 for how to count full/partial participation.
14. **Total Dollars Claimed** – Enter the total dollar amounts for columns 12 and 13.
15. **Total % Claimed –** Enter the total participation claimed for columns 12 and 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 UDBE Goal", a Good Faith Effort (GFE) is required.
16. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
17. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
18. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
19. **Date** - Enter the date this section of the form is signed by the preparer.
20. **(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:

21. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
22. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
23. **Contract Execution Date** - Enter the date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
24. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
25. **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.
26. **Date** - Enter the date the Local Agency Representative signs the form.
27. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
28. **(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:

29. **DLAE Name (Print)** – Clearly enter the name of the DLAE.
30. **DLAE Signature** – DLAE must sign this section of the form to certify that it has been reviewed for completeness.
31. **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:

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

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

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

The prospective participant also agrees by submitting his/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

DISCLOSURE OF LOBBYING ACTIVITIES

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

1. Type of Federal Action:

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

2. Status of Federal Action:

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

3. Report Type:

☐ a. initial
b. material change

For Material Change Only:
year ____ quarter _____
date of last report_____

4. Name and Address of Reporting Entity

☐ Prime ☐ Subawardee
Tier _____ , if known

Congressional District, if known

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

Congressional District, if known

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable _____

8. Federal Action Number, if known:

9. Award Amount, if known:

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

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

(attach Continuation Sheet(s) if necessary)

11. Amount of Payment (check all that apply)

$_____ ☐ actual ☐ planned

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

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

13. Type of Payment (check all that apply)

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

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

(attach Continuation Sheet(s) if necessary)

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

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

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date:_____

Authorized for Local Reproduction

Standard Form - LLL

Federal Use Only:

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

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

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

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered federal action.

2. Identify the status of the covered federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in Item 4. checks "Subawardee" then enter the full name, address, city, State and zip code of the prime federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.

8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in Item 4. to influenced the covered federal action.
    (b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (Ml).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal

officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.

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

16. The certifying official shall sign and date the form, print his/her name title and telephone number.

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

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

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EXHIBIT 10-R A &E SAMPLE CONTRACT LANGUAGE

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

TABLE OF CONTENTS
A&E SAMPLE CONTRACT LANGUAGE

Article	Subject	Page
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*Article II	Statement of Work	
Article III	Consultant's Reports and/or Meetings	
*Article IV	Performance Period	
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*Article XX	Ownership of Data	
Article XXI	Claims Filed by LOCAL AGENCY'S Construction Contractor	
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Article XXV	Statement of Compliance	
Article XXVI	Debarment and Suspension Certification	
Article XXVII	State Prevailing Wage Rates	
*Article XXVIII	Conflict of Interest	
*Article XXIX	Rebates, Kickbacks or other Unlawful Consideration	
*Article XXX	Prohibition of Expending State or Federal Funds for Lobbying	
Article XXXI	Notification	
Article XXXII	Agreement	
Article XXXIII	Signatures	

ARTICLE I INTRODUCTION

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

The name of the CONSULTANT is as follows:

_____

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

_____

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

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

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

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

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

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

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

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

ARTICLE II STATEMENT OF WORK

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

A. Consultant Services

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

B. Right of Way

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

C. Subsurface Investigations

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

D. Local Agency Obligations

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

E. Conferences, Visits to Site, Inspection of Work

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

F. Checking Shop Drawings

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

G. Documentation

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

H. Number of Copies

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

ARTICLE III CONSULTANT'S REPORTS AND/OR MEETINGS

(Choose either Option 1 or Option 2.)

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

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

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

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

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

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

ARTICLE IV PERFORMANCE PERIOD

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

(Choose either Option 1 or Option 2.)

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

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

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

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

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

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

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

(Option 1 - Use paragraphs A through G below for standard contracts. 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. The LOCAL AGENCY will reimburse the CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by the CONSULTANT in performance of the work. The CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event, will the CONSULTANT be reimbursed for overhead costs at a rate that exceeds the LOCAL AGENCY's approved overhead rate set forth in the Cost Proposal. In the event, that the LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time and/or actual costs reimbursable by the LOCAL AGENCY shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by contract amendment.

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

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

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

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

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

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

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

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

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

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

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

(*Option 2- When specified rates of payment are to be made for certain items, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and reletter the remaining paragraphs. Adjust as necessary for work specific to your project. Use Exhibit 10-H, Example #1 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 the CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.

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

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

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

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

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

(Option 3 - Use paragraphs A through L below for on-call contracts. Use Exhibit 10-H, Example #2 for Cost Proposal Format.)

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

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

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

D. In addition, the 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.

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

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

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

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

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

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

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

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

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

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

(Option 4 - Use paragraphs A through E below for lump sum contracts. 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 the consultant will include compensation for all work and deliverables, including travel and equipment described in Article II Statement of Work of this contract. No additional compensation will be paid to the CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between the Consultant and the LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by contract amendment and approved by the LOCAL AGENCY.

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

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

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

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

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

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

ARTICLE VI TERMINATION

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

ARTICLE VII FUNDING REQUIREMENTS

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

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

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

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

ARTICLE VIII CHANGE IN TERMS

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

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

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

ARTICLE IX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

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

ARTICLE X COST PRINCIPLES

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

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

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

ARTICLE XI CONTINGENT FEE

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

ARTICLE XII RETENTION OF RECORDS/AUDIT

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

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

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

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

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

ARTICLE XIV AUDIT REVIEW PROCEDURES

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

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

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

ARTICLE XV SUBCONTRACTING

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

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

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

ARTICLE XVI EQUIPMENT PURCHASE

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

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

C. Any equipment purchased as a result of this contract is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of $5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit the LOCAL AGENCY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the LOCAL AGENCY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the LOCAL AGENCY." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than $5000.00 is credited to the project.

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

ARTICLE XVII INSPECTION OF WORK

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

ARTICLE XVIII SAFETY

(Use on all contracts regardless of funding source)

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

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

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

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

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

ARTICLE XIX INSURANCE

(Choose either Option 1 or Option 2.)

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

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

B. The Certificate of Insurance will provide:

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

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

AGENCY may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

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

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

ARTICLE XX OWNERSHIP OF DATA

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

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

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

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

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

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

C. Services of the CONSULTANT's personnel in connection with the LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this agreement in order to 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 the LOCAL AGENCY's operations, which are designated confidential by the LOCAL AGENCY and made available to the CONSULTANT in order to carry out this contract, shall be protected by the CONSULTANT from unauthorized use and disclosure.

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

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

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

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

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

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

ARTICLE XXIII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

ARTICLE XXIV EVALUATION OF CONSULTANT

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

ARTICLE XXV STATEMENT OF COMPLIANCE

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

ARTICLE XXVI DEBARMENT AND SUSPENSION CERTIFICATION

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

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

ARTICLE XXVII STATE PREVAILING WAGE RATES

(Choose either Option 1 or Option 2.)

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

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

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

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

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

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

ARTICLE XXVIII CONFLICT OF INTEREST

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XXIX REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

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

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

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

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

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

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

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

ARTICLE XXXI NOTIFICATION

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

CONSULTANT:

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

LOCAL AGENCY:

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

Retention

ARTICLE XXXII AGREEMENT

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

ARTICLE XXXIII SIGNATURES

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

DATE:_____

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

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

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

Item _____: _____
_____

Item _____: _____
_____

Item _____: _____
_____

Item _____: _____
_____

Item _____: _____
_____

Item _____: _____
_____

***Indicates supporting documentation attached.**

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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 sub-consultants) 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 and/or referral to the appropriate authorities for further investigation.

☐ I am aware that the following firms and sub-consultants/sub-contractors have submitted proposals in response to the above referenced solicitation:

List firms including sub-consultants/sub-contractors:

1. _____

2. _____

3. _____

4. _____

etc. _____

Date: _____

Signed: _____

Name: _____

Title: _____

Dept./Local Agency: _____

Employer: _____

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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: _____

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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 sub-consultant.
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 sub-consultant.
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 sub-consultant. 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 and/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 and/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 Agreement/Contract)

NON-DISCRIMINATION CLAUSE

During the performance of this Agreement, Contractor and its subcontractors 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. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors 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 Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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