



## DISCUSSION AGENDA ITEM 1

**SUPPORTING DOCUMENTATION FOLLOWS WITH: 30 PAGES**

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1. Receive 2017 Audit Presentation and Accept 2017 Audited Financial Statements.

# **CITY OF TRINIDAD**

*California*

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**Annual Financial Report**  
**June 30, 2017**

## **City Council**

**Dwight Miller**  
**Susan Rotwein**  
**Jim Baker**  
**Jack West**  
**Steve Ladwig**

**Mayor**  
**Mayor Pro-Tem**  
**Member**  
**Member**  
**Member**

## **Appointed Officials**

**City Manager**  
**Dan Berman**

**City Clerk**  
**Gabriel Adams**

**CITY OF TRINIDAD**

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# MARCELLO & COMPANY

## CERTIFIED PUBLIC ACCOUNTANTS

2701 Cottage Way, Suite 30 / Sacramento, California 95825

### INDEPENDENT AUDITOR'S REPORT

Honorable Mayor  
Members of the City Council  
City of Trinidad, California

#### Report on the Financial Statements

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Trinidad, California, as of and for the year ended June 30, 2017, and the related notes to the financial statements, which collectively comprise the City's basic financial statements as listed in the table of contents.

#### *Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

#### *Auditor's Responsibility*

Our responsibility is to express an opinion on these financial statements based upon our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purposes of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

#### *Opinion*

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Trinidad, as of June 30, 2017, and the respective changes in financial position and where applicable, cash flows thereof for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Honorable Mayor  
Members of the City Council  
City of Trinidad, California

### ***Other Matters***

#### ***Required Supplementary Information***

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, and budgetary comparison information, as listed in the table of contents, be presented to supplement the basic financial statements. Such information, although not part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historic context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Management has omitted *management's discussion and analysis* that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinion on the basic financial statements is not affected by this missing information.

#### ***Other Information***

Our audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise the City of Trinidad's basic financial statements. The combining nonmajor fund financial statements are presented for purposes of additional analysis and are not a required part of the financial statements.

The combining nonmajor fund financial statements are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

***Marcella & Company***

Certified Public Accountants  
Sacramento, California  
December 7, 2017

**GOVERNMENT-WIDE FINANCIAL STATEMENTS**

**CITY OF TRINIDAD**  
**Government-wide Financial Statements**  
**Statement of Net Position**  
**June 30, 2017**

	Primary Government		
	Governmental Activities	Business-Type Activities	Total
<b>ASSETS</b>			
Cash and investments	\$ 1,282,965	\$ 1,072,796	\$ 2,355,761
Receivables	319,042	41,163	360,205
Prepaid expenses	11,191	5,995	17,186
Capital assets, net of depreciation	9,500	25,089	34,589
Capital assets, net of depreciation	3,061,124	1,519,812	4,580,936
Total assets	<u>4,683,822</u>	<u>2,664,855</u>	<u>7,348,677</u>
<b>LIABILITIES</b>			
Payables	130,766	31,462	162,228
Customer deposits	-	2,980	2,980
Total liabilities	<u>130,766</u>	<u>34,442</u>	<u>165,208</u>
<b>NET POSITION</b>			
Net investment in capital assets	3,070,624	1,544,901	4,615,525
Restricted	110,143	-	110,143
Unrestricted	1,372,289	1,085,512	2,457,801
Total net position	<u>\$ 4,553,056</u>	<u>\$ 2,630,413</u>	<u>\$ 7,183,469</u>

The accompanying notes to financial statements are an integral part of this financial statement

**CITY OF TRINIDAD**  
**Government-wide Financial Statements**  
**Statement of Activities**  
**Year Ended June 30, 2017**

Functions/Programs	Program Revenue			Net (Expense) Revenue and Change in Net Position			
	Expenditures	Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-type Activities	Total
<b>Governmental Activities</b>							
General government	\$ 372,777	\$ 23,466	\$ 136,157	\$ -	\$ (213,154)	\$ -	\$ (213,154)
Public safety	202,072	-	104,740	-	(97,332)	-	(97,332)
Public works	191,478	-	27,823	-	(163,655)	-	(163,655)
Capital improvement projects	151,873	-	-	178,824	26,951	-	26,951
Depreciation	43,466	-	-	-	(43,466)	-	(43,466)
Total governmental activities	961,666	23,466	268,720	178,824	(490,656)	-	(490,656)
<b>Business-type Activities</b>							
Water utility	1,011,278	318,187	-	95,284	-	\$ (597,807)	(597,807)
Cemetery	23,906	4,245	-	-	-	(19,661)	(19,661)
Total business-type activities	1,035,184	322,432	-	95,284	-	(617,468)	(617,468)
Total primary government	\$ 1,996,850	\$ 345,898	\$ 268,720	\$ 274,108			(1,108,124)
<b>General Revenue</b>							
Sales tax					246,438	-	246,438
Property taxes					97,465	-	97,465
Transient occupancy					171,173	-	171,173
Use of property					48,472	-	48,472
Investment earnings					3,791	2,525	6,316
Other revenue					23,600	964	24,564
Totals					590,939	3,489	594,428
<b>Change in Net Position</b>							
Net Position - beginning					100,283	(613,979)	(513,696)
Net Position - end of year					4,452,773	3,244,392	7,697,165
					\$ 4,553,056	\$ 2,630,413	\$ 7,183,469

The accompanying notes to financial statements are an integral part of this financial statement

**FUND FINANCIAL STATEMENTS**

**CITY OF TRINIDAD**  
**Balance Sheet**  
**Governmental Funds**  
**June 30, 2017**

**ASSETS**

	General Fund	Clean Beaches Grant	COPS Grant Program	OPC Citywide LID	Other Governmental Funds	Total Governmental Funds
Cash and investments	\$ 1,305,494	\$ -	\$ -		\$ 38,159	\$ 1,343,653
Receivables	204,139	47,669	23,376	62,218	5,016	342,418
Prepaid expenses	11,191	-	-	-	-	11,191
Total assets	<u>\$ 1,520,824</u>	<u>\$ 47,669</u>	<u>\$ 23,376</u>	<u>\$ 62,218</u>	<u>\$ 43,175</u>	<u>\$ 1,697,262</u>

**LIABILITIES**

	General Fund	Clean Beaches Grant	COPS Grant Program	OPC Citywide LID	Other Governmental Funds	Total Governmental Funds
Payables	\$ 49,815	\$ 12,668	\$ 5,601	\$ 53,875	\$ 8,808	\$ 130,767
Cash overdrafts	-	34,810	6,139	8,350	11,389	60,688
Total liabilities	<u>49,815</u>	<u>47,478</u>	<u>11,740</u>	<u>62,225</u>	<u>20,197</u>	<u>191,455</u>

**FUND BALANCES**

Nonspendable	11,191	-	-	-	-	11,191
Restricted	75,317	191	11,636	-	34,635	121,779
Committed	1,239,000	-	-	-	-	1,239,000
Assigned	64,576	-	-	-	-	64,576
Unassigned	80,925	-	-	(7)	(11,657)	69,261
Total fund balances	<u>1,471,009</u>	<u>191</u>	<u>11,636</u>	<u>(7)</u>	<u>22,978</u>	<u>1,505,807</u>

Total liabilities and fund balances	<u>\$ 1,520,824</u>	<u>\$ 47,669</u>	<u>\$ 23,376</u>	<u>\$ 62,218</u>	<u>\$ 43,175</u>	<u>\$ 1,697,262</u>
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The accompanying notes to financial statements are an integral part of this financial statement

**CITY OF TRINIDAD**  
**Reconciliation of the Governmental Funds Balance Sheet to the Statement of Net Position**  
**June 30, 2017**

Total Fund Balances - Governmental Funds (page 6) \$ 1,482,432

Amounts reported for governmental activities in the statement of net position are different because:

Capital assets used in governmental activities are not financial resources and therefore are not reported in the balance sheet of governmental activities.

Capital assets not being depreciated 9,500  
Capital assets, net of depreciation 3,061,124

Net Position - Governmental Activities (page 4) \$ 4,553,056

*The accompanying notes to financial statements are an integral part of this financial statement*

**CITY OF TRINIDAD**  
**Statement of Revenue, Expenditures, and Change in Fund Balances**  
**Governmental Funds**  
**Year Ended June 30, 2017**

REVENUE	General Fund	Clean Beaches Grant	COPS Grant Program	OPC Citywide LID	Other Governmental Funds	Total Governmental Funds
Intergovernmental	\$ 125,518	\$ 85,631	\$ 126,381	\$ 79,636	\$ 53,754	\$ 470,920
Property tax	97,465	-	-	-	-	97,465
Sales tax	246,438	-	-	-	-	246,438
Transient occupancy tax	171,173	-	-	-	-	171,173
Licenses, planning and permits	23,466	-	-	-	-	23,466
Use of property	48,472	-	-	-	-	48,472
Investment earnings	3,791	-	-	-	-	3,791
Other revenue	23,537	-	-	-	63	23,600
Totals	739,860	85,631	126,381	79,636	53,817	1,085,325
<b>EXPENDITURES</b>						
General government	347,066	-	-	-	25,711	372,777
Public safety-police	75,317	-	115,845	-	-	191,162
Public safety-fire	10,911	-	-	-	-	10,911
Public works	191,478	-	-	-	-	191,478
Capital improvement projects	-	85,665	-	79,643	30,176	195,484
Totals	624,772	85,665	115,845	79,643	55,887	961,812
Excess Revenue over Expenditures	115,088	(34)	10,536	(7)	(2,070)	123,513
<b>Other Financing Sources (Uses)</b>						
Transfers in	-	-	-	-	-	-
Transfers (out)	-	-	-	-	-	-
Totals	-	-	-	-	-	-
<b>Change in Fund Balances</b>						
Fund Balances - beginning	115,088	(34)	10,536	(7)	(2,070)	123,513
Fund Balances - end of year	1,355,921	225	1,100	-	25,048	1,382,294
	\$ 1,471,009	\$ 191	\$ 11,636	\$ (7)	\$ 22,978	\$ 1,505,807

The accompanying notes to financial statements are an integral part of this financial statement



**CITY OF TRINIDAD**  
**Proprietary Funds**  
**Statement of Net Position**  
**June 30, 2017**

	Business-type Activities		
	Water Fund	Cemetery Fund	Total Enterprise Funds
<b>ASSETS</b>			
Current Assets:			
Cash and investments	\$ 959,847	\$ 112,949	\$ 1,072,796
Receivables	41,163	-	41,163
Prepaid expenses	5,995	-	5,995
Total current assets	<u>1,007,005</u>	<u>112,949</u>	<u>1,119,954</u>
Noncurrent Assets:			
Capital assets not being depreciated	25,089	-	25,089
Capital assets, net of depreciation	1,516,082	3,730	1,519,812
Total assets	<u>2,548,176</u>	<u>116,679</u>	<u>2,664,855</u>
<b>LIABILITIES</b>			
Current Liabilities:			
Payables	29,390	2,072	31,462
Customer deposits	2,980	-	2,980
Total liabilities	<u>32,370</u>	<u>2,072</u>	<u>34,442</u>
<b>NET POSITION</b>			
Net investment in capital assets	1,541,171	3,730	1,544,901
Restricted	-	-	-
Unrestricted	974,635	110,877	1,085,512
Total net position	<u>\$ 2,515,806</u>	<u>\$ 114,607</u>	<u>\$ 2,630,413</u>

The accompanying notes to financial statements are an integral part of this financial statement

**CITY OF TRINIDAD**

**Proprietary Funds**

**Statement of Revenue, Expenses, and Change in Net Position**

**Year Ended June 30, 2017**

	Business-type Activities		
	Water Fund	Cemetery Fund	Total Enterprise Funds
<b>OPERATING REVENUE</b>			
Water sales	\$ 316,498	\$ -	\$ 316,498
Burial plot sales	-	5,655	5,655
Burial plot refunds	-	(1,410)	(1,410)
Late charges	1,689	-	1,689
Totals	<u>318,187</u>	<u>4,245</u>	<u>322,432</u>
<b>OPERATING EXPENSES</b>			
Personnel services	148,051	23,028	172,079
Operations and maintenance	159,870	650	160,520
Depreciation	22,242	228	22,470
Totals	<u>331,163</u>	<u>23,906</u>	<u>355,069</u>
<b>OPERATING INCOME (LOSS)</b>	<u>(12,976)</u>	<u>(19,661)</u>	<u>(32,637)</u>
<b>NONOPERATING REVENUE (EXPENSES)</b>			
Intergovernmental grants	95,284	-	95,284
Grant funded project expenses	(680,115)	-	(680,115)
Investment earnings	2,250	275	2,525
Other revenue (expense)	964	-	964
Totals	<u>(581,617)</u>	<u>275</u>	<u>(581,342)</u>
Income (Loss) Before Transfers	(594,593)	(19,386)	(613,979)
Transfers in	1,338,375	-	1,338,375
Transfers (out)	(1,338,375)	-	(1,338,375)
<b>CHANGE IN NET POSITION</b>			
Net Position - beginning	(594,593)	(19,386)	(613,979)
Net Position - end of year	<u>3,110,399</u>	<u>133,993</u>	<u>3,244,392</u>
	<u>\$ 2,515,806</u>	<u>\$ 114,607</u>	<u>\$ 2,630,413</u>

The accompanying notes to financial statements are an integral part of this financial statement

**CITY OF TRINIDAD**  
**Proprietary Funds**  
**Statement of Cash Flows**  
**Year Ended June 30, 2017**

**CASH FLOWS PROVIDED BY (USED FOR)**

	Business-type Activities		
	Water Fund	Cemetery Fund	Total Enterprise Funds
<b>Operating Activities</b>			
Cash received from customers	\$ 321,895	\$ 4,245	\$ 326,140
Cash paid for personal services	(149,051)	(23,028)	(172,079)
Cash paid for operations and maintenance	(177,825)	(532)	(178,357)
Net cash provided (used)	(4,981)	(19,315)	(24,296)
<b>Noncapital Financing Activities</b>			
Other revenue	964	-	964
Net cash provided (used)	964	-	964
<b>Capital &amp; Financing Activities</b>			
Grants received	95,284	-	95,284
Grant funded capital expenditures	(73,345)	-	(73,345)
Net cash provided (used)	21,939	-	21,939
<b>Investing Activities</b>			
Investment earnings	2,250	275	2,525
<b>Net Increase (Decrease) in Cash</b>	20,172	(19,040)	1,132
Cash - beginning	939,675	131,989	1,071,664
Cash - end of year	\$ 959,847	\$ 112,949	\$ 1,072,796
<b>Operating Activities Analysis</b>			
Operating Income (Loss) (page 11)	\$ (12,976)	\$ (19,661)	\$ (32,637)
Reconciliation adjustments:			
Add depreciation, a noncash expense	22,242	228	22,470
(Increase) decrease in receivables	3,708	-	3,708
(Increase) decrease in prepaid expenses	(5,995)	-	(5,995)
Increase (decrease) in payables	(11,960)	118	(11,842)
Net cash provided (used)	\$ (4,981)	\$ (19,315)	\$ (24,296)

The accompanying notes to financial statements are an integral part of this financial statement

**CITY OF TRINIDAD**  
**Notes to Financial Statements**  
**June 30, 2017**

The notes to the financial statements include a summary of significant accounting policies and other notes considered essential to fully disclose and fairly present the transactions and financial position of the City as follows:

- Note 1 - Significant Accounting Policies
- Note 2 - Stewardship, Compliance, and Accountability
- Note 3 - Cash and Investments
- Note 4 - Receivables
- Note 5 - Defined Contribution Retirement Plan
- Note 6 - Capital Assets
- Note 7 - Payables
- Note 8 - Risk Management
- Note 9 - Commitments and Contingencies
- Note 10 - Subsequent Events
- Note 11 - New Pronouncements
- Note 12 - Fund Balance Designations Section of the Balance Sheet

**CITY OF TRINIDAD**  
**Notes to Financial Statements**  
**June 30, 2017**

**Note 1 - Significant Accounting Policies**

Defining the Reporting Entity

The City of Trinidad was incorporated on November 7, 1870 under the laws of the State of California. The City operates under a Council-Manager form of government that provides the following services: public safety (police, fire and animal control), recreation and culture, public improvements, planning and zoning, general and administrative services, cemetery and water utilities.

The City participates in a joint powers agency through a formally organized and separate entity agreement. The financial activities of the Public Agency Risk Sharing Authority of California (PARSAC), a public entity risk pool, are not included in the accompanying financial statements because they are administered by a governing board which is separate from and independent of the City.

**Basis of Presentation**

The accounting policies of the City conform to accounting principles generally accepted in the United States of America as prescribed by the Governmental Accounting Standards Board and the American Institute of Certified Public Accountants as applicable to governments. The following is a summary of the more significant policies.

Government-wide Financial Statements

The government-wide financial statements (i.e., the statement of net position and the statement of activities) report information on all of the nonfiduciary activities of the primary government. For the most part, the effect of interfund activity has been removed from these statements. Governmental activities, which normally are supported by taxes and intergovernmental revenue, are reported separately from business-type activities, which rely to a significant extent on fees and charges for support.

The statement of activities demonstrates the degree to which the direct and indirect expenses of a given function or segment are offset by program revenue. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenue includes (1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment, and (2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not included among program revenue are reported instead as general revenue. Expenses reported for functional activities include allocated indirect expenses.

Separate financial statements are provided for governmental funds, proprietary funds and fiduciary funds, even though the later are excluded from the government-wide financial statements. Major individual governmental funds and major individual enterprise funds are reported as separate columns in the fund financial statements.

Fund Financial Statements

The accounting system of the City is organized and operated on the basis of separate funds, each of which is considered to be a separate accounting entity. Each fund is accounted for by providing a separate set of self-balancing accounts that constitute its assets, liabilities, fund equity, revenue, and expenditures/expenses. Funds are organized into three major categories: governmental, proprietary, and fiduciary. An emphasis is placed on major funds within the governmental and proprietary categories. A fund is considered major if it is the primary operation fund of the City, or the government has determined that a fund is important to the financial statement user, or it meets the following criteria:

- Total assets, liabilities, revenue, or expenditures/expenses of that individual governmental fund or enterprise fund are at least 10% of the corresponding total for all funds of that category or type.

**CITY OF TRINIDAD**  
**Notes to Financial Statements**  
**June 30, 2017**

- Total assets, liabilities, revenue, or expenditures/expenses of the individual governmental fund or enterprise fund are at least 5% of the corresponding total for all governmental and enterprise funds combined.

The funds of the financial reporting entity are described below:

Governmental Fund Types

Governmental funds are those through which most general government functions typically are financed. The City maintains the following fund types:

- General Fund - this fund accounts for all unrestricted resources except those required to be accounted for in another fund.
- Special Revenue Funds - these funds are used to account for the proceeds of specific revenue resources (other than major capital projects) that are legally restricted to expenditures for specified purposes.
- Capital Projects Funds - these funds are used to account for financial resources to be used for the acquisition, improvements or construction of streets, infrastructure and major capital projects.
- Enterprise Funds - these funds are established to account for operations that are financed and operated in a manner similar to private business enterprises - where the intent of the City is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges. The *Water Utilities Fund* and the *Cemetery Fund* are reported as enterprise funds.

Major Funds

The following are the City's major funds this year:

- *General Fund* - this fund is the City's primary operating fund. It accounts for all financial resources of the general government, except those required to be accounted for in another fund.
- *Clean Beaches Grant* - this fund is used to account for proceeds received from a State grant. Revenue is restricted for monitoring and management expenditures of biological significant areas.
- *COPS Grant* - this fund is used to account for proceeds received from a State grant. Revenue is restricted for public safety expenditures.
- *Ocean Protection Council (OPC) Citywide Low Impact Development (LID) Grant* - this planning and construction project is being funded by State Proposition 1 funds. Revenue is restricted for the design and construction of alternative street and storm water drainage flows.

Measurement Focus

Measurement focus is a term used to describe "which" transactions are recorded within the various financial statements. Basis of accounting refers to "when" transactions are recorded regardless of the measurement focus applied. The government-wide statement of net position and the statement of activities, and both governmental and business-type activities are presented using the economic resources measurement focus. The accounting objectives of the economic measurement focus are the determination of operating income, changes in net position (or cost recovery), financial position, and cash flows. All assets and liabilities (whether current or noncurrent) associated with their activities are reported.

**CITY OF TRINIDAD**  
**Notes to Financial Statements**  
**June 30, 2017**

In the fund financial statements, the "current financial resources" measurement focus or the "economic resources" measurement focus is used, as appropriate. All governmental funds utilize a "current financial resources" measurement focus. Only current financial assets and liabilities are generally included on their balance sheets. Their operating statements present sources and uses of available spendable financial resources during a given period. These funds use fund balance as their measure of available spendable financial resources at the end of the period.

The proprietary fund utilizes an "economic resources" measurement focus. Proprietary fund equity is classified as net position.

Agency funds are not involved in the measurement of results of operations; therefore, measurement focus is not applicable to them.

Basis of Accounting

In the government-wide statement of net position, and in the statement of activities, both governmental and business-like activities are presented using the "accrual basis of accounting." Under the accrual basis of accounting, revenue is recognized when earned, and expenses are recorded when the liability is incurred and the amount of obligation is ascertainable. Revenue, expenses, gains, losses, assets, and liabilities resulting from exchange and exchange-like transactions are recognized when the exchange takes place.

In the fund financial statements, governmental funds are presented on the "modified accrual basis of accounting." Under this modified accrual basis of accounting, revenue is recognized when "measurable and available." Measurable means knowing or being able to reasonably estimate the amount. Available means collectible within the current period or soon enough thereafter to pay current liabilities. Revenue which is susceptible to accrual includes property taxes and special assessments that are levied for and due for the fiscal year and collected within 60 days after year-end. Licenses, permits, fines, penalties, charges for services, and miscellaneous revenue are recorded as governmental fund type revenue when received in cash because they are not generally measurable until actually received. Revenue from taxpayer assessed taxes, such as sales taxes, are recognized in the accounting period in which they became both measurable and available to finance expenditures of the fiscal period. Grant revenue, which is normally reimbursements of expenses under contractual agreements, is recorded as a receivable when earned rather than when susceptible to accrual. Generally, this occurs when authorized expenditures are made under the grant program or contractual agreement. Expenditures are recognized when the fund liability is incurred, if measurable, except for unmatured interest on long-term debt in the governmental funds, which is recognized when due.

Proprietary funds use the "accrual basis of accounting" which records the financial effect on an enterprise of transactions and other events and circumstances that have cash consequences for an enterprise in the periods in which those transactions, events and circumstances occur rather than only when cash is received or paid by the enterprise.

Budgetary Data

General Budget Policies: the City maintains budgetary controls of which the objective is to ensure compliance with legal provisions embodied in the annual budget approval by the City Council. Budgetary control for operations is maintained at the department level by individual funds. Budgetary control for capital improvement projects (i.e., project-length financial plans) is maintained at the individual project level by fund. The City's budgeted expenditure authority lapses at the end of each fiscal year. However, outstanding purchase order commitments or capital improvement projects may be re-appropriated for the subsequent fiscal year upon City Council approval.

Budget Basis of Accounting: budgets for governmental funds are adopted on a basis consistent with accounting principles generally accepted in the United States of America as prescribed by the GASB and

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the AICPA. The Budgetary Comparison Schedule of the general fund presents comparisons of legally adopted budget amounts (both the original budget and final budget), and actual amounts, on the budgetary basis. The budgeting basis is substantially equivalent to the City's accounting basis; thus no reconciliation between the two is considered necessary.

**Other Accounting Policies**

Cash and Investments

The City follows the requirements of GASB in reporting cash and investments at fair value and disclosing risks related to credit risk, concentration of credit risk, interest rate risk and foreign currency risk, as applicable.

Cash and Cash Equivalents

For purposes of the statement of cash flows, the City considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents.

Capital Assets

Capital assets used in governmental fund type operations are accounted for on the statement of net position. Public domain general capital assets (infrastructure) consisting of certain improvements other than buildings, such as roads, sidewalks and bridges are capitalized prospectively starting July 1, 2003 in accordance with GASB Stmt No. 34. City policy has set the capitalization threshold for reporting capital assets at \$5,000. Capital outlay is recorded as expenditures of the general and special revenue funds, and, as capital assets in the government-wide financial statements to the extent the City's capitalization threshold is met. Donated assets are recorded at estimated fair value at the date of donation.

Property, plant and equipment acquired for proprietary funds are capitalized in the respective fund to which it applies and are stated at their cost. Where cost could not be determined from the available records, estimated historical cost was used to record the estimated value of the assets.

Depreciation is recorded on a straight-line basis over the estimated useful lives of the capital assets which range from 3 to 20 years for equipment and vehicles, and 20 to 50 years for infrastructure, buildings and improvements. Land, art and treasures are not considered exhaustible, therefore are not being depreciated.

Use of Estimates

The preparation of financial statements requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Compensated Absences

In compliance with GASB Stmt No.16, the City has established a liability for accrued vacation, except that additional accruals for salary-related expenses associated with the costs of compensated absences, for example, the employer's share of social security and Medicare taxes, have not been accrued as that amount is not considered significant or material to the financial statements taken as a whole. All vacation pay is accrued when incurred in the government-wide and proprietary funds financial statements. This liability is established for current employees at their current rates of pay. If accrued vacation is not used by the employee during their term of employment, compensation is payable to the employee at the time of separation, and at the employee's prevailing rate of pay. Each fiscal year, an adjustment to the liability is made based on pay rate changes and adjustments for the estimated current portion due within one year. Due to the immaterial amount of year end accrued compensated absences, the City has elected to report compensated absences as accrued expenses in all funds, which is merged with accounts payable and reported as Payables in the financial statements.

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Interfund Activity

Interfund activity is reported as loans, reimbursements or transfers. Loans are reported as interfund receivables and payables as appropriate and are subject to elimination upon consolidation. Reimbursements are when one fund incurs a cost and then charges the appropriate benefiting fund and reduces its related cost as a reimbursement. All other interfund transactions are treated as transfers. Transfers between governmental and proprietary funds are netted as part of the reconciliation to the government-wide financial statements.

Property Tax Revenue

Property taxes in the State of California are administered for all local agencies at the County level and consist of secured, unsecured and utility tax rolls. The following is a summary of major policies and practices relating to property taxes:

- *Property Valuations* - are established by the Assessor of Humboldt County for the secured and unsecured property tax rolls; the utility property tax roll is valued by the California State Board of Equalization. Under the provisions of Article XIII A of the State Constitution (Proposition 13, adopted by the voters on June 8, 1978), properties are assessed at 100% of full value. From this base of assessment, subsequent annual increases in valuation are limited to a maximum of 2%. However, increase to full value is allowed for property improvements or upon change in ownership. Personal property is excluded from these limitations and is subject to annual reappraisal.
- *Tax Levies* - are limited to 1% of full assessed value which results in a tax rate of \$1.00 per \$100 assessed valuation under the provisions of Proposition 13. Tax rates for voter-approved indebtedness are excluded from this limitation.
- *Tax Levy Dates* - are attached annually on January 1, preceding the fiscal year for which the taxes are levied. The fiscal year begins July 1 and ends June 30 of the following year. Taxes are levied on both real and unsecured personal property. Liens against real estate, as well as the tax on personal property, are not relieved by subsequent renewal or change in ownership.
- *Tax Collections* - are the responsibility of the County's tax collector. Taxes and assessments on secured and utility rolls, which constitute a lien against the property, may be paid in two installments: The first is due on November 1 of the fiscal year and is delinquent if not paid by December 10; and the second is due on March 1 of the fiscal year and is delinquent if not paid by April 10. Unsecured personal property taxes do not constitute a lien against property unless the taxes become delinquent. Payment must be made in one installment, which is delinquent if not paid by August 31 of the fiscal year. Significant penalties are imposed by the County for late payments. The City has elected to receive the City's portion of the property tax revenue from the County under the State enacted "Teeter Bill" program. Under this program, the City receives 100% of the City's share of the levied property taxes in periodic payments, with the County assuming responsibility for collecting the delinquencies as well as keeping the related late penalties and interest.
- *Tax Levy Apportionments* - due to the nature of the City-wide maximum levy, it is not possible to identify general-purpose tax rates for specific entities. Under State legislation adopted subsequent to the passage of Proposition 13, apportionments to local agencies are made by each County auditor-controller based primarily on the ratio that each agency represented of the total City-wide levy for the three fiscal years prior to fiscal year 1979.

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- *Property Tax Administration Fees* - the State of California fiscal year 1990-91 Budget Act authorized Counties to collect an administrative fee for its collection and distribution of property tax revenue.

Revenue and Expenditures

Substantially all governmental fund revenue is accrued. Property taxes are billed and collected within the same period in which the taxes are levied. Subsidies and grants to proprietary funds, which finance either capital or current operations, are reported as non-operating revenue based on GASB Stmt. No. 33. In applying GASB Statement No. 33 to grant revenue, the provider recognizes liabilities and expenses and the recipient recognizes receivables and revenue when the applicable eligibility requirements, including time requirements, are met. Grant resources transmitted before eligibility requirements are met, are reported as advances by the provider and deferred revenue by the recipient.

Operating income in proprietary fund financial statements includes revenue and expenses related to the primary continuing operations of the fund. Principal operating revenue for proprietary funds are charges to customers for sales or services. Principal operating expenses are the costs of providing goods or services and include administrative expenses and depreciation of capital assets. Other revenue and expenses are classified as non-operating in the financial statements. When both restricted and unrestricted resources are available for use, it is the City's policy to use restricted resources first, and then unrestricted resources as needed. Expenditures are recognized when the related fund liability is incurred.

Net Position and Fund Balances

The City's Net Position is classified as follows on the government-wide statement of net position:

- *Net Investment in Capital Assets* - represents the City's total investment in capital assets reduced by any outstanding debt used to acquire these assets.
- *Restricted Net Position* - includes resources that the City is legally or contractually obligated to spend in accordance with restrictions imposed by external third parties.
- *Unrestricted Net Position* - represents resources derived from sources without spending restrictions, are used for transactions relating the general operations of the City, and may be used at the discretion of those charged with governance to meet current expenses or obligations for any purpose.

Fund Balance designations are classified on the governmental funds balance sheet as follows:

- *Nonspendable* - amounts that cannot be spent because they are either (a) legally or contractually required to be maintained intact or (b) not in spendable form such as long-term notes receivable.
- *Restricted* - amounts that can be spent only for the *specific purposes* stipulated by constitution, external resource providers, or through enabling legislation.
- *Committed* - amounts that can be used only for the *specific purposes* determined by a formal action of the City Council, to establish, modify or rescind a fund balance commitment.
- *Assigned* - amounts that are constrained by the government's *intent* to be used for specific purposes but do not meet the criteria to be classified as restricted or committed, as determined by a formal action or policy of the City Council or its appointed official.

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- Assigned - amounts that are constrained by the government's *intent* to be used for specific purposes but do not meet the criteria to be classified as restricted or committed, as determined by a formal action or policy of the City Council or its appointed official.
- Unassigned - the residual classification for the government's general fund and includes all spendable amounts not contained in the other classifications.

**Note 2 - Stewardship, Compliance, and Accountability**

Revenue Limitations Imposed by California Proposition 218

Proposition 218, which was approved by the voters in November 1996, regulates the City's ability to impose, increase, and extend taxes, assessments, and fees. Any new, increased, or extended taxes, assessments, and fees subject to the provisions of Proposition 218, require voter approval before they can be implemented. Additionally, Proposition 218 provides that these taxes, assessments, and fees are subject to the voter initiative process and may be rescinded in the future years by the voters.

Deficit Fund Balances

Due to the City incurring costs in advance of receiving grant awards and other reimbursements, and revenue which it expects to recover in the future from grants and other sources, the following funds incurred deficits in their ending fund balances:

Local Coastal Project	\$	891
Onsite wastewater treatment		10,591
		\$ 11,482

Cash Deficit Balances by Fund

The following governmental activity funds reported year-end cash deficit balances:

COPS program grant	\$	6,139
Clean Beaches Grant		34,810
OPC Citywide LID		8,350
Local Coastal Project		1,873
Onsite wastewater treatment fund		9,341
		\$ 60,513

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**Note 3 - Cash and Investments**

The City follows the practice of pooling cash and investments of all funds except for restricted funds required to be held by outside custodians, fiscal agents or trustees, under the provisions of bond covenants. Cash and investments at fiscal year-end are classified in the accompanying financial statements as follows:

<b>Statement of Net Position</b>	
Governmental Activities	\$ 1,282,966
Business-type Activities	1,072,796
	\$ 2,355,761
Cash and Investments consist of the following:	
Deposits with financial institutions	\$ 1,780,153
Local Agency Investment Fund	575,608
	\$ 2,355,761

**Collateral and Categorization Requirements**

At fiscal year end, the City's carrying amount of demand deposits was \$1,780,040 and the local bank account balances were \$1,849,966. The difference of \$69,926 represented outstanding checks and deposits in transit. Of the total bank deposit balance, \$250,000 was insured by Federal Depository Insurance Corporation (FDIC) and \$1,599,966 was collateralized in accordance with California Government Code Section 53600. California law requires that the fair value of the pledged securities must equal at least 110% of the City's deposits. California law also allows financial institutions to secure the City's deposits by pledging first trust deed mortgage notes having a value of 150% of the City's total deposits.

Investments in money market funds and the Local Agency Investment Fund (LAIF) are not insured by the FDIC or any government agencies. Investments in government or government sponsored entity (GSE) bonds are not insured but are collateralized by loans on real estate.

**Investment Policy**

The table below identifies the investment types that are authorized under provisions of the City's investment policy adopted September 14, 2011, and in accordance with Section 53601 of the California Government Code. The table also identifies certain provisions of the investment policy that address interest rate risk, credit risk, and concentration of credit risk.

<u>Authorized Investment Type</u>	<u>Maximum Maturity</u>	<u>Maximum Percentage of Portfolio</u>	<u>Maximum Investment in One Issuer</u>	<u>Minimum Rating</u>
Certificates of Deposit	3 years	20%	None	None
U.S. Treasury Securities	None	None	None	None
Local Agency Investment Fund	None	None	None	N/A
State and Local Agency Obligations	None	20%	None	AAA

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Interest Rate Risk

Interest rate risk is the risk that changes in market interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates.

Concentration of Credit Risk

The investment policy of the City contains limitations on the amount that can be invested in any single issuer as described above, and beyond that stipulated by the California government code. Investments at fiscal year-end were as follows:

<u>Investment Type</u>	<u>Fair Value</u>	<u>Maturity</u>	<u>Yield</u>	<u>Concentration</u>
Local Agency Investment Fund	\$ 575,608	6.4 months	0.92%	24%
Demand Deposits (checking)	1,780,053	on demand	0.01%	76%

Credit Risk

Generally, credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of a rating by a nationally recognized statistical rating organization. The City's investment policy limits credit risk by requiring compliance with the California Government Code for investment of public funds.

The credit risk for *deposits* is the risk that, in the event of the failure of a depository financial institution, a government will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party. The California government code and the City's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits, other than the following provision for deposits: "The California government code requires that a financial institution secure deposits made by state or local governmental units by pledging securities in an undivided collateral pool held by a depository regulated under state law (unless so waived by the governmental unit). The market value of the pledged securities in the collateral pool must equal at least 110% of the total amount deposited by the public agencies. California law also allows financial institutions to secure City deposits by pledging first trust deed mortgage notes having a value of 150% of the secured public deposits."

The credit risk for *investments* is the risk that, in the event of the failure of the counterparty (e.g., broker-dealer) to a transaction, a government will not be able to recover the value of its investment or collateral securities that are in the possession of another party. The California government code and the City's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for investments. With respect to investments, custodial credit risk generally applies only to direct investments in marketable securities. Custodial credit risk does not apply to a local government's indirect investment in securities through the use of mutual funds or government investment pools (such as LAIF).

Participation in an External Investment Pool

The City is a voluntary participant in the Local Agency Investment Fund (LAIF). LAIF, established in 1977, is regulated by California Government Code Section 16429 and under the day to day administration of the California State Treasurer. There is a five member Local Investment Advisory Board that is chaired by the State Treasurer. LAIF determines fair value of its investment portfolio based on market quotations for those securities where market quotations are readily available, and on amortized cost or best estimate for those securities where market value is not readily available. LAIF is part of the Pooled Money Investment Account (PMIA) and under the control of the State Treasurer's Office, which is audited by the Bureau of State Audits. As of June 30, 2017, PMIA had approximately

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\$77.6 billion in investments. Audited financial statements of PMIA may be obtained from the California State Treasurer's web site at [www.treasurer.ca.gov](http://www.treasurer.ca.gov).

The fair value of the City's investment in this pool is reported in the accompanying financial statements at amounts based upon the City's pro-rata share of the fair value provided by LAIF for the entire LAIF portfolio (in relation to the amortized cost of that portfolio). The balance available for withdrawal is based on the accounting records maintained by LAIF, which are recorded on an amortized cost basis.

**Note 4 - Receivables**

Accounts and other receivables as reported in the Statement of Net Position are comprised of the following:

<u>Governmental Activities</u>	
Property taxes	\$ 37,059
COPS grant	23,376
Sales tax	63,344
Intergovernmental	99,301
Grant reimbursements	47,669
Transient occupancy taxes	31,224
Other receivables	40,445
	<u>\$ 342,418</u>
<u>Business-type Activities</u>	
Water fund - grant reimbursements	\$ 26,855
Water utility customers	14,308
	<u>\$ 41,163</u>

Management has elected to record bad debts using the direct write-off method. Accounting principles generally accepted in the United States of America require that the allowance method be used to reflect bad debts. However, the effect of the use of the direct write-off method is not materially different from the results that would have been obtained had the allowance method been followed.

**Note 5 - Defined Contribution Retirement Plan**

The City contributes to an employee owned defined contribution plan administered through Smith Barney/Hartford ITT under established plan provisions, and which may be amended by City council resolution. The City contributes 6% of an employee's annual salary to the plan which provides retirement benefits. The City also provides matching contributions up to 6% of an employee's contributions for all eligible employees. Plan participants age 50 and older can make catch-up annual contributions up to \$5,000; and in the three years prior to retirement, can make catch-up contributions of up to twice the annual limit. All employee and employer contributions are tax deferred to the employee. The City contributed \$31,525 to the plan for the year.

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**Note 6 - Capital Assets**

Governmental-type capital asset activity for the year was follows:

	<u>Beginning Balance</u>	<u>Additions/ Completions</u>	<u>Retirements/ Adjustments</u>	<u>Ending Balance</u>
<i><u>Nondepreciable Assets</u></i>				
Land	\$ 9,500	\$ -	\$ 34,278	\$ 43,778
Construction-in-progress	-	-	-	-
	<u>9,500</u>	<u>-</u>	<u>34,278</u>	<u>43,778</u>
<i><u>Depreciable Assets</u></i>				
Buildings, Improvements, and Streets	3,294,135	567,500	(601,777)	3,259,858
Equipment	103,924	-	(20,187)	83,737
Vehicles	57,775	17,500	-	75,275
	<u>3,455,834</u>	<u>585,000</u>	<u>(621,964)</u>	<u>3,418,870</u>
<i><u>Accumulated Depreciation</u></i>	<u>(394,710)</u>	<u>-</u>	<u>9,913</u>	<u>(384,797)</u>
Depreciable assets, net	<u>3,061,124</u>	<u>585,000</u>	<u>(612,051)</u>	<u>3,034,073</u>
Total capital assets, net	<u>\$ 3,070,624</u>	<u>\$ 585,000</u>	<u>\$ (577,773)</u>	<u>\$ 3,077,851</u>

Business-type capital asset activity for the year was follows:

	<u>Beginning Balance</u>	<u>Additions/ Completions</u>	<u>Retirements/ Adjustments</u>	<u>Ending Balance</u>
<i><u>Nondepreciable Assets</u></i>				
Water utility - Land	\$ 5,089	\$ 20,000	\$ -	\$ 25,089
Construction-in-progress	1,918,350	-	(1,918,350)	-
	<u>1,923,439</u>	<u>20,000</u>	<u>(1,918,350)</u>	<u>25,089</u>
<i><u>Depreciable Assets</u></i>				
Water utility	764,222	1,281,206	-	2,045,428
Cemetery	7,964	-	-	7,964
	<u>772,186</u>	<u>1,281,206</u>	<u>-</u>	<u>2,053,392</u>
<i><u>Accumulated Depreciation</u></i>				
Water utility	(909,805)	(22,242)	11,460	(920,587)
Cemetery	(4,006)	(228)	-	(4,234)
Depreciable assets, net	<u>(141,625)</u>	<u>1,258,736</u>	<u>11,460</u>	<u>1,128,571</u>
Total capital assets, net	<u>\$ 1,781,814</u>	<u>\$ 1,278,736</u>	<u>\$ (1,906,890)</u>	<u>\$ 1,153,660</u>

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**Note 7 - Payables**

Accounts payable and accruals, as reported in the Statement of Net Position are comprised of the following:

	Governmental Activities	Business-type Activities
Contractors, programs & projects - grant funded	\$ 75,169	\$ 15,049
Engineering/planning consultants	42,175	-
County Sheriff - contract service	5,761	-
TBID pass through	3,139	-
Vendors and supplies	4,523	16,413
	<u>\$ 130,767</u>	<u>\$ 31,462</u>

**Note 8 - Risk Management**

The City is exposed to various risks of loss related to torts, thefts, damage and destruction of assets, errors and omissions, injuries to employees, and natural disasters. The City is a member of the Public Agency Risk Sharing Authority of California (PARSAC or the Authority), a public entity risk pool currently operating as a common risk management and insurance program for member cities. The relationship between the City and PARSAC is such that PARSAC is not a component unit of the City for financial reporting purposes. PARSAC is governed by a Board consisting of representatives from member municipalities. The Board controls the operations of the Authority, including selection of management and approval of operating budgets, independent of any influence by member municipalities beyond their representation on the Board. Financial statements may be obtained from PARSAC, 1525 Response Road, Suite One, Sacramento, CA 95815. For workers compensation insurance, the City is insured by the Local Agency Workers Compensation Excess Company. For property coverage, the City is protected by a commercial general liability insurance policy.

**Note 9 - Commitments and Contingencies**

In the normal course of City operations there are occasional and various legal claims and actions against the City for which no provision has been made in the financial statements because the amount of liability, if any, is unknown.

The City has received state and federal funds for specific purposes that are subject to review and audit by the grantor agencies. Although such audits could generate expenditure disallowances under terms of the grants, it is believed that any required reimbursements will not be material.

The City entered into an agreement with the County of Humboldt to provide law enforcement services within the City limits, payable in the amount of \$37,659 per quarter. The agreement period commences July 1, 2014 through June 30, 2017 and was renewed. Appropriations are partially funded through an annual State grant in the amount of \$100,000 and a County grant.

At June 30, 2017 the City was committed to several grant funded contracts related to water quality, environmental issues and water plant upgrades, and street improvements. The ability of the City to meet its commitments is dependent upon continued intergovernmental grant funding.

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The City entered into a 99-year lease agreement with the Trinidad Coastal Land Trust, for a building which is occupied by a branch of the Humboldt County library. Annual rent is \$500 per year and adjusted every five years equal to a consumer price index.

**Note 10 - Subsequent Events**

The management of the City has reviewed the results of operations for the period from its fiscal year end June 30, 2017 through February 15, 2018, the date the financial statements were available to be issued in draft form, and have determined that no adjustments are necessary to the amounts reported in the accompanying financial statements nor have any subsequent events occurred, the nature of which would require disclosure.

**Note 11 - New Pronouncements**

The Governmental Accounting Standards Board (GASB) has released the following new pronouncements, which can read in their entirety at <http://www.gasb.org>.

*GASB Statement No. 75, Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions.*

**Effective Date:** The requirements of this Statement are effective for periods beginning after June 15, 2017. This Statement sets new reporting requirements for government employer OPEB plans, whether or not funded, and replaces GASB 45. Because it follows Statement 68 (the new pension accounting standard) very closely, the required calculations and terms may be familiar.

*GASB Statement No. 81, Irrevocable Split-Interest Agreements*

**Effective Date:** The requirements of this Statement are effective for periods beginning after December 15, 2016. Earlier application is encouraged. (Issued 3/16)

*GASB Statement No. 83, Certain Asset Retirement Obligations*

**Effective Date:** The requirements of this Statement are effective for reporting periods beginning after June 15, 2018. Earlier application is encouraged. (Issued 11/16)

*GASB Statement No. 84, Fiduciary Activities*

**Effective Date:** The requirements of this Statement are effective for reporting periods beginning after December 15, 2018. Earlier application is encouraged. (Issued 01/17)

*GASB Statement No. 85, Omnibus 2017*

**Effective Date:** The provisions of this Statement are effective for periods beginning after June 15, 2017. Earlier application is encouraged. (Issued 03/17)

*GASB Statement No. 86, Certain Debt Extinguishment Issues*

**Effective Date:** The requirements of this Statement are effective for reporting periods beginning after June 15, 2017. Earlier application is encouraged. (Issued 05/17)

*GASB Statement No. 87, Leases*

**Effective Date:** For reporting periods beginning after December 15, 2019. (Issued 06/17)

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**Note 12 - Fund Balance Designations Section of the Balance Sheet**

<b>Fund Balances</b>	<b>General Fund</b>	<b>Clean Beaches Grant</b>	<b>COPS Grant Program</b>	<b>OPC Citywide LID</b>	<b>Other Governmental Funds</b>	<b>Total Fund Balance Designations</b>
<b>Nonspendable:</b>	\$ 11,191	\$ -	\$ -	\$ -	\$ -	\$ 11,191
<b>Restricted for:</b>						
Clean Beaches project	-	191	-	-	-	191
Measure Z proposition	75,317	-	-	-	-	75,317
Integrated Waste Mgmt	-	-	-	-	8,630	8,630
State COPS grant	-	-	11,636	-	-	11,636
State Gas tax street projects	-	-	-	-	17,142	17,142
State TDA street projects	-	-	-	-	8,863	8,863
<b>Total restricted fund balances</b>	<b>75,317</b>	<b>191</b>	<b>11,636</b>	<b>-</b>	<b>34,635</b>	<b>121,779</b>
<b>Committed to:</b>						
Emergency reserve	459,000	-	-	-	-	459,000
Budget Stabilization reserve	459,000	-	-	-	-	459,000
Capital/Special Project reserve	306,000	-	-	-	-	306,000
Self insurance reserve	15,000	-	-	-	-	15,000
<b>Total committed fund balances</b>	<b>1,239,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,239,000</b>
<b>Assigned to:</b>						
Fire dept capital reserve	50,700	-	-	-	-	50,700
Public works capital reserve	10,000	-	-	-	-	10,000
Town hall capital reserve	3,876	-	-	-	-	3,876
<b>Total assigned fund balances</b>	<b>64,576</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>64,576</b>
<b>Unassigned:</b>	<b>80,925</b>	<b>-</b>	<b>-</b>	<b>(7)</b>	<b>(11,657)</b>	<b>69,261</b>
<b>Total Fund Balances</b>	<b>\$ 1,471,009</b>	<b>\$ 191</b>	<b>\$ 11,636</b>	<b>\$ (7)</b>	<b>\$ 22,978</b>	<b>\$ 1,505,807</b>

**REQUIRED SUPPLEMENTARY INFORMATION**

*(unaudited)*

**CITY OF TRINIDAD**  
**Required Supplementary Information**  
**Budgetary Comparison Information (unaudited)**  
**June 30, 2017**

The City follows these procedures in establishing the budgetary data reflected in the financial statements:

- Prior to the close of each fiscal year, the City Manager submits to the City Council a proposed operating budget for the fiscal year commencing the following July 1. The operating budget includes proposed revenue and expenditures.
- Public hearings are conducted at City Council meetings to obtain taxpayer comments prior to adoption of the budget in June.
- Prior to July 1, the budget is legally adopted for all governmental fund types through Council approved resolution.
- The City Manager is authorized to transfer budget amounts within and between funds as deemed desirable and necessary in order to meet the City's needs; however, revisions that alter the total expenditures must be approved by the City Council. Formal budgetary integration is employed as a management control device during the year for the governmental type funds.
- Budgets for the governmental type funds are adopted on a basis consistent with generally accepted accounting principles. Budgeted amounts presented are as originally adopted and as further amended by the City Council.

**CITY OF TRINIDAD**  
**Required Supplementary Information**  
**Budgetary Comparison Information (unaudited)**  
**General Fund, State COPS Grant Fund, and County Measure Z Fund**  
**Year Ended June 30, 2017**

	Budget Amounts (unaudited)		Actual Amounts	Variance with Final Budget
	Original	Final		Positive (Negative)
<b>Resources (Inflows)</b>				
State COPS grant	\$ 100,000	\$ 100,000	\$ 126,381	\$ 26,381
County Measure Z grant	75,000	75,000	75,317	317
Public Safety - Police	175,000	175,000	201,698	26,698
Property tax	98,550	98,550	97,465	(1,085)
Sales tax	252,000	252,000	246,438	(5,562)
Transient occupancy tax	130,000	130,000	171,173	41,173
Intergovernmental	-	-	50,201	50,201
Investment earnings	-	-	3,791	3,791
Licenses, planning and permits	34,100	34,100	23,466	(10,634)
Use of property	46,935	46,935	48,472	1,537
Other revenue	6,030	6,030	23,537	17,507
Transfers in	30,000	30,000	-	(30,000)
Amounts Available for Appropriation	<u>772,615</u>	<u>772,615</u>	<u>866,241</u>	<u>93,626</u>
<b>Charges to Appropriation (Outflows)</b>				
State COPS grant	100,000	100,000	116,845	(16,845)
County Measure Z grant	75,000	75,000	75,317	(317)
Public Safety - Police	175,000	175,000	191,162	(16,162)
General Government:				
City Administration	340,693	340,693	347,066	(6,373)
Public Safety - Fire	17,100	17,100	10,911	6,189
Public Works	165,337	165,337	191,478	(26,141)
Fire dept. reserve	-	-	-	-
Public works reserve	-	-	-	-
Town hall reserve	-	-	-	-
Transfers out	-	-	-	-
Total Charges to Appropriations	<u>698,130</u>	<u>698,130</u>	<u>740,617</u>	<u>(42,487)</u>
<b>Excess (Deficit)</b>	<u>\$ 74,485</u>	<u>\$ 74,485</u>	<u>\$ 125,624</u>	<u>\$ 51,139</u>

**OTHER SUPPLEMENTARY INFORMATION**

**CITY OF TRINIDAD**  
**Combining Financial Statements**  
**Nonmajor Governmental Funds**  
**Year Ended June 30, 2017**

	Trinidad Tolls Fund	Integrated Waste Mgmt.	LCP Local Coastal Project	State Gas Tax Fund	Transportation Development Agency	Onsite Wastewater Treatment	DOT Van Wycke Trail	TOTAL NONMAJOR FUNDS
<b>ASSETS</b>								
Cash and investments	\$ (815)	\$ 12,969	\$ -	\$ 17,142	\$ 8,863	\$ -	\$ -	\$ 38,159
Receivables	1,032	-	3,984	-	-	-	-	5,016
Total assets	\$ 217	\$ 12,969	\$ 3,984	\$ 17,142	\$ 8,863	\$ -	\$ -	\$ 43,175
<b>LIABILITIES</b>								
Payables	\$ 217	\$ 4,339	\$ 3,002	\$ -	\$ -	\$ 1,250	\$ -	\$ 8,808
Cash overdrafts	-	-	1,873	-	-	9,341	175	11,389
Total liabilities	217	4,339	4,875	-	-	10,591	175	20,197
<b>FUND BALANCES</b>								
Total liabilities and fund balances	-	8,630	(891)	17,142	8,863	(10,591)	(175)	22,978
	\$ 217	\$ 12,969	\$ 3,984	\$ 17,142	\$ 8,863	\$ -	\$ -	\$ 43,175
<b>REVENUE</b>								
Intergovernmental	\$ 1,032	\$ 11,342	\$ 13,557	\$ 12,948	\$ 13,450	\$ 1,425	\$ -	\$ 53,754
Other revenue	-	-	-	42	21	-	-	63
Total revenue	1,032	11,342	13,557	12,990	13,471	1,425	-	53,817
<b>EXPENDITURES</b>								
General government	1,032	23,201	-	1,478	-	-	-	25,711
Capital improvements	-	-	14,039	-	11,822	4,140	175	30,176
Total expenditures	1,032	23,201	14,039	1,478	11,822	4,140	175	55,887
Transfers in	-	-	-	-	-	-	-	-
Transfers (out)	-	-	-	-	-	-	-	-
<b>CHANGE IN FUND BALANCES</b>								
Fund balances - beginning	-	(11,859)	(482)	11,512	1,949	(2,715)	(175)	(2,070)
Fund balances - end of year	-	20,439	(409)	5,630	7,214	(7,876)	-	25,048
	\$ -	\$ 8,630	\$ (891)	\$ 17,142	\$ 8,863	\$ (10,591)	\$ (175)	\$ 22,978



## DISCUSSION AGENDA ITEM 2

**SUPPORTING DOCUMENTATION FOLLOWS WITH:      0 PAGES**

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2. Receive Mid-Year Budget Presentation



## DISCUSSION AGENDA ITEM 3

**SUPPORTING DOCUMENTATION FOLLOWS WITH: 5 PAGES**

---

1. Consider Developing RFQs for Engineering and Planning Professional Services

*The complete Caltrans Manual was 58 pages long.*

*Paper copies will be available upon request, and the digital copy will be posted online with the packet.*

## **DISCUSSION AGENDA ITEM**

**Date: February 15, 2018**

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### **Item: Procurement of Engineering and Planning Professional Services**

**Summary:** The City is working under various state grants that have very specific procurement requirements the grantee must follow. For some of these grants, those requirements include the City demonstrating that all contractors, including the City Planner and City Engineer services, have been selected through an open Request for Qualifications process within the last five years.

This requirement is consistent with generally accepted best practices that Cities procure outside consultants for engineering, architectural and planning services through publication of a Request for Qualifications (RFQ) in a competitive Qualifications Based Selection process. The RFQ can be project specific or for procuring general services (such as City Engineer and City Planner).

For contracting with consultants (e.g. engineering and planning) on projects funded by Caltrans (state and or federally funded), the City must either adopt the Caltrans Local Assistance Procedures Manual (LAPM) Chapter 10 Consultant Selection or get approval of the City's procedures by Caltrans. Staff recommends adoption of the LAPM Chapter 10 to guide procurement processes for the Van Wycke Trail grant and other applicable grant projects.

In order to satisfy current and upcoming grant requirements, and as a matter of general policy, staff recommends that the City initiate a Request for Qualifications process for our City Engineer and our City Planner services. The intention would be to enter into one or more task-based professional service contracts with individuals or firms to provide general planning, engineering, surveying, environmental and construction management services. Services may include assistance with future State, Federal and locally funded projects, as well as project management, project review, consultation and design services. Additionally, the submitted Statements of Qualifications on file with the City could be used to procure services as needed throughout the year.

The process would begin with identifying and defining the need for consultant services, developing scopes of work and schedules, then drafting and releasing RFQs for Engineering Services and for Planning Services. Staff would return to Council with recommendations for a consultant selection committee and other actions necessary to complete the selection process according to state and federal requirements.

#### **Staff Recommendation:**

- Adopt Caltrans Local Assistance Procedures Manual, Chapter 10 Consultant Selection as City procedure for applicable state and federally funded projects.
- Direct staff to develop a schedule for engineering and planning consultant selection, and develop and release Requests for Qualifications for Engineering Services and for Planning Services.

**Attachment:** Caltrans Local Assistance Procedures Manual, Chapter 10 Consultant Selection

Chapter 10 **Consultant Selection**

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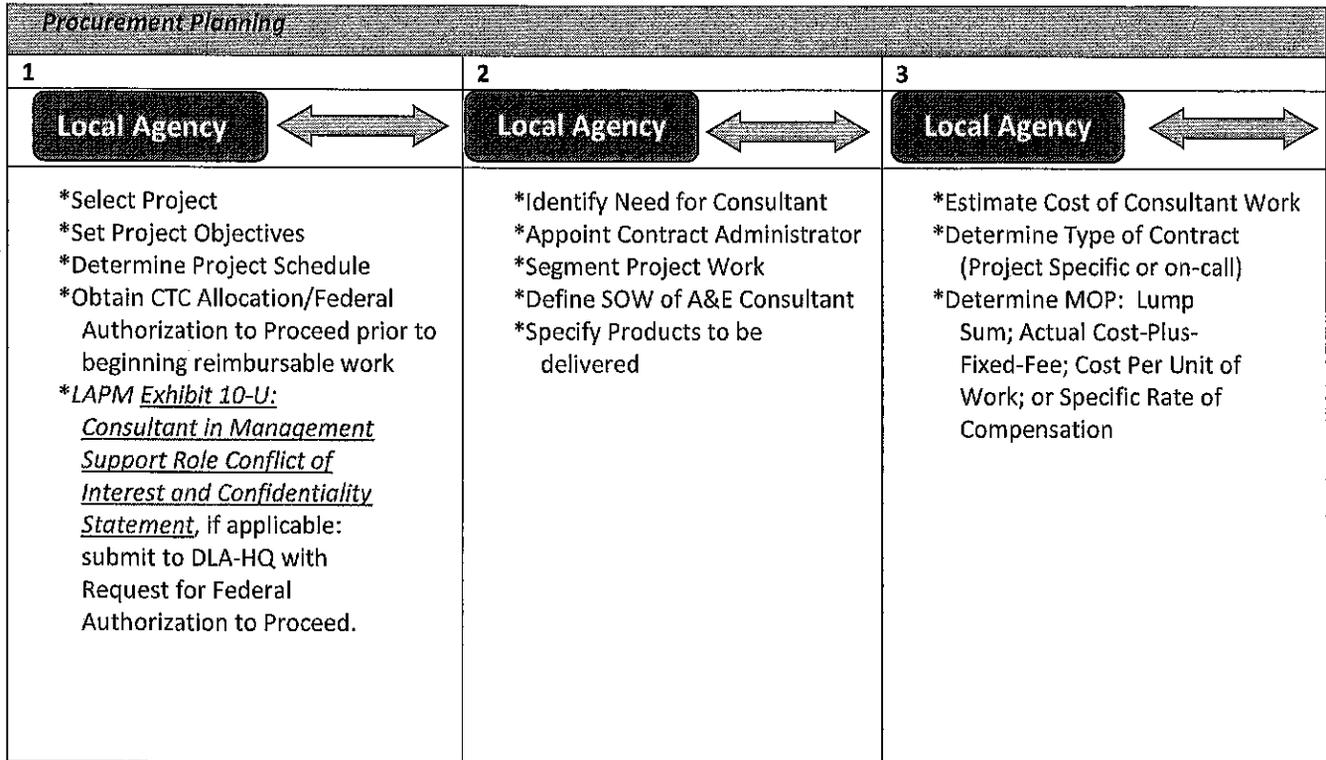
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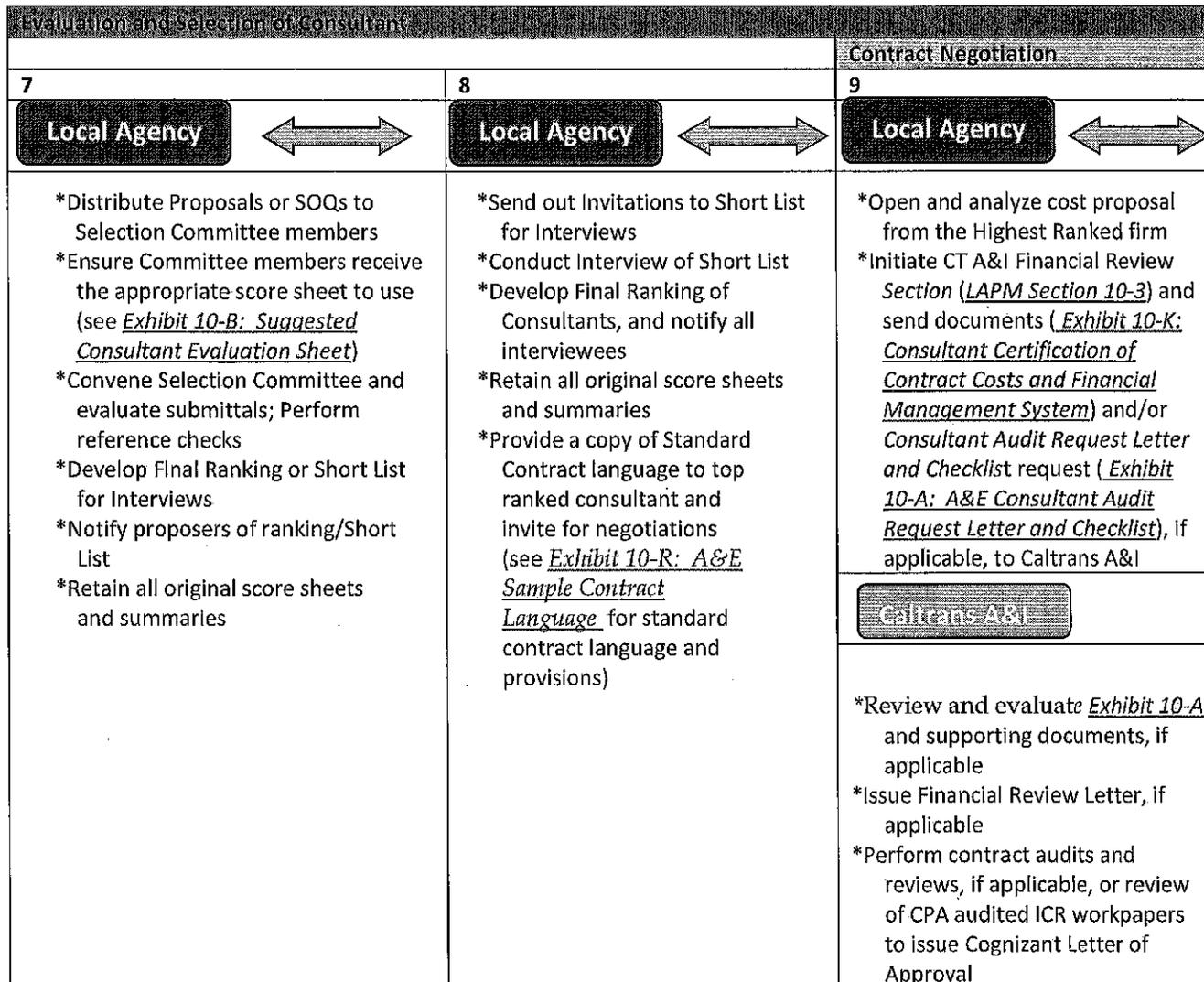
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**DBE = Disadvantaged Business Enterprise**  
**DLA = Division of Local Assistance**  
**DLAE = District Local Assistance Engineer**  
**DLA-HQ = Division of Local Assistance-Headquarters**  
**LAPG = Local Assistance Program Guidelines**  
**LAPM = Local Assistance Procedures Manual**  
**MOP = Method of Payment**  
**RFP = Request for Proposal**  
**RFQ = Request for Qualifications**  
**SOQ = Statement of Qualifications**  
**SOW = Statement/Scope of Work**

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

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

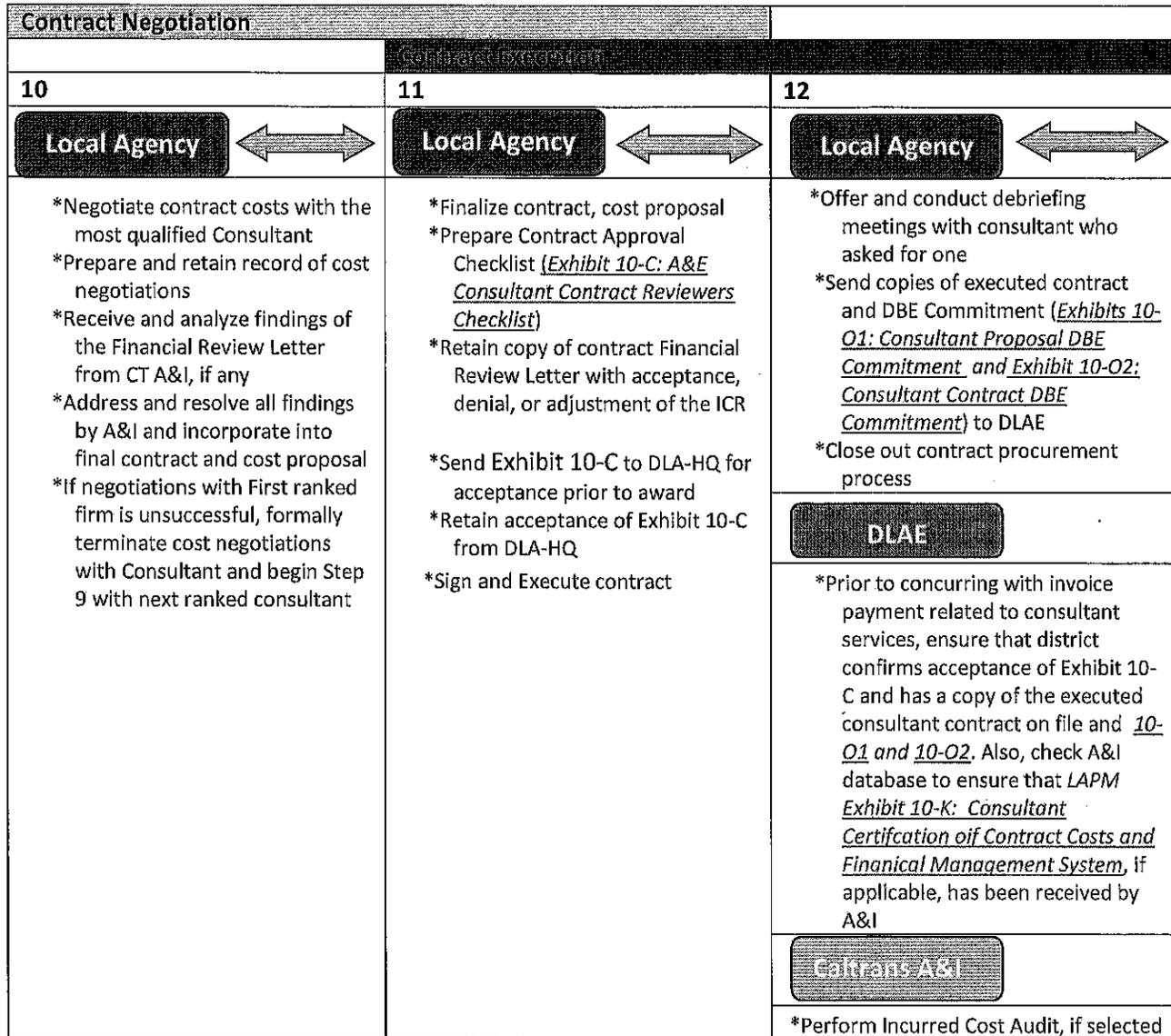
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**DLAE = District Local Assistance Engineer**  
**DLA-HQ = Division of Local Assistance-Headquarters**  
**LAPG = Local Assistance Program Guidelines**  
**LAPM = Local Assistance Procedures Manual**  
**MOP = Method of Payment**  
**RFP = Request for Proposal**  
**RFQ = Request for Qualifications**  
**SOQ = Statement of Qualifications**  
**SOW = Statement/Scope of Work**

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

## Chapter 10 **Consultant Selection**

### 10.1 **GENERAL**

#### **Introduction**

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

#### **Architectural and Engineering Consultants**

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

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

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

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

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

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

### Non A&E Consultants

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

Non-A&E contract procurement on highway projects must also comply with California State Public Contract Code, Section 10335-10381.

For more details on non-A&E consultants, see Section 10.10 Section 10.10: Non-A&E Consultants of this chapter.

### Selecting the Project

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

### Subcontracted Services

The consultant is responsible for performing the work required under the contract in a manner acceptable to the local agency. The consultant's organization and all associated consultants and subconsultants must be identified in 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. The subcontract must contain all required provisions of the prime contract.

### Organizational and Consultant Conflicts of Interest

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

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

### Federal Regulation Governing Conflict of Interest (23 CFR 1.33) Requires that:

- No contracting agency employee who participates in the procurement, management, or administration of federal or state funded contracts or

subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;

- No person or entity performing services for a contracting agency in connection with a federal or state funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a federal-aid highway funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project.

### **Consultants Performing Work on Multiple Phases of Federal-aid Projects**

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

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

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

extended period until the preconstruction phase of the project is complete and construction funding authorized. The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications based selection was conducted. All consultants acting in a management support role must complete Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement (see Section 10.9: Miscellaneous Considerations in this chapter) and retain it in the local agency files.

### **Section 10.9: Miscellaneous Considerations Authorization to Proceed**

The Federal Highway Administration (FHWA) must give the local agency an Authorization to Proceed (E-76) with the work prior to performing of any work for which federal reimbursement is to be requested, (see the LAPM Chapter 3: Project Authorization). For state funded projects see the Local Assistance Program Guidelines (LAPG), Chapter 23: Local Agency State Transportation Improvement Program Projects, for guidance on 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.

## **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 solicit assistance from another agency, or use a qualified private consultant to perform the required work.

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

### **Appointing the Contract Administrator**

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

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

- Ensures that all records, files and other documents related to contract procurement and management activities are retained in contract/project files;
- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;
- Arranges for preparation before an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant's cost proposal;
- Ensures contract audit and review procedure is followed;
- Ensures that fee/profit negotiation is conducted and keeps records
- Serves as the local agency's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- Reviews and approves the consultant's invoices and/or progress payments to ensure that billings are in accordance with the terms and conditions of the contract, and correspond accurately to the work performed during the billing period;
- Identifies other local agency staff for the consultant to contact, if needed;
- Closes out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports (Exhibit 17-F: Final Report Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors).

### 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 LAPM Chapter 6: Environmental Procedures and Standard Environmental Reference (SER) Chapters 31: Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and Chapter 32: Environmental Impact Statement (E)). Final detailed design shall not begin until environmental clearance has been received if federal reimbursement is desired.

Refer to Figure 10-2: Segmenting Consultant Work below, which illustrates several satisfactory ways to segment consultant activities.

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

**Figure 10-2: Segmenting Consultant Work**

**Specify Products to be Delivered**

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

**Scope of Consultant Work**

The scope of work, which the contract must include, is a detailed description of the products or

services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement; determine personnel and time requirements; and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables, standards for design and other work, quality control measures, acceptance criteria and deadlines.

### **Non-Discrimination Clause**

The Non-Discrimination Clause (*Exhibit 10-R: A&E Sample Contract Language, Article XVI Statement of Compliance*) must be included in each consultant contract. The consultant must include the nondiscrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

### **Disadvantaged Business Enterprise (DBE) Participation**

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

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

A DBE goal must be established by the local agency for each contract.. *Exhibit 10-I: Notice to Proposers DBE Information* must be included in the RFQ or RFP if the proposed contract will include federal-aid funds. The consultant must meet the goal by using DBEs, or if not able to meet the DBE goal, document that a good faith effort was made to meet the contract goal. Good faith efforts must be documented by the consultant and approved by the local agency (see *Exhibit 15-H: DBE Information-Good Faith Efforts*). If the consultant's documented good faith efforts are found to be inadequate by the local agency, the consultant must be offered an opportunity for reconsideration.

If a DBE subconsultant is unable to perform its subcontracted services and the goal is not otherwise met, the consultant must make a good faith effort to replace it with another DBE subconsultant to the extent needed to meet the DBE goal. For more detailed information see *Exhibit 10-I*. A contract provision for DBE Participation must be included in all consultant contracts with federal-aid funds. For sample contract clauses with and without specified DBE goals see *Exhibit 10-R, Article XX Disadvantaged Business Enterprise (DBE) Participation*.

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

For Contracts with DBE Goals: If the local agency has set a DBE goal, *Exhibit 10-01: Consultant Proposal DBE Commitment* must be included in the proposal package provided to the local agency by each (prime consultant) proposer. The purpose of *Exhibit 10-01* is to demonstrate the

proposer's commitment to meet the DBE goal set by the local agency. Exhibit 10-02: Consultant Contract DBE Commitment, must be completed at the conclusion of cost negotiations, incorporated into the final agreement and a copy sent the DLAE. The purpose of this form is to capture DBE participation in accordance with 49 CFR, Part 26. This form must include the names, addresses, and phone numbers of DBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a subcontracted item of work is not to be performed or furnished by the DBE firm, a description of the exact portion of work to be performed or furnished by that DBE must be included in the DBE commitment, including the planned location of that work. A proposer certified as a DBE firm must describe the work it has committed to be performed with its own forces, as well as any other work that it has committed to be performed by the DBE subconsultant, suppliers, and trucking companies.

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

#### **For Contracts with No DBE Goals:**

For contracts with no DBE contract goal, Exhibit 10-01: Consultant Proposal DBE Commitment is not necessary and only Exhibit 10-02: Consultant Contract DBE Commitment must be included in the award package and provided by the winning proposer.

#### **Reporting DBE Final Utilization (Contracts with or without Goals):**

Upon completion of the contract a summary of the DBE final utilization must be prepared, certified correct, and submitted on Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) and First-Tier Subcontractor or equivalent to the local agency showing total dollars paid to each subconsultant and supplier. Exhibit 17-F is reviewed by the local agency and certified as complete and accurate. The local agency must send the original, plus one copy of the completed Exhibit 17-F with the final invoice to the DLAE within 30 days after completion of the contract.

#### **Estimated Cost of Consultant Work**

An independent estimate for cost or price analysis is needed for all consultant contracts (23 CFR 172.7(a)(1)(v)(B)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency's negotiating team has a cost analysis of the project to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the local agency's negotiating team, is to be kept confidential and maintained for records.

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

It should be stressed that all work to be derived from the consultant services, such as preliminary design, environmental or final design, must be clearly identified in the solicitation

of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible.

Some of the costs estimating techniques are:

**Analogous Estimating:**

Analogous cost estimating is using the actual cost of a previous, similar contract as the basis for estimating the cost of the current contract. Analogous cost estimating is frequently used to estimate costs when there is a limited amount of detailed information about the project. Analogous cost estimating is generally less accurate and it is most reliable when previous projects are similar in fact, and not just in appearance, and it uses expert judgment.

**Parametric Estimating:**

Parametric estimating is a technique that uses statistical relationship between historical data and other variables to calculate a cost estimate for an activity resource. This technique can produce a higher level of accuracy depending upon the sophistication, as well as underlying resource quantity and the cost data. A cost example would involve multiplying the planned quantity of work by the historical cost per unit to obtain the estimated cost of the contract.

**Bottom-up Estimating:**

This technique involves estimating the cost for individual work in the contract with the lowest level of detail. This detailed cost is then summarized or rolled up to determine a total cost of contract. Cost detail should include estimated hours per task, labor hourly cost for professional and non-professional classifications, subconsultant costs, other project direct costs, and profit. Labor costs should be broken down to direct labor and indirect cost rates, if possible.

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

For on-call (as-needed) contracts, the cost estimate/analysis should include at minimum, a historical analysis of annual needs for consultant work, professional labor cost and market analysis, and reasonable profit analysis.

**Determine Type of Contract**

Types of contracts to be used are described as follows:

- Project-specific contract is between the local agency and consultant for the performance of services and a defined scope of work related to a specific project or projects.
- Multi-purpose or Multi-phased contract is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses. On-call contract is a contract for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity are needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, and field surveying, etc. Many agencies use

these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172).

- To maintain the intent of the Brooks Act (40 USC 1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:
  - Must define a general scope of work, complexity, and professional nature of services.
  - Specify a task order procedure the local agency uses to procure project specific work under the contract.
  - No task order is valid unless the on-call contract is still enforced. For example, if the on call contract is expired, all task orders will become invalid.
  - If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services:
  - Identify the number of consultants that may be selected or contracts that may be awarded.
- Specify procedures in the contracts the local agency will use to award/execute task orders among the consultants:
- Either through an additional qualification-based selection process (see the Two-Step RFQ/RFQ process later in this chapter), OR
  - On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only.

### **Determine Method of Payment**

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

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

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

The consultant is reimbursed for actual costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated

from contract costs. The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract.

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

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

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious and measurable, such as geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance; but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H, Example #3 and Exhibit 10-R, Article V Option 2).

### **Specified Rates of Compensation**

The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant's estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate.

This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method is recommended for on-call contracts for specialized or support type services, such as construction engineering and inspection, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of consultant's level of effort and the classification of employees used to perform the contracted work. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H, Example #2 and Exhibit 10-R, Article V, Option 3).

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

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

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

## **10.3 A&E CONSULTANT AUDIT AND REVIEW PROCESS**

This section outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (A&I), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

### **APPLICABLE STANDARDS**

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

- Caltrans Local Assistance Procedures Manual (LAPM);
- State and Federal agreements between the local agency and Caltrans, i.e. Master Agreements;
- Project Program Supplemental Agreements;
- 23 United States Code (U.S.C.), Section 112 - Letting of Contracts;
- 40 U.S.C., Chapter 11: the Brooks Act;
- 23 CFR, Chapter 1, Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services;
- 23 CFR, Chapter 1- Federal Highway Administration, Department of Transportation;
- 48 CFR, Federal Acquisition Regulation, Chapter 1, Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 - Cost Accounting Standards (CAS), Subpart 9900;

- 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- United States Government Accountability Office, Government Auditing Standards
  - Generally accepted government auditing standards (GAGAS);
- California Government Code sections 4525-4529; and
- Proposed contract terms and conditions.

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

### **AUDIT GUIDANCE AVAILABLE**

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

The local agency may seek financial and accounting assistance from its own internal audit staff and independent CPAs for compliance. The consultant may seek professional guidance in selecting its independent CPA. See also the AASHTO Audit Guide, Ch 2.5 C. *Selection of CPA Firm as Overhead Auditor* for guidance in the selection process. Training is also offered by FHWA’s National Highway Institute (see <http://www.nhi.fhwa.dot.gov/default.aspx>). Courses offered include:

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

If consultants seek training that provides resources on how to build an ICR and basic timekeeping, there are Indirect Cost Rate and Timekeeping webinars created by the Washington State Department of Transportation (WA DOT). The link to the webinars is available at <http://www.dot.ca.gov/hq/audits/>. For training and additional information provided by the Caltrans Local Assistance, visit Caltrans Local Assistance Blog at <http://www.localassistanceblog.com/>. For FHWA’s Q&A for ICRs and audits, and A&E related services, visit FHWA at <http://www.fhwa.dot.gov/programadmin/172qa.cfm>.

### **ALLOWABLE COSTS**

23 USC 112 (b)(2)(B) provides that any A&E contract or subcontract awarded, whether funded in whole or in part with Federal-aid highway funds in furtherance of highway construction projects, shall be performed and audited in compliance with the Federal cost principles. Local agencies are required to perform a cost analysis to ensure all costs are

allowable in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the Federal cost principles. Costs shall be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions. Local agency may use a sample Cost Analysis Worksheet (See Exhibit 10-H1 through 4).

Indirect costs incurred by local agencies are required to apply consultant or subconsultant's ICR, which has been accepted by Caltrans to contracts. An ICR is valid for the one-year applicable accounting period. ICRs shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR Part 172.11(b)(1). If the firm is subject to CAS, the firm must use the applicable indirect cost rate for the contract.

A consultant's accepted ICR for its one-year applicable accounting period shall be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period shall not be a condition or qualification to be considered for the work or contract award. The contract must clearly specify the ICR period if it is beyond the one-year applicable period and agreed by all concerned parties.

Consultants shall account for costs appropriately and maintain records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with the Federal cost principles.

A&I and representatives of the Federal Government have the right to conduct an audit of all costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment. For further guidance, refer to 23 CFR Part 172 and 48 CFR Part 31.

Generally, whenever the local agencies, consultants and contractors are unable to provide requested information, it shall be viewed that the required actions were either never performed or not properly recorded. Therefore, retention of all the relevant documents is not only required but also important as it minimizes negative findings, disallowed costs and assumptions. For more references, refer to Applicable Standards in this chapter.

## **APPROVAL OR ACCEPTANCE OF INDIRECT COST RATES**

### **Cognizant Letters of Approval**

A cognizant approved ICR refers to the ICR established by an audit in accordance with GAGAS or CPA Workpaper Review in accordance with GAGAS to test compliance with the Federal cost principles and accepted by a cognizant agency.

Once reasonable assurance is obtained, the cognizant agency establishes and approves the ICR and a cognizant approval letter is issued. A cognizant agency may be the home state Department of Transportation (DOT) (the state where the consultant's accounting and financial records are located), a federal agency, or a State transportation agency to which

cognizance for the particular ICRs of a consulting firm has been delegated or transferred in writing. When providing cognizant ICR approval, the cognizant agency may perform either an ICR audit or review of an audit report and related work performed by, and the workpapers prepared by a CPA in accordance with GAGAS.

### **Caltrans Acceptance of Indirect Cost Rate**

When the ICRs have not been established by a cognizant agency, Caltrans shall perform an audit or review of a consultant's and subconsultant's ICR to provide reasonable assurance of compliance with the Federal cost principles. An audit or review may consist of one or more of the following:

- Conduct a risk-based review of the ICR calculation and supporting documents;
- Perform an audit in accordance with GAGAS and issuing an audit report;
- Review and accept an audit report and related workpapers prepared by a CPA or another State Transportation Agency;

The outcome of an audit or review is for Caltrans to approve or accept the ICR so that it can be relied upon for future contracts with the consultant for a given one-year accounting period and for reliance by other contracting agencies using the same consultant. Local agencies shall ensure that only approved or accepted ICRs of consultants for the applicable one-year accounting period be applied to contracts, if rates are not under dispute. Local agencies may check A&I's website for consultant's approved or accepted ICRs. All approved or accepted ICRs are issued an Acceptance Identification (ID) number by A&I that is posted to A&I's website at <http://www.dot.ca.gov/hq/audits/>. This ID number should be referenced on all future contracts that use the same fiscal year ICR.

ICRs that have not been accepted by Caltrans will not be eligible for indirect cost payment. An ICR approved by a cognizant agency may be used across states for the one-year applicable accounting period but an ICR accepted by Caltrans may only be applied to A&E contracts entered into with the Caltrans and local agencies. Local agencies include Cities, Counties, Metropolitan Planning Organization, Special Districts, and Regional Transportation Planning Agency that receive federal funds from Caltrans.

### **Financial Review Performed Prior to Contract Execution**

All consultants, including prime and subconsultants, on a proposed contract with a dollar value greater than \$150K are subject to a financial review of the ICR by A&I. The financial documents required are detailed in the Exhibit 10-A, *A&E Consultant Financial Review Request Letter and Exhibit 10-A Checklist*. A&I will review the ICR financial documents to either accept, adjust, or reject the rate **prior to contract execution** using a risk-based approach as dictated by factors that include but are not limited to:

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Financial stability;
- Conformance to terms and conditions of previous contracts;
- General responsiveness and responsibility;
- The approximate dollar amount of all A&E contracts awarded to the consultant by

- Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultants indirect cost rate;
- Assessment of consultant's internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;
- Stability of organizational staffing.

For ICRs that have been adjusted or rejected by A&I, the consultant must provide a revised cost proposal that reflects the adjusted or excluded indirect costs.

### **Local Agencies' Responsibilities**

Local Agencies are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and sub-consultants as outlined in Exhibit 10-A (*A&E Consultant Audit Request Letter*) and the Exhibit 10A-Checklist. Local Agencies are responsible for forwarding these documents to A&I for review and acceptance of the ICR. Local agencies are also required to ensure that A&I has copies of the Exhibit 10-K "*Consultant Certification of Contract Costs and Financial Management System*" and Exhibit 10-H "*Cost Proposal*" for all consultants, both prime and sub-consultants. The ICR included in Exhibit 10-H must match the ICR included in the Exhibit 10-K and the consultant's ICR schedule. For contracts spanning more than one year, local agencies are responsible for ensuring the Exhibit 10-K and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract.

The Exhibit 10-H "*Cost Proposal*" includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. Local agencies must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with Federal cost principles.

All contract supporting documentation must be retained by the local agency in project files for the required retention period. Unsupported costs may be disallowed and required to be returned to Caltrans. Having proper documentation policy and procedures, trained staff and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, allowable, and allocable to the contract and comply with federal cost principles.

Contracts below \$150,000 are not subject to the Caltrans Financial Document Review but local agencies are required to establish that all costs are in compliance with the Federal cost principles, 23 CFR Part 172 and other applicable requirements are met. All documents listed above and cost analysis documents are required to be retained in the project files to demonstrate compliance.

### **Consultants' Responsibilities (Both prime consultants and subconsultants)**

A&E prime consultants and sub-consultants in contract with local agencies using state or federal-aid highway fund should refer to Exhibit 10-A and the 10-A Checklist for the ICR

financial documents required to be submitted to their local agency for forwarding to A&I. Consultants must complete the "Annual Certification of Indirect Costs and Financial Management System" (Exhibit 10-K) that attests that the ICR rate proposed is in compliance with FAR (48 CFR Part 31) and that the consultant's financial management system is adequate to accumulate and segregate, reasonable, allowable and allocable direct and indirect project costs. For all future contracts in one fiscal year, the consultant need only provide a copy of the Exhibit 10-K to the Local Agency. The Exhibit 10-A and 10-K should be submitted to the local agency who will forward a copy to A&I along with all other related and required financial documents.

Consultants must also follow all the federal, state, and contract requirements outlined above in the Section above, "*Applicable Standards*". Each contracting consultant must ensure its ICR is not combined with any parent company's or subsidiaries' ICR.

ICR schedules should be prepared using the accrual basis of accounting and presented in compliance with the Federal cost principles for both the prime consultant and subconsultants.

All workers employed on public works project must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project. <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. Prime and subconsultant consultants must include prevailing wage rate information in the cost proposal (*see Exhibit 10-H1-3 for example*) and provide a Prevailing Wage Rate Policy on company letterhead, signed and dated. The policy must document their accounting treatment for prevailing wage deltas and including the following information:

- Description of types of work they perform which require payment of prevailing wage rates
- Explanation of how the firm pays prevailing wage deltas to affected employees (e.g. pay directly to employee as single amount to cover delta base and delta fringe, pay delta base to employee and pay delta fringe amount to a third party plan, etc.)
- Accounting method used for prevailing wage delta base costs
- Accounting method used for prevailing wage delta fringe costs
- Effect on firm's most recently completed indirect cost rate

For guidance see Caltrans' Prevailing Wage Interpretive Guidance on A&I's website [www.dot.ca.gov/audits](http://www.dot.ca.gov/audits)

Consultant's labor distribution summary report is a labor expense report that detail all hours worked (paid and unpaid), wages earned, and benefits accrued by all of the consultant's employees. The labor summary report should detail, but not be limited to, employee names, salaries, hourly rates, total hours worked, direct hours, indirect hours by type, general ledger accounts, paid time off hours, uncompensated hours and amounts, etc.

Executive compensation analysis is an evaluation by the consultant to determine the allow ability and reasonableness of executive compensation in compliance with the Federal cost principles and AASHTO Audit Guide. The executive compensation analysis using the

National Compensation Matrix or independent compensation surveys demonstrates and supports the allow ability and reasonableness of executive compensation.

### **Audits and Investigations' Responsibilities**

After A&I receives a complete financial document packet (per Exhibit 10-A) from the local agency, A&I will review the consultants' proposed ICR and supporting documents and then notify consultants and local agencies in writing whether the proposed ICRs are accepted, adjusted, or denied.

Caltrans A&I and representatives of the federal government have the right to conduct a final audit of all costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment.

Contracts will be executed after A&I either accepts, adjusts, or rejects the ICR and a revised final cost proposal (if applicable) is received. Correction of the final cost proposal, however, does NOT need to be cleared through Caltrans A&I before executing the contract. The letter of acceptance along with the executed contract shall be retained in the project file. Failure to reflect the adjusted or denied ICR in a revised final cost proposal may result in the disallowance of costs.

Instructions are provided in the Exhibit 10-A on how to submit a complete Financial Review packet. Submit documents for Financial Review requests to [conformance.review@dot.ca.gov](mailto:conformance.review@dot.ca.gov).

Alternatively, if you do not have Internet access, you can mail Financial Review packets to Caltrans' A&I mailing address:

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

### **AUDITS AND REVIEWS TO BE PERFORMED**

An audit, as defined in 23 CFR 172.3, is defined as a formal examination, in accordance with professional standards of a consultant's accounting systems, incurred cost records, and other cost presentations to test the reasonableness, allow ability, and allocability of costs in accordance with the Federal cost principles (as specified in 48 CFR part 31.) AASHTO Audit Guide Chapter 1.3 defines an audit as a formal examination, in accordance with professional standards, of accounting systems, incurred cost records, and other cost presentations to verify their reasonableness, allowability, and allocability for negotiating agreement fees and for determining allowable costs to be charged to government contracts. Audit objectives include the identification and evaluation of all activities that contribute to, or have an impact on, proposed or incurred costs related to government contracts.

### Indirect Cost Rate Audits

During an ICR audit, the auditors (A&I or independent CPAs) will examine the consultant's proposed ICR for the applicable one-year accounting period on the proposed contract to ensure that unallowable costs have been removed from the indirect costs, that allowable costs have been correctly measured and properly charged and allocated, and that the ICR has been developed in accordance with the Federal cost principles (as specified in 23 U.S.C. Section 112(b)(2)(B), 23 CFR Part 172.11, 48 CFR Part 31 and other FAR and State requirements. As a result of the audit, the local agency will work with the consultant to adjust the ICR and contract costs, if applicable, where disallowed costs are identified based on audit recommendations.

For guidance regarding the existing policies and procedures set forth in the federal regulations, and acceptable ICR schedules, refer to the AASHTO Audit Guide, Chapter 5, and Figure 10-3 Standard Indirect Cost Rate Schedule in this Chapter. The review program in the AASHTO Audit Guide, Appendix A, should be used as a guide in performing ICR audits. This review program is used for reviews of CPA audited ICR workpapers.

### CPA Workpaper Reviews

During a workpaper review of a CPA audit of an ICR, A&I will review the CPA's audit workpapers to determine whether it is appropriate to issue a Cognizant Letter of Approval or accept the ICR. The CPA Workpaper Review is conducted to determine whether: (a) the CPA's audit of the ICR was conducted in accordance with generally accepted government auditing standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with the Federal cost principles and related federal and state laws and regulations, and (c) the audit report format and contents are acceptable. Figure 10-3 Standard Indirect Cost Rate Schedule provided at the end of this chapter provides required format and contents. Chapter 11 of the AASHTO Audit Guide provides information for the audit and required disclosures. CPAs are required to furnish copies of their workpapers as requested. A CPA Workpaper Review may apply to all contracts selected for review. The outcome of the CPA Workpaper Review is a Cognizant Letter of Approval or Caltrans Acceptance of ICR. The review program in the AASHTO Audit Guide, Appendix A, is used in performing CPA Workpaper Reviews.

**IMPORTANT NOTE FOR CPAs:** Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing is required. GAGAS provides that auditors may find it appropriate to use lower materiality levels as compared with the materiality levels used in non-GAGAS audits because of the public accountability of government entities and entities receiving government funding, various legal and regulatory requirements, and the visibility and sensitivity of government programs. Use of the AASHTO Audit Guide should be used as a tool for performing audits and attestations of A&E firms.

### Contract Audits

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

- The consultants' accounting system is adequate to accumulate and segregate costs;

- Costs are reasonable, allowable, and allocable and are supported adequately;
- The contract contains all required fiscal provisions and the provisions are verbatim;
- Proper state and federal procurement requirements were followed; and
- Other audits/ reviews of the contract as necessary.

### **Incurred Cost Audits**

During an Incurred Cost Audit auditors will review incurred contract costs to determine if:

- Cost data are maintained in an acceptable accounting control system that gathers, records, classifies, analyzes, summarizes, and report accurate and timely financial data, which includes subsystems such as project and other direct costs, compensation, billing, and labor.
- Costs are adequately supported;
- Reasonable, allowable, and allocable;
- Compliance with state and federal laws and regulations;
- Compliance with the Master Agreement and Supplemental Agreement;
- Compliance with the fiscal provisions stipulated in the contract; and
- The terms required by the Master Agreement and federal laws and regulations are in the contract.

### **AUDIT FINDINGS AND REVIEW DEFICIENCIES**

If audited or reviewed, local agencies are responsible for ensuring contracts, cost proposals, and ICR(s) are modified to conform to audit and review recommendations as necessary, and to ensure that audit findings and review deficiencies are resolved in a timely manner. Failure to do so may result in costs being disallowed.

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

**FAR Compliant, Inc. - Statement of Direct Labor, Fringe Benefits, and General Overhead For the year ended December 31, 20xx**

Description	General Ledger Balance	Unallowable	FAR Reference	Total Proposed	Home Office	Field Office
Direct Labor	\$123,456,789	(\$934,568)	(1)(15)	\$122,522,221	\$85,765,555	\$36,756,666
<b>Fringe Benefits</b>						
Vacation/Paid Leaves	\$17,283,950			\$17,283,950	\$12,098,765	\$5,185,185
Payroll Taxes	\$1,530,864	(\$30,617)	(15)	\$1,500,247	\$1,050,173	\$450,074
Medical Insurance	\$10,864,197			\$10,864,197	\$7,604,938	\$3,259,259
401K Match	\$4,938,272			\$4,938,272	\$3,456,790	\$1,481,481
Incentives and Bonus	\$15,308,642	(\$3,123,456)	(2)	\$12,185,186	\$8,529,630	\$3,655,556
Other Employee Benefits	\$2,515,280	(\$553,433)	(3)	\$1,961,847	\$1,373,293	\$588,554
<b>Total Fringe Benefits</b>	<b>\$52,441,206</b>	<b>(\$3,707,506)</b>		<b>\$48,733,700</b>	<b>\$34,113,590</b>	<b>\$14,620,110</b>
<b>General &amp; Administrative Overhead</b>						
Indirect Overhead Labor	\$72,696,030	(\$4,452,541)	(1)(2)(4)(15)	\$68,243,489	\$65,790,948	\$2,452,541
Purchased Labor/Subconsultants	\$22,433,019	(\$22,433,019)	(5)	\$ -	\$ -	\$ -
<b>Office Rent</b>	<b>\$12,345,679</b>	<b>(\$987,654)</b>	<b>(6)</b>	<b>\$11,358,025</b>	<b>\$11,038,025</b>	<b>\$320,000</b>
Supplies & Utilities	\$5,753,086			\$5,753,086	\$4,027,160	\$1,725,926
Postage and Shipping	\$1,770,000	\$321,456	(5)	\$2,091,456	\$1,464,019	\$627,437
Equipment and Maintenance	\$3,812,346			\$3,812,346	\$2,512,789	\$1,299,557
Depreciation Expense	\$6,202,469	(\$1,345,678)	(7)	\$4,856,791	\$3,205,482	\$1,651,309
Interest	\$123,456	(\$123,456)	(8)	\$ -	\$ -	\$ -
Dues and Subscription	\$123,456	(\$12,345)	(9)	\$111,111	\$77,778	\$33,333
Advertising & Marketing	\$427,406	(\$45,678)	(10)	\$381,728	\$267,210	\$114,518
Vehicles	\$5,896,123	(\$147,403)	(5)(11)(14)	\$5,748,720	\$4,024,104	\$1,724,616
Bad debts	\$12,345	(\$12,345)	(12)	\$ -	\$ -	\$ -
<b>Legal and Accounting Services</b>	<b>\$3,713,580</b>	<b>(\$222,815)</b>	<b>(13)</b>	<b>\$3,490,765</b>	<b>\$3,490,765</b>	<b>\$ -</b>
Fines and Penalties	\$80,000	(\$80,000)	(16)	\$ -	\$ -	\$ -
<b>Total General &amp; Admin. Overhead</b>	<b>\$135,388,995</b>	<b>(\$29,541,478)</b>		<b>\$105,847,517</b>	<b>\$95,898,280</b>	<b>\$9,949,237</b>
Total Indirect Costs				\$154,581,216	\$130,011,870	\$24,569,347
Indirect Cost Rates				126.17%	151.59%	66.84%

**Figure 10.3: Standard Indirect Cost Rate Schedule**

**FAR References:**

- (1) FAR 31.202: Uncompensated overtime.
- (2) FAR 31.205-6: Profit distribution and excess of the reasonable compensation.
- (3) FAR 31.205-46, 31.205-14 & 31.205-51: Meals not for valid business purposes and associated with lobbying and lacking adequate support
- (4) FAR 31.201-2: Administrative staff costs billed to projects/clients.
- (5) FAR 31.201-2: Subconsultant labor and other direct costs billed to and paid by contracts/clients.
- (6) FAR 31.205-36 and 31.205-17: Capital lease costs, rent paid in excess of reasonable costs, and idle facilities and capacity costs.
- (7) FAR 31.201-2 & 31.205-6: Costs relates to personal use by employees and luxury vehicles.
- (8) FAR 31.205-20: Interest and other financial costs not allowable.
- (9) FAR 31.201-2: Non-business related dues and subscriptions.
- (10) FAR 31.205-1: Costs for advertisement and public relations costs and trade show expense including labor.
- (11) FAR 31.205-46(d) and 31.205-6(m)(2): Personal use of vehicle and lack of mileage logs and business purpose.
- (12) FAR 31-205-3: Bad debts and collection costs.
- (13) FAR 31.205-27 and 31.205-47: Reorganization and capital raising related costs and costs incurred in connection with violation of a law or regulation by the consultant.
- (14) FAR 31.205-46: Unreasonable costs and costs not supported by documents and lack of business purpose.
- (15) FAR 31.201-6(a) & CAS 405-40: Labor costs associated with unallowable costs.
- (16) FAR 31.205-15: Fines and penalties resulting from violations of laws and regulations.

## 10.4 CONSULTANT SELECTION METHODS

Figure 10-4: Consultant Selection Flowchart shows the three methods normally used in selecting a consultant. They are:

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

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

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

Beginning with *Section 10.5: Consultant Selection Using the One-Step RFP Method* Using the One-Step RFP Method each of the selection methods is explained in detail. Regardless of the method used, the local agency shall retain all consultant selection documentation in their project files as required by 23 CFR Part 172.

### One-Step RFP

The One-Step RFP method may be used for Project-specific contracts when the scope of work is well defined or for Multi-phased contracts where the defined scope of work is divided into phases. Other considerations include when the consultant's services are highly specialized and there are few qualified consultants.

### One-Step RFQ

The One-Step RFQ method is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two step selection process is used for procurement of on-call contract(s).

### Two-Step (RFQ Followed by RFP)

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or on-call list, through a single solicitation. For more information, refer to description of on-call contract in *Section 10.2: Identifying & Defining a Need for Consultants*. This method requires substantially more work and time than the other two methods described above.

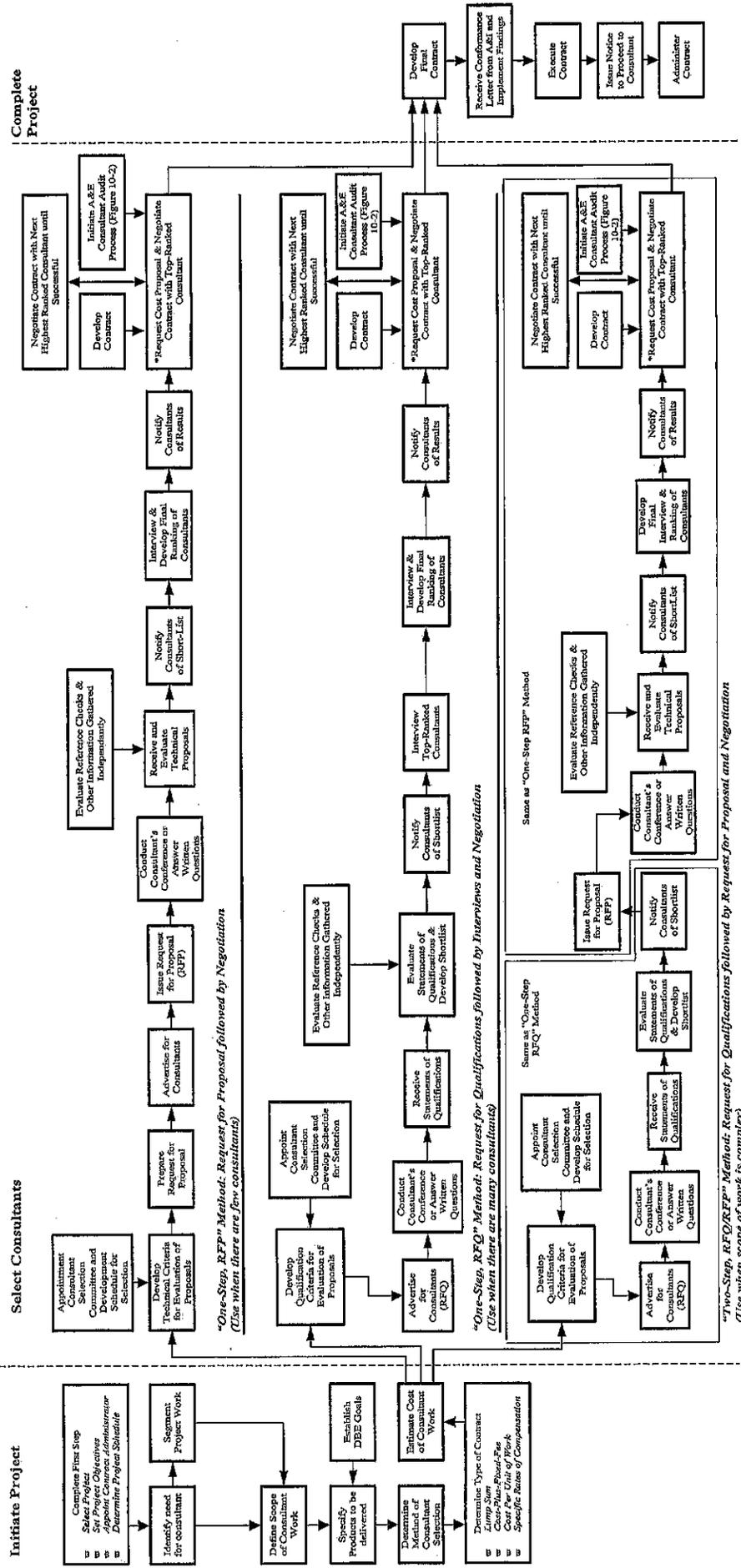


Figure 10-4: Consultant Selection Flowchart

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## 10.5 CONSULTANT SELECTION USING THE ONE-STEP RFP METHOD

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. For non-A&E consulting contracts, a cost proposal shall 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 subject matter experts from the project's functional area. The members should be familiar with the project/segment to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement.

### Develop Technical Criteria for Evaluation of Proposals

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

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

### Develop Schedule for Consultant Selection

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

### Prepare RFP

The information required in a RFP includes the following:

- Description of project;
- Scope of work;
- Schedule of work (including estimated start and end dates of the contract);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See Exhibit 10-H: Sample Cost Proposal (Example 3) for sample cost proposal formats;
- Contract audit and review process requirements (see Section 10.3: A&E Consultant Audit and Review Process);
- Proposal format and required contents;
- Method, criteria and weighting for selection;
- A DBE contract goal is specified (see Exhibit 10-I: Notice to Proposers DBE Information), if a federal-aid contract;
- Consultants acting in a management support role requirements Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement;
- Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

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

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered);
- Organizational chart;
- Schedule and deadlines;
- Staffing plan;
- Proposed Team—complete for prime consultant and all key subconsultants;
- Key personnel names and classifications—key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm;
- Consultant DBE Commitment document, see Exhibit 10-O1: Consultant Proposal DBE Commitment;

- References.

### **Financial Management and Accounting System Requirements**

The local agency must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

### **Advertise for Consultants**

The solicitation process for consultant services shall be by public advertisement, or by any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of contract. The minimum length of advertisement is 14 calendar days.

Advertisement of the RFP in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting government contract solicitations such as BidSync, Planetbids, or posting the RFP on the local agency's or other widely used websites are all acceptable methods of solicitation.

To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

### **Issue/Publish RFP**

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

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

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

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

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be

considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. The members of the consultant selection committee must evaluate each proposal according to the technical criteria listed in the RFP. Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

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

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

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

### **Negotiate Contract with Top-Ranked Consultant**

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as Exhibit 10-K: Consultant Certification of Contract Costs and financial Management System of Costs and Financial Management System and Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist, whichever applicable (see Section 10.3: A&E Consultant Audit and Review Process) should be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their technical proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceeds to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations

commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFP and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be properly disposed of by permanently deleting the cost proposals and/or any copy of the cost proposals.

The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. It can be revised, if needed, for use in negotiations with the next most qualified consultant. A contract audit and review may be required (see *Section 10.3: A&E Consultant Audit and Review Process* in this chapter). Local agency Contract Administrator ensures that all required documentations are provided to Caltrans A&I within 10 days of written request, including all documents for a Financial Review, if applicable. Caltrans A&I will not proceed with a Financial Document Review until all required documentation is completed correctly and submitted. Negotiations should be finalized after addressing all deficiencies noted in the Caltrans A&I Financial Review Letter if applicable. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan;
- Schedule and deadlines (for deliverables and final duration of contract);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fees. Fee is required to be negotiated as a separate element
- Hours, level of effort by task and/or classification

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. The local agency and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see *Exhibit 10-C: A&E Consultant Contract Reviewers Checklist*), and adjustment or denial of ICR as identified in the Financial Review Letter has been included in the final cost proposal, if applicable.

Prior to contract award, the local agency must submit a completed Exhibit 10-C signed by the Contract Administrator for all new or amended federal and/or state funded A&E consultant contracts to [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov) for Caltrans review and acceptance. If there are any changes to the contract after Caltrans acceptance of Exhibit 10-C, the local agency must notify Caltrans and provide a copy of an updated Exhibit 10-C and all contract amendments to [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov). Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement. Submission of Exhibit 10-C to Caltrans HQ for acceptance is not required for non-A&E consultant contracts.

## 10.6 CONSULTANT SELECTION USING THE ONE-STEP RFQ METHOD

The RFQ method is used when the services being procured are specialized, or the scope of work is defined broadly and may include multiple projects.

### Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the scope of work to be contracted out and with the local agency standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the local agency and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement.

### Develop Technical Criteria for Evaluation of Qualifications

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

## Develop Schedule for Consultant Selection

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

## Prepare RFQ

As a minimum, the RFQ generally includes the following:

- General description of the services or project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See Exhibit 10-H: Sample Cost Proposal for sample cost proposal formats;
- Contract audit and review process requirements (see Section 10.3: A&E Consultant Audit and Review Process);
- Statement of Qualification (SOQ) format and required content to be submitted;
- Method and criteria and weights for selection;
- A DBE contract goal is specified (see Exhibit 10-I: Notice to Proposers DBE Information), if a federal-aid contract;
- Consultants acting in a management support role requirements Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement; Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

The RFQ specifies the content of the SOQ, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFQ is published and time that SOQs must be submitted. More time may be required for complex contracts or scope of work.

Items typically required in a statement of qualification include:

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

- Organizational chart;
- Forecast or Schedule of work;
- Consultant DBE Commitment document, see Exhibit 10-01: Consultant Proposal DBE Commitment;
- References.

### **Financial Management and Accounting System Requirements**

The local agency must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

### **Advertise for Consultants**

The solicitation process for consultant services shall be by public advertisement or any other public forum or method that assures qualified in-State and out-of-State consultant are given a fair opportunity to be considered for award of contract. The RFQ must contain sufficient project work information, so that interested consultants can submit an appropriate SOQ.

Advertisements for RFQ may take one of two approaches. The most common is an advertisement or publication of the RFQ in a major newspaper of general circulation, technical publication of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting contract solicitations such as Bid Sync, PlanetBids, or posting the RFQ on other widely used websites. To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

In the second approach, the local agency advertises the availability of the RFQ in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, or through a web hosting or clearing houses known for posting contract solicitations such as BidSync or PlanetBids, and requests that interested consultants send a letter of interest to the local agency for the RFQ. The RFQs shall then be sent to those firms who indicated interest in the RFQ. In some cases, it may be desirable to advertise nationwide for a particular project or service. This approach provides a registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addenda to the RFQ, if necessary.

### **Issue/Publish RFQ**

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

### **Receive/Evaluate Statements of Qualifications and Develop Shortlist**

The first step in the evaluation process is to determine that each SOQ contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The consultant selection committee reviews the submitted SOQ according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant's references. This check applies to major subconsultants also. The committee establishes a 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 (short list) that will be requested to attend interviews. Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

### **Interview Top-Ranked Consultants**

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

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

All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

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

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing. The next two sections provide guidance when the RFQ is solicited for specialized services and additional information is required prior to cost negotiations with consultant. For on-call contracts, skip the next two sections and begin Negotiation phase.

### **Conduct Scoping Meeting**

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

### **Request Cost Proposal**

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

Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

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

### **Negotiate Contract with Top-Ranked Consultant**

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System and Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist, whichever applicable (see Section 10.3: A&E Consultant Audit and Review Process) will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their statements of qualification.

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

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated.

Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant.

At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFQ and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be properly disposed of by permanently deleting the cost proposals and/or any copy of the cost proposals.

A contract audit and review may be required (see Section 10.3: A&E Consultant Audit and Review Process earlier in this chapter). Local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans A&I in a timely fashion, including all

documents for a Financial Review, if applicable. Caltrans A&I will not proceed with a Financial Review until all required documentation is completed correctly and submitted. Negotiations may be completed after receipt of the Caltrans A&I Financial Review Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Staffing plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments and fee. Fee is required to be negotiated as a separate element.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. For on-call contracts, typically a price agreement is reached based on specific rate of compensation for the term of the contract. The subsequent task orders (or mini agreements for individual project work) is negotiated based on actual cost plus fee, or lump sum, which is derived from the wage rates agreed upon earlier for the on-call contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see Exhibit 10-C: A&E Consultant Contract Reviewers Checklist), and receive Caltrans A&I's Financial Review acceptance letter, if applicable.

Prior to contract award, the local agency must submit a completed Exhibit 10-C signed by the Contract Administrator for all new or amended federal and/or state funded A&E consultant contracts to [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov) for Caltrans review and acceptance. If there are any changes to the contract after Caltrans acceptance of Exhibit 10-C, the local agency must notify Caltrans and provide a copy of an updated Exhibit 10-C and all contract amendments to [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov). Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement. Submission of Exhibit 10-C is not required for non-A&E consultant contracts..

## 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 is indicated in

Figure 10-4: Consultant Selection Flowchart. Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use only when the scope of work is very complex or unusual. The Two-Step RFQ/RFP is also well suited for procuring multiple on-call contracts through single solicitation. The outcome of the first step - RFQ will be multiple contracts, or on-call list of consultants with cost/price agreements. The subsequent project work will be procured thru individual competition or mini-RFPs amongst the on-call consultants. The mini-RFP or the task order will be negotiated with first ranked firm from each competition. Task order (mini-RFP) cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.

## 10.8 COMPLETING THE PROJECT

### Develop the Final Contract

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

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

### Review and Approval of Contracts

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

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
- Work activities and schedules are consistent with the nature and scope of the project;
- DBE goal Exhibit 10-O2: Consultant Contract DBE Commitment is included for all contracts regardless of goal;
- Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System (for Prime and Subs), and Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist and all supporting documents, if applicable, have been submitted to Caltrans A&I;

- If applicable, adjustment or denial of the ICR identified in the Financial Review Letter have been included in the final cost proposal;
- *Exhibit 10-C: A&E Consultant Contract Reviewers Checklist* must be used to ensure that required documentation has been provided;
- A cost proposal (see *Exhibit 10-H: Sample Cost Proposal*), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

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

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

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

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

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

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

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

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

### **Administer the Contract**

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

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

- Monitoring project progress and compliance with contract requirements;
- Receiving, reviewing and assessing reports, plans, and other required products/deliverables;
- Receiving and reviewing state prevailing wages. (See Department of Industrial Relations websites below.
  - DIR FAQ website:  
[http://www.dir.ca.gov/OPRL/FAQ\\_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
  - DIR Wage Determination website:  
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>
- Reviewing invoices to ensure costs claimed are in accordance to the method of payment and contract cost proposal, approving payments;
- If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices.
- Record keeping and reporting;
- Controlling costs;
- Identifying changes to the scope of work and preparation of amendments (must ensure that any changes to the scope is within the constraints of the original RFP/RFQ;
- Completing the consultant performance evaluations (see Exhibit 10-S: Consultant Performance Evaluation).

### **Substitution of Consultant Personnel and Subconsultants**

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

The proposed substituted person must be as qualified as the original, and at the same or lower cost. For engineering types of consultant contracts, the consultant's project manager must be a registered engineer in the State of California.

### **Invoicing (or Progress Payments)**

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

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

- Copy of Executed Consultant contract;
- Exhibit 10-01: Consultant Proposal DBE Commitment (federally funded projects only);
- Exhibit 10-02: Consultant Contract DBE Information (federally funded projects only);

DLAE must confirm that the local agency has submitted copies of Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System (for Prime and Subconsultants) to Caltrans A&I and received acceptance of Exhibit 10-C: Consultant Contract Reviewers Checklist from Caltrans.

Invoices should include the following:

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

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

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

The local agency is to follow the procedures given in *LAPM Chapter 5: Invoicing*, to obtain reimbursement of federal or state funds.

### **Contract Amendments**

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services shall be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement (see Q&As at: [http://www.fhwa.dot.gov/programadmin/172qa\\_01.cfm](http://www.fhwa.dot.gov/programadmin/172qa_01.cfm)).

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

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

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

All contract amendments must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment. If an emergency exists of such magnitude that a delay cannot be tolerated, the local agency and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of local agency funding. *Section 10.3: A&E Consultant Audit and Review Process* of this chapter shall apply to the entire contract and must be completed prior to execution of the contract amendment.

### **Performance Evaluation**

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

## Project Records

Federal-Aid Highway Program funding recipients and sub-recipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records considered pertinent to the grant agreement and in compliance with Federal laws and regulations (e.g., 23 USC 112; 40 USC 1101-1104, 23 CFR 172, 48 CFR 31, and 2 CFR Part 200). 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 (2 CFR Part 200.333).

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

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder's list;
- Documentation of DBE participation (including Exhibit 10-01: Consultant Proposal DBE Commitment and Exhibit 10-02: Consultant Contract DBE Commitment);
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see Exhibit 10-B: Suggested Consultant Evaluation Sheet);
- Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines);
- Financial Review Letter and Cognizant Agency Letter, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management (Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System) for contracts over \$150,000 or more;
- A&E Consultant Audit Request Letter and Checklist (Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist) for contracts over \$150,000 and all supporting documentation.
- Executed consultant contracts, cost proposals and amendments (see Exhibit 10-R: A&E Sample Contract Language and Exhibit 10-H: Sample Cost Proposal);
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;

- Performance evaluation (see Exhibit 10-S: Consultant Performance Evaluation);
- Consultant contract checklists (see Exhibit 10-C: A&E Consultant Contract Reviewers Checklist);
- Accounting records documenting compliance with State and federal administrative requirements;
- Certifications and Conflict of Interest forms (Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement, Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement and Exhibit 10-Q: Disclosure of Lobbying Activities, as appropriate).

### Retention Clauses

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

### Review of Local Agency Actions

Federal-aid or state reimbursement is contingent on meeting the federal or state requirements and can be withdrawn, if these procedures are not followed and documented. The local agency files are to be maintained in a manner to facilitate future FHWA or Caltrans process reviews and audits. As specified in the Review and Approval of Contracts above, the Contract Administrator must review the proposed consultant contract before execution.

Exhibit 10-C: A&E Consultant Contract Reviewers Checklist is to be completed and signed. A copy shall be emailed to Caltrans at [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov) prior to contract award for acceptance. This acceptance of Exhibit 10-C must be retained in the local agency project files.

## 10.9 MISCELLANEOUS CONSIDERATIONS

### Engineering Services Under \$150,000

The procurement of consultant services by Small Purchase Procedures is in accordance with 23 CFR 172.7(a)(2) and 48 CFR 2.101.

Local agencies should be fully aware that consultant services costing in aggregate no more than \$150,000 per contract may be obtained through a relatively simple and informal method of procurement. This informal method must be sound and appropriate for the consulting services procured and the project files must contain justification for the selection. The method of procurement shall be an open and competitive process in selecting consultants and should consider a minimum of three different consultants whenever possible. The Brooks Act and the consultant audit process described in Section 10.3: A&E Consultant Audit and Review Process of this chapter do not apply to consultant service contracts under \$150,000. Although this method of procurement is informal, it must still comply with Sections 10.1: General, 10.2: Identifying & Defining a Need for Consultants Completing the Project, and Section 10.9: Miscellaneous Considerations, of this chapter.

Project splitting should not be used to take advantage of the small purchase procedure in order to circumvent the Brooks Act.

**Table 10-1: Summary of Required/Non-Required Activities for Small Purchase Procedure**

REQUIRED	NOT REQUIRED
<ul style="list-style-type: none"> <li>• Competitive process (collect three bids)</li> <li>• Conflict of interest determination</li> <li>• Assigned Contract Administrator</li> <li>• Defined scope of work/schedule of deliverables/start and end dates for contract</li> <li>• Defined deliverables/Prime and Subconsultant responsibilities</li> <li>• DBE goal for contract; <u>Exhibit 10-O1: Consultant Proposal DBE Commitment</u>, <u>Exhibit 10-O2: Consultant Contract DBE Commitment</u></li> <li>• Cost estimate prior to receiving bids</li> <li>• Best method of payment determination</li> <li>• Contract provisions/clauses</li> <li>• Evaluation of consultant, justification of selection</li> <li>• Contract management responsibilities</li> </ul> <p><u>Exhibit 10-C: A&amp;E Consultant Contract Reviewers Checklist</u></p>	<ul style="list-style-type: none"> <li>• No RFP/RFQ</li> <li>• No Selection/Evaluation Panel</li> <li>• No Evaluation criteria disclosure requirements</li> <li>• No record of costs/profit negotiations</li> </ul> <p>No audit and review requirement of contract (no <u>Exhibit 10-A: A&amp;E Consultant Audit Request Letter and Checklist</u> or <u>Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System</u>)</p>

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

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

**Noncompetitive Negotiated Contracts (Sole-Source)**

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals (23 CFR 172.7(a)(3)).

FHWA considers these types of contracts as Sole Source contracts and should be used only in very limited circumstances. A Public Interest Finding prepared by the local agency and approved by Caltrans is required before establishing these services (23 CFR 172.7(a)(3); also see Exhibit 12-F: Cost-Effectiveness/Public Interest Finding).

Conditions under which noncompetitive negotiated contracts may be acceptable include:

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

The local agency shall:

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

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

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

### **Personal Services Contracts**

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

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

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

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

### **Retaining a Consultant as an Agency Engineer or in Management Support Role**

A local agency may retain qualified consultants in a management support role on its staff in professional capacities for state funded or federal-aid projects such as:

- A City Engineer (or equivalent) who manages the engineering unit for the city, providing oversight of a project, series of projects, managing or directing work of other consultants or contractors on behalf of the City, selecting other consultants, approving changes to schedule, scope, deliverables or costs, and approving invoices
- A County Engineer (or equivalent) who manages the engineering unit for the county such as duties described above.
- A Project Manager (or equivalent) who manages and oversees a project, series of projects or the work of other consultants and contractors on behalf of the public agency
- A Program Manager (or equivalent) who manages and oversees an element of a highway program, function, or service on behalf of the public agency

However, a consultant in a management support role is not:

- A consultant engineer performing project-specific design, and/or construction contract administration and construction engineering for the public agency
- A consultant "project manager" performing contract management on behalf of the consultant on the public agency's consultant contract.
- A consultant providing support to administrative duties such as federal authorization process, labor compliance activities, and other management and administrative tasks.

The use of a consultant in a management support 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 support roles must be selected using the same procedures as those for other consultants specified in this chapter.

Eligibility for federal or state reimbursement for a consultant in a management support role 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;
- For a state funded or federal-aid project, completion of *Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement* by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered;
- 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;
- For a state funded or federal-aid project, a local agency consultant in a management support role shall not:
  - Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or subconsultant to a proposing firm;
  - Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the local agency consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.
  - Apply for or receive reimbursement of federal-aid funds for the local agency's federal-aid project if either of the foregoing has occurred. However reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
  - Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).

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

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

- Subparagraphs of 2 CFR 200.318 maintain a contract administration system and 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.



### **Construction Engineering Services**

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

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

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

## **10.10 NON-A&E CONSULTANTS**

### **Definition**

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

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

### **Intelligent Transportation System (ITS) Projects**

Intelligent Transportation System (ITS) means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects are those that in whole or in part, funds the acquisition of

technologies or systems of technologies that provide significant contributions to the provision of one or more ITS user services as defined in the National ITS Architecture.

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

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding. If the ITS project involves considerable software development, system integration, hiring engineers and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it would be considered an engineering and design services contract and the contract must be procured as an A&E consultant contract.

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

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

For more information regarding Intelligent Transportation Systems (ITS) Program procurement requirements, refer to *LAPG, Chapter 13 LAPG Chapter 13: Intelligent Transportation Systems*.

### **Non-Infrastructure Projects**

- Non-infrastructure (NI) projects are those transportation-related projects that do not involve either engineering design, Right-of-Way acquisition (for additional guidance refer to *LAPM Chapter 13*), or the eventual physical construction of transportation facilities.

Procurement of Non-A&E consultant contracts associated with non-infrastructure projects must follow Non-A&E procurement procedures described in this chapter. For more information on NI projects, refer to *LAPM Chapter 3 Project Authorization. LAPM Chapter 3: Project Authorization*.

### **Procurement of Non-A&E Consultant Contracts**

Local agencies must use their own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal laws and regulations (2 CFR Part 200). All non-A&E

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

- a. Request for proposals must be publicized and all evaluation factors and their relative importance identified
- b. Proposals must be solicited from an adequate number of qualified sources (no less than three)
- c. Local agency must have a written procedure for evaluating proposals
- d. Consultants other than A&E consultants shall be selected using cost or cost and qualifications (best value)
- e. Public agencies contracting with other public agencies to perform work need an executed Memorandum of Understanding (MOU) or interagency agreement
- f. A consultant firm that was instrumental or listed in the application process for projects, such as ATP, is not entitled to be awarded a contract for its implementation without a competitive procurement. All federal/state funded contracts must be competitively solicited.

#### **Determining Need for Consultant**

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

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

#### **Preparing the Request for Proposal**

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

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

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

### Scope of Work

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

### Technical Proposal

The Technical proposal should include the following information:

- **Consultant Project Manager** - qualifications, roles and responsibilities.
- **Methodology** - description of work and overall approach, specific techniques that will be used and specific administrative and operations expertise to be used.
- **Workplan and Work Schedule** - the technical proposal should include activities and tasks, and their delivery schedule.
- **Personnel** - List of personnel who will be working on the project, and their resumes.
- **Facilities and resources** (If applicable) - Explanation of where the services will be provided and what type of equipment is needed to perform services.
- **Sub-contracts** - Identify all sub-contracts that are to be used, description of each and the work by each sub-consultant/sub-contractor. No work shall be subcontracted unless listed in the technical proposal. Sub-consultant resumes should be provided.
- **References** - The technical proposal should provide at least three (3) clients for whom the proposer has performed work of similar nature to the request.

### Cost Proposal Worksheet

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

### DBE Consideration

DBE consideration is required on all federal-aid funded contracts including non-A&E..

### Solicitation and Award of Contracts

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

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

Contracts may be modified or amended only if the contracts so provide. Amendments must be requested and executed prior to the termination date of the most recently approved original or amended contract. All records of contract activities shall be kept for three years after federal final voucher E-76 or state final voucher for State-Only funds. Costs are reimbursable after state allocation by the California Transportation Commission (CTC) and/or the issuance of the federal E-76. The per diem rate shall not exceed the state rate. Contract Managers are responsible for monitoring expenditures on all contracts and verifying categories of work that require prevailing wage. A person in Responsible Charge of contract management is required for all federally funded projects.

### Evaluation Criteria

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

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

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

To establish effective competition, a minimum of three proposal must be evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) (*LAPM Exhibit 12-F: Cost-Effective/Public Interest Finding*) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

### Oral Presentations

Oral presentations are optional. The evaluation criteria must include factors/sub-factors and weights used to score the proposers performance at the oral presentation. The evaluation committee will only be able to score each proposer based upon this criteria. The Contract Manager/Administrator should develop a set of questions related to the scope of work or the project to be asked during the evaluation committee question and answer (Q & A) section of the oral presentations. All proposers are asked the same questions for consistency.

### Protest/Appeals/Reinstatement Procedures

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

## 10.11 REFERENCES

- 23 CFR, Part 172  
Administration of Engineering and Design Related Service Contracts  
<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3>
  
- 40 USC, Section 1104  
Brooks Act <http://www.fhwa.dot.gov/programadmin/121205.cfm>
  
- 41 CFR  
Public Contracts and Property Management  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl)
  
- 41 USC  
Public Contracts  
<http://law.onecle.com/uscode/41/index.html>
  
- 23 USC  
Letting of Contracts  
<http://www.fhwa.dot.gov/map21/docs/title23usc.pdf>
  
- 48 CFR, Chapter 1, Part 15.404  
<https://www.acquisition.gov/far/html/FARTOCP15.html>

- 48 CFR, Chapter 1, Part 31  
<https://www.acquisition.gov/far/html/FARTOCP15.html>
- Title 48, Part 16 – Types of Contracts  
<http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1>
- 48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts  
<https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3>
- 48 CFR 31.201-3  
<https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf>
- 48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900  
<https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99>
- 2 CFR Part 200  
[http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)
- 49 CFR, Part 26  
Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)
- American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit and Accounting Guide  
<http://audit.transportation.org/Pages/default.aspx>
- Caltrans Division of Procurement and Contracts Website  
<http://www.dot.ca.gov/dpac/index.html>
- California Labor Code, Section 1775  
<http://law.onecle.com/california/labor/1775.html>
- Government Auditing Standards (GAS) issued by the United States Government Accountability Office  
<http://www.gao.gov/yellowbook/overview>
- Government Code Sections 4525 through 4529.5  
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5>

- OMB Circular A-110  
Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations  
[https://www.whitehouse.gov/omb/circulars\\_a110](https://www.whitehouse.gov/omb/circulars_a110)
- Standard Environmental Reference (SER)  
<http://www.dot.ca.gov/ser/>